



Council of the
European Union

Brussels, 5 December 2018
(OR. en)

15223/18

Interinstitutional File:
2018/0403(NLE)

COASI 276	ECOFIN 1175
ASIE 70	COMPET 852
CFSP/PESC 1159	RECH 523
COHOM 165	ENER 424
CONOP 111	TRANS 623
COTER 173	TELECOM 453
JAI 1253	ENV 859
WTO 322	EDUC 457
FISC 532	EMPL 563

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 December 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 784 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion, on behalf of the European Union, of the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part

Delegations will find attached document COM(2018) 784 final.

Encl.: COM(2018) 784 final



Brussels, 4.12.2018
COM(2018) 784 final

2018/0403 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 25 November 2004, the Council authorised the Commission to negotiate a Partnership and Cooperation Agreement ('PCA' or 'the Agreement') with six ASEAN countries, including Singapore. Negotiations with Singapore were launched in October 2005 and finalised in May 2013. The two sides initialled the PCA in Singapore on 14 October 2013.

Negotiations were carried out in consultation with the Working Party on Asia and the Pacific (COASI), as a consultative committee. The European Parliament has been kept informed throughout the negotiations.

Following the adoption of the Council Decision on the signing of the Agreement on 16/07/2018, the Agreement was signed on 19/10/2018 in Brussels.

The present proposal concerns the legal instrument concluding the Agreement.

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1. The aim and content of the Agreement

The PCA with Singapore is the fifth agreement with an ASEAN country, following the agreements with Indonesia, the Philippines, Vietnam and Malaysia. It will supersede the current legal framework of the 1980 Cooperation Agreement between the European Economic Community and member countries of the Association of South-East Asian Nations.

This Agreement with Singapore constitutes a stepping stone towards enhanced political and economic involvement of the EU in South-East Asia. It will provide the basis for more effective bilateral engagement by the EU and its Member States with Singapore by strengthening political dialogue and enhancing cooperation in a broad range of areas.

The PCA covers the EU's standard political clauses on human rights, International Criminal Court (ICC), Weapons of Mass Destructions (WMD), Small Arms and Light Weapons (SALW) and counter-terrorism. It also encompasses cooperation in areas such as trade and investment issues, industrial policy, health, environment, climate change, energy, tax, education and culture, labour, employment and social affairs, science and technology, and transport. The Agreement further addresses cooperation in the area of justice, freedom and security, i.e. legal cooperation, money laundering and terrorist financing, organised crime and corruption.

The PCA contains a Side Letter, which forms an integral part of the Agreement. The Side Letter confirms the parties' understanding that, at the time of signature of the Agreement, they are not aware, based on objectively available information, of any of each other's domestic laws, or their application, which could lead to the invocation of the non-execution mechanism.

The PCA is complemented by a Free Trade Agreement and an Investment Protection Agreement, which constitute specific agreements giving effect to trade and investment

provisions of the PCA, and which are an integral part of the overall bilateral relations and the common institutional framework as provided for in Article 9(2) of the PCA.

The Agreement provides for the possibility of suspending the application of the PCA or of any specific agreement referred to under Article 9(2) and Article 43(3) of the Agreement in case of a violation of essential elements of the Agreement, i.e. the human rights clause and the non-proliferation clause.

The Agreement establishes a Joint Committee with the task of ensuring the proper functioning and implementation of the Agreement.

2.2. Substantive legal basis

According to the case-law, if examination of an EU measure reveals that it pursues two purposes or that it comprises two components and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component. Exceptionally, if it is established, on the other hand, that the measure simultaneously pursues a number of objectives, or has several components, which are inextricably linked without one being incidental to the other, so that various provisions of the Treaty are applicable, the measure must be founded on the various corresponding legal bases (see, to that effect, judgments of 10 January 2006, *Commission v Parliament and Council*, C-178/03, EU:C:2006:4, paragraphs 42 and 43; of 11 June 2014, *Commission v Council*, C-377/12, EU:C:2014:1903, paragraph 34; and of 14 June 2016, *Parliament v Council*, C-263/14, EU:C:2016:435, paragraph 44).

In this particular case, the predominant purpose or component is cooperation with a third country. That is why the proposed Decision should be based on Article 212 TFEU.

2.3. Procedural legal basis

Article 218(6) TFEU provides for the adoption of a decision to authorise the conclusion of an agreement. Article 218(8) TFEU provides that the Council is to act by qualified majority except for the circumstances listed in the second subparagraph of Article 218(8) TFEU where the Council is to act unanimously. The voting rule for this particular case is therefore qualified majority.

2.4. Conclusion

The legal basis of the proposed decision should therefore be Article 212 TFEU, in conjunction with Articles 218(6)(a) TFEU. No additional provisions are required as legal basis¹.

3. OTHER ELEMENTS: NECESSITY OF PROPOSED DECISION

Article 216 TFEU provides that the Union may conclude an agreement with one or more other countries where the Treaties so provide or where this is necessary in order to achieve, in the framework of the Union's policies, one of the objectives referred to in the Treaties, is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

¹ Case C-377/12 *Commission v Council*, ECLI: EU: C: 2014: 1903 and Case C-244/17 *Commission v Council*, ECLI:EU:C:2018:662.

The Treaties provide for the conclusion of agreements such as the PCA, namely in Article 212 TFEU. Moreover, the conclusion of the PCA is necessary for the purpose of achieving, in the framework of the Union's policies, objectives referred to in the Treaties, including in the areas of human rights, the non-proliferation of weapons of mass destruction, counter-terrorism, combating organised crime, combating money laundering and terrorist financing, trade, migration, environment, energy, climate change, transport, employment and social affairs, health etc.

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on the conclusion, on behalf of the European Union, of the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 212, in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision 2018/1047², the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part ('the Agreement') was signed on 19 October 2018, subject to its conclusion at a later date.
- (2) The objective of the Agreement is to provide the basis for more effective bilateral engagement by the Union and its Member States with Singapore by strengthening cooperation and dialogue across a broad range of bilateral, regional and multilateral issues and constitutes a stepping stone towards enhanced political and economic involvement of the Union in South-East Asia.
- (3) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part, the Joint Declarations and the Side Letter which are an integral part of the Agreement, are hereby approved on behalf of the Union.

² Council Decision (EU) 2018/1047 of 16 July 2018 on the signing, on behalf of the Union, of the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part (OJ L 189, 26.7.2018, p. 2).

The text of the Agreement, of the Joint Declarations and of the Side Letter, are attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the Union, to the notification provided for in Article 49(1) of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption³.

Done at Brussels,

For the Council
The President

³ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.