Council of the European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 364 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, with regard to the adoption of a recommendation on the extension of the EU-Morocco Action Plan implementing the advanced status (2013-2018)

Delegations will find attached document COM(2019) 364 final.

Encl.: COM(2019) 364 final

EUROPEAN
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Brussels, 6.8.2019
COM(2019) 364 final

2019/0166 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, with regard to the adoption of a recommendation on the extension of the EU-Morocco Action Plan implementing the advanced status (2013-2018)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be adopted on behalf of the Union in the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part ('the Agreement' or 'the Euro-Mediterranean Agreement'), with regard to the envisaged adoption of a recommendation to extend by two years (2019 and 2020) the EU-Morocco Action Plan implementing the advanced status (2013-2018).

2. CONTEXT OF THE PROPOSAL

2.1. The Euro-Mediterranean Agreement

The purpose of the Euro-Mediterranean Agreement is to:

- provide an appropriate framework for political dialogue between the Parties, allowing the development of close relations in all areas they consider relevant to such dialogue;
- establish the conditions for the gradual liberalisation of trade in goods, services and capital;
- encourage integration of the Maghreb countries by promoting trade and cooperation between Morocco and other countries of the region;
- promote trade and the expansion of harmonious economic and social relations between the Parties, notably through dialogue and cooperation, so as to foster the development and prosperity of Morocco and its people;
- promote economic, social, cultural and financial cooperation, as well as cooperation in the fields of scientific research and innovation.

The Agreement entered into force on 1 March 2000.

2.2. The Association Council

The Association Council established by the Euro-Mediterranean Agreement consists, on the one hand, of the members of the Council of the European Union and members of the European Commission and, on the other hand, of members of the Government of the Kingdom of Morocco. In order to achieve the aims set out in the Agreement, the Association Council has the power to take decisions and may also issue recommendations where necessary. It draws up its decisions and recommendations by agreement between the Parties.

2.3. Act envisaged by the Association Council

The Association Council must adopt, by means of an exchange of letters, a recommendation on the extension of the EU-Morocco Action Plan implementing the advanced status (2013-2018) (the 'act envisaged').

The purpose of the act envisaged is to extend by two years (2019 and 2020) the validity of the EU-Morocco Action Plan implementing the advanced status (2013-2018). This extension will ensure continuity in the implementation of Morocco's advanced status.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The position to be adopted by the European Union in the Association Council established by the Euro-Mediterranean Agreement with regard to the adoption of a recommendation to extend by two years (2019 and 2020) the EU-Morocco Action Plan implementing the advanced status (2013-2018) is based on the text of the Action Plan annexed to this Decision.

The two Parties have on a number of occasions confirmed the richness and vitality of the relations between the European Union and Morocco and their full commitment to the continued development of these relations in all areas of mutual interest.

In the current political context, the extension of the 2013-2018 Action Plan will constitute the basis of EU-Morocco cooperation for 2019 and 2020 and will enable negotiations to begin to establish the direction of and the new priority areas for EU-Morocco relations in the years ahead.

The extension of the Action Plan is therefore in the interest of the European Union.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*'.

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[1].

4.1.2. Application to the case at hand

The Association Council is a body created by an agreement, in this case the Euro-Mediterranean Agreement.

The act which the Association Council is called upon to adopt constitutes an act having legal effects.

The act envisaged has legal effects by virtue of the fact that the validity of the EU-Morocco Action Plan implementing the advanced status (2013-2018) will be extended by two years, i.e. until the end of 2020.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis of the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis of a decision under Article 218(9) TFEU depends primarily on the aim and content of the act envisaged in respect of which a position is taken on the

[1] Judgment of the Court of Justice of 7 October 2014 in Case C-399/12, *Germany* v *Council* (OIV), ECLI:EU:C:2014:2258, paragraphs 61 to 64.

Union's behalf. If the act envisaged pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the case at hand

The aim and content of the act envisaged relate mainly to the association with a third country.

It follows that the substantive legal basis of the proposed decision is Article 217 TFEU.

4.3. Conclusion

The legal basis for the proposed decision is Article 217 in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ACT ENVISAGED

Given that the act of the Association Council will amend the implementing period of the Action Plan, it should be published in the *Official Journal of the European Union* once it has been adopted.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (the 'Agreement') entered into force on 1 March 2000.

(2) Article 80 of the Euro-Mediterranean Agreement gives the Association Council the power to issue recommendations.

(3) The Association Council must adopt, by means of an exchange of letters, a recommendation on the extension of the EU-Morocco Action Plan implementing the advanced status (2013-2018).

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Association Council, as the decision is binding on the Union.

(5) The extension of the 2013-2018 Action Plan will constitute the basis of EU-Morocco relations for 2019 and 2020 and will enable the establishment of new priority areas for EU-Morocco relations in the years ahead.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, with regard to the adoption of a recommendation to extend by two years (2019 and 2020) the EU-Morocco Action Plan implementing the advanced status (2013-2018) shall be based on the text annexed to this Decision.

Article 2

This Decision is addressed to the Commission and the High Representative of the Union for Foreign Affairs and Security Policy.

Done at Brussels,

For the Council
The President