Council of the European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 November 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	JOIN(2018) 29 final
Subject:	Joint Proposal for a COUNCIL DECISION on the position to be adopted on behalf of the European Union in the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the adoption of decisions on the rules of procedure of the Partnership Council, the Partnership Committee and those of specialised subcommittees or any other body

Delegations will find attached document JOIN(2018) 29 final.

Encl.: JOIN(2018) 29 final

EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 29.11.2018
JOIN(2018) 29 final

2018/0395 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union in the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the adoption of decisions on the rules of procedure of the Partnership Council, the Partnership Committee and those of specialised subcommittees or any other body

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision on the position to be adopted on the Union's behalf in the Partnership Council established by the EU- Armenia Comprehensive and Enhanced Partnership Agreement ('CEPA' or 'the Agreement'), in connection with the adoption of the rules of procedure of the Partnership Council and of the Partnership Committee and the establishment of sub-committees and other bodies.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Armenia Comprehensive and Enhanced Partnership Agreement

The CEPA aims to enhance the comprehensive political and economic partnership and cooperation between the EU and Armenia, based on common values and close links, including by increasing the participation of the Republic of Armenia in policies, programmes and agencies of the European Union. It creates a strong enabling framework for enhanced political dialogue on all areas of mutual interest, promoting the development of close political relations.

The CEPA sets out general principles and objectives for EU-Armenia relations and creates an institutional structure for the implementation of the Agreement.

It was applied provisionally from [1 June 2018].

2.2. The Partnership Council

The Partnership Council is established by Article 362 of the Agreement. It supervises and regularly reviews the implementation of the Agreement.

The Partnership Council consists of representatives of the Parties at ministerial level and meets at regular intervals, at least once a year, and when circumstances require. The Partnership Council may meet in any configuration, by mutual agreement. It adopts its own rules of procedure.

The Partnership Council takes decisions within the scope of the Agreement in cases provided for therein. The decisions are binding upon the Parties, which are to take appropriate measures to implement them. The Partnership Council may also make recommendations. It adopts its decisions and recommendations by agreement between the Parties, subject to the completion of the Parties' respective internal procedures.

2.3. The Partnership Committee

The Partnership Committee is established by Article 363 of the Agreement. It assists the Partnership Council in the performance of its duties and functions, and prepares the meetings of the Partnership Council.

The Partnership Committee has the power to adopt decisions in areas in which the Partnership Council has delegated powers to it in the cases provided for in the Agreement. Those

decisions are binding upon the Parties, which are to take appropriate measures to implement them. The Partnership Committee adopts its decisions by agreement between the Parties, subject to the completion of the Parties' respective internal procedures.

It is composed of representatives of the Parties, in principle at senior official level. It is chaired alternately by a representative of the EU or of the Republic of Armenia. It normally meets at least once a year. Its rules of procedure are adopted by the Partnership Council.

2.4. Envisaged act of the Partnership Council

The Partnership Council is to adopt a decision on its own rules of procedure and those of the Partnership Committee, as well as on the establishment of sub-committees and other bodies.

The purpose of the envisaged act is to adopt, in accordance with Articles 362(4) and 363(4) of the Agreement, rules of procedure governing the functioning of the Partnership Council and of the Partnership Committee, and to establish sub-committees and other bodies to allow for implementation of the CEPA.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The position to be adopted on behalf of the Union should enable the adoption of the rules of procedure of the Partnership Council and of the Partnership Committee.

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 notion 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 present case

The Partnership Council and the Partnership Committee are bodies established by the CEPA.

The acts set out in the annex to this Decision constitute acts having legal effects, because Article 362(6) of the Agreement empowers the Partnership Council to adopt decisions that are binding on the parties. The acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed Decision is Article 218(9) TFEU.

[1] Case C-399/12 *Germany* v *Council* (OIV), ECLI: EU: C: 2014:2258, paragraphs 61-64.

4.2. Substantive legal basis

Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is adopted on behalf of the Union. If the envisaged act 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.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal basis.

5. CONCLUSION

In the light of the above, the legal basis of the proposed Decision should be Article 37 TEU and Articles 91, 100(2), 207 and 209 TFEU in conjunction with Article 218(9) TFEU.

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COUNCIL DECISION

on the position to be adopted on behalf of the European Union in the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the adoption of decisions on the rules of procedure of the Partnership Council, the Partnership Committee and those of specialised subcommittees or any other body

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 91, 100(2), 207 and 209 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) The Comprehensive and Enhanced Partnership Agreement between the European Union and its Member States, of the one part, and the Republic of Armenia, of the other part ('the Agreement')[2], was signed in Brussels on 24 November 2017 and applied provisionally from 1 June 2018.

(2) Articles 362 and 363 of the Agreement establish a Partnership Council and a Partnership Committee to facilitate the implementation of the Agreement.

(3) Pursuant to Article 362(4) of the Agreement, the Partnership Council is to establish its own rules of procedure and pursuant to Article 363(4) of the Agreement, the Partnership Council determines in its rules of procedure the duties and functioning of the Partnership Committee.

(4) In order to ensure the effective implementation of the Agreement, the rules of procedure of the Partnership Council and of the Partnership Committee should be adopted.

(5) Article 364 (2) of the CEPA provides that the Partnership Council may decide to set up any subcommittees and other bodies in specific areas that can assist it in carrying out its duties. It further provides that the Partnership Council shall, in its rules of

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1532441113638&uri=CELEX:22018A0126(01)

procedure, determine the composition and the duties of such committees and bodies and how they shall function,

(6) The Partnership Council, during its [...] session/meeting on [date], is to adopt the rules of procedure of the Partnership Council, the Partnership Committee and those of specialised subcommittees or any other body..

(7) It is appropriate to establish the position to be taken on the Union's behalf in the Partnership Council, as its decisions on the rules of procedure of the Partnership Council, the Partnership Committee and those of specialised subcommittees or any other body, and on the establishment of subcommittees will be binding on the Union.

(8) The Union's position in the Partnership Council should therefore be based on the attached draft texts of the rules of procedure of the Partnership Council and of the Partnership Committee its annex.

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the EU-Armenia Partnership Council as regards the rules of procedure of the Partnership Council, the Partnership Committee and those of specialised subcommittees, including for the subcommittee on Geographical Indication[3]or any other body, and as regards the establishment of subcommittees shall be based on the draft acts of the Partnership Council attached to this Decision. Minor amendments to the draft Decision may be accepted without further decision by the Council.

Article 2

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

Article 3

This Decision shall enter into force on [...].

Done at Brussels,

For the Council
The President

[3] The Geographical Indications Sub-Committee created by Article 240 of the agreement is responsible for adopting its own rules of procedure.