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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	23 February 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 92 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part, in connection with the envisaged adoption of a decision concerning the establishment of a Sub-committee on Maritime Cooperation

Delegations will find attached document COM(2023) 92 final.

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COM(2023) 92 final

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Proposal for a

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on the position to be taken on behalf of the European Union in the Joint Committee established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part, in connection with the envisaged adoption of a decision concerning the establishment of a Sub-committee on Maritime Cooperation

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the EU-Philippines Joint Committee (the 'Joint Committee'), established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines[1], of the other part in connection with the envisaged adoption of a decision concerning the establishment of a specialised Sub-committee on Maritime Cooperation.

Context of the proposal

1.1. The Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part

The Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part ('the Agreement') aims to strengthen the bilateral relationship of the parties, who undertake to hold comprehensive dialogues, and to promote further cooperation between them on all sectors of mutual interest. The Agreement entered into force on 1 March 2018.

1.2. The EU-Philippines Joint Committee

The Joint Committee shall perform the tasks provided for in Article 48 of the Agreement. It consists of representatives of both Parties to the Agreement and which supervises the implementation of the Agreement. It examines any major issues arising within the framework of the Agreement and any other bilateral or international issues of mutual interest for the purpose of attaining the objectives of the Agreement. The Joint Committee may also make appropriate recommendations, by mutual agreement between the two Parties.

Pursuant to Article 48(3) of the Agreement, the Joint Committee can set up specialised sub-committees that can assist it in carrying out its tasks and duties. The Joint Committee determines the composition and duties of such committees or bodies and how they function. The EU and the Philippines have both expressed interest in setting up a Sub-committee on Maritime Cooperation.

1.3. The envisaged act of the Joint Committee

It is proposed that the Joint Committee adopts a decision on the establishment of a Sub-committee on Maritime Cooperation, including the adoption of its terms of reference ('the envisaged act'), in accordance with Article 48(3) of the Agreement.

The purpose of the envisaged act is to set up a specialised Sub-committee on Maritime Cooperation in order to assist the Joint Committee in the performance of its tasks. The Joint Committee takes its decisions and makes recommendations by common agreement of the Parties. In line with Article 8(2) of its Rules of Procedure, the Joint Committee may take decisions or make recommendations by written procedure if both Parties so agree.

[1] OJ L 343, 22.12.2017, p. 3

2. POSITION TO BE TAKEN ON THE UNION'S BEHALF

This proposal for a Council Decision establishes the position to be taken on the Union's behalf in the Joint Committee set up by the Agreement to establish a Sub-committee on Maritime Cooperation and to adopt its Terms of Reference. The EU and Philippines have both expressed interest in setting up a specialised sub-committee on Maritime Cooperation.

The proposed Union position is based on the draft act of the Joint Committee as set out in the Annex attached to this proposal for a Council Decision.

3. LEGAL BASIS

3.1. Procedural legal basis

3.1.1. 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*'[2].

3.1.2. Application to the present case

The Joint Committee is a body set up by the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part ('EU-Philippines PCA').

The act which the Joint Committee is called upon to adopt constitutes an act having legal effects, as the decision, taken by common agreement of the Parties pursuant to Article 48(3) of the Agreement, will allow for the creation of a Sub-committee on Maritime Cooperation.

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

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

3.2. Substantive legal basis

3.2.1. 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 taken on the Union's behalf. 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

[2] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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. The proposed decision concerns the functioning of the international bodies set up on the basis of the Partnership Agreement. The field within which the contested decision falls must be determined in the light of the Partnership Agreement as a whole.[3]

3.2.2. Application to the present case

The EU-Philippines PCA has been concluded based on Articles 207 and 209 TFEU as its substantive legal basis.[4] The main purpose of the proposed decision is to set up a subcommittee, on the basis of the agreement, in charge of maritime transport matters. Article 27 of the EU-Philippines PCA provides for cooperation in the field of maritime labour, education and training, including safety at the workplace and decent working conditions, while Article 38 of the same agreement sets out areas of cooperation in the field of maritime transport. The predominant field is therefore that of maritime transport. The corresponding legal bases under the TFEU is Article 100(2) TFEU.

As the aim of setting up the mentioned subcommittee is twofold, namely to further the aims of the Agreement in a general manner, but also, in a more specific manner to provide for a forum for cooperation of the parties in the field of maritime transport, the envisaged act that simultaneously pursues a number of objectives. It is thus legally justified to include, exceptionally, the various corresponding legal bases as substantive legal bases. These are as follows: the legal bases on which the Agreement as a whole had been concluded (Articles 207 and 209 TFEU), coupled with the legal basis necessary for cooperation in maritime transport (Article 100(2) TFEU). Therefore, the substantive legal bases of the proposed decision should comprise the following provisions: Article 100(2) TFEU and Articles 207 and 209 TFEU.

3.3. Conclusion

The legal basis of the proposed decision should be Article 100(2)TFEU, Article 207 and Article 209 TFEU, in conjunction with Article 218(9) TFEU.

[3] Judgment of the Court of Justice of 4 September 2018 Commission v Council (Kazakhstan), C-244/17, EU:C:2018:662, paragraph 40.

[4] Council Decision (EU) 2017/2414 of 25 September 2017 on the conclusion, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part (OJ L 343, 22.12.2017, p. 1).

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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 100(2), Article 207 and Article 209, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines , of the other part ('the Agreement') was concluded by the Union by Council Decision (EU) 2017/2414 of 25 September 2017 and entered into force on 1 March 2018.

(2) Pursuant to Article 48 of the Agreement, a Joint Committee is established to supervise the implementation of the Agreement. Pursuant to Article 48(3) of the Agreement, the Joint Committee can set up specialised sub-committees or bodies that can assist it in carrying out its tasks and duties. The Joint Committee determines the composition and duties of such subcommittees or bodies and how they function. The EU and the Philippines have both expressed interest in setting up a sub-committee on Maritime Cooperation in order to facilitate a dedicated dialogue on all aspects of EU-Philippines maritime cooperation.

(3) By written procedure, in accordance with Article 8(2) of its Rules of Procedure, the Joint Committee is to adopt a decision on the creation of the sub-committee on Maritime Cooperation and the adoption of its Terms of Reference.

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

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the forthcoming written procedure in the Joint Committee shall be based on the draft act of the Joint Committee as set out in the Annex attached to this Decision.

2. Minor changes to the draft act of the Joint Committee may be agreed to by the representatives of the Union without a further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President