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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	10 May 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 230 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Association Council established by the Euro-Mediterranean Agreement of 22 April 2002 establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part

Delegations will find attached document COM(2021) 230 final.

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COM(2021) 230 final

2021/0117 (NLE)



Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Association Council established by the Euro-Mediterranean Agreement of 22 April 2002 establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The present proposal concerns the Decision establishing the Union position to be taken in the EU-Algeria Association Council with a view to adopting a decision intended to resolve a dispute between the parties to the Association Agreement.

2. CONTEXT OF THE PROPOSAL

The proposal concerns the Euro-Mediterranean Agreement of 22 April 2002 establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part ('the Association Agreement'). The Agreement entered into force on 1 September 2005.

The Association Council is established under the first subparagraph of Article 92 of the Association Agreement as the highest body for the management of this Agreement. The Association Council is responsible for examining major issues arising from the Association Agreement and any other bilateral or international issues of common interest.

In addition, Article 100(2) of the Association Agreement provides that the Association Council may settle by decision any dispute referred to it by a party pursuant to Article 100(1) of the Association Agreement.

The planned decision is intended to settle the dispute referred to the Association Council by the European Union on 24 June 2020.

The decision is expected to be adopted as rapidly as possible by written procedure, no later than by the next meeting of the Association Council.

The planned decision will become binding on the parties in accordance with the second subparagraph of Article 94 and Article 100(3) of the Association Agreement.

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

On 24 June 2020, by *note verbale* from the European Commission (Directorate-General for Trade), the European Union referred a dispute concerning the interpretation and application of the Association Agreement between the European Union and Algeria to the Association Council.

The dispute in question arose in 2015 when Algeria began to introduce a series of barriers to bilateral trade with the European Union. In May 2018, owing to the trade concerns resulting from the measures imposed, the Association Council issued a joint declaration, inviting the parties to find solutions as soon as possible. To this end, a high-level working group was set up in 2018 and has met four times.

Despite repeated high-level interventions and targeted political efforts on the part of the EU, the dispute remains unresolved. It was therefore necessary to formally refer the matter to the Association Council in order to settle this dispute in accordance with Article 100 of the Association Agreement.

The dispute as to the application and interpretation of the Association Agreement concerns, in particular, the measures imposed by Algeria which are set out below.

- a) On 7 January 2018, Algeria adopted Executive Decree No 18-02, which includes a ban on imports of a number of products. The list of products concerned was subsequently amended several times, most recently on 27 January 2019 by Executive Decree No 19-12, and currently includes cars and private vehicles classified under tariff headings 87.01 to 87.05. This measure appears to be incompatible with Article 17 of the Association Agreement, as it imposes new quantitative restrictions on imports of goods into Algeria, or measures having an equivalent effect.
- b) On 11 July 2018, Algeria adopted Law No 18-13 on the supplementary finance law for 2018, introducing an 'additional provisional safeguard duty'. On 25 September 2018, Algeria adopted Executive Decree No 18-230 laying down detailed rules for drawing up and establishing the list of goods subject to the additional provisional safeguard duty and the corresponding rates. On this basis, the Order of the Ministry of Trade of 26 January 2019, which entered into force on 27 January 2019, laid down a list of goods to which an additional provisional safeguard duty applies. This list was amended by the Order of the Ministry of 8 April 2019. This duty amounts to between 30% and 200% of the value of the goods. In total, the amended list includes more than 992 tariff lines, covering agricultural products, processed agricultural products and numerous consumer goods. In adopting these measures, Algeria appears to be failing to comply with its obligation to gradually abolish the customs duties and charges having equivalent effect on imports into Algeria of products originating from the European Union, set out in Article 9 of the Association Agreement. Algeria also appears to be failing to comply with the arrangements applicable to agricultural, fishery and processed agricultural products provided for in Article 14 of the Association Agreement. Finally, by introducing new customs duties on imports or charges having equivalent effect, Algeria appears to be failing to comply with Article 17 of the Association Agreement.
- c) On 27 December 2017, Algeria adopted Law No 17-11 on the finance law for 2018. Article 115 of this law increased the customs duties applicable to 129 tariff lines which cover, among other things, telecommunications components, modems, cables and electrical appliances. The customs duties for certain products have increased from an initial rate of between 0% and 5% to a rate of 30%, and for certain other products from an initial rate of 30% to a rate of 60%. This measure appears to be among those incompatible with Article 17 of the Association Agreement, as in adopting this measure, Algeria is applying new customs duties to imports of these products.

- d) In 2015, Algeria established a system for the granting of import or export licences under Law No 15-15 of 15 July 2015 on the general rules applicable to the import and export of goods, and by Executive Decree No 15-306 of 6 December 2016 laying down the terms and conditions for applying import or export licensing schemes for products and goods. These licensing schemes concern automatic and non-automatic licences and give the Government the power to demand that import licences be granted by registration on the administrative lists of the Ministry of Trade. This measure appears to be among those incompatible with Article 17 of the Association Agreement, as it provides a legal basis for new quantitative restrictions, or new measures having an equivalent effect.
- e) On 30 September 2019, the Algerian Association of Banks and Financial Institutions (ABEF) published Circular No 479/DG/2019, which refers to letter No 189/CC/MF/2019 from the Chief of staff of the Ministry of Finance, dated 29 September 2019, imposing new restrictive measures against imports of mobile phones and household electrical appliances, and comprising three elements. First, the payment of imports must respect a compulsory deferral period of nine months. Second, operators are required to prioritise the use of national maritime transport capacities whenever such a choice is possible. Third, imports are authorised only under contracts using, as far as possible, the Incoterms FOB clause. As of 31 December 2019, the obligation to use the Incoterms FOB clause was extended to imports of all products. On 25 and 26 December 2019, two further circulars were published, Nos 643/DG/2019 and 645/DG/2019, containing additional information on how to apply the obligation to use national maritime carriers and the FOB clause. These measures, in particular as regards the payment conditions and the FOB clause, appear to be among those incompatible with Article 17 of the Association Agreement, as they are likely to constitute new quantitative restrictions on imports of products into Algeria or a measure with equivalent effect. These measures also appear to be incompatible with Articles 30, 32 and 34 of the Association Agreement, as they appear to violate the commitments made by Algeria relating to the processing of European Union services and service providers. In addition, with respect to maritime transport and, in particular, by imposing the obligation to use national maritime carriers, it appears that Algeria is failing to respect the principle of free access to international markets and traffic on a commercial basis and is applying measures which appear to be disguised restrictions or to have discriminatory effects on the freedom to provide services in international maritime transport. Furthermore, by imposing a deferral period of nine months for payments, it appears that Algeria is also failing to comply with Article 38 of the Association Agreement.

The abovementioned restrictive measures applied by Algeria have led to a substantial reduction in trade between Algeria and the European Union in respect of the goods and services in question.

Further to the referral to the Association Council, consultations took place on 29 September 2020 and 7 December 2020. During these consultations, the parties began discussions on a draft decision of the Association Council.

At the 7th meeting of the Sub-Committee on industry, trade and investment on 28 October 2020, and at the informal meeting of the members of the Council Association, the European Union and Algeria confirmed their common objective of resolving this dispute by a decision of the Council Association.

This decision must take into account the fact that Algeria, according to its declaration at the meeting of 29 September 2020, has not adopted, on the basis of its internal legislation, automatic or non-automatic licensing schemes for the import or export of products.

In addition, at the meeting held on 7 December 2020, Algeria signalled its intention to abolish the restrictions on imports of cars as of 1 January 2021.

The decision of the Association Council must contain the common interpretation of the two parties as to the conformity of the measures adopted by Algeria which are the subject of the dispute on the provisions of the Association Agreement, and indicate the actions to be taken by Algeria. In this respect, the transition period granted to Algeria and the procedures to be applied in the event that it does not comply with the decision need to be defined.

It should be noted that Algeria has not yet submitted its observations on the draft decision of the Association Council attached to the proposal for a Council decision. It is therefore likely that the text of the draft will be subject to major amendments during future negotiations.

4. LEGAL BASIS

4.1. Procedural legal basis

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) regulates 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 Association Council is a body created by an agreement, in this case the Association Agreement.

The act which the Association Council is called upon to adopt constitutes an act having legal effects. The planned act will be binding under international law in accordance with the second subparagraph of Article 94 and Article 100(3) of the Association Agreement.

The planned 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.

4.2. Substantive legal basis

The substantive legal basis for a Decision under Article 218(9) TFEU depends primarily on the objective and content of the planned act in respect of which a position is taken on the Union's behalf.

The main objective and content of the planned act relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is the first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE PLANNED ACT

Given that the act of the Association Council will introduce for Algeria additional transitional derogations to the obligations established under the Association Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Association Council established by the Euro-Mediterranean Agreement of 22 April 2002 establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, 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 the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Euro-Mediterranean Agreement of 22 April 2002 establishing an Association between the European Community and its Member States of the one part, and the People's Democratic Republic of Algeria, of the other part ('the Agreement'), was concluded by the Union by Council Decision 2005/690/EC¹ of 18 July 2005 and entered into force on 1 September 2005.
- (2) The Association Council is established by Article 92(1) of the Association Agreement.
- (3) Pursuant to Article 100(2) of the Agreement, the Association Council may adopt a decision with a view to settling a dispute referred to it by a party to the agreement.
- (4) On 24 June 2020, by *note verbale* the European Union referred a dispute concerning the interpretation and application of the Agreement to the Association Council.
- (5) The dispute concerns several trade measures applied by Algeria since 2015, in particular, a ban on imports of cars, the adoption of additional provisional safeguard duties applicable to 992 tariff lines, the adoption of additional customs duties applicable to 129 tariff lines, the introduction of a system for the granting of import or export licences, the establishment of a compulsory nine-month deferral period for the payment of imports and other instructions concerning the contractual clauses to be applied to imports.
- (6) During the consultations of 29 September 2020 and 7 December 2020, the parties began working on a draft decision of the Association Council to settle the dispute in question.

¹ OJ L 265, 10.10.2005, p. 1.

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

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the Association Council established by the first subparagraph of Article 92 the Euro-Mediterranean Agreement of 22 April 2002 establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, is based on the draft act attached to this Decision.

Article 2

The European Commission shall publish the Decision of the Association Council in the *Official Journal of the European Union*, after its adoption.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*