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2018/0291 (NLE)

Proposal for a

COUNCIL DECISION

on the accession of Samoa to the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

The attached proposal for a Council Decision constitutes the legal instrument for the approval, on behalf of the European Union (EU), of the accession of Samoa to the Interim Partnership Agreement between the European Union, of the one part, and the Pacific States, of the other part, pursuant to Article 218(6) TFEU.

The Council authorised the Commission to open negotiations for Economic Partnership Agreements (EPA) with ACP countries on 12 June 2002.

On 30 July 2009 the EU signed the EPA between the European Community, of the one part, and the Pacific States, of the other part. The EPA has been provisionally applied by Papua New Guinea and by Fiji since 20 December 2009 and 28 July 2014, respectively.

Article 80 of the EPA provides for the possibility for other Pacific Islands to accede to the Agreement. Accordingly, on 5 February 2018, Samoa submitted a request to the Council together with a market access offer to accede to the EPA. The Commission assessed the offer and found it to be acceptable. Accordingly, it concluded negotiations on behalf of the Union on 23 April 2018.

The Commission informed EU Member States orally and in writing on the accession process with Samoa via the ACP Working Party of the Council. The European Parliament was also informed via its Committee on International Trade (INTA). The complete text of the market access offer resulting from negotiations with Samoa was circulated to both institutions on 26 April 2018.

The necessary technical modifications to the Agreement to take account of the accession are yet to be agreed by the Parties to the EPA (the EU, Papua New Guinea and Fiji).

• **Consistency with existing policy provisions in the policy area**

This proposal implements the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part ('ACP-EU Partnership Agreement', or Cotonou Agreement)¹.

The accession of Samoa to the EPA between the EU, Fiji and Papua New Guinea², which is an asymmetric and WTO-compatible trade agreement, reinforces the legal framework of the EU trade relations with partner countries and facilitates reciprocal trade. It also incorporates Samoa into the regime of joint rules and institutions established by the EPA.

Samoa graduated from the Least Developed Countries (LDC) category in 2014. As a result, it will lose the EU's Everything-But-Arms (EBA) preferences after a transitional period that is ending on 31 December 2018. As of then, the standard form of the Generalised Scheme of Preferences (GSP) will apply to Samoa's exports to the EU, which is however less generous than the EBA. To maintain full duty-free-quota-free access to the EU market, Samoa would

¹ OJ L 287, 4.11.2010, p. 3 Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

² Council Decision of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1).

need to have joined the existing EPA between the EU, Fiji and PNG as of 1 January 2019. It is therefore foreseen that the EU and Samoa shall provisionally apply the Agreement subject to notifying each other in writing of the completion of the procedures necessary for this purpose in accordance with Article 76(3) of the Agreement.

Consistency with other Union policies

The Economic Partnership Agreement contains provisions on Sustainable Development (Article 3), whereby the Parties reaffirm that the objective of sustainable development shall be an integral part of the provisions of this Agreement, consistent with the overarching objectives and principles set out in Cotonou Agreement, and especially the general commitment to reduce and eventually eradicate poverty in a way that is consistent with the objectives of sustainable development. The EPA is a development-oriented trade agreement, which offers asymmetric market access to Samoa and allows it to shield sensitive sectors from liberalisation, while providing a large number of safeguards and a clause for infant industry protection. It further contains provisions on the rules of origin that facilitate Samoa's exports into the EU. These provisions contribute to the objective of Policy Coherence for Development and are consistent with Article 208(2) TFEU.

Samoa is included in the EU list of non-cooperative jurisdictions on tax matters since 5 December 2017. On the basis of the Council Conclusions adopted the same day (ECOFIN 1088), the EU institutions are invited to take the EU list of non-cooperative jurisdictions for tax purposes into account in foreign policy, economic relations and development cooperation with the relevant third countries. Following this invitation, the Commission will use the context of the EPA Committee meeting to raise with the Samoan authorities their situation towards the EU list, in particular to advocate for tax reforms in line with the EU listing criteria. The scope of the agreement does not cover tax good governance and under no circumstances the Commission intends to introduce such elements in the scope of the agreement.

2. LEGAL ELEMENTS OF THE PROPOSAL

• Legal basis

The legal basis for this Council decision is the Treaty on the Functioning of the European Union, in particular its Article 207, in conjunction with Article 218(6)(a)(v), thereof.

• Subsidiarity (for non-exclusive competence)

The common commercial policy, in accordance with Article 3 of the TFEU, is defined as an exclusive Union competence.

• Proportionality

This proposal is necessary in order to implement the Union's international commitments, as set out in the ACP-EU Partnership Agreement.

• Choice of the instrument

This proposal is in accordance with Article 218(6) TFEU, which envisages the adoption by the Council of decisions on international agreements. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Impact assessment**

A Sustainability Impact Assessment (SIA) of the EU-ACP Economic Partnership Agreements was carried out between 2003 and 2007. The terms of reference for this project were published by the European Commission in 2002 under a competitive call for tender. As a result of this call for tender a five-year framework contract was awarded to PwC France in August 2002. A draft version of the SIA's final report was presented to stakeholders in Europe during the EU Civil Society Dialogue meeting organised by the European Commission on 23 March 2007 in Brussels, Belgium.

- **Regulatory fitness and simplification**

The approval of the accession of Samoa to the EPA is not subject to REFIT procedures; it does not imply any costs for the Union SMEs; and it does not raise any issues from the viewpoint of the digital environment.

- **Fundamental rights**

The proposal does not have consequences for the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

Samoa graduated from the Least Developed Countries category in 2014; as such it continues to benefit from the 'Everything But Arms' initiative which offers its exports duty-free quota-free market access into the EU for a transitional period ending on 31 December 2018. There will be no budgetary implications as the accession to the Agreement will continue Samoa's market access into the EU on the same terms.

5. OTHER ELEMENTS

- **Benefits of the accession for economic operators**

The EPA establishes the conditions for EU economic operators to take full advantage of the opportunities between our respective economies. Over the course of its implementation, the EPA will largely relieve EU exporters of industrial products to Samoa from paying customs duties. It satisfies the criteria established in Article XXIV of the GATT 1994 (to eliminate duties and other restrictive regulations of commerce with respect to substantially all trade between the parties) i.e.: 80 % of EU exports are covered in 15 years. Samoa will benefit from maintaining their duty-free quota-free market access into the EU market.

The EPA also establishes a set of disciplines in the areas of sustainable development; technical barriers to trade; and Sanitary and Phytosanitary measures among others. Furthermore, the Parties to the EPA participate in the Trade Committee established under the Agreement. The possibility of the EU to avail itself of the bilateral dispute settlement mechanism foreseen under the Agreement contributes to the objective of securing a transparent, non-discriminatory and predictable environment for EU operators in the Pacific countries.

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Samoa will take part in the Trade Committee, established in accordance with Article 68 of the EPA, which shall deal with all matters necessary for the implementation of the Agreement, including monitoring and review its implementation, providing coordination and consultation on TBT and SPS issues, identifying and reviewing priority sectors and products and the resulting priority areas for cooperation, and making recommendations for modifications to the Agreement. The Trade Committee shall be composed of the representatives of the Parties.

- **Detailed explanation of the specific provisions of the proposal**

Articles 1 and 2 of the proposal contain provisions on the approval, on behalf of the Union, of the accession of Samoa to the EPA and on notification in order to express the consent of the European Union to provisionally apply the Agreement in accordance with Article 76(3) thereof.

Article 3 specifies that the approval of the accession must not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

Article 4 establishes the date of the entry into force of the Decision.

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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 207, 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) On 12 June 2002, the Council authorised the Commission to open negotiations for Economic Partnership Agreements with the African, Caribbean and Pacific Group of States³.
- (2) On 30 July 2009, the European Union (the European Community at the time) signed the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part⁴ (the 'Interim Partnership Agreement'), which establishes a framework for an Economic Partnership Agreement. The Interim Partnership Agreement has been provisionally applied by Papua New Guinea and by Fiji since 20 December 2009 and 28 July 2014, respectively.
- (3) Article 80 of the Agreement lays down the provisions regarding the accession of other Pacific Islands States.
- (4) On 5 February 2018, Samoa submitted an accession request together with a market access offer to the Council.
- (5) The Commission has assessed Samoa's offer and found it acceptable. Accordingly, it concluded negotiations with Samoa on 23 April 2018.
- (6) Article 76(3) of the Agreement makes it possible for the Union and Samoa to provisionally apply the Agreement by notifying each other in writing of the completion of the procedures necessary for this purpose..
- (7) The accession of Samoa should be approved on behalf of the European Union,

³ Council Directives for the negotiations of Economic Partnership Agreements with ACP countries and regions (9930/02 (DG E II) HH/sg).

⁴ Council Decision 2009/729/EC of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

1. The accession of Samoa to the Interim Partnership Agreement between the European Union, of the one part, and the Pacific States, of the other part (the ‘Interim Partnership Agreement’), is hereby approved on behalf of the European Union, subject to Samoa's deposit of the act of accession pursuant to Article 80 thereof.
2. The texts of the market access offer of Samoa are attached to this Decision.

Article 2

1. In order to apply the Interim Partnership Agreement provisionally between the European Union and Samoa, the President of the Council shall give the notification referred to in Article 76(2) of the Interim Partnership Agreement on behalf of the European Union.
2. The Union and Samoa shall provisionally apply the Interim Partnership Agreement ten days after they have notified each other in writing of the completion of the procedures necessary for this purpose, pursuant to paragraph 1.

Article 3

The approval of the accession shall not be construed as conferring rights or imposing obligations which can be directly invoked before European Union or Member State courts or tribunals.

Article 4

This Decision shall enter into force on the date of its adoption.

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*