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TEXTS ADOPTED

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**P8\_TA(2019)0016**

**EU-Morocco Agreement on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement (Resolution)**

**European Parliament non-legislative resolution of 16 January 2019 on the draft Council decision on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to 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 (10593/2018 – C8-0463/2018 – 2018/0256M(NLE))**

*The European Parliament,*

- having regard to the draft Council decision (10593/2018),
- having regard to the request for consent submitted by the Council in accordance with Article 207(4) and Article 218(6), second subparagraph, point (a)(i), of the Treaty on the Functioning of the European Union (C8-0463/2018),
- having regard to the Euro-Mediterranean Agreement establishing an association between the European Union and its Member States, of the one part, and the Kingdom of Morocco, of the other part,
- having regard to the Agreement between the EU and Morocco concerning reciprocal liberalisation measures on agricultural products and fishery products, also referred to as the Liberalisation Agreement, which entered into force on 1 September 2013,
- having regard to the General Court judgment (Case T-512/12) of 10 December 2015,
- having regard to the Court of Justice of the European Union (CJEU) judgment (Case C-104/16 P) of 21 December 2016,
- having regard to Commission staff working document SWD(2018)0346 of 11 June 2018, which accompanies the proposal for a Council decision,
- having regard to the Vienna Convention on the Law of Treaties of 23 May 1969 and its Articles 34 and 36,

- having regard to the report of the Secretary-General on the situation concerning Western Sahara to the United Nations Security Council (S/2018/277),
  - having regard to United Nations Security Council resolution 2414 (2018) on the situation concerning Western Sahara (S/RES/2414 (2018)),
  - having regard to the Charter of the United Nations, in particular to its Article 73 in Chapter XI regarding Non-Self-Governing Territories,
  - having regard to the Treaty on European Union (TEU), in particular its Article 21 in Chapter 1, Title V,
  - having regard to the Treaty on the Functioning of the European Union, in particular its Article 218(6)(a),
  - having regard to its legislative resolution of 16 January 2019<sup>1</sup> on the draft Council decision,
  - having regard to Rule 99(2) of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade, the opinions of the Committee on Foreign Affairs and the Committee on Agriculture and Rural Development, and the position in the form of amendments of the Committee on Fisheries (A8-0478/2018),
- A. whereas the European Union and the Kingdom of Morocco enjoy historical relations and maintain close cooperation developed through a broad partnership that covers political, economic and social aspects, as strengthened by the advanced status and the willingness of both parties to further develop it;
  - B. whereas the Liberalisation Agreement between the EU and Morocco entered into force on 1 September 2013; whereas the Front Polisario referred the agreement to the CJEU on 19 November 2012 for violating international law in applying to the territory of Western Sahara;
  - C. whereas on 10 December 2015 the first instance of the Court repealed the Council decision to conclude the Liberalisation Agreement; whereas the Council unanimously appealed this judgment on 19 February 2016;
  - D. whereas the CJEU General Court in its judgment of 21 December 2016 determined that the Liberalisation Agreement did not provide a legal basis for Western Sahara to be included, and therefore could not apply to this territory;
  - E. whereas paragraph 106 of the judgment states that the people of Western Sahara must be regarded as a ‘third party’ to the agreement – within the meaning of the principle of the relative effect of treaties – whose consent must be received for the implementation of the agreement to the territory; whereas, therefore, this agreement could not extend its application to the territory of Western Sahara in the absence of a further agreement;

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<sup>1</sup> Texts adopted, P8\_TA(2019)0017.

- F. whereas operators can still export to the European Union from Western Sahara, but since 21 December 2016 tariff preferences do not apply to products originating from this territory;
- G. whereas there is insufficient information available that would enable the EU customs authorities to determine whether products exported from Morocco originate in Western Sahara, therefore preventing compliance with the CJEU ruling;
- H. whereas, following the CJEU judgment, the Council gave the Commission a mandate to modify protocols 1 and 4 of the Euro-Mediterranean Association Agreement in order to allow for the inclusion of Western Saharan products; whereas their inclusion by definition necessitates some form of traceability to identify such products;
- I. whereas it is essential to ensure that the Agreement complies with the judgment of the CJEU of 21 December 2016 in Case C-104/16P;
- J. whereas the Commission and the European External Action Service (EEAS) consulted, in Brussels and in Rabat, elected officials and several representatives and associations of civil society from the non-self-governing territory of Western Sahara;
- K. whereas Parliament considered it necessary to go and assess the situation at first hand and gain an understanding of the different views of the people; whereas it recalled the conclusions of the fact-finding mission of its Committee on International Trade (INTA) to the territory on 2 and 3 September 2018;
- L. whereas the modification of the Liberalisation Agreement takes place within a broader political and geopolitical context;
- M. whereas, following the end of Spanish colonialisation of Western Sahara, the conflict in the area has lasted for more than forty years;
- N. whereas Western Sahara is considered by the United Nations as a non-decolonised territory;
- O. whereas United Nations Security Council resolution 2440 (2018) prolonged the MINURSO mandate for an additional six-month period;
- P. whereas the EU and its Member States do not recognise the sovereignty of Morocco over the territory of Western Sahara; whereas the United Nations and the African Union recognise the Front Polisario as the representative of the people of Western Sahara;
- Q. whereas the United Nations lists Western Sahara as a Non-Self-Governing Territory for the purposes of Article 73 of its Charter;
- 1. Recalls that Morocco is a privileged EU partner in the Southern Neighbourhood, with which the EU has built up a strong, strategic and long-lasting partnership that covers political, economic and social aspects, as well as security and migration; highlights that Morocco has been granted advanced status within the European Neighbourhood Policy (ENP);

2. Stresses that it is important for this agreement to give guarantees regarding respect for international law, including human rights, and to comply with the relevant ruling by the CJEU;
3. Recalls the obligation under Article 21 of the TEU for the EU and its Member States to respect the principles of the United Nations Charter and international law; underlines, in this respect, that Article 1(2) of the UN Charter includes respect for the principle of the self-determination of peoples;
4. Recalls that, according to Article 21 of the TEU, the Union's action on the international scene shall be guided by the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms and respect for the principles of the United Nations Charter and international law;
5. Stresses that this agreement does not imply any form of recognition of Morocco's sovereignty over Western Sahara, presently listed by the United Nations as a non-self-governing territory, large parts of which are currently administered by the Kingdom of Morocco, and insists that the EU's position remains that of supporting UN efforts to secure a just, lasting and mutually acceptable solution to the conflict in Western Sahara that will provide for the self-determination of the people of Western Sahara, in accordance with international law, the UN Charter and the relevant UN resolutions; reiterates, therefore, its full support to the UN Secretary-General's Personal Envoy for Western Sahara, Mr Horst Köhler, in helping to bring the parties back to the UN negotiation table in order to achieve this settlement; calls on the parties to resume these negotiations without preconditions and in good faith; emphasises that ratification of the amended Liberalisation Agreement between the EU and Morocco has to be strictly without prejudice to the outcome of the peace process over Western Sahara;
6. Points out that a meeting of the parties involved in the conflict was held in Geneva in early December on the initiative of the UN and with the participation of Algeria and Mauritania, and hopes that meeting will help kick-start the peace process;
7. Recognises the two conditions set in the CJEU judgment, to explicitly mention Western Sahara in the Agreement text and to obtain the consent of the people, as well as the third criterion added by the Council which is the need to ensure that it benefits the local population;
8. Stresses, as stated in the Commission report, that all reasonable and feasible steps have been taken to inquire about the consent of the population concerned, through these inclusive consultations;
9. Underlines that throughout the consultation process the Commission and the EEAS maintained regular contact with the team of the UN Secretary-General's Personal Envoy for Western Sahara;
10. Takes note of the legitimate interests of the people in the territory and believes that a respected and accepted end to the ongoing conflict is required for the territory's economic development; is, at the same time, convinced that the Sahrawi people has the right to develop while awaiting a political solution;

11. Notes, in talks with various local actors and civil society representatives, that some parties express their support to the agreement by defending their right to economic development, while others consider that the settlement of the political conflict should precede the granting of trade preferences; notes that, during inclusive consultations led by the Commission and the EEAS with a range of Western Saharan organisations and other organisations and bodies, majority support was expressed, by the parties participating, for the socio-economic benefits the proposed tariff preferences would bring;
12. Recalls that the CJEU did not specify in its judgment how the people's consent has to be expressed and considers therefore that some uncertainty remains as regards this criterion;
13. Recognises that the agreement can lead to the promotion of social and sustainable development which makes a key contribution to current economic, social and environmental development and to the potential creation of both low- and high-skilled local employment opportunities; notes that an estimated 59 000 or so jobs are dependent on exports, corresponding to roughly 10 % of the population living in the territory;
14. Believes that the EU tariff preferences have had a positive impact on the agricultural and fisheries products sectors and their export levels in the non-self-governing territory of Western Sahara; calls, however, for caution in checking that these produce local value added, are locally re-invested, and provide decent work opportunities for the local population;
15. Is convinced that, notwithstanding the outcome of the peace process, the local population will profit from economic development and the spill-over effects created in terms of investment in infrastructure, employment, health and education;
16. Acknowledges the existing investment in several sectors, and the endeavours to develop green technologies such as renewables and the seawater desalination plant, but insists that further efforts are necessary to ensure increased inclusion in all parts of the local economy;
17. Recognises business initiatives by Sahrawis, especially those coming from young people, many of whom are women, and highlights their need for extended export opportunities and legal certainty in order to allow for further investment in sectors with high employment demand, such as agriculture, fisheries and infrastructure;
18. Recognises the strategic potential of Western Sahara as an investment hub for the rest of the African continent;
19. Warns of the adverse effects of the non-application of tariff preferences on products from the non-self-governing territory of Western Sahara, and the message this sends to the younger generation investing or willing to invest in the territory and its potential to develop it; underlines the risk of activities being relocated to regions where they would benefit from the preferences; notes that, according to the Commission, the non-application of tariff preferences could worsen the economic and social situation of the local population in the territories concerned;

20. Is convinced that an EU presence through, *inter alia*, this agreement is preferable to withdrawal when it comes to engagement in promoting and monitoring of human rights and individual freedoms, and demands a rigorous assessment and dialogue with Morocco on these issues;
21. Recalls that other parts of the world that have a less ambitious approach to sustainable development, high labour and social standards and human rights are knocking on the door for new trade opportunities and will gain increased influence wherever the EU withdraws;
22. Highlights that the EU's ongoing engagement in the territory will have a positive leverage effect on its sustainable development;
23. Underlines that legal certainty is essential to attract sustainable and long-term investment in the territory and hence for the dynamism and diversification of the local economy;
24. Recalls that, since the CJEU judgment, Member States cannot legally apply trade preferences to products from the non-self-governing territory of Western Sahara and that the legal uncertainty affecting economic operators has to come to an end;
25. Is aware and very concerned that, until now, it has been extremely difficult to identify which products are exported from the non-self-governing territory of Western Sahara;
26. Emphasises that a key criterion for Parliament before giving its consent to the agreement is to ensure that a mechanism will be put in place for Member States' customs authorities to have access to reliable information on products originating in Western Sahara and imported into the EU, in full compliance with EU customs legislation; emphasises that such a mechanism will make available detailed and disaggregated statistical data provided timely on such exports; regrets the fact that the Commission and Morocco took a long time to agree to such a mechanism and calls on the Commission to use all corrective measures available should the implementation of the agreement not be satisfactory; urges the Commission to present to Parliament an annual assessment of the conformity of this mechanism with EU customs legislation;
27. Highlights that, without this agreement in force, including the mechanism allowing for the identification of products, it will be impossible to know whether, and how many, products originating in the non-self-governing territory of Western Sahara are entering the European market;
28. Emphasises that the implementation of the provision agreed between the EU and Morocco on the annual mutual exchange of information and statistics concerning products covered by the Exchange of Letters is necessary to evaluate the scope of the Agreement and its impact on development and local populations;
29. Calls on the Commission and the EEAS to closely monitor the implementation and result of the agreement and to regularly report their findings to Parliament;
30. Calls on the Commission to explore ways in which trade preferences can be effectively granted in the future to the entirety of the people living in Western Sahara;

31. Points out that the EU and Morocco have negotiated, as set out in the initial agreement concluded in 2012, an ambitious and comprehensive agreement on protecting the geographical indications and designations of origin of agricultural products, processed agricultural products, fish and fishery products that provides for the protection by Morocco of the full list of the EU's geographical indications; points out, furthermore, that the procedure for concluding the agreement, which began in 2015, was suspended following the Court's judgment of 21 December 2016; calls on the EU and Morocco to resume that procedure immediately and to return swiftly to the DCFTA negotiations;
32. Emphasises that the preferential treatment granted for certain Moroccan fruit and vegetable exports to the EU under the agreement of 8 March 2012 concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products is a particularly sensitive matter for Europe's horticulture industry;
33. Emphasises that access to the EU's internal market by all third countries should comply with EU sanitary, phytosanitary, traceability and environmental rules and standards;
34. Asks the Commission to promote equivalency of measures and controls between Morocco and the European Union in the area of sanitary, phytosanitary, traceability and environmental standards as well as labelling of origin rules, in order to guarantee fair competition between the two markets;
35. Recalls that the updated agreement does not alter the tariff rate quotas and the preferential import regime previously established, and only provides European producers with clarification on the geographical scope of the agreement;
36. Draws attention to the fact that some of the fruit and vegetables exported preferentially to the EU under the terms of the agreement in question (including tomatoes and melons) come from the territory of Western Sahara, and points out that ambitious plans have been drawn up with a view to further developing such production and exports;
37. Takes note, nevertheless, of the clarification that the new agreement provides, and hopes that it will be able henceforth to provide a clear, stable framework between the parties of this agreement and for the economic operators concerned on both sides of the Mediterranean;
38. Notes that the monitoring of sensitive agricultural products and the strict application of quotas are fundamental to the balanced functioning of the agreement; points out that Article 7 of Protocol 1 to the 2012 Agreement contains a safeguard clause making it possible for appropriate steps to be taken where imports of large quantities of agricultural products classed as sensitive under the agreement cause serious market distortion and/or serious harm to the industry concerned; hopes that preferential imports into the EU of sensitive agricultural products from Morocco and Western Sahara will be subject to appropriate and broad monitoring by the Commission, and that the Commission will still be ready to activate immediately the aforementioned clause where an established need arises;
39. Takes note of the fact that EU fishing vessels operating in the waters concerned are legally obliged to have a Vessel Monitoring System (VMS) and that it is mandatory to transmit the position of a vessel to the Moroccan authorities, making it fully possible to track the vessels and to record where their fishing activities take place;

40. Calls on the EU to step up efforts to foster regional cooperation among the Maghreb countries, which can only have tremendous positive implications for the region and beyond;
41. Points to the strategic need for the EU to engage more closely with the countries in the Maghreb region and develop its ties with them; views the extension of the Association Agreement in this context as a logical component of this strategy;
42. Instructs its President to forward this resolution to the Council, the Commission and the European External Action Service.