



2018/0256M(NLE)

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DRAFT REPORT

containing a motion for a non-legislative resolution on the proposal for a 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
(0481/2018 – C8-0000/2018 – 2018/0256M(NLE))

Committee on International Trade

Rapporteur: Patricia Lalonde

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on the proposal for a 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 (0481/2018 – C8-0000/2018– 2018/0256M(NLE))

The European Parliament,

- 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 CJEU judgment (Case C-104/16 P) of 21 December 2016,
- having regard to the European Commission proposals of 11 June 2018 for conclusion and signature, on behalf of the European Union, 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 (2018/0256 (NLE), 2018/0257 (NLE)),
- 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 Treaty on European Union, 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 ...¹ 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 and the opinions of the Committee on Foreign Affairs, the Committee on Agriculture and Rural Development and the Committee on Fisheries (A8-0000/2018),
- A 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;
- B whereas on 10 December 2015 the first instance of the Court repealed the Council decision to conclude the Liberalisation Agreement; whereas the Council appealed this judgment;
- C 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;
- D 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;
- E 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;
- F whereas there is no information available that would enable the EU customs authorities to determine whether products exported from Morocco originate in Western Sahara;
- G whereas, following the CJEU judgment, the Council gave the Commission a mandate to modify the Liberalisation Agreement in order to allow for the inclusion of Western Saharan products;
- H whereas the Commission and the European External Action Service (EEAS) consulted elected officials and public opinion in Western Sahara;
- I 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;
- J whereas the modification of the Liberalisation Agreement, which is of a technical nature, takes place within a broader political and geopolitical context;
- K 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 representative of the people, but neither the EU nor its

¹ Texts adopted, P8_TA(0000)0000.

Member States do;

1. 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;
2. Fully supports and encourages the ongoing peace process under the auspices of the Personal Envoy of the Secretary-General Horst Köhler, and 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;
3. Takes note of the tensions between different interests in the territory and believes that a respected and accepted end to the ongoing conflict is required to ensure the broader participation of all groups in the territory's economic development; is, at the same time, convinced that the local population also has the right to develop while awaiting a political solution;
4. Stresses, on the basis of talks with various local economic actors and elected and civil society representatives held in the territory or during meetings at the European Parliament, that some parties express their consent 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;
5. 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;
6. Recognises the present economic, social and environmental development observed in Dakhla and Lâayoune and the significant potential for further creation of both low- and high-skilled local employment opportunities;
7. 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-autonomous territory of Western Sahara;
8. 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, health and education;
9. Acknowledges the existing investment in the renewables sector and the circular economy, such as in the seawater desalination plant, and encourages further work in this direction;
10. Insists, however, that further efforts are necessary to ensure increased inclusion in all parts of the local economy;
11. Endorses business initiatives by young Sahrawis, many of whom are women, and highlights their need for extended export opportunities in order to allow for further investment in sectors with high employment demand;

12. Recognises the strategic potential of Western Sahara as an investment hub for the rest of the African continent;
13. Warns of the adverse effects of a permanent withdrawal of tariff preferences on products from the non-autonomous territory of Western Sahara, and the message this sends to the younger generation and its potential to develop the territory; underlines the risk of activities being relocated to regions in Morocco where they would benefit from the preferences;
14. Is convinced that an EU presence through trade and investment is preferable to withdrawal when it comes to engagement in and monitoring of human rights and individual freedoms, and demands a rigorous dialogue with Morocco part on these issues;
15. Highlights that the EU's ongoing engagement in the territory will have a positive leverage effect on its sustainable development;
16. 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;
17. Recalls that, since the CJEU judgment, Member States cannot legally apply trade preferences to products from the non-autonomous territory of Western Sahara and that the legal uncertainty affecting economic operators has to come to an end;
18. Is deeply concerned that it is basically impossible to identify which products are exported from the non-autonomous territory of Western Sahara;
19. Emphasises that a key criterion for Parliament is to ensure that there will be a mechanism in place to technically trace products from Western Sahara so that Member States customs authorities have a clear indication of their origin; calls on the EU and Morocco to swiftly present a viable solution to this end; expects the corrective measures laid down in the agreement to be used in that regard;
20. 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;
21. Encourages the EU and Morocco to return swiftly to good trade relations and to aim for progress in the DCFTA negotiations;
22. Instructs its President to forward this resolution to the Council, the Commission and the European External Action Service.