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2019/0165 (NLE)

Proposal for a

COUNCIL DECISION

on the signing and provisional application, on behalf of the European Union, of a Protocol to the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip , of the other part, on a Framework Agreement between the European Union and the Palestinian Authority of the West Bank and the Gaza Strip on the general principles for its participation in Union programmes

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

As part of the European Neighbourhood Policy (ENP), the gradual opening up of certain European Union programmes and agencies to ENP partner countries is one of many measures to promote reform, modernisation and transition in the European Union's neighbourhood. The European Commission has expanded on this in its December 2006 Communication on the general approach to enable European Neighbourhood Policy partner countries to participate in Community agencies and Community programmes¹.

The Council endorsed this approach in its conclusions of 5 March 2007².

Further to this Communication and the 5 March 2007 conclusions, the Council, on 18 June 2007, issued directives to the Commission to negotiate Framework Agreements with Algeria, Armenia, Azerbaijan, Egypt, Georgia, Israel, Jordan, Lebanon, Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine, on the general principles for their participation in Community programmes³.

The June 2007 European Council⁴ reaffirmed the paramount importance of the ENP and endorsed a Presidency Progress Report⁵ that had been submitted to the Council meeting of 18 and 19 June 2007 as well as the related Council conclusions⁶. This report recalled the Council directives to negotiate relevant additional protocols.

The Joint Communication by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy on a new response to a changing Neighbourhood⁷, endorsed by the Council conclusions of 20 June 2011, further emphasised the EU's intention to facilitate partner countries' participation in EU programmes.

To date, similar protocols have been signed with Algeria⁸, Armenia⁹, Azerbaijan¹⁰, Georgia¹¹, Israel¹², Jordan¹³, Lebanon¹⁴, Moldova¹⁵, Morocco¹⁶, Tunisia¹⁷, and Ukraine¹⁸, and a Protocol with Egypt is under discussion. In September 2018, during the EU- Palestinian Authority Joint Committee, the Palestinian Authority expressed its interest in signing a Protocol to a Framework Agreement for their potential full participation in a number of selected EU programmes.

¹ COM(2006) 724 final of 4 December 2006

² GAERC conclusions of 5 March 2007

³ Council Decision (restricted) authorising the Commission to negotiate Protocols [...], Doc 10412/07

⁴ Presidency Conclusions — Brussels, 21/22 June 2007, Doc 11177/07

⁵ Presidency Progress Report on 'Strengthening the European Neighbourhood Policy', Doc 10874/07

⁶ Conclusions on Strengthening the European Neighbourhood Policy, adopted by the Council (General Affairs and External Relations) on 18 June 2007, Doc 11016/07

⁷ COM(2011) 303 final of 25 May 2011

⁸ OJ L 14/2, of 18.1.2017

⁹ OJ L 174/1, of 13.6.2014

¹⁰ OJ L 199/1, of 26.7.2016

¹¹ OJ L 165/16, of 4.6.2014

¹² OJ L 129/39, of 17.5.2008

¹³ OJ L 89/6, of 25.3.2014

¹⁴ OJ L 202/3, of 28.7.2016

¹⁵ OJ L 131/1, of 18.5.2011

¹⁶ OJ L 90/1, of 28.3.2012

¹⁷ OJ L 297/1, of 13.11.2015

¹⁸ OJ L 133/1, of 20.5.2011

The objective of the Protocol is to lay down the financial and technical rules enabling the Palestinian Authority to participate in certain EU programmes. The horizontal framework established by the Protocol sets out principles for economic, financial and technical cooperation and allows the Palestinian Authority to receive assistance, in particular financial assistance, from the European Union pursuant to the programmes. This framework applies only to these programmes for which the relevant constitutive legal acts provide the possibility of the participation of the Palestinian Authority. The signing and provisional application of the Protocol does not therefore entail the exercise of powers under the various sectoral policies, which are exercised when establishing the programmes.

2. LEGAL BACKGROUND

The Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, was signed on 24 February 1997 and entered into force on 1 July 1997.

The European Council of 17 and 18 June 2004 welcomed the Commission's proposals for the ENP and endorsed the Council conclusions of 14 June 2004.

The Council, on 5 March 2007, expressed support for the general and global approach outlined in the Commission's Communication of 4 December 2006 to enable ENP partners to participate in Community agencies and Community programmes on their merits and where the legal bases so allow.

Further to this Communication and the 5 March 2007 conclusions, the Council, on 18 June 2007, issued directives to the Commission to negotiate Framework Agreements with ENP countries, on the general principles for their participation in Community programmes¹⁹.

The substantive legal basis for the signing of the Protocol is Article 209 of the Treaty on the Functioning of the European Union (TFEU). The procedural legal basis is Article 218(5) and (7) of the TFEU.

The Protocol will be signed with the Palestinian Authority of the West Bank and the Gaza Strip, which is the EU counterpart for the implementation of the Interim Association Agreement²⁰.

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

Not applicable.

4. BUDGETARY IMPLICATIONS

The Palestinian Authority shall contribute financially to the general budget of the European Union corresponding to the specific programmes in which the Palestinian Authority participates.

The specific terms and conditions regarding the participation of the Palestinian Authority in each programme, in particular the financial contribution payable shall be determined in a

¹⁹ Council Decision (restricted) authorising the Commission to negotiate Protocols [...], Doc 10412/07

²⁰ See also the Action Plan signed with the Palestinian Authority, as per Council Decision (EU) 2019/222 of 20 December 2018

Memorandum of Understanding between the Commission and the competent authorities of the Palestinian Authority on the basis of the criteria established by the programmes concerned.

Each Memorandum of Understanding concluded pursuant to Article 5 of the Protocol, shall stipulate, in accordance with the Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, that financial control, audits or other verifications, including administrative investigations will be carried out by or under the authority of, the Commission, the European Anti-Fraud Office and the Court of Auditors.

Detailed provisions shall be adopted on financial control and auditing, administrative measures, penalties and recovery enabling the Commission, the European Anti-Fraud Office, and the Court of Auditors to be granted powers equivalent to their powers with regard to beneficiaries or contractors established in the Union.

5. OTHER ELEMENTS

No later than three years after the date of entry into force of this Protocol and every three years thereafter, the Parties may review the implementation of this Protocol on the basis of the actual participation of the Palestinian Authority in Union programmes.

The specific terms and conditions regarding the participation of the Palestinian Authority in each programme, in particular the reporting and evaluation procedures, shall be determined in a Memorandum of Understanding between the Commission and the competent authorities of the Palestinian Authority on the basis of the criteria established by the programmes concerned.

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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 209, in conjunction with Article 218(5) and (7),

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 18 June 2007 the Council authorised the Commission to negotiate a Protocol to the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip of the other part, on a Framework Agreement between the European Union and the Palestinian Authority of the West Bank and the Gaza Strip on the general principles for its participation in Union programmes ('the Protocol').
- (2) The negotiations have been concluded.
- (3) The objective of the Protocol is to lay down the financial and technical rules enabling the Palestinian Authority to participate in certain EU programmes. The horizontal framework established by the Protocol sets out principles for economic, financial and technical cooperation measure and allows the Palestinian Authority to receive assistance, in particular financial assistance, from the European Union pursuant to the programmes. This framework applies only to these programmes for which the relevant constitutive legal acts provide for the possibility of the participation of the Palestinian Authority. The signing and provisional application of the Protocol does not therefore entail the exercise of powers under the various sectoral policies, which are exercised when establishing the programmes.
- (4) The Protocol should be signed on behalf of the European Union and it should be applied on a provisional basis pending the completion of the procedures for its conclusion,

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the Protocol to the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, on a Framework Agreement between the European Union and the Palestinian Authority of the West Bank and the Gaza Strip on the general principles for its participation in Union programmes is hereby authorised, subject to the conclusion of the said Protocol.

The text of the Protocol is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Protocol, subject to its conclusion, for the person(s) indicated by the negotiator of the Protocol.

Article 3

The Protocol shall be applied on a provisional basis, in accordance with Article 10, as from the date of its signature, pending the procedures necessary for its conclusion.

The date of signature of the Protocol will be published in the *Official Journal of the European Union*.

Article 4

The Commission is authorised to determine, on behalf of the Union, the specific terms and conditions applicable to the participation of the Palestinian Authority in any given programme, including the financial contribution payable. The Commission shall keep the relevant working party of the Council informed.

Article 5

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

Done at Brussels,

*For the Council
The President*