



Brussels, 22.8.2022
COM(2022) 403 final

2022/0239 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part, in connection with the envisaged adoption of a decision concerning the establishment of a Development Cooperation Working Group

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Committee established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part¹, in connection with the envisaged adoption of a decision concerning the establishment of a Development Cooperation Working Group.

2. CONTEXT OF THE PROPOSAL

2.1. The Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part

The Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part ('the Agreement') aims to strengthen the bilateral relationship of the Parties, who undertake to hold a comprehensive dialogue and to promote further cooperation between them on all sectors of mutual interest. The Agreement entered into force on 1 November 2017.

2.2. The Joint Committee

Article 56(1) of the Agreement establishes the Joint Committee comprising representatives of both Parties. Article 56(1) provides that its tasks are to:

- (a) ensure the proper functioning and implementation of the Agreement;
- (b) set priorities in relation to the aims of the Agreement;
- (c) make recommendations for promoting the objectives of the Agreement.

Pursuant to Article 56(2) of the Agreement, the Joint Committee has the power to take decisions in the cases provided for in the Agreement. Decisions are to be drawn up by agreement between the Parties, following the completion of the respective internal procedures required to establish a position thereon by both Parties. The decisions are to be binding on the Parties, which are to take the measures necessary to implement them.

Under Article 56(4), the Joint Committee may set up specialised working groups in order to assist it in the performance of its tasks. These working groups are to make detailed reports on their activities to the Joint Committee at each of its meetings.

Pursuant to Article 1(3) of the Rules of Procedure of the Joint Committee², the Joint Committee is to be chaired alternately by the Minister of Foreign Affairs of Mongolia and the High Representative of the Union for Foreign Affairs and Security Policy, for a period of one calendar year. The Chairs may delegate their authority to preside over all or part of the meetings of the Joint Committee to a senior official.

¹ Council Decision (EU) 2017/2270 of 9 October 2017 on the conclusion of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part (OJ L 326, 9.12.2017, p. 5).

² Draft Rules of Procedure annexed to Council Decision (EU) 2020/790 of 9 June 2020 on the position to be taken on behalf of the European Union within the Joint Committee and the Subcommittee on Trade and Investment established by the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part, as regards the adoption of decisions on the rules of procedure of the Joint Committee and the rules of procedure of the Subcommittee on Trade and Investment (OJ L 193, 17.6.2020, p. 5).

2.3. The envisaged act of the Joint Committee

During its fourth session, or, if appropriate, by written procedure beforehand in accordance with Article 8(3) of its Rules of Procedure, it is proposed that the Joint Committee adopts a decision regarding the establishment of a Development Cooperation Working Group, including the adoption of the terms of reference of that Working Group ('the envisaged act'), in accordance with Article 56(4) of the Agreement and Article 10(1)(2) of the Rules of Procedure.

The purpose of the envisaged act is to set up a specialised working group on development cooperation in order to assist the Joint Committee in the performance of its tasks. This working group is to make detailed reports on its activities to the Joint Committee at each of its meetings.

The envisaged act will become binding on the Parties in accordance with Article 56(2) of the Agreement, which provides: 'The Joint Committee, and the Subcommittee established in Article 28, shall, for the purposes of attaining the objectives of this Agreement, have the power to take decisions in the cases provided for therein. Decisions shall be drawn up by agreement between the Parties, following the completion of the respective internal procedures required to establish a position thereon by both Parties. The decisions shall be binding on the Parties, which shall take the measures necessary to implement them.'

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

This proposal for a Council Decision establishes the position to be taken on the Union's behalf in the Joint Committee set up by the Agreement on the proposition to establish a Development Cooperation Working Group and to adopt its terms of reference. Following the meeting of the Joint Committee on 3 December 2020, the EU and Mongolia, in the agreed minutes, expressed their intention to work towards the establishment of such a working group, once the respective internal procedures to that effect had been completed.

This proposition is in line with the Agreement's principles, according to which all aspects of sustainable development should be promoted. Furthermore, its Article 2 provides that Parties undertake to hold a comprehensive dialogue and promote further cooperation between them on all sectors of mutual interest. This is also in line with the Treaty's declared goal of fostering the sustainable economic, social and environmental development of developing countries.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for 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 concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do

not have a binding effect under international law, but which are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’³.

4.1.2. Application to the present case

The Joint Committee is a body set up by an agreement, namely the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part.

The act that the Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects as it will be binding under international law in accordance with Article 56(2) of the Agreement and it will permit the creation of a Development Cooperation Working Group in accordance with Article 56(4) of the Agreement. The envisaged 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

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union’s behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to development cooperation. Therefore, the substantive legal basis of the proposed decision is Article 209 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 209 TFEU, in conjunction with Article 218(9) TFEU.

³ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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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(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part ('the Agreement'), was concluded by the Union by Council Decision (EU) 2017/2270⁴ and entered into force on 1 November 2017.
- (2) Pursuant to Article 56(4) of the Agreement, the Joint Committee may set up specialised working groups in order to assist it in the performance of its tasks. These working groups are to make detailed reports on their activities to the Joint Committee at each of its meetings.
- (3) The EU and Mongolia have both expressed interest in setting up a Development Cooperation Working Group that would serve to formalise and deepen cooperation between the Parties and which would also provide input for the Joint Committee.
- (4) The Joint Committee, during its fourth session, or, if appropriate, by written procedure beforehand in accordance with Article 8(3) of its Rules of Procedure, is to adopt a decision on the creation of the Development Cooperation Working Group and the adoption of its terms of reference.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the decision will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the fourth session of the Joint Committee, or, if appropriate, by written procedure beforehand, shall be based on the draft act of the Joint Committee as set out in the Annex attached to this Decision.

⁴ OJ L 326, 9.12.2017, p. 5-6.

2. Minor changes to the draft act of the Joint Committee may be agreed to by the representatives of the Union in the Joint Committee without a further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*