



Brussels, 26.8.2020  
COM(2020) 432 final

2020/0204 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the ACP-EU Committee of Ambassadors, with regard to amending Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2020/2]**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

The present Commission decision contains a proposal on a Council decision on the position to be taken by the Union in the ACP-EU Committee of Ambassadors, on an amendment of its Decision No 3/2019 to adopt transitional measures pursuant to Article 95(4) of the Partnership Agreement between the EU and the African, Caribbean and Pacific (ACP) Group of States<sup>1</sup>, signed in Cotonou on 23 June 2000 ('Cotonou Partnership Agreement' or 'CPA') ('decision on transitional measures')<sup>2</sup>. The Commission proposes the further extension of the application of the entirety of the provisions of the Cotonou Partnership Agreement until 30 June 2021, or until entry into force of the new Partnership Agreement between the Union and the ACP States, whichever is sooner.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Cotonou Partnership Agreement**

Since 2000, the Cotonou Partnership Agreement has been the framework for the EU's relations with 79 ACP countries. The Agreement was concluded for a period of 20 years, from 1 March 2000 until 29 February 2020. It was subsequently revised in 2005 and 2010.

On 17 December 2019, the application of the provisions of the Cotonou Partnership Agreement was extended through the decision on transitional measures until 31 December 2020 or until entry into force of the new Agreement or until the provisional application between the Union and the ACP States of the new Agreement, whichever comes first.

Negotiations towards a new ACP-EU Partnership Agreement were launched in September 2018 and are currently ongoing. However, due to the delays caused by the COVID-19 pandemic, it has become clear that the negotiations will not result in a new Agreement ready to be applied by the above expiry date of 31 December 2020. The situation would result in a vacuum in the EU-ACP relations that must be filled.

#### **2.2. The ACP-EU Council of Ministers**

The ACP-EU Council of Ministers is a ministerial level body, set up by the Agreement (Article 15 CPA). It comprises, on the one hand, members of the Council of the European Union and members of the European Commission and, on the other, a member of the government of each ACP State. The functions of the Council of Ministers include, amongst other things, taking the decisions necessary for the implementation and execution of the CPA. The Council of Ministers takes its decisions by common agreement of the Parties. In order for the decisions to be valid, (i) half the members of the Council of the European Union (i.e. 14 Ministers from EU Member States), (ii) one member of the Commission, and (iii) two-thirds of the members representing the governments of the ACP States (i.e. government members from 55 different ACP States) have to be present.

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<sup>1</sup> Council Decision of 19 December 2002 concerning the conclusion of the Partnership Agreement between the African Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 65, 08.03.2003, p.27).

<sup>2</sup> Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2020/2]

### **2.3. Transitional measures**

Article 95(4), second subparagraph CPA reads as follows: “*The Council of Ministers shall adopt any transitional measures that may be required until the new Agreement comes into force*”. As per Article 95(4) second subparagraph CPA, transitional measures can be applied to extend the applicability of all or parts of the CPA, until the date of application of the new Agreement (provisional application or entry into force). In order to maintain legal, political, and institutional continuity with the ACP, given that the new Agreement will not become applicable before the expiry of the existing legal framework, it is necessary to extend the adopted transitional measures in view of continuing the application of the current Agreement.

### **2.4. The amendment of transitional measures by the ACP-EU Committee of Ambassadors**

In accordance with Article 95(4) CPA, the decision on transitional measures is to be taken by the ACP-EU Council of Ministers. However, pursuant to Article 15(4) CPA, the Council of Ministers may delegate powers to the Committee of Ambassadors. To this end, on 23 May 2019, the Council of Ministers delegated the power to adopt the decision on transitional measures to the Committee of Ambassadors<sup>3</sup>. Pursuant to Article 16(2) CPA, the Committee of Ambassadors can adopt or amend decisions binding on the parties within the mandate conferred on it by the Council of Ministers.

According to Article (1) of the Rules of Procedure of the Committee of Ambassadors<sup>4</sup>, it shall meet regularly, in particular to prepare meetings of the Council of Ministers, and whenever it proves necessary, at the request of one of the parties. Given this flexibility, the Committee of Ambassadors can ensure that the amendment of the decision on transitional measures is taken in a timely manner, and no later than October 2020.

Therefore, at one of its meetings, the ACP-EU Committee of Ambassadors is to adopt the amendment to the decision on transitional measures (‘the envisaged act’). The purpose of the envisaged act is to further extend the application of the Cotonou Partnership Agreement, in its entirety, until 30 June 2021, or until the entry into force or provisional application of the new Partnership Agreement between the Union and the ACP States, whichever comes first.

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

The Commission proposes that the current decision on transitional measure of the CPA is amended in view of extending the application of the Cotonou Partnership Agreement until 30 June 2021, unless the new Agreement enters into force or is provisionally applied before that date.

In view of the above, the proposed position of the Union is to be adopted at a session of the ACP-EU Committee of Ambassadors.

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<sup>3</sup> Decision No 1/2019 of the ACP-EU Council of Ministers of 23 May 2019 on the delegation of powers to the ACP-EU Committee of Ambassadors on the decision to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2019/920] (OJ L146, 05.06.2019, p. 114).

<sup>4</sup> Decision No 3/2005 of the ACP-EU Council of Ministers of 8 March 2005 concerning the adoption of the Rules of Procedure of the ACP-EC Committee of Ambassadors (OJ L95, 14.04.2005, p.51).

## **4. LEGAL BASIS**

### **4.4. 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 that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature.’<sup>5</sup>

#### *4.1.2. Application to the present case*

Pursuant to Article 95(4), second subparagraph of the of the ACP-EU Partnership Agreement signed in Cotonou on 23 June 2000, transitional measures can be applied to extend the applicability of all or parts of the CPA, until the date of application of the new Agreement (provisional application or entry into force after ratification by all Parties). Notably, “*The Council of Ministers shall adopt any transitional measures that may be required until the new Agreement comes into force*”.

It is therefore clear that the act which the ACP-EU Committee of Ambassadors is called upon to adopt constitutes an act having legal effects. The envisaged decision of the Committee of Ambassadors will be binding under international law in accordance with Articles 15 and 16 of the Agreement.

The Committee of Ambassadors is a body set up under Article 16 of the Cotonou Partnership Agreement.

The European Union is a contracting party alongside its Member States to the Cotonou Partnership Agreement and will thus be bound by the envisaged decision of the Committee of Ambassadors.

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 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 the functioning of the CPA as a

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<sup>5</sup> 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.

whole, notably extending its application beyond the foreseen expiry date. Thus the substantive legal basis of the Council decision must be determined in the light of the Cotonou Partnership Agreement as a whole.<sup>6</sup>

The CPA has been concluded as an association agreement and thus was based on Article 310 of the Treaty establishing the European Community, the equivalent of Article 217 TFEU. It follows that the substantive legal basis of the proposed decision is Article 217 TFEU.

### 4.3. Conclusion

The legal bases of the proposed decision should be Article 217 TFEU, in conjunction with Article 218(9) TFEU, which is the legal basis of the Council Decision EU) 2019/1932 of 18 November 2019 on the position to be taken, on behalf of the European Union, within the ACP-EU Committee of Ambassadors as regards the adoption of a decision to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement<sup>7</sup>.

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<sup>6</sup> See, in particular, judgment in case *C-244/17 Commission v Council* (“Kazakhstan ”) [ECLI:EU:C:2018:662], p. 40 and the case law referred to.

<sup>7</sup> OJ L 300, 21.11.2019, p. 1–4.

Proposal for a

## COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the ACP-EU Committee of Ambassadors, with regard to amending Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2020/2]**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Partnership Agreement between the members of the African, Caribbean and Pacific Group of States ('ACP') of the one part, and the European Union and its Member States, of the other part ('the ACP-EU Partnership Agreement')<sup>8</sup> was signed in Cotonou on 23 June 2000. The ACP-EU Partnership Agreement entered into force on 1 April 2003 and is to be applied until 31 December 2020 in accordance with Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2020/2] ('decision on transitional measures')<sup>9</sup>.
- (2) Pursuant to the first subparagraph of Article 95(4) of the ACP-EU Partnership Agreement, negotiations towards a new ACP-EU Partnership Agreement were launched in September 2018. The new Agreement will not be ready to be applied by the expiry date of the current ACP-EU Partnership Agreement due to delays caused by the COVID-19 pandemic. It is therefore deemed necessary to amend the decision on transitional measures to further extend the application of the provisions of the current ACP-EU Partnership Agreement.
- (3) The second subparagraph of Article 95(4) of the ACP-EU Partnership Agreement provides for the Council of Ministers to adopt transitional measures that may be required until the new Agreement comes into force.
- (4) Pursuant to Article 15(4) of the ACP-EU Partnership Agreement, on 23 May 2019, the ACP-EU Council of Ministers delegated the powers to adopt any transitional measures that may be required until the new Agreement comes into force to the ACP-EU

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<sup>8</sup> Agreement (OJ L317, 15.12.2000, p. 3) as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L209, 11.8.2005, p.27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L287, 4.11.2010, p 3).

<sup>9</sup> Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2020/2]

Committee of Ambassadors.<sup>10</sup> The ACP-EU Committee of Ambassadors is to have a regular meeting where it will take the decision to amend transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement.

- (5) It is appropriate to establish the position to be taken on the Union's behalf in the ACP-EU Committee of Ambassadors, as the envisaged act is binding on the Union.
- (6) The provisions of the ACP-EU Partnership Agreement will continue to be applied with the aim of maintaining continuity in relations between the Union and its Member States, on the one hand, and the ACP States, on the other. Accordingly, the amended transitional measures are not intended for amendments to the ACP-EU Partnership Agreement as provided for in Article 95(3) thereof,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf in the ACP-EU Committee of Ambassadors, pursuant to Article 95(4) of the ACP-EU Partnership agreement, is to amend Decision No 3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 to adopt transitional measure pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2020/2] to extend the application of the ACP-EU Partnership Agreement until 30 June 2021, or until the entry into force or provisional application between the Union and the ACP States of the new Agreement, whichever comes first.

#### *Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*

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<sup>10</sup> Decision No 1/2019 of the ACP-EU Council of Ministers of 23 May 2019 on the delegation of powers to the ACP-EU Committee of Ambassadors on the decision to adopt transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement [2019/920] (OJ L146, 05.06.2019, p. 114).

## Com (2020) 432

### Information Note

#### 1. Proposal

Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the ACP-EU Committee of Ambassadors, with regard to amending Decision No3/2019 of the ACP-EU Committee of Ambassadors of 17 December 2019 of transitional measures pursuant to Article 95(4) of the ACP-EU Partnership Agreement.[2020/2]

#### 2. Date of Commission document

26/08/2020

#### 3. Number of Commission document

COM (2020) 432

#### 4. Number of Council document:

2020/0204 (NLE)

#### 5. Dealt with in Brussels by

Foreign Affairs Council – African, Caribbean and Pacific Working Group.

#### 6. Department with primary responsibility

Department of Foreign Affairs and Trade.

#### 7. Other Departments involved

N/A.

#### 8. Background to, Short summary and aim of the proposal

The Cotonou Partnership Agreement (CPA) of 2000, between the EU and the African, Caribbean and Pacific (ACP) group of states, is a comprehensive partnership for the economic, social and cultural development of the ACP regions. The Agreement is based on three pillars: political partnership; economic and trade cooperation and; development cooperation. It is a legally-binding agreement between the EU and 79 ACP countries and is based on the principle of equal partnership. Agreements governing EU relations with ACP States date back to the Lomé Convention which was signed in 1975. The CPA was due to expire on 29 February 2020.

On 17 December 2019, the application of the provision of the Cotonou Partnership Agreement was extended through the decision on transitional measures until 31 December 2020 or until entry into force of the new Agreement (or until the provisional application between the Union and the ACP States of the new Agreement), whichever comes first. This was due to some delays in negotiating a successor agreement, called (for now) the Post-Cotonou agreement. The extended timeframe of the CPA was thus designed to continue the provisions of the CPA whilst allowing the development of a new framework agreement to continue.

This present Commission decision contains a proposal on a Council decision on the position to be taken by the Union in the ACP-EU Committee of Ambassadors, on an amendment of its Decision No 3/2019 to adopt transitional measures pursuant to Article 95(4) of the Partnership Agreement between the EU and the ACP Group of States. The Commission proposes the further extension of the application of the entirety of the provisions of the Cotonou Partnership

Agreement until 30 June 2021, or until entry into force of the new Partnership Agreement between the Union and the ACP States, whichever is sooner.

Due to the delays caused by COVID-19 pandemic, it has become clear that the post-Cotonou negotiations will not result in a new Agreement ready to be applied by the end of this year. Therefore, the current proposal sets out how transitional measures will be undertaken so as to enable legal, political and institutional continuity in EU and ACP relations.

The Cotonou Partnership Agreement (Article 95.4) enables the ACP-EU Council of Ministers to adopt any transitional measures that may be required until a new Agreement comes into force. ACP-EU Council of Ministers have the power to delegate the power to adopt the decision on transitional measures to the Committee of Ambassadors, as provided for in the Cotonou Partnership Agreement.

Therefore, at one of its forthcoming meetings, the ACP-EU Committee of Ambassadors is to adopt the amendment to the decision on transitional measures to extend the application of the Cotonou Partnership Agreement.

### **9. Legal basis of the proposal**

The act which the ACP-EU Council of Ministers is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 15 (3) of the Agreement. The envisaged act does not supplement or amend the institutional framework of the Cotonou Partnership Agreement. Therefore, the procedural basis for the proposed decision is Article 218(9) TFEU.

### **10. Voting Method**

Unanimous Council Decision required.

### **11. Role of the EP**

N/A

### **12. Category of proposal**

Technical.

### **13. Implications for Ireland & Ireland's Initial View**

Ireland supports this proposal. There will be no additional costs to Ireland.

### **14. Impact on the public**

N/A.

### **15. Have any consultations with Stakeholders taken place or are there any plans to do so?**

N/A.

### **16. Are there any subsidiarity issues for Ireland?**

No.

### **17. Anticipated negotiating period**

N/A.

### **18. Proposed implementation date**

This decision shall apply from its date of adoption.

**19. Consequences for national legislation**

N/A.

**20. Method of Transposition into Irish law**

N/A.

**21. Anticipated Transposition date**

N/A.

**22. Consequences for the EU budget in Euros annually**

N/A.

**23. Contact name, telephone number and e-mail address of official in Department with primary responsibility**

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**Date**

*8 September 2020*