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2023/0456 (NLE)

Proposal for a

COUNCIL DECISION

on the accession of Tuvalu to the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

The attached proposal for a Council Decision constitutes the legal instrument for the approval, on behalf of the European Union (EU), of the accession of Tuvalu to the interim Partnership Agreement between the European Union, of the one part, and the Pacific States, of the other part, pursuant to Article 218(6) TFEU.

The Council authorised the Commission to open negotiations for Economic Partnership Agreements (EPA) with ACP countries on 12 June 2002.

On 30 July 2009 the EU signed an interim EPA between the Union (the European Community at the time), of the one part, and the Pacific States, of the other part. The interim EPA has been provisionally applied by Papua New Guinea and the Republic of Fiji since 20 December 2009 and 28 July 2014, respectively.

Article 80 of the interim EPA provides for the possibility for other Pacific Islands to accede to the Agreement. Accordingly, the Independent State of Samoa and Solomon Islands acceded to the Agreement and are provisionally applying it since 31 December 2018 and 17 May 2020, respectively.

On 31 March 2023, Tuvalu submitted a request to the Commission, together with a market access offer, to accede to the interim EPA. The Commission assessed the offer and, after amendments, found it to be acceptable. Accordingly, it concluded negotiations on behalf of the Union on 28 April 2023.

• **Consistency with existing policy provisions in the policy area**

This proposal implements the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part (“ACP-EU Partnership Agreement”, or Cotonou Agreement, to be replaced by the “EU-OACPS Agreement” (the post-Cotonou Agreement))¹.

The accession of Tuvalu to the interim EPA between the EU, Fiji, Papua New Guinea, Samoa and Solomon Islands², which is an asymmetric and WTO-compatible trade agreement, reinforces the legal framework of the EU trade relations with partner countries and facilitates reciprocal trade. It also incorporates Tuvalu into the regime of joint rules and institutions established by the interim EPA.

Tuvalu is expected to graduate from the Least Developed Countries (LDC) status in 2024. Tuvalu will lose the EU's Everything-But-Arms (EBA) preferences three years thereafter, and its exports to the EU will be covered by the standard form of the Generalised Scheme of Preferences (GSP), which is however less generous than the EBA. To maintain full duty-free-quota-free access to the EU market, Tuvalu would need to accede to the interim EPA between the EU and the Pacific States (Fiji, Papua New Guinea, Samoa and Solomon Islands).

¹ OJ L 287, 4.11.2010, p. 3 Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

² Council Decision of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1).

Upon accession, and pending the completion of related internal procedures by the Pacific Parties to the Agreement (Fiji, Papua New Guinea, Samoa and Solomon Islands), the EU and Tuvalu shall provisionally apply the Agreement subject to notifying each other in writing of the completion of the procedures necessary for this purpose in accordance with Article 76(3) of the Agreement.

- **Consistency with other Union policies**

The Economic Partnership Agreement contains provisions on Sustainable Development (Article 3), whereby the Parties reaffirm that the objective of sustainable development shall be an integral part of the provisions of this Agreement, consistent with the overarching objectives and principles set out in Cotonou Agreement, and especially the general commitment to reduce and eventually eradicate poverty in a way that is consistent with the objectives of sustainable development.

The interim EPA is a development-oriented trade agreement, which offers asymmetric market access to Tuvalu and allows it to shield sensitive sectors from liberalisation, while providing a large number of safeguards and a clause for infant industry protection. It further contains provisions on the rules of origin that facilitate Tuvalu's exports into the EU. These provisions contribute to the objective of Policy Coherence for Development and are consistent with Article 208(2) TFEU.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this Council decision is the Treaty on the Functioning of the European Union, in particular the first subparagraph of Article 207(4), in conjunction with Article 218(6)(a)(v), thereof.

- **Subsidiarity (for non-exclusive competence)**

The common commercial policy, in accordance with Article 3 of the TFEU, is defined as an exclusive Union competence.

- **Proportionality**

This proposal is necessary in order to implement the Union's international commitments, as set out in the ACP-EU Partnership Agreement, in particular to conclude new WTO compatible trading arrangements progressively removing barriers to trade between the Parties and enhancing cooperation in all areas relevant to trade.

- **Choice of the instrument**

There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Impact assessment**

A Sustainability Impact Assessment (SIA) of the EU-ACP Economic Partnership Agreements was carried out between 2003 and 2007. The terms of reference for this project were

published by the European Commission in 2002 under a competitive call for tender. As a result of this call for tender a five-year framework contract was awarded to PwC France in August 2002. A draft version of the SIA's final report was presented to stakeholders in Europe during the EU Civil Society Dialogue meeting organised by the European Commission on 23 March 2007 in Brussels, Belgium. No new SIA has been carried out because this initiative concerns an accession to an existing Agreement that is already being applied by the other Pacific Island States whose structural characteristics and economic and social situation are comparable to those of Tuvalu.

- **Regulatory fitness and simplification**

The approval of the accession of Tuvalu to the interim EPA is not subject to REFIT procedures; it does not imply any costs for the Union SMEs; and it does not raise any issues from the viewpoint of the digital environment.

- **Fundamental rights**

The proposal does not have consequences for the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

Tuvalu is expected to graduate from the Least Developed Countries category in 2024. It will continue to benefit from the EU's 'Everything But Arms' preferences, which offers duty-free quota-free access to EU market for all products (except arms and amunitions), for a transitional period of three years thereafter. There will be no budgetary implications as the accession to the Agreement will continue Tuvalu's market access into the EU on the same terms of preferences.

5. OTHER ELEMENTS

- **Benefits of the accession for economic operators**

The interim EPA establishes the conditions for EU economic operators to take full advantage of the opportunities between our respective economies. Over the course of its implementation, the interim EPA will largely relieve EU exporters of industrial products to Tuvalu from paying customs duties. It satisfies the criteria established in Article XXIV of the GATT 1994 (to eliminate duties and other restrictive regulations of commerce with respect to substantially all trade between the parties). The offer meets WTO threshold, i.e. 80.2% of liberalisation (in tariff lines), corresponding to 82.1% in volume of EU exports over 20 years. Tuvalu will benefit from maintaining its duty-free quota-free access into the EU market.

The interim EPA also establishes a set of disciplines in the areas of sustainable development; Technical Barriers to Trade (TBT); and Sanitary and Phytosanitary (SPS) measures among others. Furthermore, the Parties to the interim EPA participate in the Trade Committee established under the Agreement. The possibility of the EU to avail itself of the bilateral dispute settlement mechanism foreseen under the Agreement contributes to the objective of securing a transparent, non-discriminatory and predictable environment for EU operators in the Pacific countries.

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Tuvalu will take part in the Trade Committee, established in accordance with Article 68 of the interim EPA, which shall deal with all matters necessary for the implementation of the

Agreement, including monitoring and review of implementation, providing coordination and consultation on TBT and SPS issues, identifying and reviewing priority sectors and products and the resulting priority areas for cooperation, and making recommendations for modifications to the Agreement. The Trade Committee shall be composed of the representatives of the Parties.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Articles 1 and 2 of the proposal contain provisions on the approval, on behalf of the Union, of the accession of Tuvalu to the interim EPA and on notifications in order to express the consent of the European Union to accession and the provisional application of the Agreement in accordance with Article 76(3) thereof.

Article 3 specifies that the approval of the accession must not be construed as conferring rights or imposing obligations which can be directly invoked before the Union or Member State courts or tribunals.

Article 4 establishes the date of the entry into force of the Decision.

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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 the first subparagraph of Article 207(4), in conjunction with point (a)(v) of the second subparagraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) On 12 June 2002, the Council authorised the Commission to open negotiations for Economic Partnership Agreements with the African, Caribbean and Pacific Group of States².
- (2) The Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part³ (the ‘Interim Partnership Agreement’), which establishes a framework for an Economic Partnership Agreement, was signed in London on 30 July 2009. The Interim Partnership Agreement has been provisionally applied by Papua New Guinea and the Republic of the Fiji since 20 December 2009, 28 July 2014, respectively.
- (3) Article 80 of the Agreement lays down the provisions regarding the accession of other Pacific Islands States. Accordingly, the Independent State of Samoa and Solomon Islands have acceded to the Agreement and have been provisionally applying it since 31 December 2018 and 17 May 2020, respectively.
- (4) On 31 March 2023, Tuvalu submitted a request for accession together with a market access offer to the Union.
- (5) The Commission has assessed Tuvalu’s offer and, after amendments, found it acceptable. Accordingly, the Commission concluded negotiations with Tuvalu on 27 April 2023.
- (6) In accordance with Article 76(3) of the Agreement, the Union and Tuvalu are to provisionally apply the Agreement 10 days after notifying each other in writing of the completion of the procedures necessary for this purpose.

¹ The European Parliament gave its consent on [date].

² Council Directives for the negotiations of Economic Partnership Agreements with ACP countries and regions (9930/02 (DG E II) HH/sg).

³ Council Decision 2009/729/EC of 13 July 2009 on the signature and provisional application of the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (OJ L 272, 16.10.2009, p. 1).

- (7) The accession of Tuvalu to the Interim Partnership Agreement should be approved on behalf of the Union, subject to Tuvalu's deposit of the act of accession pursuant to Article 80(2) thereof,

HAS ADOPTED THIS DECISION:

Article 1

1. The accession of Tuvalu to the Interim Partnership Agreement between the European Community, of the one part, and the Pacific States, of the other part (the 'Interim Partnership Agreement'), is hereby approved on behalf of the Union, subject to Tuvalu's deposit of the act of accession pursuant to Article 80(2) thereof.
2. The President of the Commission shall, on behalf of the Union, notify the other Contracting Parties to the Interim Partnership Agreement and Tuvalu of the approval, by the Union, of the accession of Tuvalu to the Interim Partnership Agreement.
3. The text of the market access offer of Tuvalu is attached to this Decision.

Article 2

1. For the purposes of provisionally applying the Interim Partnership Agreement between the Union and Tuvalu, the President of the Commission shall, on behalf of the Union, give the notification referred to in Article 76(3) of the Interim Partnership Agreement.
2. The Union and Tuvalu shall provisionally apply the Interim Partnership Agreement 10 days after they have notified each other in writing of the completion of the procedures necessary for that purpose in accordance with paragraph 1.

Article 3

The approval of the accession of Tuvalu to the Interim Partnership Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

Article 4

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

Done at Brussels,

*For the Council
The President*