Council Decision (EU) 2019/217 of 28 January 2019 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

COUNCIL DECISION (EU) 2019/217

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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 the second subparagraph of Article 218(6), point (a)(i) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[(1)],

Whereas:

(1) 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[(2)] ('the Association Agreement') entered into force on 1 March 2000.

(2) Since the Association Agreement entered into force, the Union has continued to strengthen its bilateral relations with the Kingdom of Morocco and awarded it advanced status.

(3) The Union does not prejudge the outcome of the United Nations' political process on the final status of Western Sahara and, has consistently reaffirmed its commitment to resolving the dispute in Western Sahara, presently listed by the United Nations as a non-self-governing territory, large parts of which are currently administered by the Kingdom of Morocco. It fully supports the efforts made by the United Nations Secretary-General and his personal envoy to help the parties reach a fair, lasting and mutually-acceptable political solution that would ensure the self-determination of the people of Western Sahara under agreements aligned with the principles and objectives enshrined in the Charter of the United Nations, as set out in the Resolutions of the UN Security Council, in particular Resolutions 2152 (2014), 2218 (2015), 2385 (2016), 2351 (2017) and 2414 (2018).

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/217. (See end of Document for details)*

(4) Since the Association Agreement came into force, products from Western Sahara certified to be of Moroccan origin have been imported to the Union, benefiting from the tariff preferences laid down in its relevant provisions.

(5) However, in its judgment in Case C-104/16 P[(3)], the Court of Justice specified that the Association Agreement covered the territory of the Kingdom of Morocco alone and not Western Sahara, which is a non-self-governing territory.

(6) It should be ensured that the trade flows developed over the years are not disrupted, while establishing appropriate guarantees for the protection of international law, including of human rights, and sustainable development in the territories concerned. On 29 May 2017, the Council authorised the Commission to open negotiations with the Kingdom of Morocco with a view to establishing, in accordance with the judgment of the Court of Justice, a legal basis to grant the tariff preferences laid down in the Association Agreement to products originating in Western Sahara. An agreement between the European Union and the Kingdom of Morocco is the only means of ensuring that the import of products originating in Western Sahara benefits from preferential origin, given that only the Moroccan authorities are able to ensure compliance with the rules necessary for the granting of such preferences.

(7) The Commission assessed the potential consequences of such an Agreement for sustainable development, particularly with regard to the advantages and disadvantages for the people concerned arising from the tariff preferences given to products from Western Sahara and the exploitation of the natural resources of the territories in question. The effects of tariff benefits on employment, human rights and the exploitation of natural resources are very difficult to measure as they are by nature indirect. Moreover, it is not easy to obtain objective information on this issue.

(8) Nonetheless, the assessment indicates that, overall, the advantages for the economy of Western Sahara arising from the granting of the tariff preferences laid down in the Association Agreement to products originating in Western Sahara, such as the powerful leverage effect it represents for economic growth and thus social development, outweigh the disadvantages raised in the consultation process, such as the extensive use of natural resources, especially underground water reserves, for which measures have been taken.

(9) It has been assessed that the extension of tariff preferences to products originating in Western Sahara will have a positive overall effect for the people concerned. It can be expected that this effect should continue and may even be enhanced in the future. The assessment indicates that extending the benefit of tariff preferences to Western Saharan products will promote the conditions for investment and foster substantial and rapid growth favourable to local jobs. The existence in Western Sahara of economic and production activities that would benefit greatly from the tariff preferences laid down in the Association Agreement shows that failure to grant tariff preferences would significantly jeopardise exports from Western Sahara, especially those of fishery and agricultural products. It is assessed that by stimulating investment, the granting of tariff preferences should also have a positive impact on the development of Western Sahara's economy.

(10) Having regard to the considerations on consent in the ruling of the Court of Justice, the Commission, in liaison with the European External Action Service, has taken all reasonable and feasible steps in the current context to adequately involve the people concerned in order to ascertain their consent to the agreement. Wide-ranging consultations were conducted and the majority of the social, economic and political stakeholders who participated in the consultations stated that they were in favour of extending the tariff preferences in the Association Agreement to Western Sahara. Those who rejected the idea felt essentially that such an Agreement should affirm Morocco's position on Western Sahara. However, the text of the Agreement does not imply that it recognises Morocco's sovereignty over Western Sahara. The Union will also continue to step up its efforts in support of the process, initiated and pursued through the United Nations, working towards a peaceful resolution of the dispute.

(11) In accordance with Council Decision (EU) 2018/1893[(4)], 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 (the 'Agreement'), was signed on 25 October 2018 subject to its conclusion at a later date.

(12) The Agreement helps achieve the aims pursued by the Union under Article 21 of the Treaty on European Union.

(13) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

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 (the 'Agreement'), is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to the notification provided for in the Agreement[(5)].

Article 3

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.