

Subject: Letter to Members of the European Parliament Committee on International Trade

Brussels, 20 February 2018

Dear colleagues,

The Members of the International Trade committee (INTA) will today, Tuesday 20 February, be briefed by representatives of the European Commission on the amendment of the EU-Morocco Association Agreement in order for it to comply with the European Court of Justice (ECJ) ruling of 21 December 2016.¹ Ahead of this agenda point, we undersigned Members of the European Parliament want to express our deep concern about the way the Commission has proceeded with the amendment process.

From Moroccan press², we understand that the Commission and Morocco essentially concluded their negotiations by late January. We have previously expressed our concerns regarding the transparency of the talks, and this rapid and unexpected arrangement came as a surprise to us, who have been following the issue closely. Further, it stands in stark contrast to the information provided by the Commission, notably the relevant INTA monitoring group.

The way these talks have been taking place is at odds with pledges made by European Commission President Jean-Claude Juncker to increase the transparency of trade negotiations. A letter we sent to Trade Commissioner Cecilia Malmström on 2 February, addressing our concerns on the matter, remains so far unanswered.³

You will also be aware of the extraordinary delay in the transmission by the Council of the negotiation mandate. Moreover, no sustainability impact assessment was carried out prior to the launch of the negotiations, which seems unique in the history of recent trade negotiations, and the Commission conceded that it did not dispose of data on the past trade flows from and with the territory which raises questions as to its capacity to defend European interests during the negotiations.

Furthermore, judging from the facts that we have been provided with it is unlikely that the agreement reached in January addresses the critical part of the ECJ ruling, namely the requirement of the prior consent of the people of Western Sahara.

The ECJ ruling clearly stated that Western Sahara is not a part of Morocco and that any agreement concerning this territory needs the consent of the Saharawi people. The consent cannot be reduced to a mere consultation, or only be with parties that the Moroccan side agrees with. Moreover, the people of Western Sahara cannot be equated to the population of the territory of the occupied Western Sahara. Indeed, that population consists of a majority of Moroccan settlers, whereas a majority of the Saharawis were forced into exile and now live in refugee camps in the Algerian desert.

¹ The negotiations sought to amend the agricultural protocols to the Association Agreement between the European Union and Morocco, in order for it to comply with the Court of Justice of the European Union (ECJ) ruling of 21 December 2016 in relation to Western Sahara.

² Statut Avancé, “Accord agricole : Le Maroc et l’UE paraphent un document pour renforcer leur partenariat“, 1 February 2018, <http://www.statut-avance.com/2185-accord-agricole-le-maroc-et-lue-paraphent-un-document-pour-renforcer-leur-partenariat.html>

³ Please find the letter in attachment.

As of today, the Commission has exclusively been negotiating with Morocco and no consent from the people of Western Sahara has been sought. The Front Polisario, which is recognised by the UN as the representative of the people of Western Sahara, as well as 85 different Saharawi civil society organisations have all expressed their objections to the re-negotiated agreement and have stressed that last-minute, haphazard “consultations” cannot substitute the ECJ requirement of “consent”. They state that any economic gains or development that comes as a result of Morocco’s trade with the EU does not benefit them, but rather helps reinforcing Morocco’s occupation and will add to the systematic discrimination against the Saharawi people. Moreover, we recall that the ECJ explicitly ruled that it was not necessary to determine whether the implementation is likely to benefit the people of Western Sahara, but that only mattered the prior consent of the latter.⁴

We, undersigned Members, feel alarmed about the way that the Commission is managing the process, the lack of transparency and possibilities for scrutiny for members of the European Parliament, and the Commission’s attempts to circumvent the ECJ ruling from December 2016.

The seriousness of this situation is compounded by the fact that the territory of Western Sahara is closed to outside observers; international NGOs such as Amnesty International and Human Rights Watch, international media and UN human rights monitors are banned from entering the territory. Moreover, MEPs from the Intergroup are systematically prevented from accessing Western Sahara, including most recently in October 2017. This closure of the territory prevents any independent assessment of the reality on the ground, and notably of the impact of EU policies.

We cannot stress enough the need for the EU to live up to the rulings of its own court. Otherwise, and in a time when the European Commission has activated article 7 procedures against Poland over its breaches of the rule of law, the credibility of the European Union is at stake.

We hope for your support in this endeavour.

With kind regards,

Jytte Guteland (S&D, Sweden), chair of the Western Sahara intergroup
Bodil Valero (Greens/EFA, Sweden), vice chair of the Western Sahara intergroup
Ivo Vajgl (ALDE, Slovenia), vice chair of the Western Sahara intergroup
Paloma López Bermejo (GUE/NGL), Spain, vice chair of the Western Sahara intergroup
Fabio Massimo Castaldo (EFDD, Italy), vice chair of the Western Sahara intergroup

⁴ Paragraph 106 of the ECJ ruling of December 2016



Ms. Cecilia Malmström, Commissioner for Trade

Brussels, 2 February 2018

Dear Commissioner Malmström,

We are addressing you in order to urgently clarify the information according to which the European Commission has unexpectedly concluded its negotiations on the agricultural protocols of the EU-Morocco Association Agreement with the Kingdom of Morocco. The negotiations sought to amend the agreement in order for it to comply with the Court of Justice of the European Union (ECJ) ruling of 21 December 2016. The ruling clearly stated that Western Sahara is not a part of Morocco and that any agreement concerning Western Sahara needs the consent of the Sahrawi people.

The Commission's rapid and unexpected conclusion of the negotiations stands in stark contrast to the information provided to us Members of the European Parliament, and it contradicts what the Commission told us just as late as last week at a closed monitoring group meeting.

Judging from the facts that we Members of Parliament have been provided with, we find it unlikely that the Commission could have reached an agreement that complies with the ECJ ruling. To us, critical parts of the ruling appear to be unaddressed, in particular the ruling's requirement of the prior consent of the people of Western Sahara.

Thus, can the Commission explain in what ways it considers to have obtained the consent of the people of Western Sahara? We want to know which stakeholders that have been consulted, and whether the Commission has engaged with the UN recognised representative of Western Sahara, Front Polisario, as well as consulted Sahrawi civil society organisations. Genuine and thorough consultations prior to the finalisation of the negotiations would have seemed even more indispensable given that the Commission, in a unique and unjustified manner, has failed to carry out a Sustainability Impact Assessment prior to the launch of these negotiations.

Moreover, can the Commission explain why it is hastily concluding this negotiation process just before the court ruling on the EU-Morocco Fisheries Agreement, which has direct relevance for EU agreements with Morocco?

Finally, can the Commission explain why it has sent contradictory information to us Members of the European Parliament regarding the latest state of play of the negotiations?

Yours sincerely,

Jytte Guteland (S&D) chair of the intergroup for Western Sahara

Ivo Vajgl (ALDE) vice-chair of the intergroup for Western Sahara

Bodil Valero (Greens/EFA) vice-chair of the intergroup for Western Sahara

Paloma López Bermejo (GUE/NGL) vice-chair of the intergroup for Western Sahara