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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	24 September 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 584 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Partnership Committee established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the amendment of the list of individuals to serve as arbitrators in dispute settlement proceedings

Delegations will find attached document COM(2020) 584 final.

Encl.: COM(2020) 584 final



EUROPEAN
COMMISSION

Brussels, 24.9.2020
COM(2020) 584 final

2020/0270 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Partnership Committee established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the amendment of the list of individuals to serve as arbitrators in dispute-settlement proceedings

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 Partnership Committee established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part ("the Agreement"), in connection with the envisaged adoption of a decision amending the list of individuals to serve as arbitrators in dispute settlement proceedings

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement

The Agreement aims to expand the existing wide bilateral cooperation in economic, trade and political areas, and on sectoral policies, thus providing a long-term basis for further developing EU-Armenia relations. By intensifying political dialogue and improving cooperation in a broad range of areas, the Agreement lays the foundations for a more effective bilateral engagement with Armenia.

Council Decision (EU) 2018/104 of 20 November 2017 approved the signing and provisional application of the Agreement pursuant to Article 385 of the Agreement. The Agreement is applied on a provisional basis since 1 June 2018.

2.2. The Partnership Committee

The Partnership Committee meeting in a specific configuration to address all issues related to Title VI (Trade and Trade-related Matters) of the Agreement is specified in Article 363(7) of the Agreement. Pursuant to Article 363(1) and (6) of the Agreement, the Partnership Committee assists the Partnership Council in the performance of its duties and functions. It has the power to adopt decisions in areas in which the Partnership Council has delegated powers to it and in the cases provided for in the Agreement. Those decisions are binding upon the Parties to the Agreement, which shall take appropriate measures to implement them.

2.3. The envisaged act of the Partnership Committee

The arbitration procedure set out in Chapter 13 of Title VI of the Agreement provides that where the Parties fail to resolve a dispute by recourse to consultations, the Party that sought consultation may request establishment of an arbitration panel. Article 339(1) of the Agreement requires the Partnership Committee to establish, on the basis of proposals made by the Parties, a list of at least 15 individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals who are not nationals of either Party and who shall serve as chairperson of the arbitration panel. Each sub-list shall include at least five individuals. The Partnership Committee shall also ensure that the list is always maintained at that level.

The arbitrators and chairpersons proposed by the Union and by the Republic of Armenia must have specialised expertise in law, international trade and other matters concerning the

provisions of Title VI of the Agreement and meet the requirement of independence as specified in Article 339(2) of the Agreement.

On this basis, the list of arbitrators was established by decision adopted by the Partnership Committee in Trade Configuration on 17 October 2019. One of the five candidate arbitrators from the Republic of Armenia, however, no longer fulfills the requirement of independence as specified in Article 339(2) of the Agreement.

The Republic of Armenia has proposed a new candidate arbitrator who has specialised expertise in law, international trade and other matters concerning the provisions of Title VI of the Agreement and is expected to meet the requirement of independence as specified in Article 339(2) of the Agreement.

The purpose of the envisaged act is therefore to define the Union's position relating to the adoption by the Partnership Committee of a decision amending the list of individuals willing and able to serve as arbitrators in dispute settlement proceedings, by replacing the individual among the five candidate arbitrators from the Republic of Armenia who no longer fulfils the conditions of Article 339(2) of the Agreement by the new candidate proposed by the Republic of Armenia.

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

The position to be adopted on behalf of the Union aims at amending the list of individuals who are willing and able to serve as arbitrators in dispute settlement proceedings.

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.*’

4.1.2. Application to the present case

The Partnership Committee is a body established by the Agreement. The decision to be adopted by the Partnership Committee will be binding under international law in accordance with Article 363(6) 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.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to ensuring the implementation of the Union's common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207(3) and the first subparagraph of Article 207(4).

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(3) and the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Partnership Committee established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the amendment of the list of individuals to serve as arbitrators in dispute-settlement proceedings

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part¹ ('the Agreement') was signed on behalf of the Union in accordance with Council Decision (EU) 2018/104² and is applied on a provisional basis since 1 June 2018.
- (2) Pursuant to Article 339(1) of the Agreement, the Partnership Committee established a list of 15 individuals who are willing and able to serve as arbitrators ('the list of arbitrators') at its meeting of 17 October 2019.
- (3) Armenia has informed the Union that one of the arbitrators it had proposed no longer fulfills the conditions set out in Article 339(2) of the Agreement and should therefore be replaced.
- (4) In order to ensure the operation of the provisionally applied provisions of the Agreement, the Partnership Committee is to adopt a decision to amend the list of arbitrators.

¹ OJ L 23, 26.1.2018, p. 4.

² Council Decision (EU) 2018/104 of 20 November 2017 on the signing, on behalf of the Union, and provisional application of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part (OJ L 23, 26.1.2018, p. 1).

- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Partnership Committee as the draft decision will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Partnership Committee of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the amendment to the list of individuals who are willing and able to serve as arbitrators, in accordance with Article 339(1) and (2) of the Agreement, shall be based on the draft Decision of the Partnership Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*