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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	25 September 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	JOIN(2017) 36 final
Subject:	Joint Proposal for a COUNCIL DECISION on the signing, on behalf of the European 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

Delegations will find attached document JOIN(2017) 36 final.

Encl.: JOIN(2017) 36 final



HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 25.9.2017
JOIN(2017) 36 final

2017/0236 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The attached proposal constitutes the legal instrument for the signing 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 (hereinafter referred to as ‘the Agreement’).

Relations between the European Union (EU) and the Republic of Armenia (Armenia) are currently based on the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, which entered into force on 1 July 1999 for an initial ten-year period and which has been automatically renewed.

On 29 September 2015, the Council adopted Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate a Framework Agreement between the EU and Armenia. Negotiation of the Agreement began on 7 December 2015. The text of the Agreement was initialled on 21 March 2017.

The Council has been kept informed at all stages of the negotiations. It has been consulted in the Working Party on Eastern Europe and Central Asia and in the Trade Policy Committee. The European Parliament has also been kept promptly and fully informed throughout the negotiations.

The Commission and the High Representative consider that the objectives set by the Council in its negotiating directives have been met and that the draft Agreement can be submitted for signature.

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1 The aim and content of the agreement

The scope of the new Agreement is comprehensive, covering issues of EU competence and interests, which reflects the existing wide range of cooperation in economic, trade and political areas, as well as on sectoral policies. It develops these areas further, thus providing a long-term basis for further development of EU-Armenia relations. By strengthening political dialogue and improving cooperation in a broad range of areas, the Agreement provides the basis for a more effective bilateral engagement with Armenia.

The Agreement includes the EU’s standard political clauses on human rights, the international criminal courts, weapons of mass destruction, small arms and light weapons and counter-terrorism. It also contains provisions on cooperation in areas such as transport, energy, health, the environment, climate change, taxation, education and culture, employment and social affairs, banking and insurance, industrial policy, agriculture and rural development, tourism, research and innovation, and mining. In addition, it covers legal cooperation, the rule of law, combatting money laundering and terrorist financing, and fighting organised crime and corruption.

The Agreement contains a substantive trade title with important commitments in several trade policy areas. These will improve conditions for bilateral EU-Armenia trade, while taking full account of Armenia's obligations as a member of the Eurasian Economic Union. These will ensure a better regulatory environment for the economic operators in areas such as trade in goods and services, setting up and running companies, capital movements, government procurement, intellectual property rights, sustainable development, and competition.

In certain areas, the Agreement is also designed to bring Armenian law gradually closer to the EU *acquis*. However, it does not go as far as to establish an association between the EU and Armenia.

The Agreement has provisions on its provisional application.

2.2 The legal basis for the proposed decision

Article 218(5) TFEU provides for the adoption of a decision authorising the signing of an agreement. Moreover, the second subparagraph of Article 218(8) TFEU provides that the Council acts unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act.

With regard to a measure that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the Court has held that, where various provisions of the Treaty are therefore applicable, such a measure will have to be founded, exceptionally, on the various corresponding legal bases, unless the procedure laid down for each legal basis are incompatible with each other (Case C-490/10 Parliament v Council, ECLI: EU:C:2012:525, paragraph 46).

The Agreement pursues objectives and includes components from the Common Foreign and Security Policy, the Common Commercial Policy and development cooperation. These aspects of the Agreement are inseparably linked without one being incidental to the other.

The Common Foreign and Security Policy is a field for which unanimity is required for the adoption of an European Union act.

The legal basis of the proposed decision should therefore include Article 37 TEU, Article 207 TFEU and Article 209 TFEU read in conjunction with Article 218(5) TFEU and the second subparagraph of Article 218(8) TFEU. No additional provisions are required as legal basis (see Case C-377/12 Commission v Council, ECLI: EU: C: 2014:1903).

Having assessed the text of the Agreement the Commission and the High Representative take the view that the Agreement does not cover any areas that would fall into the exclusive competence of the Member States and would thus warrant, in legal terms, the use of a mixed agreement. However, as the negotiating directives were issued in view of a mixed agreement, the text of the Agreement was initialled as mixed agreement and in consequence proposed here as such for signature and conclusion, the parties being the European Union and European Atomic Energy Community and their Member States of the one part and the Republic of Armenia, of the other part.

2.3 The necessity of the proposed decision

Article 216 TFEU provides that the European Union may conclude an agreement with one or more third country where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the context of EU policies, one of the objectives referred to in the Treaties, where it is provided for in a legally binding EU act or where it is likely to affect common rules or alter their scope.

The Treaties provide for the conclusion of agreements such as this one, namely in Articles 37 TEU, 207 TFEU and 209 TFEU. Moreover, the conclusion of the Agreement is necessary for the purpose of achieving, within the framework of the EU's policies, objectives referred to in the Treaties, including strengthening human rights, non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, trade, migration, the environment, energy, climate change, transport, science and technology, employment and social affairs, education, agriculture.

The Agreement must be signed before it can be concluded on behalf of the European Union.

Joint Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, in particular Articles 207 and 209, in conjunction with Article 218(5) and the second paragraph of Article 218(8), thereof,

Having regard to the proposal from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 29 September 2015, the Council authorised the Commission and the High Representative to open negotiations with the Republic of Armenia on a Framework Agreement.
- (2) Those negotiations have been concluded and 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, hereinafter referred to as the Agreement', was initialled on 21 March 2017.
- (3) Article 385 of the Agreement provides for its provisional application.
- (4) The Agreement should be signed on behalf of the Union and applied on a provisional basis, subject to the fulfilment of the procedures required for its conclusion at a later date.

HAS ADOPTED THIS DECISION:

Article 1

1. The signing 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 is hereby authorised on behalf of the Union, subject to the conclusion of the said Agreement.

2. The text of the Agreement to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiators of the Agreement

Article 3

1. In accordance with Article 385 of the Agreement and subject to the notifications provided for therein, the Agreement shall be applied provisionally in its entirety between the Union and the Republic of Armenia, pending its entry into force.
2. The date from which the Agreement is to be provisionally applied shall be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 4

1. For the purposes of Article 240 of the Agreement, any amendments to the Agreement through decisions taken by the Subcommittee on Geographical Indications shall be approved by the Commission on behalf of the Union. Where interested parties cannot reach agreement after objections have been raised concerning a geographical indication, the Commission shall adopt such a position on the basis of the procedure laid down in Article 57 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs¹.
2. For the purpose of Article 270(2), first sentence, of the Agreement the Commission is authorised to approve the Union position with regard to amendments to Annex XI to the Agreement.

For the purpose of Article 270(2), second sentence, of the Agreement the Commission is authorised to raise objections to a modification or rectification of Annex XI proposed by the Republic of Armenia.

Article 5

The Agreement shall not be construed as conferring rights or imposing obligations that can be directly invoked before Union or Member State courts and tribunals.

Article 6

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

¹ OJ L 343 14.12.2012, p.1

Done at Brussels,

*For the Council
The President*