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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 August 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 357 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Association Committee meeting in trade configuration established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other, concerning the update of Annex XIII (Approximation of customs legislation) to the Agreement

Delegations will find attached document COM(2020) 357 final.

Encl.: COM(2020) 357 final

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Brussels, 5.8.2020
COM(2020) 357 final

2020/0164 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Association Committee meeting in trade configuration established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other, concerning the update of Annex XIII (Approximation of customs legislation) to the Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The present proposal concerns the Council decision adopting the Union positions to be taken in the Association Committee meeting in Trade configuration in connection with the update of Annex XIII (Approximation of customs legislation) to chapter 5 on Customs and trade facilitation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part.

2. CONTEXT OF THE PROPOSAL

2.1. The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part ('the Agreement') aims to contribute to gradual economic integration and deepening of political association between Georgia and the European Union (hereafter 'the Parties'). The agreement entered into force on 1 July 2016.

2.2. The Association Committee

The Association Committee is a body established by the Agreement which, pursuant to Article 408(3) of the Agreement, has the power to adopt decisions in the cases provided for in the Agreement and in areas in which the Association Council has delegated powers to it. Those decisions shall be binding upon the Parties, which shall take appropriate measures to implement them.

As set out in Article 408(4) of the Agreement, the Association Committee shall meet in trade configuration to address all trade and trade-related issues of Title IV of the Agreement. As specified in Article 1(4) of the Rules of Procedure of the Association Committee and of Sub-Committees ('the Rules of Procedure'), the Association Committee in Trade configuration shall be composed of senior officials of the European Commission and of Georgia responsible for trade and trade-related matters. A representative of the European Commission or of Georgia who is responsible for trade and trade-related matters shall act as Chair of the Association Committee in Trade configuration in accordance with Article 1.4 of Annex II of Decision 1/2014 of the EU-Georgia Association Council[1]. The meetings will also be attended by a representative of the European External Action Service.

Pursuant to Article 408(3) of the Agreement and Article 11(1) of the Rules of Procedure, the Association Committee shall adopt its decisions by mutual agreement between the Parties and on completion of the respective internal procedures. Each decision or recommendation shall be signed by the Chair of the Association Committee and authenticated by the Secretaries of the Association Committee.

[1] OJ L 321, 5.12.2015, p. 60–69

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

3.1. The envisaged acts of the Association Committee

The present proposal for a Council decision establishes the Union position on the decision to be taken in the Association Committee established by the Agreement in relation to the update of Annex XIII (approximation of customs legislation) to chapter 5 on Customs and trade facilitation.

The act, which the Association Committee in Trade configuration is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 408(3) of the Association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part.

The update of the Annex XIII is necessary in order to reflect the evolution of the Union acquis that has taken place in the customs areas since the conclusion of negotiations of the Agreement in November 2013. The proposal is consistent with the Parties' obligations set out in Article 406 and Article 418 of the Agreement.

This proposal is consistent with, and contributes to, the implementation of other external policies of the Union, notably the European Neighbourhood Policy and the Development Cooperation Policy in relation to Georgia.

The trade and trade-related provisions of the Agreement were subject to ex-ante impact assessment in 2008, followed by the Commission DG Trade's Trade Sustainability Impact Assessment of 2012[2], which fed into the Deep and Comprehensive Free Trade Agreement DCFTA negotiation process. That study on economic feasibility, general economic impact and implications of a free trade agreement between the European Union and Georgia of April 2008 confirmed that implementation of trade and trade-related provisions would have no negative impact on the Union, its acquis or its policies, while projecting a positive impact on the economic development of Georgia. The proposal does not have any negative impact on the economic, social or environmental policy of the Union.

The Agreement is not subject to REFIT procedures at this stage; it does not imply any costs for the Union SMEs; and it does not raise any issues from the viewpoint of the digital environment.

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.'

[2] https://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/

The notion of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'

4.1.2. Application to the present case

The Association Committee is a body set up by an agreement, namely the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. Pursuant to Article 408(4) of the Agreement, the Association Committee shall meet in Trade configuration to address all trade and trade-related issues of Title IV of the Agreement.

Article 406(3) of the Agreement provides that the Association Council shall have the power to update or amend the Annexes to this Agreement. Pursuant to Article 408(2) of the Agreement, the Association Council may delegate to the Association Committee any of its powers, including the power to take binding decisions. The Association Council delegated the power to update or amend certain trade-related Annexes to the Association Committee meeting in Trade configuration by its Decision No 3/2014 of 17 November 2014.

The acts which the Association Committee is called upon to adopt constitutes an act having legal effect. The envisaged acts will be binding upon the Parties in accordance with Article 408(3) of the Agreement. The envisaged act does not supplement or amend the institutional framework of the Agreement. Accordingly, the Union position to be taken in the EU-Georgia Association Committee meeting in Trade configuration must be established in accordance with Article 218(9) TFEU.

The procedural legal basis for the proposed decision, therefore, 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 adopted on behalf of the Union. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged acts is to facilitate trade between the parties by updating Annex XIII (Approximation of customs legislation) to chapter 5 on Customs and trade facilitation of Title IV of the Agreement, which concerns trade and trade-related matters. Consequently, the envisaged act is within the scope of the common commercial policy referred to in Article 207.

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

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Association Committee in Trade configuration will amend the Agreement, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

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on the position to be taken on behalf of the European Union in the Association Committee meeting in trade configuration established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other, concerning the update of Annex XIII (Approximation of customs legislation) to the Agreement

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 Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States of the one part, and Georgia, of the other part ('the Agreement') was concluded by the Union by Council Decision 2014/494/EU and entered into force on 1 July 2016.

(2) Pursuant to Article 406(3) of the Agreement, the Association Council has the power to update or amend the Annexes to the Agreement.

(3) Pursuant to Article 408(2) of the Agreement, the Association Council may delegate to the Association Committee any of its powers, including the power to take binding decisions.

(4) Pursuant to Article 1 of the Association Council Decision No 3/2014 of 17 November 2014, the Association Council delegated the power to update or amend the Annexes to the Agreement which relate inter alia to Chapter 5 (Customs and trade facilitation) of Title IV (trade and trade-related Matters) of the Agreement to the Association Committee meeting in Trade configuration, to the extent that there are no specific provisions in Chapter 5 relating to the update or the amendment of that Annex.

(5) The Association Committee meeting in Trade configuration, during its next meeting, is to adopt a decision regarding the update of Annex XIII (Approximation of customs legislation) to chapter 5 on Customs and trade facilitation of the Agreement.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the Association Committee meeting in Trade configuration, as the envisaged decision will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, in the meeting of the EU-Georgia Association Committee meeting in Trade configuration, updating Annex XIII (Approximation of customs legislation) on Customs and trade facilitation, shall be based on the draft attached to this Decision.

Article 2

After its adoption, the Decision of the Association Committee meeting in Trade configuration shall be published in the Official Journal of the European Union.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President