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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	11 August 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 468 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Association Committee 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 Ukraine, of the other part

Delegations will find attached document COM(2021) 468 final.

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2021/0262 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Association Committee 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 Ukraine, of the other part

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 Association Committee in Trade configuration in connection with the envisaged adoption of a decision to amend Appendix XVII-3 (Rules applicable to telecommunication services), Appendix XVII-4 (Rules applicable to postal and courier services) and Appendix XVII-5 (Rules applicable to international maritime transport) of Annex XVII on regulatory approximation.

2. CONTEXT OF THE PROPOSAL

2.1. The Association Agreement

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ('the Agreement') aims to establish conditions for enhanced economic and trade relations leading towards Ukraine's gradual integration in the EU Internal Market, including by setting up a Deep and Comprehensive Free Trade Area as stipulated in Title IV (Trade and Trade-related Matters) of the Agreement, and to support Ukrainian efforts to complete the transition into a functioning market economy by means of, inter alia, the progressive approximation of its legislation to that of the Union. The Agreement entered into force on 1 September 2017.

2.2. The Association Committee in Trade configuration

Pursuant to Article 465(4) of the Agreement, all issues related to Title IV (Trade and Trade-related Matters) of the Agreement shall be addressed in the Association Committee in Trade configuration. According to Article 11 of Annex XVII, that Committee can take a decision to modify annex XVII of the Agreement. Pursuant to Article 465(3), these decisions shall be binding upon the Parties, which shall take appropriate measures to implement them. The Association Committee in Trade configuration shall adopt its decisions by agreement between the Parties.

2.3. The envisaged act of the Association Committee in Trade configuration

The Association Committee in Trade configuration is to adopt a decision to amend Appendix XVII-3 (Rules applicable to telecommunication services), Appendix XVII-4 (Rules applicable to postal and courier services) and Appendix XVII-5 (Rules applicable to international maritime transport) of Annex XVII on regulatory approximation ('the envisaged act').

The purpose of the envisaged act is to amend the aforementioned Appendices of Annex XVII in light of the evolution of the Union acquis listed therein since the initialling of the Agreement on 30 March 2012. This conforms to the objective of Ukraine's gradual regulatory approximation to the Union acquis as laid down in the preamble to the Agreement and in particular in Articles 114, 124 and 138 of Chapter 6 (Establishment, Trade in Services and Electronic Commerce) of Title IV (Trade and Trade-related Matters) of the Agreement.

The envisaged act will become binding on the parties in accordance with Article 11 of the Annex XVII, which provides that: 'The Trade Committee may decide to modify the

provisions of this Annex XVII in case it deems necessary'. Furthermore, Article 465(3) of the Agreement provides that: 'The Association Committee shall have the power to adopt decisions in the cases provided for in this Agreement and in areas in which the Association Council has delegated powers to it. These decisions shall be binding upon the Parties, which shall take appropriate measures to implement them. The Association Committee shall adopt its decisions by agreement between the Parties'

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

The position to be adopted on behalf of the Union aims at amending Appendix XVII-3 (Rules applicable to telecommunication services), Appendix XVII-4 (Rules applicable to postal and courier services) and Appendix XVII-5 (Rules applicable to international maritime transport) of Annex XVII.

Amending the Appendices is necessary in order to reflect the evolution of the Union acquis that has taken place in the above-mentioned services sectors since the initialling of the negotiated text of the Agreement on 30 March 2012.

This decision implements the Union's common commercial policy towards an Eastern Partner country, based on the provisions of the above-mentioned Association Agreement. It is consistent with the objective of Ukraine's gradual regulatory approximation to the Union acquis as laid down in the preamble to the Agreement.

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 Association Committee in trade configuration is a body established by the Association Agreement. The decision the Association Committee in trade configuration shall adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 465(3) 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 first subparagraph of Article 207(4) TFEU provides for the exclusive Union competence with regard to trade in services, with the exception of transport services, with regard to third countries including stipulations on the regulatory framework conditions for the supply of such

services. Article 100(2) TFEU provides for a legal base regarding measures for sea and air transport.

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 including aspects of international maritime transport.

Therefore, the substantive legal basis of the proposed decision is provided by Article 100(2) TFEU and the first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 100(2) and the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the decision of the Association Committee 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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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) and 207(4), first subparagraph, 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 Ukraine, of the other part ('the Agreement') entered into force on 1 September 2017.

(2) Pursuant to Article 11 of Annex XVII, the Association Committee in trade configuration may update or amend Annex XVII of the Agreement.

(3) The Association Committee in trade configuration should adopt the envisaged act on amending Appendix XVII-3 (Rules applicable to telecommunication services), Appendix XVII-4 (Rules applicable to postal and courier services) and Appendix XVII-5 (Rules applicable to international maritime transport).

(4) In accordance with Articles 114, 124 and 138 of the Agreement, both parties recognise the importance of the approximation of Ukraine's existing legislation to that of the European Union. Ukraine shall ensure that existing laws and future legislation will be gradually made compatible with the EU acquis.

(5) Considering that several Union acts listed in Appendix XVII-3 (Rules applicable to telecommunication services), Appendix XVII-4 (Rules applicable to postal and courier services) and Appendix XVII-5 (Rules applicable to international maritime transport) have been amended or repealed since the initialling of the text of the Agreement on 30 March 2012, it is necessary to adapt the appendices and to adjust certain deadlines to take into account the progress already made to date by Ukraine in the process of approximation to the Union acquis.

(6) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Association Committee in trade configuration, as the envisaged act regarding the

modification of Appendix XVII-3 (Rules applicable to telecommunication services), Appendix XVII-4 (Rules applicable to postal and courier services) and Appendix XVII-5 (Rules applicable to international maritime transport) to the Agreement will be binding upon the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Association Committee in Trade configuration of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part as regards the modification of Appendix XVII-3 (Rules applicable to telecommunication services), Appendix XVII-4 (Rules applicable to postal and courier services and Appendix XVII-5 (Rules applicable to international maritime transport) of Annex XVII shall be based on the draft Decision of that Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President