Council of the European Union

Brussels, 22 July 2019
(OR. en)

11416/19

Interinstitutional File: 2019/0157(NLE)

COEST 174
VETER 64
WTO 213
AGRI 398

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	22 July 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 344 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Sanitary and Phytosanitary Management Sub-Committee 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(2019) 344 final.

Encl.: COM(2019) 344 final

EUROPEAN
COMMISSION

Brussels, 22.7.2019
COM(2019) 344 final

2019/0157 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Sanitary and Phytosanitary Management Sub-Committee 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 EU-Ukraine Sanitary and Phytosanitary Management Sub-Committee (hereinafter "SPS Sub-Committee") in connection with the envisaged adoption of a decision on the modification of Annex V of the Association Agreement.

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[1] (hereinafter "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 Sanitary and Phytosanitary Management Sub-Committee

The SPS Sub-Committee shall assist the Association Committee in its Trade configuration to achieve the objectives set out in Article 59 on facilitating trade in commodities covered by sanitary and phytosanitary measures whilst safeguarding human, animal and plant life or health. The SPS Sub-Committee adopts decisions, opinions, recommendations, reports and joint actions as provided for in Article 74 of the Agreement. The SPS Sub-Committee shall adopt its decisions by agreement between the Parties.

2.3. The envisaged act of the SPS Sub-Committee

The SPS Sub-Committee shall adopt a decision on the modification of Annex V of the Agreement, which lists the Union acquis to which Ukraine intends to approximate its legislation in the area of sanitary, phytosanitary and animal welfare measures such as provided for in Article 64 of the Agreement. A list (Comprehensive Strategy) was presented by Ukraine to the Commission in June 2016. Based on this list Council Decision (EU) 2017/1391[2] on the position to be taken on behalf of the European Union in the SPS Sub-Committee was adopted. However, the decision by the SPS Sub-Committee was never taken because Ukraine announced shortly thereafter that a number of clarifications and changes to the list was necessary, such as including certain legislative acts and to clarify deadlines for adoption. Following additional exchanges and clarifications on the list between the Commission and Ukraine during 2018, a revised list was technically agreed. Ukraine submitted the revised list in October 2018.

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1 OJ L 161, 29.5.2014, p. 1.
2 OJ L 195, 27.7.2017, p. 13.

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

The position to be adopted on behalf of the Union aims at modifying Annex V of the Agreement which lists the Union acquis to which Ukraine intends to approximate its legislation in the area of sanitary, phytosanitary and animal welfare measures as provided for in Article 64 of the Agreement.

The decision constitutes the legal instrument establishing the Union's position to be adopted on its behalf in the SPS Sub-Committee.

This decision implements the Union's common commercial policy towards an Eastern Partner country, based on the provisions of the above-mentioned Association Agreement.

The Council Decision will also repeal Council Decision (EU) 2017/1391 as the list adopted by that decision has been amended and replaced by the list to this Decision.

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.'

The concept 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'[3].

4.1.2. Application to the present case

The SPS Sub-Committee is a body established by the Association Agreement. The act, which the SPS Sub-Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 466(4) of the Association 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 is Article 207(4) in conjunction with 218(9) TFEU.

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

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[3] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Sanitary and Phytosanitary Management Sub-Committee will amend Annex V of the Association 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 207(3) and 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 Ukraine, of the other part ('the Agreement') entered into force on 1 September 2017.

(2) Article 64 (1) of the Agreement provides that Ukraine is to approximate its sanitary and phytosanitary and animal welfare legislation to that of the Union as set out in Annex V to the Agreement.

(3) Article 64(4) of the Agreement commits Ukraine to submit a list of the Union acquis regarding sanitary, phytosanitary and animal welfare to which it intends to approximate its domestic legislation. The list is to serve as a reference document for the implementation of Chapter 4 (Sanitary and Phytosanitary Measures) of Title IV (Trade and trade-related matters) of the Agreement, and is to be added to Annex V to the Agreement. Accordingly, Annex V to the Agreement is to be modified by a decision of the Sanitary and Phytosanitary Management Sub-Committee ("the SPS Sub-Committee"), as set out in Article 74 of the Agreement.

(4) Ukraine submitted a list to the Commission in June 2016. Council Decision (EU) 2017/1391 of 17 July 2017 adopted a Union position on the basis of that list. Ukraine announced shortly thereafter that it considered it necessary to make further clarifications and changes concerning the dates of approximation, corrections in relation to the duplication of acts and adding new acts. Consequently, the decision by the SPS Sub-Committee was not adopted on the basis of the Union position adopted by Council Decision 2017/1391.

(5) Ukraine presented a revised list to the European Commission in October 2018. Based on that list the SPS Sub-Committee will therefore adopt the envisaged act modifying Annex V of the Agreement.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the SPS Sub-Committee as the decision on modifying Annex V will be binding on the Union.

(7) Because the list adopted by Council Decision (EU) 2017/1391 has been amended and revised it is necessary to repeal Council Decision (EU) 2017/1391,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union in the SPS Sub-Committee 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 regarding the modification of Annex V shall be based on the draft Decision of that Committee attached to this Decision.

2. Minor changes to the draft Decision may be agreed by the representatives of the Union within the SPS Sub-Committee without further decision of the Council.

Article 2

Council Decision (EU) 2017/1391 of 17 July 2017 is hereby repealed.

Article 3

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

Article 4

The Decision of the SPS Sub-Committee shall be published in the *Official Journal of the European Union.*

Done at Brussels,

For the Council
The President