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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 September 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 445 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 Ukraine, of the other, concerning the update of Annex XV (Approximation of customs legislation) to the Agreement

Delegations will find attached document COM(2022) 445 final.

Encl.: COM(2022) 445 final



Brussels, 8.9.2022
COM(2022) 445 final

2022/0265 (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 Ukraine, of the other, concerning the update of Annex XV (Approximation of customs legislation) to the Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The present proposal concerns the Council decision establishing the position to be taken on Union's behalf in the Association Committee meeting in Trade configuration in connection with the update of Annex XV (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 Ukraine, of the other part¹.

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 Ukraine, 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 Ukraine, of the other part ('the Agreement') aims to contribute to gradual economic integration and deepening of political association between Ukraine and the European Union (hereafter 'the Parties'). The Agreement entered into force on 1 September 2017².

2.2. The Association Committee in trade configuration

The Association Committee is a body established by the Agreement (Article 464) which, pursuant to Article 465(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. Decision No 3/2014 of the EU-Ukraine Association Council of 15 December 2014³ delegated power to the Association Committee in Trade configuration to update or amend among others Annex XV to Chapter 5 of the Agreement. Those decisions shall be binding upon the Parties, which shall take appropriate measures to implement them.

As set out in Article 465(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. In accordance with Article 464(2) and (3), and as specified in Article 1(4) of the Rules of Procedure of the Association Committee and of Sub-Committees⁴ ('the Rules of Procedure'), the Association Committee in Trade configuration shall be composed of senior officials of the European Commission and of Ukraine responsible for trade and trade-related matters. A representative of the European Commission or of Ukraine who is responsible for trade and trade-related matters shall act as Chair of the Association Committee in accordance with Article 2 of these Rules of Procedure. The meetings will also be attended by a representative of the European External Action Service

Pursuant to Articles 463(1) and 465(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 L161, 29.5.2014, p.3.

² OJ L193, 25.7.2017, p.1.

³ OJ L158, 24.6.2015, p.4.

⁴ OJ L157, 23.6.2015, p. 99.

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

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 XV (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 in accordance with Article 465(3) 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.

The update of the Annex XV is necessary in order to reflect the evolution of the Union acquis that has taken place in the customs area since the initialling of the negotiated text on 30 March 2012 while taking into account a gradual approximation of Ukraine's legislation. The proposal is consistent with the Parties' obligations set out in Article 463 and Annex XV 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 Ukraine.

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.'*

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'*⁵.

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 Ukraine, of the other part. Pursuant to Article 465(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.

Articles 463(3) of the Agreement provide that the Association Council shall have the power to update or amend the Annexes to this Agreement. Pursuant to Article 465(2) of the Agreement,

⁵ 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.

the Association Council may delegate to the Association Committee any of its powers, including the power to take binding decisions.

The decision which the Association Committee is called upon to adopt constitutes an act having legal effect. The envisaged act will be binding upon the Parties in accordance with Article 465(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-Ukraine 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 taken on the Union's behalf. 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 act is to facilitate trade between the parties by updating Annex XV (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 decision 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.

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 Ukraine, of the other, concerning the update of Annex XV (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 Ukraine, of the other part ('the Agreement') entered into force on 1 September 2017⁶.
- (2) Pursuant to Article 465(2) of the Agreement, the Association Council may delegate to the Association Committee any of its powers, including the power to take binding decisions.
- (3) Pursuant to Article 1 of Decision No 3/2014 of the Association Council EU-Ukraine of 15 December 2014⁷, the Association Council delegated the power to the Association Committee meeting in Trade configuration, to update or amend among others Annex XV to the Agreement.
- (4) The Association Committee in Trade configuration in its next meeting is to adopt the envisaged act on the update of Annex XV (Approximation of customs legislation) to the Agreement.
- (5) Considering that several Union acts listed in Annex XV have been amended or repealed, since the initialling of the text the Agreement on 30 March 2012, it is necessary to adapt the Annex 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 appropriate to establish the position to be taken on the Union's behalf in the Association Committee in Trade configuration, as the envisaged decision of the association Committee will be binding on the Union,

⁶ OJ L 161, 29.5.2014, p. 3–2137

⁷ OJ L 158, 24.6.2015, p. 4

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the next meeting of the EU-Ukraine Association Committee in Trade configuration, as referred to in Article 465(4) 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, regarding the update of Annex XV (Approximation of customs legislation) to the Agreement, shall be based on the draft Decision of the Association Committee in Trade configuration attached to this decision.

Article 2

After its adoption, the Decision of the Association Committee in Trade configuration referred to in Article 1 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