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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	9 March 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 103 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Association Council established under 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, on the adoption of the EU-Georgia Association Agenda

Delegations will find attached document COM(2022) 103 final.

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EUROPEAN
COMMISSION

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Association Council established under 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, on the adoption of the EU-Georgia Association Agenda

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the Council decision establishing the position to be taken on the Union's behalf in the Association Council in connection with the envisaged adoption of the Association Agenda between the European Union and Georgia for 2021-2027.

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 Georgia, of the other part ('the Agreement'), aims to strengthen cooperation, to promote political association and economic integration. The Agreement also establishes a deep and comprehensive free trade area ('DCFTA'). The Agreement entered into force on 1 July 2016.

2.2. The Association Council

The Association Council was established in Article 404 of the Agreement. It supervises and monitors the application and implementation of the Agreement and periodically reviews the functioning of the Agreement in the light of its objectives. It consists of members of the Council of the European Union and members of the European Commission, on the one hand, and of members of the government of Georgia, on the other.

2.3. The envisaged act of the Association Council

In accordance with Article 406(1) of the Agreement, the Association Council has the power to adopt recommendations to attain the objectives of the Agreement. The Association Council will adopt a recommendation on the implementation of the EU-Georgia Association Agenda for 2021-2027 ('the envisaged act').

The envisaged act aims to support the implementation of the Agreement by setting out joint priorities for 2021 to 2027.

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

The EU and Georgia have agreed to consolidate their partnership by setting out priorities for 2021 to 2027 to support the Agreement's implementation.

The 2021-2027 Association Agenda covers:

- political dialogue;
- foreign and security policy;
- cooperation on freedom, security and justice, trade and trade-related matters; and
- cooperation in numerous other sectors covered by the Agreement, such as energy, public health, transport, environment, climate change and fisheries and maritime affairs.

The Association Agenda reflects the Eastern Partnership policy objectives¹ and takes into account the Commission's priorities, such as the ecological and digital transformation. It also factors in the latest policy developments, including on energy efficiency and renewable developments, environmental protection and the commitments under the Paris Agreement. The Association Agenda also addresses the new challenges posed by the COVID-19 pandemic, seeking to work jointly on health resilience and socio-economic recovery. Also of particular importance are the priorities linked to much-needed reforms in Georgia, notably in the areas of rule of law, justice reforms and democratic consolidation.

The Union needs to establish its position on the Association Agenda to facilitate the full implementation of the Agreement and guide bilateral cooperation.

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) states that the Council adopts 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*'².

4.1.2. Application to the present case

The Association Council is a body set up by an agreement, namely the Association Agreement.

The act the Association Council is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects because the EU-Georgia Association Agenda for 2021-2027 will be the basis for programming under the Neighbourhood, Development and International Cooperation Instrument – Global Europe.

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 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

¹ As set out in the Joint Communication on "Eastern Partnership policy beyond 2020 Reinforcing Resilience - an Eastern Partnership that delivers for all", the accompanying Joint Staff Working Document, and the Eastern Partnership summit – joint declaration.

² 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.

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.

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to association with third countries, in particular to furthering the implementation of the aims and objectives of the Association Agreement between the European Union and Georgia. The measures whose adoption is envisaged concern, generally, the whole of the areas covered by the Association Agreement and aim at further implementing and deepening the association between the Parties. It follows that the field within which the decision falls must be determined in the light of the Association Agreement as a whole.

Therefore, the substantive legal basis of the proposed decision is Article 217 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be article 217 TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Association Council will replace Recommendation No 1/2017 of 20 November 2017, 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 217, read 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 signed on 27 June 2014³ and entered into force on 1 July 2016.
- (2) Pursuant to Article 406(1) of the Agreement, the Association Council may adopt recommendations to attain the objectives of the Agreement.
- (3) The Association Council is to adopt the recommendation on the EU-Georgia Association Agenda for 2021-2027 by written procedure.

It is appropriate to establish the position to be taken on the Union's behalf in the Association Council, as the EU-Georgia Association Agenda for 2021-2027 will be the basis for programming under the Neighbourhood, Development and International Cooperation Instrument.

- (4) To facilitate the application of the Agreement, the Parties have agreed to establish an Association Agenda listing priorities for their joint work broken down by sector.
- (5) The Union's position in the Association Council on the adoption of the EU-Georgia Association Agenda for 2021-2027 is to be adopted by the Council,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Association Council shall be based on the draft recommendation of the Association Council attached to this Decision.

³ OJ L 261, 30.8.2014, p. 4.

Article 2

This Decision is addressed to the Commission and the High Representative.

Done at Brussels,

*For the Council
The President*