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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	10 October 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 649 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within 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 the Republic of Moldova, of the other part

Delegations will find attached document COM(2016) 649 final.

Encl.: COM(2016) 649 final



EUROPEAN
COMMISSION

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within 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 the Republic of Moldova, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The attached proposal constitutes the legal instrument for establishing the Union positions to be adopted on its behalf in a body set up by an association agreement between the Union and a third country. In particular, it relates to the implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part ('the Agreement'), regarding the adoption of a list of arbitrators for dispute settlement on trade-related matters.

The Agreement was signed on 27 June 2014, and was provisionally applied in part, pending ratification by the Member States, since 1 September 2014. Council Decision (EU) 2016/839 of 23 May 2016¹ approved the conclusion of the Agreement and pursuant to Article 464(2) of the Agreement, it entered into force on 1 July 2016.

The Agreement established the Association Committee in Trade configuration, which monitors the implementation of Title V (Trade and Trade-related matters) of the Agreement and resolves related issues. This Committee has to establish a list of arbitrators to ensure the proper functioning of the dispute settlement mechanism, as provided for in Article 404 of the Agreement.

This proposal replaces the Commission proposal COM(2015)390 final². The replacement is necessary because two of the arbitrators proposed by the Republic of Moldova no longer fulfill the conditions set out in Article 404(2) of the Agreement. The Republic of Moldova proposed and the European Commission recommends the Council to accept two other candidates that fulfill the conditions set out in Article 404(2) of the Agreement. In addition, this proposal reflects the fact that the Agreement entered into force on 1 July 2016.

- **Consistency with existing policy provisions in the policy area**

This proposal implements the Union's common commercial policy toward an Eastern Partner country, based on the provisions of the above-mentioned Agreement. It aims to set up the necessary institutional instruments enabling the Union and the Republic of Moldova to effectively address bilateral disputes concerning the application and interpretation of the Agreement. It is consistent with the Union's approach to dispute settlement disciplines negotiated or implemented within free trade agreements with other trade partners.

- **Consistency with other Union policies**

This proposal is consistent and complements the other external policies of the Union, notably the European Neighbourhood Policy and the development cooperation policy in relation to the Republic of Moldova.

¹ OJ L 141, 28.5.2016, p. 28.

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1469533573883&uri=CELEX:52015PC0390>

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for establishing the Union position to be taken in the committees set up by the Agreement is the Treaty on the Functioning of the European Union, and in particular its Article 207(4) in conjunction with Article 218(9) thereof.

- **Subsidiarity (for non-exclusive competence)**

The common commercial policy, in accordance with Article 3 of the TFEU, is defined as an exclusive Union competence. Therefore, the subsidiarity principle does not apply.

- **Proportionality**

This proposal is necessary in order to implement the Union's international commitments set out in the Agreement with the Republic of Moldova.

- **Choice of the instrument**

This proposal is in accordance with Article 218(9) TFEU, which envisages the adoption by the Council of decisions. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Stakeholder consultations are not applicable to this proposal.

- **Collection and use of expertise**

The Commission has taken into account input provided by Member States in recent years as regards Union nationals who are suitable and qualified to act as arbitrations in disputes brought under the Union's trade agreements.

- **Impact assessment**

The proposal relates to the implementation of institutional aspects of the Agreement, and in particular its Title V on Trade and trade-related matters, between the Union and the Republic of Moldova. The proposal does not have any impact on the economic, social or environmental policy of the Union. The Agreement entered into force on 1 July 2016 and its implementation is at a very early stage.

- **Regulatory fitness and simplification**

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

- **Fundamental rights**

The proposal does not have consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the Agreement is reviewed regularly by the EU-Republic of Moldova Association Council. The European Commission also committed to report annually on the implementation of Title V (Trade and trade-related matters) of the Agreement, including on the elements included in this proposal, to the European Parliament.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The proposal aims to adopt a Union position in relation to the implementation of the trade part of the Agreement between the Union and the Republic Moldova. Title V (Trade and trade-related matters) of that Agreement includes Chapter 14 (Dispute Settlement), which provides for a mechanism to resolve trade-related disputes between the parties to the Agreement, concerning the application or interpretation of the trade part of that Agreement. The arbitration procedure set out in Chapter 14 provides that the complaining party may request establishment of an arbitration panel to resolve a bilateral dispute. Article 404 of the Agreement sets out the rules for the composition of the panel. The Agreement envisages the establishment of a list of qualified individuals who may serve as arbitrators. Accordingly, a draft list of arbitrators who are willing and able to serve on an arbitration panel has been discussed with the Government of the Republic of Moldova, providing for five candidate arbitrators proposed by the Union, five candidate arbitrators proposed by the Republic of Moldova and five third-country nationals who may serve as chairpersons of an arbitration panel. The list will be used in cases when an arbitration panel needs to be established.

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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 the first paragraph 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 the Republic of Moldova, of the other part³ ('the Agreement'), entered into force on 1 July 2016.
- (2) Article 404(1) of the Agreement provides that the Association Committee in Trade configuration, as set out in Article 438(4) of the Agreement, is to agree on a list of individuals to serve as arbitrators in dispute settlement proceedings within six months from the entry into force of the Agreement.
- (3) In accordance with Article 404(1) of the Agreement, a draft list of arbitrators to serve on an arbitration panel has been discussed with the Government of the Republic of Moldova, providing for five candidate arbitrators proposed by the Union, five candidate arbitrators proposed by the Republic of Moldova and five third-country nationals who may serve as chairpersons to an arbitration panel.
- (4) It is therefore appropriate to establish the position to be adopted on behalf of the Union within the Association Committee in Trade configuration in relation to the list of individuals to serve as arbitrators in dispute settlement proceedings,

³ Council Decision 2014/492/EU of 16 June 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (OJ L 260, 30.8.2014, p.1).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the Association Committee in Trade configuration in relation to the adoption of the list of individuals to serve as arbitrators in dispute settlement proceedings shall be based on the draft Decision of that Committee, attached to this Decision.

Minor changes to the draft Decision may be agreed to by the representatives of the Union within the Association Committee in Trade configuration without further decision of the Council.

Article 2

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

Article 3

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

Done at Brussels,

For the Council
The President