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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2017) 754 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 the Republic of Moldova, of the other
concerning the update of Annex XXVIII-A (Rules applicable to financial
services), Annex XXVIII-B (Rules applicable to telecommunication
services) and Annex XXVIII-D (Rules applicable to international maritime
transport) to the Agreement

Delegations will find attached document COM(2017) 754 final.

Encl.: COM(2017) 754 final



Brussels, 13.12.2017
COM(2017) 754 final

2017/0338 (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 the Republic of Moldova, of the other concerning the update of Annex XXVIII-A (Rules applicable to financial services), Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-D (Rules applicable to international maritime transport) to the Agreement

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 meeting in Trade configuration in connection with the envisaged update of Annex XXVIII-A (Rules applicable to financial services), Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-D (Rules applicable to international maritime transport) to 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.

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 the Republic of Moldova, 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 the Republic of Moldova, of the other part ('the Agreement') aims to contribute to gradual economic integration and deepening of political association between the Republic of Moldova and the European Union. The Agreement entered into force on 1 July 2016.

2.2. The Association Committee

The Association Committee is a body established by the Agreement, which, pursuant to Article 438(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. Those decisions shall be binding upon the Parties, which shall take appropriate measures to implement them.

As set out in Article 438(4) of the Agreement, the Association Committee shall meet in Trade configuration to address all trade and trade-related issues of Title V of the Agreement. As specified in Article 1(4) of the Rules of Procedure of the Association Committee and of Sub-Committees ('the Rules of Procedure')¹, the Association Committee in Trade Configuration shall be composed of senior officials of the European Commission and of the Republic of Moldova who are responsible for trade and trade-related matters. A representative of the European Commission or of the Republic of Moldova who is responsible for trade and trade-related matters shall act as Chair of the Association Committee in Trade configuration. The meetings will also be attended by a representative of the European External Action Service.

Pursuant to Article 438(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.

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

The Association Committee meeting in Trade configuration is to adopt three decisions regarding the update of Annex XXVIII-A (Rules applicable to financial services), Annex

¹ OJ L 9, 15.1.2015, p. 53.

XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-D (Rules applicable to international maritime transport) to the Agreement ('the envisaged acts').

The purpose of the envisaged acts is to update the aforementioned Annexes in light of the evolution of the Union *acquis* listed therein since the conclusion of negotiations of the Agreement in June 2013. This conforms to the obligations of the Union and of the Republic of Moldova on dynamic approximation set out in Article 449 of the Agreement and aims to facilitate the ongoing process of approximation to the Union *acquis* in the Republic of Moldova.

The envisaged acts will become binding on the parties in accordance with Article 438(3) of the Agreement, which provides: '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. Those decisions shall be binding upon the Parties, which shall take appropriate measures to implement them'.

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

The present proposal for a Council decision establishes the Union position on three decisions to be taken in the Association Committee in Trade configuration established by the Agreement in relation to the update of Annex XXVIII-A (Rules applicable to financial services), Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-D (Rules applicable to international maritime transport).

The update of the above-mentioned Annexes is necessary in order to reflect the evolution of the Union *acquis* that has taken place in the above-mentioned services sectors since the conclusion of negotiations of the Agreement in June 2013. The proposal is consistent with the Parties' obligations set out in Article 436 and Article 449 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 the Republic of Moldova.

The trade and trade-related provisions of the Agreement were subject to an ex-ante impact assessment in 2009, followed by the Commission DG Trade's Trade Sustainability Impact Assessment of 2012, which fed into the DCFTA negotiation process. That study confirmed that implementation of trade and trade-related provisions would have no negative impact on the Union, its *acquis* or its policies, while projecting a positive impact on the economic development of the Republic of Moldova. The proposal does not have any negative impact on the economic, social or environmental policy of the Union.

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’.²

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 the Republic of Moldova, of the other part. Pursuant to Article 438(4) of the Agreement, the Association Committee shall meet in Trade configuration to address all trade and trade-related issues of Title V of the Agreement.

Article 436(3) of the Agreement provides that the Association Council shall have the power to update or amend the Annexes to the Agreement. Pursuant to Article 438(2) of the Agreement, the Association Council may delegate to the Association Committee any of its powers, including the power to take binding decisions. The Association Council delegated the power to update or amend certain trade-related Annexes to the Association Committee meeting in Trade configuration by its Decision No 3/2014 of 16 December 2014.

The acts which the Association Committee is called upon to adopt constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 438(3) of the Agreement.

The envisaged acts do 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 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 acts relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision, comprises the following provisions: Article 207 TFEU.

4.3. Conclusion

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

² Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

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 the Republic of Moldova, of the other concerning the update of Annex XXVIII-A (Rules applicable to financial services), Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-D (Rules applicable to international maritime transport) to the Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, 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 part ('the Agreement') was concluded by the Union by Council Decision 2014/492/EU of 16 June 2014³ and entered into force on 1 July 2016.
- (2) Pursuant to Article 1 of the Association Council Decision No 3/2014 of 16 December 2014⁴, the Association Committee in Trade configuration may update or amend the Annexes to the Agreement.
- (3) The Association Committee in Trade configuration is to adopt the envisaged act on Annex XXVIII-A (Rules applicable to financial services), Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-D (Rules applicable to international maritime transport)
- (4) 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 adoption of three decisions regarding the update of Annex XXVIII-A (Rules applicable to financial services), Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-D (Rules applicable to international maritime transport) to the Agreement will be binding upon the Union.
- (5) Considering that several Union acts listed in Annexes XXVIII-A, XXVIII-B and XXVIII-D to the Agreement have been amended or repealed since the conclusion of negotiations of the Agreement, in order to ensure proper approximation it is necessary to add to these Annexes a number of acts that implement, amend, supplement or replace the measures listed therein, as well as amend certain deadlines to take into

³ OJ L 260, 30.8.2014 p.739.

⁴ OJ L 110, 29.4.2015 p. 40.

account the progress already made to date by the Republic of Moldova in the process of approximation to the Union *acquis*,

HAS ADOPTED THIS DECISION:

Article 1

The positions to be taken, on the Union's behalf in the meeting of the Association Committee in Trade configuration, shall be based on the draft acts of the Association Committee in Trade configuration attached to this Decision:

- (i) Decision of the EU-Republic of Moldova Association Committee updating Annex XXVIII-A to the Agreement (Rules applicable to financial services);
- (ii) Decision of the EU-Republic of Moldova Association Committee updating Annex XXVIII-B to the Agreement (Rules applicable to telecommunication services);
- (iii) Decision of the EU-Republic of Moldova Association Committee updating Annex XXVIII-D to the Agreement (Rules applicable to international maritime transport).

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*