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European Union

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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 August 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 369 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Partnership Committee established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the list of individuals to serve as arbitrators in dispute settlement proceedings

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Delegations will find attached document COM(2019) 369 final.

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Encl.: COM(2019) 369 final



Brussels, 28.8.2019  
COM(2019) 369 final

2019/0170 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union within the Partnership Committee established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the list of individuals to serve as arbitrators in dispute settlement proceedings**

## 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 Partnership Committee established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part ("the Agreement"), in connection with the envisaged adoption of a decision establishing the list of individuals to serve as arbitrators in dispute settlement proceedings.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Agreement**

The Agreement aims to expand the existing wide bilateral cooperation in economic, trade and political areas, and on sectoral policies, thus providing a long-term basis for further developing EU-Armenia relations. By intensifying political dialogue and improving cooperation in a broad range of areas, the Agreement lays the foundations for a more effective bilateral engagement with Armenia.

Council Decision (EU) 2018/104 of 20 November 2017 approved the signing and provisional application of the Agreement and pursuant to Article 385 of the Agreement. The Agreement is applied on a provisional basis since 1 June 2018.

#### **2.2. The Partnership Committee**

The Partnership Committee meeting in a specific configuration to address all issues related to Title VI (Trade and Trade-related Matters) of the Agreement is specified in Article 363(7) of the Agreement. Pursuant to Article 363(1) and (6) of the Agreement, the Partnership Committee assists the Partnership Council in the performance of its duties and functions. It has the power to adopt decisions in areas in which the Partnership Council has delegated powers to it and in the cases provided for in the Agreement. Those decisions are binding upon the Parties to the Agreement, which shall take appropriate measures to implement them.

#### **2.3. The envisaged act of the Partnership Committee**

The arbitration procedure set out in Chapter 13 of Title VI of the Agreement provides that where the Parties fail to resolve a dispute by recourse to consultations, the Party that sought consultation may request establishment of an arbitration panel. The purpose of the envisaged act is to define the Union's position relating to the adoption by the Partnership Committee of a list of individuals willing and able to serve as arbitrators in dispute settlement proceedings.

Article 339(1) of the Agreement requires the Partnership Committee to establish, on the basis of proposals made by the Parties, a list of at least 15 individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals who are not nationals of either Party and who shall serve as chairperson of the arbitration panel. Each sub-list shall include at least five individuals.

Accordingly, a draft list has been discussed with the Republic of Armenia, providing for five candidate arbitrators from the Union, five candidate arbitrators from the Republic of Armenia and five third-country nationals who may serve as chairpersons of an arbitration panel.

The candidate arbitrators and chairpersons proposed by the Union and by the Republic of Armenia have specialised expertise in law, international trade and other matters concerning the provisions of Title VI of the Agreement and are expected to meet the requirement of independence as specified in Article 339(2) of the Agreement.

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

The position to be adopted on behalf of the Union aims at establishing a list of individuals who are willing and able to serve as arbitrators in dispute settlement proceedings.

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

This decision implements the Union's common commercial policy towards an Eastern Partner country, based on the provisions of the Agreement. The establishment of a list of arbitrators is a legal requirement for setting up the institutional structures which enable the Union and the Republic of Armenia to effectively address bilateral disputes concerning the application and interpretation of the trade title 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.

### **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.

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'<sup>1</sup>.

##### *4.1.2. Application to the present case*

The Partnership Committee is a body established by the Agreement. The decision that the Partnership Committee shall adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 363(6) of the 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.

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<sup>1</sup> 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

## **4.2. Substantive legal basis**

### *4.2.1. Principles*

The substantive legal basis is Article 207(3) and the first subparagraph of Article 207(4) in conjunction with Article 218(9) TFEU.

### *4.2.2. Application to the present case*

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

Therefore, the substantive legal basis of the proposed decision is Article 207(3) and the first subparagraph of Article 207(4).

## **4.3. Conclusion**

The legal basis of the proposed decision should be Article 207(3) and the first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

## **5. PUBLICATION OF THE ENVISAGED ACT**

It is envisaged to publish the Decision of the Partnership Committee in the *Official Journal of the European Union* once adopted.

Proposal for a

## COUNCIL DECISION

**on the position to be taken on behalf of the European Union within the Partnership Committee established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the list of individuals to serve as arbitrators in dispute settlement proceedings**

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) In accordance with Article 339(1) of the Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part (the "Agreement"), the Partnership Committee shall establish a list of at least 15 individuals who are willing and able to serve as arbitrators.
- (2) In accordance with Article 385(5) of the Agreement, the Agreement is provisionally applied since 1 June 2018.
- (3) In accordance with Article 339(1) of the Agreement, the Union and the Republic of Armenia have each proposed their candidates willing and able to serve as arbitrators and have agreed on five third-country nationals who may serve as chairpersons to an arbitration panel.
- (4) It is appropriate for the Partnership Committee to establish the list of arbitrators.
- (5) The Decision of the Partnership Committee shall be published after its adoption,

HAS ADOPTED THIS DECISION:

### *Article 1*

The position to be taken on behalf of the Union in the Partnership Committee of the Agreement regarding the adoption of the list of individuals who are willing and able to serve as arbitrators, in accordance with Article 339(1) of the Agreement, shall be based on the draft Decision of the Partnership Committee attached to this Decision.

*Article 2*

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

This Decision is addressed to the Commission.

The Decision of the Partnership Committee shall be published in the Official Journal of the European Union.

Done at Brussels,

*For the Council  
The President*