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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:	27 November 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 606 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Association Committee in Trade configuration

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Delegations will find attached document **COM(2019) 606 final**.

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Encl.: **COM(2019) 606 final**



Brussels, 27.11.2019  
COM(2019) 606 final

2019/0268 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Association  
Committee in Trade configuration**

## 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 EU-Moldova Association Committee in Trade configuration in connection with the envisaged adoption of a decision updating Annex XV of the EU-Moldova Association Agreement.

### **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 Members States, on the one part, and the Republic of Moldova, on the other part ('the Agreement') establishes the Deep and Comprehensive Free Trade Area ('DCFTA') which aims to establish conditions for enhanced economic and trade relations. This includes the progressive reduction or elimination of custom duties on goods traded between both Parties. The Agreement entered fully into force on 1 July 2016.

#### **2.2. The Association Committee in Trade configuration**

The Association Committee in Trade configuration was established in Article 438(4) of the Agreement and performs the tasks conferred upon it under Title V of the Agreement, i.e. Trade and Trade-related matters. By decision 3/2014 of the EU-Republic of Moldova Association Council, of 16 December 2014, the Association Council delegated the power to update or amend the Annexes to the Agreement that relate to Chapters 1, 3, 5, 6 and 8 of Title V (Trade and Trade-related Matters) of the Agreement to the Association Committee in Trade configuration.

#### **2.3. The envisaged act of the Association Committee in Trade configuration**

Article 147 of the Agreement provides that the Parties shall examine, in the Association Committee in Trade configuration, on an appropriate reciprocal basis, the opportunities for granting each other further concessions with a view to improving liberalisation of trade in agricultural products, in particular those subject to tariff-rate quotas (TRQs). More concretely, Article 147(5) foresees such review during the third year after the entry into force of the Agreement. Furthermore, Article 148(5) foresees the possibility for the Association Committee in Trade configuration to amend, by mutual consent, the trigger volumes of the products subject to the anti-circumvention mechanism (Annex XV-C).

"Decision No .../... of the EU-Republic of Moldova Association Committee in Trade configuration of ... 20... updating Annex XV to the Agreement" ('the envisaged act'), is expected to be adopted by the Association Committee in Trade configuration by written procedure, as provided for in Article 11 of Annex II of Decision No 1/2014 of the EU-Republic of Moldova Association Council, of 16 December 2014, adopting its Rules of Procedure and those of the Association Committee and of subcommittees.

The purpose of the envisaged act is to amend Annex XV of the Agreement ("Elimination of customs duties") in line with the results of the negotiations between the European

Commission and the Republic of Moldova, which were initiated at the request of the Republic of Moldova in the framework of the above mentioned review.

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

The position to be adopted on behalf of the Union aims at modifying Annex XV of the Agreement, in line with the results of the negotiations between the European Commission and the Republic of Moldova.

Pursuant to the provisions of Article 147(4) and 148(5) of the Agreement, the results of the negotiation will be formalized through a Decision of the EU-Moldova Association Committee on Trade configuration. According to the procedure foreseen in Article 218(9) of the Treaty on the Functioning of the European Union ('TFEU'), the Commission will present a proposal to the Council, which shall adopt a decision establishing the position to be adopted on the Union's behalf in the above-mentioned committee.

The following tables summarize the proposed amendments:

*Table 1 – Amendments to Annex XV-A (TRQs for Moldovan exports into the EU)*

Product (CN code)	Current (tonnes)	New (tonnes)
Table grapes, fresh (08061010)	10 000	20 000
Plums, fresh (08094005)	10 000	15 000
Cherries (excl. sour cherries), fresh (08092900)*	Non existing	1 500

\* In Annex XV-B, in the list of products subject to entry price, the line with CN code 2012 0809 29 00 and product description “Cherries (excl. sour cherries), fresh” shall be deleted.

*Table 2 – Amendments to Annex XV-C (trigger volumes of the anti-circumvention mechanism for Moldovan exports into the EU)*

Product category	Current (tonnes)	New (tonnes)
6. Wheat, flour and pellets	75 000	150 000
7. Barley, flour and pellets	70 000	100 000
8. Maize, flour and pellets	130 000	250 000
10. Cereal processed	2 500	5 000

*Table 3 – Amendments to Annex XV-D (TRQs for EU exports into Moldova – Gradual phasing-in)*

TRQ (product category)	Current	New
TRQ 1 (Pork)	4 000	5 500 (4 500/5 000/5 500)
TRQ 2 (Poultry)	4 000	6 000 (5 000/5 500/6 000)
TRQ 3 (Dairy)	1 000	2 000 (1 500/2 000)
TRQ 5 (Sugar)	5 400	9 000 (7 000/8 000/9 000)

This agreement should be seen in the broader context of the European Council Conclusions of 20 June 2019, by which the European Commission was invited to work on a set of concrete measures to support the Republic of Moldova, based on its sustained implementation of reforms under the Agreement / DCFTA.

The Commission presented the result of the negotiations at the Trade Policy Committee on 19 July 2019 and on 6 September 2019.

## **4. LEGAL BASIS**

### **4.1. Procedural legal basis**

#### *4.1.1. Principles*

Article 218(9) 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’<sup>1</sup>.

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

The Association Committee in Trade configuration is a body set up by the Agreement. 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 under international law in accordance with Article 438(3) 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.

### **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 objective and content of the envisaged act relate to the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

### **4.3. Conclusion**

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

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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.

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

As the act of the Association Committee in Trade configuration will amend the Annex XV of 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 in Trade configuration

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 the Republic of Moldova, of the other part ('the Agreement'), was concluded by the Union by Council Decision (EU) 2016/839 of 23 May 2016<sup>2</sup> and entered into force on 1 July 2016.
- (2) Pursuant to Article 438(3) of the Agreement, the Association Committee in Trade configuration may adopt decisions in the areas in which the Association Council has delegated powers to it. The Association Council, by Decision No 3/2014 of 16 December 2014, has delegated to the Association Committee in Trade configuration its powers to update or amend certain trade-related annexes.<sup>3</sup>
- (3) Following consultations, in accordance with Article 147 of the Agreement, the Republic of Moldova and the European Union have agreed, on a reciprocal basis, to increase the volume of some products subject to annual duty-free tariff rate quotas.
- (4) The European Union accepted to increase the volume of the tariff rate quotas ('TRQ') for goods originating in the Republic of Moldova for table grapes and plums, and to introduce a new tariff rate quota for cherries. The Republic of Moldova accepted to gradually increase the volume of the tariff rate quotas for goods originating in the European Union for the following products included in the Schedule of Concessions (Republic of Moldova): pork ('TRQ 1'), poultry ('TRQ 2'), dairy ('TRQ 3') and sugar ('TRQ 5').
- (5) The Republic of Moldova requested the European Union to amend Annex XV-C in order to increase the volume for wheat (flour and pellets), barley (flour and pellets),

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<sup>2</sup> Council Decision (EU) 2016/839 of 23 May 2016 on the conclusion, on behalf of the European Union, 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 141, 28.5.2016, p. 28.

<sup>3</sup> OJ L 110, 29.4.2015, p. 40.

maize (flour and pellets) and cereal processed for triggering the anti-circumvention mechanism provided in Article 148 of this Agreement.

- (6) The Association Committee in Trade configuration is to adopt by written procedure a decision updating Annex XV to the Agreement.
- (7) It is appropriate to establish the position to be taken on the Union's behalf in the Association Committee in Trade configuration, as the decision updating Annex XV of the Agreement will be binding on the Union,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the Association Committee in Trade configuration regarding the update of Annex XV shall be based on the draft decision of that Committee attached to this Decision.

*Article 2*

The Commission shall publish the decision of the Association Committee in Trade configuration as adopted 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*