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PROPOSAL

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 22 March 2021

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

No. Cion doc.: COM(2021) 132 final - Annexes 1 to 2

Subject: ANNEXES to the Proposal for a Council Decision on the position to be taken on behalf of the European Union in the Association Committee in Trade configuration and in the Association Council established by 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, as regards a favourable opinion to the comprehensive roadmap approved by the Georgian Government for the implementation of the legislation related to public procurement and recognizing the completion of phase 1 of Annex XVI-B of the Association Agreement

Delegations will find attached document COM(2021) 132 final - Annexes 1 to 2.

Encl.: COM(2021) 132 final - Annexes 1 to 2



EUROPEAN
COMMISSION

Brussels, 22.3.2021
COM(2021) 132 final

ANNEXES 1 to 2

ANNEXES

to the
Proposal for a Council Decision

on the position to be taken on behalf of the European Union in the Association Committee in Trade configuration and in the Association Council established by 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, as regards a favourable opinion to the comprehensive roadmap approved by the Georgian Government for the implementation of the legislation related to public procurement and recognizing the completion of phase 1 of Annex XVI-B of the Association Agreement

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ANNEX I

DECISION NO .../2021 OF THE ASSOCIATION COMMITTEE IN TRADE CONFIGURATION of xx.xx.2021

**on the positive assessment of phase 1 as set out in Annex XVI-B to 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 ASSOCIATION COMMITTEE IN TRADE CONFIGURATION,

Having regard to 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, and in particular Article 146 thereof,

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 2014 and entered into force on 1 July 2016.
- (2) The Preamble to the Agreement recognises the commitment of Georgia to progressively approximate its legislation in the relevant sectors with that of the Union, in accordance with the Agreement and to implementing it effectively, thus contributing to closer political association and economic integration of Georgia with the Union to all citizens of Georgia including the communities divided by conflict.
- (3) In accordance with Article 147 of the Agreement, the Parties agree that the effective and reciprocal opening of their respective markets is to be attained gradually and simultaneously.
- (4) Pursuant to Article 146 of the Agreement, Georgia should ensure that its legislation on public procurement is gradually approximated to the Union's public procurement *acquis*, and that approximation to the Union *acquis* is to be carried out in consecutive phases as set out in the schedule in Annex XVI-B to the Agreement as amended by Decision No 2/2019 of the EU-Georgia Association Committee in Trade configuration of 18 October 2019¹.
- (5) In accordance with Article 146 of the Agreement, a decision by the Association Committee in Trade configuration is to be taken for each of the phases set out in Annex XVI-B to the Agreement on the basis of a positive assessment by that Committee.
- (6) Annex XVI-B to the Agreement as amended by Decision No 2/2019 of the Association Committee in Trade configuration of 18 October 2019 lays down the requirements to be fulfilled by Georgia for completing phase 1,

HAS ADOPTED THIS DECISION:

Article I

A favourable opinion is given to the comprehensive roadmap approved by the Government of Georgia in Decree no 536 of the Government of Georgia of 31 March 2016, "Concerning the

¹ OJ L 296, 15.11.2019, p. 33.

planned changes in the Public Procurement field envisaged in compliance with the obligations between Georgia and the EU within the scope of the Deep and Comprehensive Free Trade Area (DCFTA) Agreement”, as amended by Decrees no 154 of 22 January 2018 and no 974 of 12 June 2020 of the Government of Georgia.

Article 2

A positive assessment is given regarding the completion by Georgia of phase 1 as set out in Annex XVI-B to the Agreement based on the reasons provided in the Annex to this Decision.

Article 3

This decision has been established in Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Georgian languages, each of them being equally authentic.

Article 4

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

Done at ...

*For the Association Committee
in Trade configuration*

The Chair

The secretaries

ANNEX

In accordance with Annex XVI-B to the Deep and Comprehensive Free Trade Area (DCFTA), referred to in its Chapter 8 on public procurement, the following conditions shall be met for the completion of phase 1:

- (1) Implementation of Article 143(2) and Article 144 of the Agreement;
- (2) Agreement of the Reform Strategy set out in Article 145 of the Agreement.

Ad 1) a) With regard to the first requirement, first part, Article 143(2) provides that “Georgia shall designate in particular:

- (a) *an executive body at central government level tasked with guaranteeing a coherent policy and its implementation in all areas related to public procurement. That body shall facilitate and coordinate the implementation of this Chapter and guide the process of gradual approximation to the Union acquis, as set out in Annex XVI-B to the Agreement;*
- (b) *an impartial and independent body tasked with the review of decisions taken by contracting authorities or entities during the award of contracts. In this context, ‘independent’ means that that body shall be a public authority which is separate from all contracting entities and economic operators. There shall be a possibility to subject the decisions taken by this body to judicial review.”*

The requirement for Article 143(2)(a) was completed on 23 April 2014 by Government Decree no 306.

The central executive body at the Georgian central government level is tasked with guaranteeing a coherent policy and its implementation in all areas related to public procurement is the State Procurement Agency (SPA) of Georgia. SPA is an independent legal entity under public law authorized to ensure compliance with and fulfilment of the provisions of the Law on State Procurement (PPL).

The State Procurement Agency was established by the Decree of the President of Georgia no 223 of 5 June 2001, which was based on the PPL adopted on 9 December 1998 by the Parliament of Georgia. Later SPA merged with the Georgian Competition Agency (GCA). After signing of the Association Agreement, in order to fully meet the DCFTA requirements, SPA and GCA have been divided into two separate institutions. Accordingly, the current status of the SPA was determined by the Decree no 306 of the Government of Georgia of 23 April 2014.

The activities of the SPA are governed by the Constitution of Georgia, international agreements, including AA/DCFTA, the Law and the Statute of the SPA. State control over the activities of the SPA is implemented by the Government of Georgia. The Government of Georgia also approves the SPA structure and Statute.

The chairperson of the SPA is appointed and removed by the Prime Minister.

The staff of the SPA is recruited and promoted in accordance with the Labour Code. The total number of permanent staff is currently 123, and 22 employees are hired on a limited period contract basis which seems adequate given the functions it currently performs.

The SPA has built strong reputation within the Georgian government administration, as well as among International Financial Institutions (IFI), donor community and international stakeholders, for exercising its duties and responsibilities in an efficient and effective manner. The SPA plays a central role to facilitate and coordinate the implementation of DCFTA

obligations and guides the process of gradual approximation to the Union *acquis*, as set out in Annex XVI-B to the DCFTA. The SPA has the capacity to effectively support the development of the public procurement system (including legal landscape and whole eco system) in Georgia.

The range of functions that the Law confers to the SPA covers the general requirements recommended in international practice for such institutions in order to support the improvement of the legal framework and to strengthen the operational capacity at the contracting authorities' and economic operators level. Regulatory function, monitoring function, help-desk and training functions are adequately exercised by the SPA.

The additional functions of the SPA are the following:

- Monitor public procurement process;
- To prepare and issue subordinate normative acts to govern public procurement process;
- To study and analyse the situation in the procurement system based on the reports received from contracting authorities and to submit proposals to the Government of Georgia to make relevant decisions;
- To prepare standard and special training programmes and methodological tools, hold seminars and training for central and local self-government authorities, mass media representatives and other interested persons;
- To create, update and supervise a unified procurement database;
- To provide advisory services to contracting authorities;
- To support the introduction of modern information and communication technologies in the procurement system;
- To support the functioning of the Unified Electronic System of Public Procurement and to ensure electronic document flow during procurement proceedings;
- To consider disputes arising during procurements;
- To supervise the lawfulness of procurement procedures and to determine the policy for regulating procurement proceedings;
- To maintain the Black List and White List;
- To identify and/or integrate a procurement object into the classification system;
- To conduct consolidated tenders for certain procurement objects;
- To prepare an annual report on its activities and submit it to the Government of Georgia by 15 May of each year and to publish the report on the SPA's website.

The requirement for Article 143(2)(b) was completed on 2 July 2020 by Law of Georgia no 6730.

By this law the former review body “Dispute Resolution Council” (formal translation from the Georgian) was abolished and a new independent and impartial public body was established. The newly established administrative body will function as a review body concerning complaints regarding public procurement, Public Private Partnerships and concessions activities. The amendments also applied to issues related to awarding contracts through “simplified” (direct, single-source) procurement, e.g. to the procedure of seeking

approval of the State Procurement Agency for carrying out public procurement transactions through “simplified” procurement upon “urgent necessity”.

The provisions of the Law of Georgia no 6730 of 2 July 2020 provide for appropriate guarantees related to independence and impartiality as required by Article 143(2)(b) of the Agreement.

Ad 1) b) With regard to the first requirement, second part, according to Article 144, the Parties shall comply with a set of basic standards for the award of all contracts as stipulated in paragraphs 2 to 15 of that Article on publication, award of contracts and judicial protection. Those basic standards derive directly from the rules and principles of public procurement, as regulated in the Union public procurement acquis, including the principles of non-discrimination, equal treatment, transparency and proportionality.

These principles have been incorporated into Georgian public procurement rules with the introduction of an e-Procurement system in 2010 and the adoption of the amendment by Law of Georgia no 617 of 6 April 2017 to the Public Procurement Law.

In 2010, Georgia introduced an e-Procurement system by creating the so-called “GE-GP” - Georgian “Unified Electronic System of Public Procurement”. Since the introduction of the e-Procurement system, 100% of public procurement in Georgia is conducted via e-Procurement, which ensures transparency and stimulates competition. Transparency of the e-Procurement system fully complies with EU requirements of publication principles, as all information on tender notices and contract award are fully transparent without any restrictions.

In order to meet some of the other basic standards of Article 144 of the Agreement and to address the non-compliance of the PPL, the SPA prepared draft amendments to the PPL. The Government of Georgia approved the proposed amendments, already in December 2016 and subsequently forwarded them to the Parliament of Georgia. Those amendments were adopted by the Parliament of Georgia on 6 April 2017 by the Law of Georgia no 617. The amendments concerned the following key directions: (a) basic principles; (b) technical specifications; and (c) time limits.

- (a) The amendment to the PPL concerned Article 2(c) and Article 13 of the PPL in order to introduce the principles of equal treatment and proportionality, which were not explicitly mentioned in the Law.
- (b) The amendment to the PPL concerned Article 12-1(6) the PPL in order to introduce the use of general description of performance, technical and/or functional criteria for defining the characteristics of the works, supplies or services required. Pursuant to the new provision, contracting authorities will be able to draw up specifications on the basis of performance, technical and/or functional criteria, thus it will allow the submission of tenders that reflect the diversity of technical solutions in the marketplace. It was specified that the preferences shall be given to the performance and functional criteria, when drawing up the tender requirements;
- (c) The amendment introduced reasonable timeframes on the call for tender and for familiarization to the terms of tender.

Those amendments to the PPL entered into force on 19 July 2017. New amendments have increased time-limits for submission of tender below the Union thresholds as well. Currently time-limits for each types of procedures, under and above Union thresholds, are as follows:

Type of Procedure	Object	Monetary Threshold	Time-limits
Electronic Tender	Supplies and services contracts	From 5 000 GEL to 150 000 GEL	7 days
		150 000 GEL and more	10 days
	Works contracts	From 5 000 GEL to 300 000 GEL	10 days
		300 000 GEL and more	20 days
Above EU Thresholds	Supplies and services contracts	EURO 135 000 and more	30 days
	Works contracts	EURO 5 225 000 and more	

*Ad 2) With regard the second requirement of phase I as set out in Annex XVI-B to the Agreement, the approval of a roadmap as set out in Article 145 of the Agreement is necessary. Article 145(1) of the Agreement provides that, prior to the commencement of gradual approximation, Georgia shall submit to the Association Committee in Trade configuration a comprehensive roadmap for the implementation of Chapter 8 of Title IV of the Agreement with time schedules and milestones. This document, which according to the Agreement shall comply with the phases and time schedules set out in Annex XVI-B, shall include all reforms in terms of approximation to the Union *acquis* and institutional capacity building.*

On 31 March 2016, the Government of Georgia approved Decree no 536 on the approval of the Roadmap “Concerning the planned changes in the Public Procurement field envisaged in compliance with the obligations between Georgia and the EU within the scope of the Deep and Comprehensive Free Trade Area (DCFTA) Agreement”. This Decree was amended by Government Decrees no 154 of 22 January 2018 and no 974 of 12 June 2020.

This roadmap includes all reforms in terms of approximation to the Union *acquis* and institutional capacity building and complies with the phases and time schedules set out in Annex XVI-B to the Agreement in accordance with Article 145 of the Agreement.

ANNEX II

DECISION NO .../2021 OF THE EU-GEORGIA ASSOCIATION COUNCIL of xx.xx.2021

on the granting of reciprocal market access for supplies for central government authorities in accordance with Annex XVI-B to 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 ASSOCIATION COUNCIL,

Having regard to 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, and in particular Articles 146, 406 and Article 419(5) thereof,

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 2014 and entered into force on 1 July 2016.
- (2) The Preamble to the Agreement recognises the commitment of Georgia to progressively approximate its legislation in the relevant sectors with that of the Union, in accordance with the Agreement and to implementing it effectively, thus contributing to closer political association and economic integration of Georgia with the Union to all citizens of Georgia including the communities divided by conflict.
- (3) In accordance with Article 147 of the Agreement, the Parties agree that the effective and reciprocal opening of their respective markets is to be attained gradually and simultaneously.
- (4) Pursuant to Article 146 of the Agreement, Georgia should ensure that its legislation on public procurement is gradually approximated to the Union's public procurement *acquis*, and that approximation to the Union *acquis* is carried out in consecutive phases as set out in the schedule in Annex XVI-B to the Agreement as amended by Decision No 2/2019 of the EU-Georgia Association Committee in Trade configuration of 18 October 2019². In accordance with Decision [1/2021 *tbc*] of the Association Committee in Trade configuration of [date], the Association Committee in Trade configuration has given a positive assessment regarding the completion by Georgia of phase 1 as set out in Annex XVI-B to the Agreement
- (5) In accordance with Article 419(5) of the Agreement, the Association Council, under the powers conferred to it in Articles 406 and 408 of the Agreement, should decide on further market opening where provided for in Title IV (Trade and Trade-related Matters) of the Agreement,

HAS ADOPTED THIS DECISION:

Article I

Reciprocal market access is hereby granted for public procurement of supplies by central government authorities in the European Union to Georgia and for public procurement of

² OJ L 296, 15.11.2019, p. 33.

supplies by Georgian central government authorities to the European Union in the territories as specified in Article 429 of the Agreement.

Article 2

This decision has been established in Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Georgian languages, each of them being equally authentic.

Article 3

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

Done at ...

For the Association Council

The Chair

The secretaries