



Brussels, 16.9.2015  
COM(2015) 456 final

2015/0206 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the Union positions to be taken in the Trade and Sustainable Development Sub-Committee and in 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 Georgia, 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 Georgia, of the other part ("the Agreement").

The Association Agreement was signed on 27 June 2014, and has been provisionally applied, pending ratification by the Member States, since 1 September 2014. Council decision 2014/494/EU of 16 June 2014<sup>1</sup> approved the signing of the Agreement, on behalf of the European Union and the European Atomic Energy Community and their Member States, and the provisional application of certain provisions thereof.

The Agreement established the Association Committee in Trade configuration, which monitors the implementation of Title IV (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 268 of the Agreement.

The Agreement also provides for the establishment of the Trade and Sustainable Development Sub-Committee which is to reaffirm the commitment of both parties of the Agreement to pursue sustainable development and recognise that economic development, social development and environmental protection are its interdependent and mutually reinforcing pillars.

Pursuant to Article 243 of the Agreement, the Trade and Sustainable Development Sub-Committee is to agree at its first meeting on the list of individuals who are willing and able to serve as experts in panel procedures on trade and sustainable development.

#### **• 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 Association Agreement. It aims to set up the necessary institutional instruments enabling the Union and Georgia 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. It is also consistent with the Union's approach to trade and sustainable development.

#### **• Consistency with other Union policies**

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

---

<sup>1</sup> OJ L 261, 30.8.2014, p. 1.

## **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 Association Agreement between the Union and Georgia 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.

- **Choice of instrument**

This proposal is in accordance with Article 218(9) TFEU, which envisages the adoption by 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 arbitrators in disputes brought under the Union's trade agreements.

- **Impact assessment**

The proposal relates to the implementation of institutional aspects of the Association Agreement, and in particular its Title IV on Trade and trade-related matters, between the Union and Georgia. The proposal does not have any impact on the economic, social or environmental policy of the Union. The Association Agreement has been provisionally applied since 1 September 2014, and its implementation is at a very early stage.

- **Regulatory fitness and simplification**

The Association Agreement between the Union and Georgia 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 Association Agreement is reviewed regularly by the EU-Georgia Association Council. The European Commission also committed to report annually on the implementation of Title IV (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 Association Agreement between the Union and Georgia. Title IV (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 268 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 Georgia, providing for five candidate arbitrators from the Union, five candidate arbitrators from Georgia 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.

Title IV (Trade and trade-related matters) of that Agreement also includes Chapter 13 (trade and sustainable development) which provides that both parties of the Agreement commit to promote the development of international trade in such a way as to contribute to the objective of sustainable development, to ensure that this objective is integrated and reflected at every level of their trade relationship. For any matter which may arise parties should make every attempt to arrive at a mutually satisfactory resolution via government consultations. However if a party finds that the matter has not been satisfactorily addressed through government consultations the Agreement provides for a possibility for the party to request that a Panel of Experts be convened to examine a matter. Article 243(3) of the Agreement provides that the Trade and Sustainable Development Sub-Committee is to establish a list of at least 15 individuals who are willing and able to serve as experts in panel procedures.

Proposal for a

## **COUNCIL DECISION**

**on the Union positions to be taken in the Trade and Sustainable Development Sub-Committee and in 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 Georgia, of the other part**

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) Article 431(3) and (4) of 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”) provide for provisional application of the Agreement in part.
- (2) Article 3 of Council Decision 2014/494/EU<sup>2</sup> of 16 June 2014 specifies the provisions of the Agreement to be applied provisionally, including the provisions on the establishment and functioning of the Trade and Sustainable Development Sub-Committee and of the Association Committee in Trade configuration, on the trade and sustainable development and on the dispute settlement provisions.
- (3) Article 240 of the Agreement provides that the Trade and Sustainable Development Sub-Committee is to establish its rules of procedure.
- (4) Article 243 of the Agreement provides that that the Trade and Sustainable Development Sub-Committee is to agree at its first meeting on the list of individuals who are willing and able to serve as experts in panel procedures on trade and sustainable development.
- (5) Article 268 of the Agreement provides that the Association Committee in Trade configuration is to agree on a list of individuals to serve as arbitrators in dispute settlement proceedings within 6 months of the start of the provisional application of the Agreement.
- (6) It is therefore appropriate to determine the Union positions in relation to the rules of procedure of the Trade and Sustainable Development Sub-Committee and the list of individuals who are willing and able to serve as experts in panel procedures on trade and sustainable development to be adopted by that Sub-Committee, and in relation to

---

<sup>2</sup> Council Decision 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 Georgia, of the other part (OJ L 261, 30.8.2014, p. 1).

the list of individuals to serve as arbitrators in dispute settlement to be adopted by the Association Committee in Trade configuration,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The position to be taken by the Union within the Trade and Sustainable Development Sub-Committee established by Article 240 of 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, in relation to the adoption of the rules of procedure of the Trade and Sustainable Development Sub-Committee and of the list of individuals who are willing and able to serve as experts in panel procedures on trade and sustainable development shall be based on the draft Decisions of that Sub-Committee attached to this Decision.
2. Minor changes to the draft decision may be agreed to by the representatives of the Union in the Trade and Sustainable Development Sub-Committee without further decision of the Council.

*Article 2*

1. The position to be taken by the Union within the Association Committee in Trade configuration established by Article 408 of 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, in relation to the adoption of the list of individuals to serve as arbitrators in dispute settlement shall be based on the draft Decision of that Committee attached to this Decision.
2. Minor changes to the draft decision may be agreed to by the representatives of the Union in the Association Committee in Trade configuration without further decision of the Council.

*Article 3*

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

Done at Brussels,

*For the Council*  
*The President*