



Brussels, 31.10.2016
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2016/0346 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, 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 Ukraine, of the other in relation to the update of Annexes XXI-A to XXI-P on regulatory approximation in the area of public procurement

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The attached proposal for a Council decision establishes the Union position:

1. on a Decision of the Association Committee in Trade configuration of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ('the Agreement') in relation to the update of Annexes XXI-A to XXI-P (related to Chapter 8 on public procurement) of the Agreement;
2. on giving a favourable opinion by the Association Committee in Trade configuration on the comprehensive roadmap submitted by Ukraine in relation to the implementation of the Agreement in the area of public procurement.

The Agreement was signed on 27 June 2014, and its Title IV "TRADE AND TRADE RELATED MATTERS" (covering the provisions related to the Deep and Comprehensive Free Trade Area) is provisionally applied, since 1 January 2016. The update of the above-mentioned Annexes is necessary in order to reflect the evolution of the Union *acquis* in the area of public procurement that has taken place since the initialling of the Agreement on 30 March 2012. The proposal is consistent with the parties' obligations set out in Article 463 of the Agreement.

The favourable opinion by the Association Committee in Trade configuration on the roadmap is needed in order for Ukraine to streamline the legislative approximation in the area of public procurement as set out in Article 152 of the Agreement. This step is an integral part in the process of the implementation of the Agreement.

- **Consistency with existing policy provisions in the policy area**

This proposal implements the Union's common commercial policy towards Ukraine, an Eastern Neighbourhood Partner country, based on the provisions of the above-mentioned Agreement and in particular its objective to create a free trade area and conditions for economic intergration between the parties.

- **Consistency with other Union policies**

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 Ukraine.

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 Agreement 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 with Ukraine.

- **Choice of the instrument**

This proposal is in accordance with Article 218(9) TFEU, which envisages the adoption by the 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, as it aims merely at updating the references to the Union acquis already listed for approximation by Ukraine in the Agreement.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

The trade and trade-related provisions of the Agreement have been subject to ex-ante impact assessment (the 2007 Trade Sustainability Impact Assessment commissioned by DG Trade), which fed into the DCFTA negotiation process. That study confirmed that implementation of trade and trade-related provisions would have a positive economic impact for the EU as well as for Ukraine. The proposal does not have any negative impact on the economic, social or environmental policy of the Union.

- **Regulatory fitness and simplification**

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.

- **Fundamental rights**

The proposal does not have consequences for the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The implementation of the Agreement is reviewed regularly by the EU-Ukraine Association Council and its sub-ordinate bodies established by that Agreement. The European Commission also reports to the European Parliament and the Council following EU-Ukraine

Association Committee in Trade configuration meetings which are taking place at least once per year, including on the elements included in this proposal.

- **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:

1. the update of Annex XXI to the Agreement. Annex XXI to the Agreement provides the list of the Union *acquis* to which the Ukraine intends to approximate its domestic legislation pertaining to the area of public procurement (Chapter 8 of Title IV of the Agreement);
2. giving a favourable opinion by the Association Committee in Trade configuration on the comprehensive roadmap submitted by Ukraine in relation to the implementation of Agreement in the area of public procurement.

The updates to these annexes are necessary in the light of the evolution of the Union *acquis* listed therein since the initialling of the Agreement on 30 March 2012. Article 463(3) of the Agreement provides that the Association Council shall have the power to update or amend the Annexes to the Agreement and the Association Council delegated the power to update or amend certain trade-related annexes to the Association Committee in Trade configuration by its decision No. 3/2014 of 15 December 2014. Accordingly, the Union position is to be taken in the Association Committee in Trade configuration.

The favourable opinion by the Association Committee in Trade configuration on the comprehensive roadmap is needed in order for Ukraine to streamline the legislative approximation in the area of public procurement as set out in Article 152 of the Agreement. This step is an integral part in the process of the implementation of the Agreement. The roadmap shall be considered as the reference document for the implementation of the Agreement by Ukraine in the area of public procurement.

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on the position to be adopted, on behalf of the European Union, 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 Ukraine, of the other in relation to the update of Annexes XXI-A to XXI-P on regulatory approximation in the area of public procurement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first paragraph of Article 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 486 of the Association Agreement between the European Union and the European Atomic Energy Community, and their Member States of the one part, and the Ukraine, of the other part, ('the Agreement') provides for the provisional application of the Agreement in part, as specified by the Union.
- (2) Article 1 of Council Decision 2014/668/EU¹ of 23 June 2014 specifies the provisions of the Agreement to be applied provisionally, including the provisions on public procurement, and Annex XXI to the Agreement. The provisional application of those provisions is effective from 1 January 2016.
- (3) Article 153 of the Agreement provides that the Ukraine is to ensure that its public procurement legislation is gradually made compatible with the relevant Union *acquis*, in line with the schedule provided in Annex XXI to the Agreement.
- (4) Several Union acts listed in Annexe XXI to the Agreement have been amended or repealed since the initialling of the Association Agreement on 30 March 2012.
- (5) Article 149 of the Agreement provides that the value thresholds for public procurement contracts provided for in Annex XXI-P to the Agreement are to be revised regularly, beginning in the first even year following the entry into force of the Agreement.
- (6) It is furthermore appropriate to take into account the progress made by Ukraine in the process of approximation to the Union *acquis* by amending certain deadlines.

¹ Council Decision of 23 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 Ukraine, of the other part, as regards Title III (with the exception of the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other Party) and Titles IV, V, VI and VII thereof, as well as the related Annexes and Protocols (OJ L 278, 20.9.2014, p. 1).

- (7) It is therefore necessary to update Annex XXI in order to reflect the developments to the Union *acquis* listed therein, and revise the value thresholds for public procurement contracts provided for in Annex XXI-P to the Agreement.
- (8) Article 149 of the Agreement provides that the revision of the thresholds provided for in Annex XXI-P to the Agreement shall be adopted by decision of the Association Committee in Trade configuration.
- (9) Article 463(3) of the Agreement provides that the Association Council shall have the power to update or amend the Annexes to the Agreement.
- (10) Article 1 of the Association Council Decision No. 3/2014 of 15 December 2014 delegates the power to update or amend the trade-related annexes of the Agreement to the Association Committee in Trade configuration, including Annex XXI pertaining to Chapter 8 (Public Procurement) of Title IV (Trade and trade-related matters) of the Agreement.
- (11) It is therefore appropriate to determine the Union position in relation to the update of Annex XXI to the Agreement to be adopted by the Association Committee in Trade configuration.
- (12) Article 152(1) of the Agreement stipulates that Ukraine shall submit to the Association Committee in Trade configuration a comprehensive roadmap for the implementation of the legislation related to public procurement with time schedules and milestones which should include all reforms in terms of legislative approximation and institutional capacity building. This roadmap shall comply with the phases and time schedules set out in Annex XXI-A to the Agreement.
- (13) Article 152(3) specifies that a favourable opinion by the Association Committee in Trade configuration is needed in order for the comprehensive roadmap to become a reference document for the process of implementation i.e. for the legislative approximation of the public procurement related legislation to the Union *acquis*.
- (14) It is therefore appropriate to determine the Union position in relation to a favourable opinion regarding the comprehensive roadmap to be adopted by the Association Committee in Trade configuration,

HAS ADOPTED THIS DECISION:

Article 1

- 1. The position to be taken by the European Union in the Association Committee in Trade configuration established by Article 465 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ('the Agreement'), in relation to the update of Annex XXI of the Agreement 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 2

The position to be taken by the Union within the Association Committee in Trade configuration established by Article 465 of the Agreement, in relation to the favourable

opinion regarding the comprehensive roadmap shall be based on the draft Decision of that Committee referred to in Article 1(1) above.

Article 3

The Decisions of the Association Committee in Trade configuration shall be published in the Official Journal of the European Union after their adoption.

Article 4

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

Done at Brussels,

*For the Council
The President*