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2017/0246 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, in the Association Committee meeting 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 the Republic of Moldova, of the other concerning the comprehensive roadmap submitted by the Republic of Moldova in relation to the implementation of the Agreement in the area of public procurement

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal concerns the Council Decision establishing the Union position to be taken in the Association Committee meeting in Trade configuration in connection with the adoption of a favourable opinion on the comprehensive roadmap submitted by the Republic of Moldova in relation to the implementation of the Agreement in the area of public procurement.

2. CONTEXT OF THE PROPOSAL

2.1. 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 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') aims to contribute to gradual economic integration and deepening of political association between the Republic of Moldova and the European Union. The Agreement entered into force on 1 July 2016.

2.2. The Association Committee

The Association Committee is a body established by the Agreement, which, pursuant to Article 438(3) of the Agreement, has the power to adopt decisions in the cases provided for in the Agreement and in areas in which the Association Council has delegated powers to it. Those decisions shall be binding upon the Parties, which shall take appropriate measures to implement them.

As set out in Article 438(4) of the Agreement, the Association Committee shall meet in Trade configuration to address all trade and trade-related issues of Title V of the Agreement. As specified in Article 1(4) of the Rules of Procedure of the Association Committee and of Sub-Committees ('the Rules of Procedure'),¹ the Association Committee in Trade Configuration shall be composed of senior officials of the European Commission and of the Republic of Moldova who are responsible for trade and trade-related matters. A representative of the European Commission or of the Republic of Moldova who is responsible for trade and trade-related matters shall act as Chair of the Association Committee in Trade configuration. The meetings will also be attended by a representative of the European External Action Service.

Pursuant to Article 438(3) of the Agreement and Article 11(1) of the Rules of Procedure, the Association Committee shall adopt its decisions by mutual agreement between the Parties and on completion of the respective internal procedures. Each decision or recommendation shall be signed by the Chair of the Association Committee and authenticated by the Secretaries of the Association Committee.

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

The Association Committee meeting in Trade configuration is to adopt a decision giving a favourable opinion on the comprehensive roadmap submitted by the Republic of Moldova in relation to the implementation of the Agreement in the area of public procurement ('the envisaged act').

¹ OJ L 9, 15.1.2015, p. 53.

The purpose of the favourable opinion on the roadmap is to streamline the legislative approximation of the Republic of Moldova in the area of public procurement as set out in Article 272 of the Agreement. This step is an integral part of the process of the implementation of the Agreement. The roadmap shall be considered as the reference document for the implementation of the Agreement by the Republic of Moldova in the area of public procurement.

The envisaged act shall become binding upon the Parties to the Agreement in accordance with Article 438(3) of the Agreement, which provides: ‘The Association Committee shall have the power to adopt decisions in the cases provided for in this Agreement and in areas in which the Association Council has delegated powers to it. Those decisions shall be binding upon the Parties, which shall take appropriate measures to implement them’.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The present proposal for a Council decision establishes the Union position on a decision to be taken in the Association Committee established by the Agreement in relation to a favourable opinion on the comprehensive roadmap submitted by the Republic of Moldova in relation to the implementation of the Agreement in the area of public procurement.

The favourable opinion by the Association Committee meeting in Trade configuration on the roadmap is needed in order for the Republic of Moldova to streamline the legislative approximation in the area of public procurement as set out in Article 272 of the Agreement.

The roadmap on public procurement submitted by the Republic of Moldova complies with the requirements set out in Article 272(1) and (2) of the Agreement.

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 the Republic of Moldova.

The trade and trade-related provisions of the Agreement were subject to ex-ante impact assessment in 2009, followed by the Commission DG Trade's Trade Sustainability Impact Assessment of 2012, which fed into the DCFTA negotiation process. That study confirmed that implementation of trade and trade-related provisions would have no negative impact on the Union, its *acquis* or its policies, while projecting a positive impact on the economic development of the Republic of Moldova. The proposal does not have any negative impact on the economic, social or environmental policy of the Union.

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.

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, with the exception of acts supplementing or amending the institutional framework of the agreement’.

The notion 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*’.²

4.1.2. Application to the present case

The Association Committee is a body set up by an agreement, namely 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.

Article 272(3) of the Agreement provides that following a favourable opinion by the Association Committee in Trade configuration, the roadmap shall be considered as the reference document for the implementation of this Chapter. Pursuant to Article 438(3) of the Agreement, the Association Committee shall have the power to adopt decisions in the cases provided for in the Agreement. Pursuant to Article 438(4) of the Agreement, the Association Committee shall meet in Trade configuration to address all trade and trade-related issues of Title V of the Agreement.

The act which the Association Committee meeting in Trade Configuration is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding upon the Parties in accordance with Article 438(3) of the Agreement.

The envisaged act does not supplement or amend the institutional framework of the agreement.

The procedural legal basis for the proposed Council decision, therefore, 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 adopted on behalf of the Union. 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 main objective and content of the envisaged act is the adoption of a favourable opinion on the comprehensive roadmap submitted by the Republic of Moldova in relation to the implementation of the Agreement in the area of public procurement. Consequently, the main objective and content of the envisaged act relates to the common commercial policy in accordance with Article 207.

The substantive legal basis of the proposed Council decision, therefore, is Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed Council decision is Article 207 in conjunction with Article 218(9) TFEU.

² Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

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on the position to be adopted, on behalf of the European Union, in the Association Committee meeting 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 the Republic of Moldova, of the other concerning the comprehensive roadmap submitted by the Republic of Moldova in relation to the implementation of the Agreement 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 Article 207, 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 2016³ and entered into force on 1 July 2016.
- (2) Pursuant to Article 272(1) and (2) of the Agreement, the Republic of Moldova shall submit to the Association Committee in Trade configuration, as set out in Article 438(4) of this Agreement, a comprehensive roadmap for the implementation of the public procurement chapter with time schedules and milestones which shall include all reforms in terms of approximation to the Union *acquis* and institutional capacity building.
- (3) Article 272(3) of the Agreement provides that following a favourable opinion by the Association Committee in Trade configuration, the roadmap shall be considered as the reference document for the implementation of Chapter 8 of Title V of the Agreement. The Union shall make its best efforts in assisting the Republic of Moldova in the implementation of the roadmap.
- (4) The Association Committee meeting in Trade Configuration is to adopt a decision for the purposes of giving a favourable opinion on the comprehensive roadmap submitted by the Republic of Moldova in relation to the implementation of the Agreement in the area of public procurement. Pursuant to Article 438(3) of the Agreement, the decision of the said Committee shall be binding upon the Parties, which shall take appropriate measures to implement it.
- (5) It is appropriate to establish the position to be adopted on behalf of the Union in the Association Committee meeting in Trade Configuration, as the roadmap submitted by the Republic of Moldova complies with the requirements set out in Article 272(1) and (2) of the Agreement. In the Association Committee meeting in Trade Configuration,

³ OJ L141, 28.5.2016 p.28.

the Union is to be represented by the Commission in accordance with Article 17(1) of the Treaty on the European Union (TEU),

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, shall be based on the draft Decision of the Association Committee meeting in Trade Configuration attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*