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EUROPEAN UNION FOR  
FOREIGN AFFAIRS AND  
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By	Mr. Peter SANDLER
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Joint Recommendation for a

**COUNCIL DECISION**

**authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to open negotiations and negotiate a modernised Association Agreement with the Republic of Chile**

{SWD(2017) 172 final} - {SWD(2017) 173 final}

EXPLANATORY MEMORANDUM

**1. CONTEXT OF THE PROPOSAL**

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

Chile was the first South American country to conclude an Association Agreement with the EU ('the Agreement'). The Agreement, which includes political, cooperation and trade provisions, was applied provisionally as of 1 February 2003. The Agreement entered into force on 1 March 2005.

The implementation of the Agreement has progressed well and its institutional framework is fully functional. The Agreement has contributed to strengthening EU-Chile ('the Parties') relations and has opened the way to defining new areas of cooperation and the establishment of new policy dialogues. On trade matters, the Agreement includes a Free Trade Agreement, which has contributed to a strong growth in bilateral trade and investment.

During a meeting in the margins of the EU-CELAC Summit held in Santiago on 26-27 January 2013, leaders from the EU and Chile agreed that they should explore options to modernise the Agreement following 10 years of its implementation. In April 2015, the 6<sup>th</sup> EU-Chile Association Council endorsed the establishment of the joint working group ('the Group') on the modernisation of the Agreement. The aim of the Group was to conduct a scoping exercise by assessing the level of ambition for entering into negotiations to modernise the Agreement in all areas. The Group created two subgroups, one responsible for political and cooperation and the other for trade. The subgroups concluded their work on the occasion of the 14<sup>th</sup> EU-Chile Association Committee that was held on 31 January 2017.

A modernised Agreement should frame EU-Chile relations by encompassing political, security, sectorial cooperation and trade matters. The main policy objective is to deepen EU-Chile relations by setting out a new comprehensive text to replace the existing Agreement so as to broaden its current scope and reflect the new bilateral and global political and economic challenges. The modernisation process should, building on the experiences of implementing the current Agreement, take into account the deepening of the EU integration process and the accession of new EU Member States, the evolution of the role of the EU and Chile on the international scene.

On trade matters there have also been major trade policy developments at global level, and the Parties have concluded highly ambitious and comprehensive agreements with third partners, which go well beyond the provisions of the EU-Chile Free Trade Agreement.

The preparatory discussions that took place in the Group contributed to defining a number of the parameters that the modernisation process should take into account. For the political and cooperation part, the Group contributed in reaching an initial understanding on the possible structure and scope of the new Agreement. The Group also helped in identifying potential areas of mutual interest for future cooperation, focussing on continued EU-Chile international cooperation in the framework of Agenda 2030 and the achievement of sustainable development goals.

On trade matters, the scoping exercise reflected the scope and the level of ambition that the Parties could achieve in a comprehensive modernisation of the trade part of the Agreement. It confirmed the shared objective to ambitiously upgrade the framework for the bilateral trade

and investment relationship, building on the existing Agreement and going beyond WTO commitments. Negotiations should be conducted taking into account the most recent trade agreements negotiated and concluded by the Parties, and to the need to ensure complementarity and coherence with those negotiations and agreements.

A modernised Agreement should therefore provide for the highest possible level of liberalisation of trade in goods, services, investment and access to government procurement. It should ensure a high level of protection and enforcement of intellectual property rights, including on geographical indications. Furthermore, it should extend the scope of the existing trade provisions in addressing non-tariff barriers and other regulatory and rules-based aspects. A modernised Agreement should ensure the right of the Parties to pursue legitimate objectives of public policy in all relevant areas. It should also take forward other issues such as trade and sustainable development, trade and gender, and trade and SMEs.

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

The recommendation is in line with *the Global Strategy for the European Union's Foreign and Security Policy* which provides, among other aims, a deepening of relations with Latin America and the Caribbean through the conclusion of bilateral partnerships.

The recommendation is in line with the Communication '*Trade for All - Towards a More Effective, Transparent and Responsible Trade and Investment Policy*' which highlights the need to move the EUs bilateral relationships forward in order to deliver jobs and growth by tackling trade and investment barriers in a comprehensive way, while securing the EU high level of social and environmental protection and other policy objectives, including sustainable development and the particular needs of SMEs. The '*Trade for All*' highlighted that the Commission would request negotiating directives to modernise the Agreement after successfully completing the scoping exercise.

- **Consistency with other Union policies**

The recommendation is in line with *The Agenda for Change*, adopted in 2011, as the basis for the EU's development policy towards non-EU countries. In that context, Chile has graduated from the EU bilateral cooperation assistance and new formula of international cooperation have been sought building on the *European Consensus on Development* and *The 2030 Agenda for Sustainable Development*.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The recommendation is based on Article 218(3) and (4) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

The purpose of the Agreement is to upgrade the existing association between the EU and Chile. Therefore, action should be conducted at EU level.

The common commercial policy is listed among the areas of exclusive competence of the Union in Article 3 of the TFEU) and under Article 5(3) of the Treaty on European Union, the subsidiarity principle does not apply in areas of exclusive competence.

- **Proportionality**

The recommendation for a Council decision authorising the Commission and the High Representative for Foreign Affairs and Security Policy ('the High Representative') to negotiate a modernised Agreement with Chile does not go beyond what is necessary or appropriate to achieve the policy objectives.

On trade matters, in line with the principle of proportionality, all reasonable options for policy interventions were considered in order to assess the likely effectiveness of such policy interventions, as described in detail in the impact assessment report.

- **Choice of the instrument**

Decision by the Council of the European Union.

### 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

An *ex-post* evaluation on the economic impact of the trade part of the Agreement was conducted by an external consultant in 2012. Further details are provided in the impact assessment report attached to this recommendation.

- **Stakeholder consultations**

Between 8 June and 8 September 2016, the Commission carried out an online public consultation, which was published on the website of the Directorate-General for TRADE and posted on 'EU Survey' (the Commission's online public consultations tool). Interested parties were invited to answer questions covering a wide range of themes on trade and investment between the EU and Chile. The summary of the responses to the public consultation is attached to the impact assessment report, and the responses from interested parties were published on DG TRADE's website.

- **Collection and use of expertise**

An external consultant was commissioned to carry out an *ex-ante* analysis on the potential impact of the modernisation of the trade part of the Agreement. This external study is annexed to the impact assessment report.

- **Impact assessment**

An impact assessment on the modernisation of the trade part of the Agreement has been conducted. The impact assessment report and its executive summary sheet, as well as the positive opinion of the Regulatory Scrutiny Board, are attached to this Recommendation.

In addition to the impact assessment, an independent sustainability impact assessment will examine the potential economic, social, human rights and environmental impacts of the trade part of the modernised Agreement. It will be carried out by external consultants at the same time as the negotiations, and will rely on a wide-ranging, continuous consultation of interested parties, notably civil society. The sustainability impact assessment will be finalised ahead of

the initialling of the modernised Agreement, and its findings will feed into the negotiating process.

- **Regulatory fitness and simplification**

SMEs should benefit from new trade opportunities and cost savings due to trade liberalisation and from the enhanced legal framework, as well as from provisions improving customs procedures, and those increasing regulatory transparency. The impact assessment report contains detailed information on the potential impacts on interested parties and economic sectors.

- **Fundamental rights**

The EU will seek to include specific clauses on democracy, the rule of law, human rights and fundamental freedoms, which need to be defined as essential elements of the Agreement.

The impact assessment report on the modernisation of the trade part of the Agreement addresses the issues of fundamental rights under social, environmental and human rights aspects. For example, in line with established EU policy, the trade part of a modernised Agreement should contain a chapter on Trade and Sustainable Development.

#### **4. BUDGETARY IMPLICATIONS**

The trade part of a modernised Agreement will have a limited negative impact on the EU budget in the form of customs duties due to tariff liberalisation. Indirect positive impacts are expected in terms of increases in resources linked to value added tax and gross national income.

#### **5. OTHER ELEMENTS**

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

In line with the commitment made in the 2015 Communication ‘*Trade for All – Towards a more responsible trade and investment policy*’, there will be an in-depth *ex-post* evaluation of the effects of the trade part of the modernised Agreement once it has been in force for sufficient time to ensure availability of meaningful data. The attached impact assessment report contains detailed information on the envisaged monitoring and evaluation arrangements.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Not applicable.

#### **Procedural aspects**

The negotiating team will consist of the Commission and the High Representative.

In accordance with Article 218(4) TFEU, it is suggested that the Council designates a special committee in consultation with which the negotiations must be conducted. The Working Party on Latin America and the Caribbean will be consulted on the political and cooperation parts of the modernised Agreement. The Trade Policy Committee will be consulted on trade-related parts of the modernised Agreement.

The European Parliament will be informed at all stages of the procedure, in line with Article 218 (10) TFEU.

The precise structure of the Agreement will be determined in the light of a further assessment of Opinion 2/15 of the Court of Justice.

The Commission and the High Representative will inform Chile about the EU internal rules on transparency, and about the access by the Council of the European Union and the European Parliament to negotiating documents.

The Commission and the High Representative welcome the fact that the members of the Council of the European Union are increasingly engaging at an early stage with their parliaments on trade negotiations in line with their institutional practices. It encourages the members of the Council of the European Union to do the same on this Recommendation for a Council Decision, having due regard to Council Decision 2013/488/EU.

The Commission and the High Representative recommend that the negotiating directives be made public immediately after their adoption.

This Recommendation for a Council Decision will be unclassified when the negotiating directives in Annex are detached from the Recommendation.

Joint Recommendation for a

**COUNCIL DECISION**

**authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to open negotiations and negotiate a modernised Association Agreement with the Republic of Chile**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy ('High Representative'),

WHEREAS negotiations should be opened with a view to concluding a modernised Association Agreement with Chile ('the Agreement') to replace the Agreement establishing an association between the European Community and its Member States, of one part, and the Republic of Chile, of the other part<sup>1</sup>.

HAS ADOPTED THIS DECISION:

*Article 1*

- (1) The Commission and the High Representative are hereby authorised to negotiate, on behalf of the Union, a modernised Association Agreement with Chile ("the Agreement"),
- (2) The Commission shall be the head of the Union's negotiating team.

*Article 2*

The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the Annex to this Decision.

*Article 3*

The negotiations shall be conducted in consultation with the Council Working Party on Latin America and the Caribbean. The Trade Policy Committee shall be consulted on the trade related parts of the Agreement.

*Article 4*

This Decision and its Annex will be made public immediately after their adoption.

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<sup>1</sup> OJ L352 of 30/12/2002, p.1.

*Article 5*

This Decision is addressed to the Commission and the High Representative.

Done at Brussels,

*For the Council  
The President*