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2013/0151 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL/BACKGROUND

The attached proposal constitutes the legal instrument for authorising the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part .

The Commission proposal for the Council approval of the parts of the Agreement which fall under the Treaty establishing the European Atomic Energy Community will be made separately.

Relations between the EU and Ukraine are currently based on the Partnership and Co-operation Agreement which entered into force in 1998. At the 13th EU-Ukraine Summit in Paris in 2008, the leaders of the EU and Ukraine agreed that the Partnership and Co-operation Agreement should be succeeded by an Association Agreement.

The EU-Ukraine Association Agreement is the first of a new generation of Association Agreements with Eastern Partnership countries. Negotiations of this comprehensive and ambitious Agreement between the EU and Ukraine were launched in March 2007. In February 2008, following the decision of accession of Ukraine to the WTO, the EU and Ukraine launched negotiations on a Deep and Comprehensive Free Trade Area (DCFTA) as a core element of the Association Agreement.

The Association Agreement aims to accelerate the deepening of political and economic relations between Ukraine and the EU, as well as Ukraine's gradual access to parts of the EU Internal Market including by setting up a DCFTA. It is a concrete way to exploit the dynamics in EU-Ukraine relations, focusing on support to core reforms, on economic recovery and growth, governance and sector co-operation. The Agreement also constitutes a reform agenda for Ukraine, based on a comprehensive programme of approximation of Ukraine's legislation to EU norms, around which all partners of Ukraine can align themselves and focus their assistance. EU assistance to Ukraine is linked with the reform agenda as it emerges from the Agreement. The Comprehensive Institutional Building Programme is particularly important in this regard.

At the 15th Ukraine-EU Summit of 19 December 2011, the EU and the President of Ukraine noted that a common understanding on the text of the Association Agreement was reached. On 30 March 2012, the chief negotiators of the European Union and Ukraine initialled the text of the Association Agreement. The trade negotiators from both sides initialled the DCFTA part of the Agreement on 19 July 2012.

On 10 December 2012, the Foreign Affairs Council adopted Conclusions on Ukraine, expressing the EU's commitment to the signing of the Association Agreement, including a DCFTA, as soon as the Ukrainian authorities demonstrate determined action and tangible progress in the three areas (Elections, selective justice, and overall reforms as set out in the Association Agenda), possibly by the time of the Eastern Partnership Summit in Vilnius in November 2013. The Council also indicated that the signature of the Agreement could be accompanied by opening for provisional application of parts of the Agreement. The provisional application is foreseen in view of keeping mutual economic interests and shared values in equilibrium, and the common will of the EU and Ukraine to start implementing and enforcing various parts of the Agreement in order to advance an early reform impact on sector specific issues before the conclusion of the Agreement.

As requested by the 10 December Council Conclusions, the High Representative and the Commission are monitoring and keeping the Council informed about progress achieved by

Ukraine in meeting the requirements set out by the Council conclusions, including in the context of the preparations of the June 2013 EU-Ukraine Cooperation Council and November 2013 Eastern Partnership Summit in Vilnius.

2. RESULTS OF THE NEGOTIATIONS

Member States have been regularly informed and consulted in the relevant Council Working Groups, notably in COEST and Trade Policy Committee (TPC), at all stages of the negotiations. The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Association Agreement is acceptable to the Union.

The final content of the Association Agreement can be summarised as follows:

The Agreement establishes an association between the Union and its Member States of the one part and Ukraine of the other part. This constitutes a new stage in the development of EU-Ukraine contractual relations, aiming at political association and economic integration and leaving open the way for further progressive developments.

The overall aims of the association focus on promoting a gradual rapprochement between the parties on the basis of common values; providing enhanced political dialogue; promoting, preserving and strengthening peace and stability in both the regional and international dimensions; establishing conditions for enhanced economic and trade relations leading towards Ukraine's gradual access to parts of the EU Internal Market; enhancing Justice, Freedom and Security (JFS) cooperation with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms, and establishing conditions for increasingly close co-operation in other areas of mutual interest.

General Principles of the Agreement include a specific set of "essential elements", the violation of which by one of the Parties could give rise to specific measures under the Agreement, including the suspension of rights and obligations. These elements are respect for democratic principles, human rights and fundamental freedoms as defined in relevant international instruments; respect for the rule of law; promotion of respect for sovereignty and territorial integrity, inviolability and independence; and countering the proliferation of weapons of mass destruction, related materials and means of delivery.

Other General Principles of the Agreement relate to the principles of a free market economy, good governance, the fight against corruption, the fight against trans-national organized crime and terrorism, the promotion of sustainable development and effective multilateralism.

The Agreement sets out the aims of an enhanced and strengthened political dialogue promoting gradual convergence on foreign and security matters with the aim of Ukraine's ever deeper involvement in the European security area. The Agreement establishes a number of fora for the conduct of political dialogue, and provides for dialogue and co-operation on domestic reform based on the common principles set out by the Parties. There are also provisions for intensified dialogue on foreign and security policy, including CSDP, for the promotion of peace and international justice by ratifying and implementing the Rome Statute of the International Criminal Court, and for joint efforts on regional stability, conflict prevention, crisis management, military/technological co-operation, anti-terrorism, anti-proliferation and disarmament and arms control.

In the field of JFS, the Agreement pays particular attention to the rule of law and to the reinforcement of judicial institutions and practices. The Agreement sets out the framework for co-operation on migration, asylum and border management, on personal data protection, money laundering and terrorism financing and on anti-drugs policy. This Title contains

provisions on movement of persons, including on readmission, on visa facilitation and on the gradual steps towards a visa-free regime in due course (provided that relevant conditions for well-managed and secure mobility are in place). Treatment and mobility of workers are also covered, as is a commitment to further development of judicial co-operation in civil and criminal matters - making full use of relevant international and bilateral instruments.

The Association Agreement foresees a wide range of sector cooperation, focusing on support to core reforms, economic recovery and growth, governance and sector co-operation in more than 30 areas, such as: energy, transport, environment protection, industrial and small and medium enterprise cooperation, social development and protection, equal rights, consumer protection, education, training and youth as well as cultural cooperation. In all of these areas, enhanced co-operation starts from the basis of current frameworks, both bilateral and multilateral, with the aim of more systematic dialogue and exchange of information and good practice. Key to the sectoral co-operation chapters is a comprehensive menu of regulatory approximation set out in annexes to the Agreement. Specific schedules for transposition and implementation by Ukraine of selected parts of the EU acquis will provide a focus for on-going co-operation, and will form the core of Ukraine's domestic reform and modernization agenda.

The Agreement includes an updated institutional framework encompassing co-operation and dialogue fora from the Summit level down the level of technical subcommittees. Specific decision-making roles are foreseen for an Association Council, and by delegation for an Association Committee, which may also meet in a specific configuration to address trade issues. Fora for civil society, notably the representative organisations for social partners, trade-unions and employers, and parliamentary co-operation are also foreseen. The Agreement also includes provisions on monitoring, fulfilment of obligations and dispute settlement (including separate provisions for trade-related issues).

Closer economic integration through the DCFTA will be a powerful stimulant to the country's economic growth. Approximation of Ukraine to EU legislation, norms and standards, will be the method. As a core element of the Association Agreement, the DCFTA will create business opportunities in both the EU and Ukraine and will promote real economic modernization and integration with the EU. Higher standards of products, better services to citizens, and above all Ukraine’s readiness to compete effectively in international markets should be the result of this process.

3. LEGAL ELEMENTS OF THE PROPOSAL

On the part of the Union, the legal basis for the conclusion of this Agreement is Article 217, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8), as well as Article 218(7) of TFEU.

The attached proposal constitutes the legal instrument for the conclusion of the Association Agreement.

In light of the above-mentioned results - and provided that the Ukrainian authorities demonstrate determined action and tangible progress in the three areas identified by the 10 December 2012 Council Conclusions on Ukraine – the Commission proposes that the Council conclude the Agreement on behalf of the European Union after having received the consent of the European Parliament.

The fact that the Commission has submitted its proposal as an agreement of the Union and its Member States and Ukraine is related to the genesis of this agreement under the rules of the Treaty before the entry into force of the Treaty of Lisbon.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article(s) 217, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof, as well as Article 218(7) thereof,

Having regard to the proposal from the European Commission[1],

Having regard to the consent of the European Parliament[2],

Whereas:

(1) On 22 January 2007 the Council authorised the Commission to open negotiations with Ukraine for the conclusion of a new Agreement between the European Union and Ukraine to replace the Partnership and Cooperation Agreement.

(2) These negotiations were successfully finalised and the Association Agreement between the European Union and its Member States and Ukraine (hereinafter referred to as the "Agreement") was initialled in 2012.

(3) In accordance with Council Decision [number of Decision] of [date][3], the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part was signed at [place] on [date], subject to its conclusion at a later date.

(4) Pursuant to Article 218(7) of the Treaty on the Functioning of the European Union, it is appropriate for the Council to authorise the Commission to approve modifications to be adopted by the Association Committee in its Trade configuration pursuant to Article 465(4) of the Agreement, as proposed by the Sub-Committee on Geographical Indications pursuant to Article 211 of the Agreement.

(5) It is appropriate to set out the relevant procedures for the protection of geographical indications which are given protection pursuant to the Agreement.

(6) The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.

(7) The Association Agreement should be approved on behalf of the European Union.

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1 OJ L , , p. .
2 OJ L , , p. .
3 OJ L , , p. .

HAS ADOPTED THIS DECISION:

Article 1

The Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, together with the Annexes and Protocols attached thereto, is hereby approved.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to notify the Depository of the Agreement provided in Article 486(2) of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

For the purposes of Article 211of the Agreement, modifications of the Agreement through decisions of the Sub-Committee on Geographical Indications shall be approved by the Commission on behalf of the European Union. Where interested parties cannot reach agreement following objections relating to a geographical indication, the Commission shall adopt such a position on the basis of the procedure laid down in Article 57(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs[4].

Article 4

1. A name protected under Sub-section 3 “Geographical Indications” of Chapter 9 of Title IV of the Agreement may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits conforming to the corresponding specification.

2. In accordance with Article 207 of the Agreement, the Member States and the institutions of the European Union shall enforce the protection provided for in Articles 204 to 206 of the Agreement, including at the request of an interested party.

Article 5

The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.

[4] OJ L 343 14.12.2012, p.1

Article 6

This Decision shall enter into force on [date][5].

Done at Brussels,

For the Council
The President

[5] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.