

EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

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2017/0238 (NLE)

Joint Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, 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 the conclusion of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part (hereinafter referred to as 'the Agreement').

Relations between the European Union (EU) and the Republic of Armenia (Armenia) are currently based on the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, which entered into force on 1 July 1999 for an initial ten-year period and which has been automatically renewed.

On 29 September 2015, the Council adopted Decisions authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate a Framework Agreement between the EU and Armenia. The Council has been kept informed at all stages of the negotiations. It has been consulted in the Working Party on Eastern Europe and Central Asia and in the Trade Policy Committee. The European Parliament has also been kept promptly and fully informed throughout the negotiations.

Negotiation of the Agreement began on 7 December 2015 and the text of the Agreement was initialled on 21 March 2017.

2. LEGAL ELEMENTS OF THE PROPOSAL

2.1 The aim and content of the agreement

The scope of the new Agreement is comprehensive, covering issues of EU competence and interests, which reflects the existing wide range of cooperation in economic, trade and political areas, a on sectoral policies. The Agreement develops these areas further, thus providing a long-term basis for further developing EU-Armenia relations. By intensifying political dialogue and improving cooperation in a broad range of areas, the Agreement lays the foundations for a more effective bilateral engagement with Armenia.

The Agreement includes the EU's standard political clauses on human rights, the international criminal courts, weapons of mass destruction, small arms and light weapons, and counter-terrorism. It also contains provisions on cooperation in areas such as transport, energy, health, the environment, climate change, taxation, education and culture, employment and social affairs, banking and insurance, industrial policy, agriculture and rural development, tourism, research and innovation, and mining. In addition, it covers legal cooperation, the rule of law, combating money laundering and terrorist financing, and fighting organised crime and corruption.

The Agreement contains a substantive trade title with important commitments in several trade policy areas. These will improve conditions for bilateral EU-Armenia trade, while taking full account of Armenia's obligations as a member of the Eurasian Economic Union. They will ensure a better regulatory environment for economic operators in areas such as trade in services and goods, setting up and running companies, capital movements, government procurement and intellectual property rights, sustainable development, and competition.

Following the adoption of the Council Decision on the signing, on behalf of the European Union, and provisional application of the Agreement, the Agreement was signed by the European Union and the Republic of Armenia as a mixed Agreement.

In certain areas, the Agreement is also designed to bring Armenian law gradually closer to the EU *acquis*. However, it does not go as far as to establish an association between the EU and Armenia.

2.2 The legal basis for the proposed decision

Article 218(6)(a)(iii) TFEU provides that, where an agreement establishes a specific institutional framework by organising cooperation procedures, the Council adopts a decision concluding the agreement after obtaining consent of the European Parliament. Moreover, the second subparagraph of Article 218(8) TFEU provides that the Council acts unanimously when the agreement covers a field for which unanimity is required for the adoption of an European Union act.

With regard to a measure that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the Court has held that, where various provisions of the Treaty are therefore applicable, such a measure will have to be founded, exceptionally, on the various corresponding legal bases, unless the procedure laid down for each legal basis is incompatible with each other (Case C-490/10 Parliament v Council, ECLI: EU:C:2012:525, paragraph 46).

The Agreement pursues objectives and includes components from the Common Foreign and Security Policy, the Common Commercial Policy and development cooperation. These aspects of the Agreement are inseparably linked without one being incidental to the other.

The Common Foreign and Security Policy is a field for which unanimity is required for the adoption of an Union act.

The Agreement establishes an institutional framework by organising cooperation procedures between Armenia and the EU.

The legal basis of the proposed decision should therefore be Article 37 TEU, Article 207 TFEU and Article 209 TFEU read in conjunction with Article 218(6)(a) TFEU and the second subparagraph of Article 218(8) TFEU. No additional provisions are required as legal basis (see Case C-377/12 Commission v Council, ECLI: EU: C:2014:1903).

Having assessed the text of the Agreement, the Commission and the High Representative take the view that the Agreement does not cover any areas that would fall into the exclusive competence of the Member States and would thus warrant, in legal terms, the use of a mixed agreement. However, as the negotiating directives were issued in view of a mixed agreement, the text of the Agreement was initialled as mixed agreement and in consequence proposed here as such for signature and conclusion, the parties being the European Union and European Atomic Energy Community and their Member States of the one part and the Republic of Armenia, of the other part.

2.3 The necessity of the proposed decision

Article 216 TFEU provides that the European Union may conclude an agreement with one or more third country where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, in the context of EU policies, one of the objectives referred to

in the Treaties, where it is provided for in a legally binding EU act, or where it is likely to affect common rules or alter their scope.

The Treaties provide for the conclusion of agreements such as the this one, namely in Articles 37 TEU, 207 TFEU and 209 TFEU. Moreover, the conclusion of the Agreement is necessary for the purpose of achieving, within the framework of the European Union's policies, objectives referred to in the Treaties, including strengthening human rights, non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, trade, migration, the environment, energy, climate change, transport, science and technology, employment and social affairs, education, agriculture.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 207 and 209, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

Having regard to the joint proposal by the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with Council Decision (EU) of …., the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part (hereinafter referred to as 'the Agreement'), was signed on 24 November 2017, subject to its conclusion at a later date.

(2) The Agreement constitutes an important step towards the increased political and economic involvement of the European Union in the South Caucasus. By intensifying political dialogue and improving cooperation in a broad range of areas, it will provide the basis for more effective bilateral engagement with the Republic of Armenia.

(3) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to undertake, on behalf of the European Union, the notification provided for in Article 385 of the Agreement in order to express the consent of the European Union to be bound by the Agreement.

Article 3

1. For the purposes of Article 240 of the Agreement, modifications of the Agreement through decisions of the Subcommittee 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 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[1].

2. For the purpose of Article 270(2), first sentence, of the Agreement the Commission is authorised to approve the Union position with regard to amendments to Annex XI to the Agreement.

For the purpose of Article 270(2), second sentence, of the Agreement the Commission is authorised to object to a modification or rectification of Annex XI proposed by the Republic of Armenia.

Article 5

1. A name protected under Subsection 3, 'Geographical Indications', of Chapter 9 of Title V 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 301 of the Agreement, the Member States and the institutions of the European Union shall enforce the protection provided for in Articles 297 to 300 of the Agreement, regardless of whether they have been requested to do so by an interested party.

Article 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.

Article 7

This Decision shall enter into force on the day of its adoption. The date of entry into force of the Agreement is published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Done at Brussels,

For the Council
The President

[1] OJ L 343 14.12.2012, p.1