EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 25.9.2017
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ANNEX 6

ANNEX

to the

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.

ANNEX XI

ADDITIONAL COVERED PUBLIC PROCUREMENT

A. European Union:

Works concession contracts covered under Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, as amended, when awarded by an entity listed in the European Union's Annexes 1 and 2 to Appendix I to the WTO Government Procurement Agreement under the regime of that Directive. This regime complies with Articles I, II, IV, VI, VII (except points 2 (e) and 2 (l)), XVI (except paragraphs 3 and 4) and XVIII of the WTO Government Procurement Agreement.

B. Republic of Armenia:

Concession contracts covered under the regime of the Law on Public Procurement, when awarded by an entity listed in the Republic of Armenia's Annexes 1 and 2 to Appendix I to the WTO Government Procurement Agreement.

ANNEX XII

to CHAPTER 2: ANTI-FRAUD AND CONTROL PROVISIONS of TITLE VII: FINANCIAL ASSISTANCE AND ANTI-FRAUD AND CONTROL PROVISIONS

The Republic of Armenia undertakes to gradually approximate its legislation to the following legislation of the European Union and international instruments within the stipulated timeframes.

Convention of 26 July 1995 on the protection of the European Communities' financial interests

The following provisions of that Convention shall apply:

– Article 1 – General provisions, definitions

– Article 2(1) by taking the necessary measures to ensure that the conduct referred to in Article 1, and participating in, instigating, or attempting the conduct referred to in Article 1(1), are punishable by effective, proportionate and dissuasive criminal penalties

Timetable: these provisions of that Convention shall be implemented upon entry into force of this Agreement.

– Article 3 – Criminal liability of heads of businesses

Timetable: these provisions of that Convention shall be implemented within 3 years of the entry into force of this Agreement.

Protocol to the Convention on the protection of the European Communities' financial interests

The following provisions of that Protocol shall apply:

– Article 1(1)(c) and Article 1(2) – Relevant definitions

– Article 2 – Passive corruption

– Article 3 – Active corruption

– Article 5(1) by taking the necessary measures to ensure that the conduct referred to in Articles 2 and 3, and participating in and instigating the conduct in question, are punishable by effective, proportionate and dissuasive criminal penalties

– Article 7 as far as it refers to Article 3 of the Convention

Timetable: these provisions of that Protocol shall be implemented upon entry into force of this Agreement.

Second Protocol to the Convention on the protection of the European Communities' financial interests

The following provisions of that Protocol shall apply:

– Article 1 – Definition

– Article 2 – Money laundering

– Article 3 – Liability of legal persons

– Article 4 – Sanctions for legal persons

– Article 12 as far as it refers to Article 3 of the Convention

Timetable: these provisions of that Protocol shall be implemented upon entry into force of this Agreement.

Protection of money against counterfeiting

Council Regulation (EC) 1338/2001 of 28 June 2001 lays down necessary measures for the protection of the euro against counterfeiting

Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting

Timetable: these provisions of Regulation (EC) 1338/2001 and Directive 2014/62/EU shall be implemented within 3 years of the entry into force of this Agreement.

International Convention for the suppression of counterfeiting currency (Geneva, 1929)

Timetable: the Convention shall be signed and ratified upon entry into force of this agreement.

PROTOCOL TO TITLE VII
FINANCIAL ASSISTANCE
AND ANTI FRAUD AND CONTROL PROVISIONS
CHAPTER 2: ANTI FRAUD AND CONTROL PROVISIONS

Protocol on Definitions

1. "Irregularity" means any infringement of a provision of EU law, of this Agreement or ensuing agreements and contracts, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it, either by reducing or losing revenue accruing from own resources collected directly on behalf of the European Union, or by an unjustified item of expenditure.

2. "Fraud" means:

(a) in respect of expenditure, any intentional act or omission relating to:

– the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Union or budgets managed by, or on behalf of, the European Union,

– the non-disclosure of information in violation of a specific obligation, with the same effect as described in the first indent of this point,

– the misapplication of funds referred to in the first indent of this point for purposes other than those for which they were originally granted.

(b) in respect of revenue, any intentional act or omission relating to:

– the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Union or budgets managed by, or on behalf of, the European Union,

– non-disclosure of information in violation of a specific obligation, with the same effect,

– misapplication of a legally obtained benefit, with the same effect.

3. "Active corruption" means the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official, for himself or for a third party, for him to act or refrain from acting in accordance with his duty, or in the exercise of his functions, in breach of his official duties in a way which damages or is likely to damage the financial interests of the European Union.

4. "Passive corruption" means the deliberate action of an official who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or, in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the financial interests of the European Union.

5. "Conflict of interest" means any situation that could cast doubt on the ability of staff to act in an impartial and objective manner for reasons as defined in article 57 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union.

6. "Unduly paid" means paid in breach of the rules governing EU funds.

7. "European Anti-Fraud Office" (OLAF) means the European Commission's specialised anti-fraud department. OLAF has operational independence and is responsible for carrying out administrative investigations intended to combat fraud, corruption and any other illegal activity adversely affecting the financial interests of the European Union, as provided for in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations by the European Anti-Fraud Office and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

PROTOCOL

ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

ARTICLE 1

Definitions

For the purposes of this Protocol:

(a) "customs legislation" means any legal or regulatory provisions applicable in the territories of the Parties, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;

(b) "applicant authority" means a competent administrative authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Protocol;

(c) "requested authority" means a competent administrative authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Protocol;

(d) "personal data" means all information relating to an identified or identifiable individual and;

(e) "operation in breach of customs legislation" means any violation or attempted violation of customs legislation.

ARTICLE 2

Scope

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.

2. Assistance in customs matters, as provided for in this Protocol, applies to any administrative authority of a Party which is competent for the application of this Protocol. That assistance shall neither prejudice the provisions governing mutual assistance in criminal matters nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.

3. Assistance to recover duties, taxes or fines is not covered by this Protocol.

ARTICLE 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.

2. At the request of the applicant authority, the requested authority shall inform it whether:

(a) goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;

(b) goods imported into the territory of one of the Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:

(a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation or;

(b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;

(c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation and;

(d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

ARTICLE 4

Spontaneous assistance

The Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

(a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Party;

(b) new means or methods employed in carrying out operations in breach of customs legislation;

(c) goods known to be subject to operations in breach of customs legislation;

(d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation and;

(e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

ARTICLE 5

Delivery and notification

1. At the request of the applicant authority, the requested authority shall, in accordance with the legal or regulatory provisions applicable to that authority, take all necessary measures in order to deliver any documents or to notify any decisions, of the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

2. Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

ARTICLE 6

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. In case of urgency, the requested authority may accept oral requests, but such oral requests shall be confirmed by the applicant authority in writing immediately.

2. Requests pursuant to paragraph 1 shall include the following information:

(a) the applicant authority;

(b) the assistance requested;

(c) the object of and the reason for the request;

(d) the legal or regulatory provisions and other legal considerations;

(e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations; and

(f) a summary of the relevant facts and of the enquiries already carried out.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement does not apply to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirements set out in paragraphs 1 to 3, the requested authority may require the correction or completion of the request. In the meantime the authorities of each Party may order precautionary measures.

ARTICLE 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party, by supplying information already in its possession, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

3. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other concerned authority referred to in paragraph 1, to obtain information relating to activities that are or could be operations in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.

4. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

ARTICLE 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified copies or other items.

2. This information may be provided in electronic format.

3. The applicant authority may request the transmission of original documents only in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

ARTICLE 9

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements in cases where a Party is of the opinion that assistance under this Protocol would:

(a) be likely to prejudice the sovereignty of Republic of Armenia or that of a Member State which has been requested to provide assistance under this Protocol;

(b) be likely to prejudice public policy, security, state secret or other essential interests, in particular in the cases referred to in Article 10 paragraph 2; or

(c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the requested authority on the grounds that it will interfere with ongoing investigations, prosecutions or proceedings. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. In the cases referred to in paragraphs 1 and 2, the requested authority shall communicate its decision and the reasons therefor to the applicant authority without delay.

ARTICLE 10

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, in accordance with the laws and regulations applicable in each Party. That information shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws and regulations of the receiving Party.

2. Personal data may be exchanged only where the receiving Party undertakes to protect such data in a manner that is considered adequate by the other.

3. The use of information obtained under this Protocol in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation is considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The requested authority may subject the supply of information or the granting of access to documents to the condition that they be notified of such use.

4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

ARTICLE 11

Experts and witnesses

An official of the other Party may be authorised by the requested authority to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

ARTICLE 12

Assistance expenses

The Parties shall waive all claims against each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, expenses for experts and witnesses and those for interpreters and translators who are not public service employees.

ARTICLE 13

Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of the Republic of Armenia and on the other hand to the competent services of the European Commission and the customs authorities of the Member States, as appropriate. They shall decide on all practical measures and arrangements necessary for its implementation, taking into consideration the applicable laws and regulations in particular for the protection of personal data.

2. The Parties shall consult each other and subsequently keep each other informed of the implementation measures which they adopt in accordance with the provisions of this Protocol.

3. In the European Union the provisions of this Protocol shall not affect the communication of any information obtained under this Protocol between the competent services of the European Commission and the customs authorities of the Member States. In the Republic of Armenia the provisions of this Protocol shall not affect the communication among Armenia's customs authorities of any information obtained under this Protocol.

ARTICLE 14

Other agreements

The provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States and the Republic of Armenia insofar as the provisions of the latter are incompatible with those of this Protocol.

ARTICLE 15

Consultations

In respect of the interpretation and implementation of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Sub-Committee on Customs established by Article 126 of this Agreement.