



EUROPEAN  
COMMISSION

Brussels, 10.11.2014  
COM(2014) 698 final

2014/0331 (NLE)

Proposal for a

**COUNCIL AND COMMISSION DECISION**

**On the position to be adopted on behalf of the Union and the European Atomic Energy Community in the Association Council established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, in relation to the adoption of the rules of procedure of the Association Council and of the Association Committee, to the establishment of two Sub-Committees, and to the delegation of certain powers by the Association Council to the Association Committee in Trade configuration**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL/BACKGROUND**

The attached proposal constitutes the legal instrument for authorising the position of the Union and of the European Atomic Energy Community to be adopted in the Association Council established by the Association Agreement ("the Agreement") between the European Union and the European Atomic Energy Community and their Member States and Ukraine, in relation to the adoption of the rules of procedure of the Association Council and of the Association Committee, the establishment of two Sub-Committees, and the delegation of certain powers by the Association Council to the Association Committee in Trade configuration.

Negotiations of the comprehensive and ambitious Association 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 is the most advanced of its typed ever negotiated by the EU in particular with regard to trade and economic integration, going far beyond a simple market opening. The aim is to accelerate the deepening of political and economic relations between Ukraine and the EU, as well as to advance Ukraine's gradual economic integration with the EU Internal Market in selected areas, notably through establishing a DCFTA.

On 23 June 2014, the Council adopted its decision<sup>1</sup> on the signing, on behalf of the European Union and the European Atomic Energy Community and their Member States, and provisional application of certain provisions of the remaining chapters of the Association Agreement, including its Deep and Comprehensive Free Trade Area (DCFTA) part between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part. The political chapters of the Agreement had previously been signed on 21 March 2014<sup>2</sup>. Subsequently, the Agreement was signed in Brussels on Friday, 27 June 2014 in the margins of the European Council.

Ukraine ratified the Agreement in September and exchanged notifications in that regard with the EU within the same month meaning that provisional application may commence from 1 November 2014. However, following consultations with the Ukrainian side and in the context of the overall efforts for the implementation of the peace process in Ukraine, it was agreed to delay until 31 December 2015 the provisional application of the trade-related provisions of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ('the Association Agreement') (Title IV), and at the same time to continue the application of the Union's autonomous trade measures for the benefit of Ukraine.

Consequently, the provisional application of the relevant provisions of Titles III, IV, V, VI and VII, and the related Annexes and Protocols, of the Association Agreement is to take effect in stages. In respect of Titles III, V, VI and VII, and the related Annexes and Protocols, the notification provided for in Article 486 of the Association Agreement was made end of September, in conjunction with the notification of provisions provided for in Article 4 of

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<sup>1</sup> OJ L 278 of 15.09.2014 p.1 to 8

<sup>2</sup> OJ L 161 of 29.05.2014 p. 1

Council Decision 2014/295/EU1. In respect of Title IV, and the related Annexes and Protocols, the notification was made so that the provisional application may take effect on 1 January 2016 following a further notification as provided for in Article 486 of the Association 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 the eligible parts of the Agreement in order to advance an early reform impact on sector specific issues before the conclusion of the Agreement.

## **2. RESULTS OF THE NEGOTIATIONS**

Title VII of the Agreement with Ukraine provides for the institutional framework that is necessary for the proper function and the implementation of the Agreements. The Agreement establishes an Association Council (Article 461(1)) at ministerial level to supervise and monitor the application and implementation of the Agreement.

To prepare the meetings and deliberations of the Association Council, implement the decisions of the Association Council where appropriate and, in general, ensure continuity of the association relationship and the proper function of the Agreement an Association Committee is also established (as per Article 464(1)).

The Association Council as well as the Association Committee may decide to set up any other Sub-Committee or body that can assist it in carrying out its duties, and shall determine the composition and duties of such committees or bodies and how they shall function. Furthermore, the Association Council has the power to amend or update the Annexes to the Agreement (Article 463(3) of the Agreement). It may delegate any of its powers to the Association Committee, including the power to take binding decisions (Article 465(2) of the Agreement).

The Association Committee shall meet in a specific configuration to address all issues, deriving from Title IV "Trade and Trade-related matters" (Article 465(4) of the Agreement). The DCFTA part of the Agreement foresees specific Sub-Committees on Sanitary & Phytosanitary matters, customs, geographical indicators and trade & sustainable development to assist the Association Committee with its duties.

Fora for civil society and parliamentary cooperation are also foreseen.

With a view to ensuring smooth and timely implementation of the DCFTA part of the Agreement, in particular with regard to the updates or amendment of several trade-related Annexes to the Agreement, it is suggested to delegate such powers from the Association Council to the Association Committee in Trade configuration. Such delegation will ensure the necessary link between, and create conditions for a timely follow-up to, the technical discussions within that Committee on the implementation of trade-related commitments, including those pertaining to approximation to the EU *acquis* by Ukraine.

With a view to completing the institutional framework and allowing for expert level discussions in the key areas falling within the scope of provisional application of the Agreements, it is suggested to establish two Sub-Committees, designated as follows:

- (1) Sub-Committee on Justice, Freedom & Security (JFS);
- (2) Sub-Committee on Economic and other Sector cooperation.

The purpose of the Sub-Committees is to focus on those topics where concrete results are expected, rather than to necessarily cover the same agenda of topics year after year.

Additional Sub-Committees may be established at a later stage, following agreement of the Parties.

The Association Agreement foresees a wide range of sector cooperation, focusing on support to core reforms, economic recovery and growth, governance and sector cooperation in 28 areas, such as; justice, energy, transport, statistics, environment protection and promotion, industrial and small and medium enterprise cooperation, agriculture and rural development, social policies, justice, civil society cooperation, consumer policy, public administration reform, education, training and youth as well as cultural cooperation.

In all of these areas, enhanced cooperation 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 cooperation chapters is a comprehensive menu of gradual approximation, where relevant, with the EU *acquis* set out in annexes to the Agreement. Specific schedules for approximation and implementation by Ukraine of selected parts of the EU *acquis* will provide a focus for on-going cooperation, and will form the core of Ukraine's domestic reform and modernisation agenda.

Any "regular dialogues" as frequently referred to in the Agreement may cover all of the aforementioned policy areas. The second Sub-Committee may thus meet in different configurations as the need arises. This proposal draws on experience with the Partnership & Cooperation Agreement with Ukraine and aims to streamline the functioning of the Sub-Committee structure under the Association Agreement.

Both the EU and Ukraine have committed to a rapid and effective implementation of the Agreement. The aim of this proposal is therefore to ensure that the institutional framework of the Agreement becomes operational as soon as possible. In order to facilitate this it will be crucial to proceed rapidly with the adoption process of the Rules of Procedure for the Association Council, the Association Committee and the Sub-Committees so that these can soon start functioning. It is intended to call the first meeting of the Association Council with Ukraine as soon as possibly after the start of provisional implementation, ideally before the end of the year.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

For the Union, the legal basis for authorising the Union position to be adopted in the Association Council established by the Association Agreement between the EU and Ukraine is the Treaty on the functioning of the European Union, and in particular its Article 218 (9) TFEU. For EURATOM, the legal basis for authorising its position to be adopted in the Association Council established by the Association Agreement between the EU and Ukraine is the Treaty establishing the European Atomic Energy Community, and in particular Article 101 thereof.

In light of the above-mentioned results of negotiations, on the basis of Article 218(9) TFEU and of Article 101 of the EURATOM Treaty the European Commission proposes that the Council adopt the Decision authorising the position of the Union and of the European Atomic Energy Community to be adopted in the first EU-Ukraine Association Council with regard to:

- the rules of procedure for the Association Council and the Association Committee,
- the establishment of two Sub-Committees,

and

– the delegation of certain powers from the Association Council to the Association Committee in Trade configuration.

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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 its Article 218 (9),

Having regard to the proposal from the Commission,

Whereas:

- (1) Article 486 of the Association Agreement ("the Agreement") between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part provide for provisional application of the Agreement in part.
- (2) Article 4 of the Council Decisions of 17 March 2014<sup>3</sup> and of 23 June 2014<sup>4</sup> on the signing and provisional application of the Agreement specifies certain provisions of the Agreement to be applied provisionally.
- (3) Article 462(2) of the Agreement provides that the Association Council shall establish its own rules of procedure.
- (4) Article 464(1) of the Agreement provides that the Association Council shall be assisted in the performance of its duties by an Association Committee while Article 465(1) provides that the Association Council shall determine in its rules of procedure the duties and functioning of the Association Committee.
- (5) Article 462(3) of the Agreement provides that the Association Council shall be chaired in turn by a representative of the Union and a representative of Ukraine.
- (6) Article 466(2) provides that the Association Council may decide to set up any other Sub-Committee or body in specific areas necessary for the implementation of the Agreement that can assist it in carrying out its duties.
- (7) The Association Council is responsible for supervising and monitoring the application and implementation of the Agreement. The Association Council may delegate to the

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<sup>3</sup> OJ L 161 of 29.05.2014 p. 1

<sup>4</sup> OJ L 278 of 15.09.2014 p.1 to 8

Association Committee any of its powers, including the power to take binding decisions. It is appropriate that the Association Council delegates to the Association Committee in Trade configuration, as referred to in Article 465(4) of the Agreement, the power to update or amend the Annexes to this Agreement which relate to Chapters 1 (Annexes I-C and I-D), 3, 5, 6 and 8 of Title IV (Trade and Trade-related Matters), pursuant to Articles 463(3) and 465(2) of the Agreement to the extent that there are no specific provisions in those Chapters relating to the update or the amendment of the Annexes in this Agreement.

- (8) In order to ensure the effective implementation of the Agreement, the rules of procedure should be adopted as soon as possible, including by written procedure.

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The position to be adopted on behalf of the Union and the European Atomic Energy Community in the Association Council established by Article 464 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, shall be hereby established in relation to:
  - the adoption of the rules of procedure of the Association Council and of the Association Committee,
  - the establishment of Sub-Committees and the adoption of their rules of procedure,and
  - the delegation of certain powers by the Association Council to the Association Committee in Trade configuration under the terms of the draft Association Council decisions annexed to this Decision.
2. Minor technical changes to the draft decisions may be agreed to by the representatives of the Union in the Association Council without further decision of the Council.

#### *Article 2*

The Association Council shall be chaired on the Union side by the High Representative of the Union for Foreign Affairs and Security Policy.

#### *Article 3*

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council*  
The President

*For the Commission*  
The President