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2016/0324 (NLE)

Proposal for a

COUNCIL DECISION

on the Union position to be adopted in the Sanitary and Phytosanitary Sub-Committee, the Trade and Sustainable Development Sub-Committee, the Customs Sub-Committee, and in the Geographical Indications Sub-Committee 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 Sanitary and Phytosanitary Sub-Committee, the Trade and Sustainable Development Sub-Committee, the Customs Sub-Committee, and the Geographical Indications Sub-Committee

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

The attached proposal constitutes the legal instrument for authorising the Union position to be adopted in the Sanitary and Phytosanitary Sub-Committee (“SPS Sub-Committee”), in the Trade and Sustainable Development Sub-Committee (“TSD Sub-Committee”), in the Customs Sub-Committee and in the Geographical Indications Sub-Committee (“GI Sub-Committee”) 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 (“the Agreement”), in relation to the adoption of the Rules of Procedure of the the SPS Sub-Committee, the Trade and Sustainable Development, the Customs Sub-Committee and the GI Sub-Committee.

The Agreement was signed in Brussels on 27 June 2014 and its Title IV on Trade and Trade-Related Matters (DCFTA) is provisionally applied, since 1 January 2016.

The Agreement established a Sanitary and Phytosanitary Sub-Committee, the Trade and Sustainable Development Sub-Committee, the Customs Sub-Committee, and the Geographical Indications Sub-Committee. These Sub-Committees have to monitor the implementation of the DCFTA part of the Agreement, and resolve related issues. The Sub-Committees have to adopt their Rules of Procedure. The first meetings of the Sub-Committees are expected to take place in the second half of 2016. The Rules of Procedure of these Sub-Committees, attached to this proposal, are based on the Rules of Procedure of the Association Committee.

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

This proposal implements the Union’s common commercial policy towards Ukraine, an Eastern Neighbourhood Partner country, based on the provisions of the above-mentioned Agreement and in particular its objective to create a deep and comprehensive free trade area between the parties (DCFTA).

- **Consistency with other Union policies**

This proposal is consistent with and contributes to the implementation of other external policies of the Union, notably the European Neighbourhood Policy and the development cooperation policy in relation to Ukraine.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for establishing the Union position to be taken in the Committees and Sub-Committees set up by the Agreement is the Treaty on the Functioning of the European Union, and in particular its Article 207(4) in conjunction with Article 218(9) thereof.

In light of approval of the four draft texts of the Rules of Procedure by Ukraine, on the basis of Article 207(4) and Article 218(9) TFEU, the European Commission proposes that the Council adopts the Decision authorising the Union position on the decisions to be adopted in the first EU-Ukraine SPS Sub-Committee, in the EU-Ukraine Trade and Sustainable Development Sub-Committee, in the EU-Ukraine Customs Sub-Committee and in the EU-Ukraine GI Sub-Committee with regard to their Rules of Procedure.

Article 74 of the Agreement establishes the SPS Sub-Committee and provides that it should adopt its working procedures at its first meeting. The meeting of the SPS Sub-Committee is to take place in the second half of 2016. In view of this first meeting it is necessary to prepare the Union position on the draft Rules of Procedure for the said Sub-Committee. The attached draft rules were approved by Ukraine.

Article 300 of the Agreement establishes the Trade and Sustainable Development Sub-Committee and provides that it should adopt its Rules of Procedure. The first meeting is expected to take place in the second half of 2016. Therefore it is necessary to prepare the Union position on the Rules of Procedure for that Sub-Committee. The attached draft rules were approved by Ukraine.

Article 83 of the Agreement establishes the Customs Sub-Committee and provides that it should adopt its internal Rules of Procedure. The first meeting is expected to take place the second half of 2016. Therefore it is necessary to prepare the Union position on the Rules of Procedure for that Sub-Committee. The attached draft rules were approved by Ukraine.

Article 211 of the Agreement establishes the GI Sub-Committee and provides that it should adopt its Rules of Procedure. The first meeting is expected to take place in the second half of 2016. Therefore it is necessary to prepare the Union position on the Rules of Procedure for that Sub-Committee. The attached draft rules were approved by Ukraine.

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

The common commercial policy, in accordance with Article 3 of the TFEU, is defined as an exclusive Union competence. Therefore, the subsidiarity principle does not apply.

- **Proportionality**

This proposal is necessary in order to implement the Union's international commitments set out in the Agreement with Ukraine.

- **Choice of the instrument**

This proposal is in accordance with Article 218(9) TFEU, which envisages the adoption by the Council of decisions establishing the positions to be adopted on the Union's behalf in a body set up by and agreement, when that body is called upon to adopt acts having legal effects. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

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

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

Not applicable.

- **Stakeholder consultations**

Stakeholder consultations are not applicable to this proposal, as it aims merely at implementing the Union's commitments set out in the Agreement.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

The trade and trade-related provisions of the Agreement have been subject to ex-ante impact assessment (the 2007 Trade Sustainability Impact Assessment commissioned by DG Trade), which fed into the DCFTA negotiation process. That study confirmed that implementation of trade and trade-related provisions would have a positive economic impact for the EU as well as for Ukraine. The proposal does not have any negative impact on the economic, social or environmental policy of the Union.

- **Regulatory fitness and simplification**

The Agreement is not subject to REFIT procedures at this stage; it does not imply any costs for the Union SMEs; and it does not raise any issues from the viewpoint of the digital environment.

- **Fundamental rights**

The proposal does not have consequences for the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

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

The implementation of the Agreement is reviewed regularly by the EU-Ukraine Association Council and its sub-ordinate bodies established by that Agreement. The European Commission also reports to the European Parliament and the Council following EU-Ukraine Association Committee in Trade configuration meetings which are taking place at least once per year, including on the elements included in this proposal.

- **Explanatory documents (for directives)**

Not applicable.

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

The proposal aims to adopt a Union position in relation to:

The Deep and Comprehensive Free Trade Area (DCFTA), as part of EU-Ukraine Association Agreement ("the Agreement"), is applied since 1 January 2016. The Agreement established a number of joint institutions, among them the Sanitary and Phytosanitary Sub-Committee, the Trade and Sustainable Development Sub-Committee, the Customs Subcommittee and the Geographical Indications Sub-Committee which are responsible for the implementation of the DCFTA commitments related to their respective areas of expertise.

In accordance with Article 218(9) TFEU, any joint decision with legal consequences to be adopted by a body of the Association Agreement requires a prior Council decision on the Union position.

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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 207(4) in conjunction with Article 218(9) thereof,

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 Council Decision 2014/668/EU¹ of 23 June 2014 specifies the provisions of the Agreement to be applied provisionally, including the provisions on the establishment and functioning of the Sanitary and Phytosanitary Sub-Committee ("SPS Sub-Committee"), the Trade and Sustainable Development Sub-Committee ("TSD Sub-Committee"), the Customs Sub-Committee, and the Geographical Indications Sub-Committee ("GI Sub-Committee").
- (3) Article 74 of the Agreement provides that the SPS Sub-Committee should establish its working procedures at the first meeting.
- (4) Article 300 of the Agreement provides that the Trade and Sustainable Development Sub-Committee should establish its Rules of Procedure.
- (5) Article 83 of the Agreement provides that the Customs Sub-Committee should establish its Rules of Procedure.
- (6) Article 211 of the Agreement provides that the GI Sub-Committee should establish its Rules of Procedure,

¹ Council Decision of 23 June 2014 on the signing, on behalf of the European Union, and provisional application 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, as regards Title III (with the exception of the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other Party) and Titles IV, V, VI and VII thereof, as well as the related Annexes and Protocols (OJ L 278, 20.9.2014, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be adopted by the Union in the SPS Sub-Committee established by Article 74 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 based on the draft Decision on the Rules of Procedure of the SPS Sub-Committee attached to this Decision.
2. Minor changes to the draft Decision may be agreed to by the representatives of the Union in the SPS Sub-Committee without further decision of the Council.

Article 2

1. The position to be adopted by the Union in the Trade and Sustainable Development Sub-Committee established by Article 300 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 based on the draft Decision on the Rules of Procedure of the Trade and Sustainable Development Sub-Committee attached to this Decision.
2. Minor changes to the draft Decision may be agreed to by the representatives of the Union in the Trade and Sustainable Development Sub-Committee without further decision of the Council.

Article 3

1. The position to be adopted by the Union in the Customs Sub-Committee established by Article 83 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 based on the draft Decision on the Rules of Procedure of the Customs Sub-Committee attached to this Decision.
2. Minor changes to the draft Decision may be agreed to by the representatives of the Union in the Customs Sub-Committee without further decision of the Council.

Article 4

1. The position to be adopted by the Union in the GI Sub-Committee established by Article 211 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 based on the draft Decision on the Rules of Procedure of the GI Sub-Committee attached to this Decision.
2. Minor changes to the draft Decision may be agreed to by the representatives of the Union in the GI Sub-Committee without further decision of the Council.

Article 5

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

Done at Brussels,

*For the Council
The President*