



Brussels, 11.7.2016  
COM(2016) 453 final

2016/0211 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be adopted on behalf of the European Union in the Association Committee in Trade configuration established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

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

The attached proposal for a Council decision establishes the Union position on a Decision of the Association Committee in Trade configuration under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part ('the Agreement') in relation to the update of Annex XVI (List of legislation with a timetable for its approximation) and Annex XXIX (Public Procurement) to the Agreement. The Agreement was signed on 27 June 2014, and is provisionally applied, since 1 September 2014.

The update of the above-mentioned annexes is necessary in order to reflect the evolution of the Union *acquis* that has taken place since the initialling of the Agreement on 29 November 2013. The proposal is consistent with the parties' obligations set out in Article 436 and Article 449 of the Agreement.

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

This proposal implements the Union's common commercial policy toward the Republic of Moldova, an Eastern Neighbourhood Partner country, based on the provisions of the above-mentioned Agreement and in particular its objective to create a free trade area between the parties.

- **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 the Republic of Moldova.

### 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for establishing the Union position to be taken in the 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.

- **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 the Republic of Moldova.

- **Choice of the instrument**

This proposal is in accordance with Article 218(9) TFEU, which envisages the adoption by the Council of decisions. 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 updating the references to the Union *acquis* already listed for approximation by the Republic of Moldova 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 in 2009, followed by the Commission DG Trade's Trade Sustainability Impact Assessment of 2012, which fed into the DCFTA negotiation process. That study confirmed that implementation of trade and trade-related provisions would have no negative impact on the Union, its *acquis* or its policies, while projecting a positive impact on the economic development of the Republic of Moldova. 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-Republic of Moldova Association Council and its sub-ordinate bodies established by that Agreement. The European Commission also committed to report annually on the implementation of Title V (Trade and trade-related matters) of the Agreement, including on the elements included in this proposal, to the European Parliament and the Council.

- **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 update of Annex XVI and Annex XXIX to the Agreement. Annex XVI to the Agreement provides the list of the Union *acquis* to which the Republic of Moldova intends to approximate its domestic legislation pertaining to technical regulations, standards and conformity assessment (Chapter 3 of Title V of the Agreement). Annex XXIX to the Agreement provides the list of the Union *acquis* for approximation by the Republic of Moldova in the area of public procurement (Chapter 8 of Title V of the Agreement).

The updates to these annexes are necessary in light of evolution of the Union *acquis* listed therein since the initialling of the Agreement on 29 November 2013. This proposal conforms to the obligations of the Union and of the Republic of Moldova on dynamic approximation set out in Article 449 of the Agreement, and aims to facilitate the ongoing process of approximation to the Union *acquis* in the Republic of Moldova.

Article 436(3) of the Agreement provides that the Association Council shall have the power to update or amend the Annexes to the Agreement and the Association Council delegated the power to update or amend certain trade-related annexes to the Association Committee in Trade configuration by its decision No. 3/2014 of 16 December 2014. Accordingly, the Union position is to be taken in the Association Committee in Trade configuration.

Proposal for a

## COUNCIL DECISION

**on the position to be adopted on behalf of the European Union in the Association Committee in Trade configuration established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first paragraph of Article 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 464(3) and (4) of the Association Agreement between the European Union and the European Atomic Energy Community, and their Member States of the one part, and the Republic of Moldova, of the other part, ('the Agreement') provide for the provisional application of the Agreement in part, as specified by the Union.
- (2) Article 3 of Council Decision 2014/492/EU<sup>1</sup> of 16 June 2014 specifies the provisions of the Agreement to be applied provisionally, including the provisions on the establishment and functioning of the Association Committee in Trade configuration, on technical barriers to trade, standardisation, metrology, accreditation and conformity assessment, Annex XVI to the Agreement, the provisions on public procurement, and Annex XXIX to the Agreement. The provisional application of those provisions has been effective since 1 September 2014.
- (3) Article 173 of the Agreement provides that the Republic of Moldova is to gradually achieve conformity with the relevant Union *acquis* in accordance with the provisions of Annex XVI to the Agreement.
- (4) Article 273 of the Agreement provides that the Republic of Moldova is to ensure that its public procurement legislation is gradually made compatible with the relevant Union *acquis*, in line with the schedule provided in Annex XXIX to the Agreement.
- (5) Several Union acts listed in Annexes XVI and XXIX to the Agreement have been amended or repealed since the initialling of the Association Agreement on 29 November 2013. Certain Union acts listed in Annex XVI to the Agreement are also listed in other Annexes. It is appropriate, in the interest of clarity of obligations, to align the deadlines for approximation applicable to these acts.

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<sup>1</sup> Council Decision of 16 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 the Republic of Moldova, of the other part (OJ L 260, 30.8.2014, p.1).

- (6) Article 269 of the Agreement provides that the value thresholds for public procurement contracts provided for in Annex XXIX-A to the Agreement are to be revised regularly, beginning in the year of entry into force of the Agreement.
- (7) It is furthermore appropriate to take into account the progress made by the Republic of Moldova in the process of approximation to the Union *acquis* by amending certain deadlines.
- (8) It is therefore necessary to update Annexes XVI and XXIX in order to reflect the developments to the Union *acquis* listed therein, and revise the value thresholds for public procurement contracts provided for in Annex XXIX-A to the Agreement.
- (9) Article 269 of the Agreement provides that the revision of the thresholds provided for in Annex XXIX-A to the Agreement shall be adopted by decision of the Association Committee in Trade configuration.
- (10) Article 436(3) of the Agreement provides that the Association Council shall have the power to update or amend the Annexes to the Agreement.
- (11) Article 1 of the Association Council Decision No. 3/2014 of 16 December 2014 delegates the power to update or amend the trade-related annexes of the Agreement to the Association Committee in Trade configuration, including Annex XVI pertaining to Chapter 3 (Technical Barriers to Trade, Standardisation, Metrology, Accreditation and Conformity Assessment) and Annex XXIX pertaining to Chapter 8 (Public Procurement) of Title V (Trade and trade-related matters) of the Agreement.
- (12) It is therefore appropriate to determine the Union position in relation to the update of Annex XVI and Annex XXIX to the Agreement to be adopted by the Association Committee in Trade configuration,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken by the European Union within the Association Committee in Trade configuration established by Article 438 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, in relation to the update of Annex XVI to the Association Agreement shall be based on the draft Decision of that Committee attached to this Decision.

Minor changes to the draft Decision may be agreed to by the representatives of the Union in the Association Committee in Trade configuration without further decision of the Council.

#### *Article 2*

The position to be taken by the European Union within the Association Committee in Trade configuration established by Article 438 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, in relation to the update of Annex XXIX of the Association Agreement shall be based on the draft Decision of that Committee attached to this Decision.

Minor changes to the draft Decision may be agreed to by the representatives of the Union in the Association Committee in Trade configuration without further decision of the Council.

*Article 3*

After their adoption, the Decisions of the Association Committee in Trade configuration shall be published in the *Official Journal of the European Union*.

*Article 4*

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

Done at Brussels,

*For the Council  
The President*