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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Partnership Committee established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and its Member States, of the one part, and the Republic of Armenia, of the other part, regarding the adoption of the Mediation Mechanism, Rules of Procedure and Code of Conduct for dispute settlement procedures on trade and trade related matters

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf in the Partnership Committee established pursuant to Article 363(1), meeting in trade configuration pursuant to Article 363(7), of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and its Member States, of the one part, and the Republic of Armenia, of the other part ('the Agreement'), in connection with the envisaged adoption of the Mediation Mechanism, the Rules of Procedure and the Code of Conduct for dispute settlement procedures pursuant to Article 319(3) and Article 335(2) of the Agreement.

This proposal sets out the necessary procedures enabling the European Union and the Republic of Armenia ('the Parties') to effectively address bilateral disputes concerning the application and interpretation of the Agreement, without supplementing or amending the institutional framework of the Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Armenia Comprehensive and Enhanced Partnership Agreement

The Agreement establishes a comprehensive and enhanced partnership between the Parties within the limits of their respective competences, based on common interest and on the deepening of the relationship in all areas of its application.

It was concluded by the Council of the European Union on 26 June 2020 after obtaining the consent of the European Parliament on 4 July 2018. The Agreement was provisionally applied since 1 June 2018 and entered into force on 1 March 2021.

2.2. The Partnership Committee

Article 363(1) of the Agreement establishes the Partnership Committee. According to Article 363(7) of the Agreement, the Partnership Committee shall meet in a specific configuration composed of representatives of the Parties to address all issues related to Title VI (Trade and Trade Related Matters). Article 363(6) of the Agreement stipulates that all decisions of the Partnership Committee shall be taken by agreement between the Parties, following the completion of their respective internal procedures. Pursuant to Article 363(6) of the Agreement, those decisions shall be binding upon the Parties, which shall take appropriate measures to implement them.

2.3. The envisaged act of the Partnership Committee

According to Article 319(3) of the Agreement, the Partnership Committee shall adopt by decision the Mediation Mechanism at its first meeting and may decide amendments thereto.

Pursuant to Article 335(2) of the Agreement, the Partnership Committee shall adopt by decision the Rules of Procedure and the Code of Conduct at its first meeting and may decide amendments thereto.

The Mediation Mechanism, the Rules of Procedure and the Code of Conduct have not been adopted in the first meeting of the Partnership Committee on 25 September 2018. This is due to revision work done by the Union on the textual templates, including experience from past dispute proceedings of the Union with Korea, Ukraine, the South African Customs Union and Algeria. The revised texts have been accepted by Armenia in the meeting of the Partnership Committee on 17 October 2023.

The Mediation Mechanism provides for the facilitation of finding a mutually agreed solution between the Parties through a comprehensive and expeditious procedure with the assistance of a mediator.

The Rules of Procedure set out the procedures that have to be followed from the rise of a dispute between the Parties to its settlement.

The Code of Conduct establishes the rules that arbitrators and mediators have to adhere to in dispute settlement proceedings, elaborating their duties, rights and obligations.

The draft proposal of the Mediation Mechanism, the Rules of Procedure and the Code of Conduct for dispute settlement procedures prepared between the Parties could be adopted by the Partnership Committee.

In the meeting of the Partnership Committee on 17 October 2023, the Parties have accepted the English language as the only authentic language for the decision of the Partnership Committee. The adoption in English is appropriate in view of Rule 48 of the Rules of Procedure which sets English as fall-back language for dispute settlement proceedings. In addition, the Mediation Mechanism, the Rules of Procedure and the Code of Conduct are only relevant for the organisation of the procedure regarding disputes between the Parties. They have no direct effect on citizens and businesses of the Union.

Translations in all official languages of the Union may be provided for the publication of the decision of the Partnership Committee in the Official Journal of the European Union for information purposes.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The position to be taken on the Union's behalf should be to support the adoption of the Mediation Mechanism, the Rules of Procedure and the Code of Conduct. The position should be based on the draft Decision of the Partnership Committee attached to the proposed Council Decision establishing the position of the Union.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union ('TFEU') provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

The concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'¹.

4.1.2. Application to the present case

The Partnership Committee is a body set up by the Agreement.

¹ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

According to Articles 319(3) and 335(2) of the Agreement, the Partnership Committee is authorised to adopt the Mediation Mechanism, the Rules of Procedure and the Code of Conduct, complementing the operational frame of the Dispute Settlement Chapter of the Agreement (Chapter 13 of Title VI).

This act, which the Partnership Committee is called upon to adopt, constitutes an act having legal effects as Article 363(6) of the Agreement provides that decisions adopted by the Partnership Committee are binding on the Parties.

The envisaged act does not supplement or amend the institutional framework of the Agreement. The Mediation Mechanism, the Rules of Procedure and the Code of Conduct are instruments to support the functioning of the Dispute Settlement Chapter of the Agreement. They operate as Annexes to this Chapter providing for the effective application and interpretation of the Agreement, but do not add substantive provisions altering the Agreement and its institutional framework.

Therefore, the procedural legal basis for the proposed Council Decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf.

4.2.2. Application to the present case

According to Article 207(1) TFEU, the common commercial policy particularly encompasses ‘changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies’.

The Agreement includes the Dispute Settlement Chapter as an integral part in its Chapter 13 of Title VI. The Dispute Settlement Chapter of the Agreement is directly linked to the common commercial policy of the Union. It guarantees the efficient settling of bilateral disputes concerning the application and interpretation of the Agreement between the Union and Armenia. The disputes concerned would cover the interpretation and application of provisions of the Agreement relating to trade and trade related matters. The envisaged act adopts Annexes to the Dispute Settlement Chapter to ensure the proper operation of the dispute settlement proceedings on trade and trade related matters. The main objective and content of the envisaged act relate to the common commercial policy through the link to dispute settlement.

Therefore, the substantive legal basis of the proposed Council Decision is Article 207(4), first subparagraph TFEU.

4.3. Conclusion

The legal basis of the proposed Council Decision is Article 207(4), first subparagraph TFEU, in conjunction with Article 218(9) TFEU.

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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 the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Comprehensive and Enhanced Partnership Agreement between the European Union and its Member States, of the one part, and the Republic of Armenia, of the other part² ('the Agreement'), has been provisionally applied since 1 June 2018 and entered into force on 1 March 2021.
- (2) Articles 319(3) and 335(2) of the Agreement require the Partnership Committee, meeting in trade configuration as set out in Article 363(7) of the Agreement, to adopt at its first meeting after the entry into force of the Agreement the Mediation Mechanism, the Rules of Procedure and the Code of Conduct for the dispute settlement procedures under Chapter 13 of Title VI of the Agreement.
- (3) The Mediation Mechanism, the Rules of Procedure and the Code of Conduct have not been adopted since the first meeting of the Partnership Committee on 25 September 2018.
- (4) A revised draft proposal of the Mediation Mechanism, the Rules of Procedure and the Code of Conduct for dispute settlement has been prepared between the Parties and should be adopted by the Partnership Committee.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Partnership Committee regarding the adoption of the Mediation Mechanism, the Rules of Procedure and the Code of Conduct to dispute settlement.
- (6) The Mediation Mechanism, the Rules of Procedure and the Code of Conduct complement the Agreement and should be published in the Official Journal of the European Union,

² OJ L 23, 26.1.2018, p. 4.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Partnership Committee established by the Agreement regarding the adoption of the Mediation Mechanism, the Rules of Procedure and the Code of Conduct for dispute settlement shall be based on the text of the draft decision of the Partnership Committee attached to this Decision.

Minor technical corrections to the draft decision may be agreed to by the representatives of the Union within the Partnership Committee without further decision of the Council.

Article 2

After its adoption, the decision of the Partnership Committee shall be published in the Official Journal of the European Union.

Article 3

This Decision shall be addressed to the Commission.

Done at Brussels,

*For the Council
The President*