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2023/0324 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union 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 Georgia, of the other part, with regard to the amendment of Annex XXII of the Association Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the EU-Georgia Association Council in connection with the envisaged adoption of a Decision concerning the amendment of Annex XXII to the EU-Georgia Association Agreement. This Annex XXII concerns taxation.

2. CONTEXT OF THE PROPOSAL

2.1. The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, on the other part

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part ('the Agreement') aims to deepen political and economic relations between the EU and Georgia, also through the creation of a Deep and Comprehensive Free Trade Area (DCFTA). It provides a framework for a progressive achievement of political association and economic integration between the EU and Georgia. It provides commitments to reform sectors of the Georgian economy in line with the EU acquis, including the objective of increasing market integration and regulatory approximation towards key elements of the EU acquis linked to environment; climate action; company law, accounting and auditing and corporate governance; consumer policy; and public health sectors, based on the EU's acquis. The Agreement entered into force on 1st July 2016.

2.2. The EU-Georgia Association Council

The EU-Georgia Association Council is the highest formal institution established under the EU-Georgia Association Agreement to supervise the implementation of the Agreement and periodically reviews the functioning of the Agreement in the light of its objectives. It was established in line with Article 404 of the Agreement.

The Association Council meets at ministerial level and at regular intervals, at least once a year, and when circumstances require. It consists of members of the Council of the European Union and members of the European Commission, on the one hand, and of members of the Government of Georgia, on the other.

It is chaired in turn by a representative of the Union and a representative of Georgia. The Association Council has the power to take decisions within the scope of the Agreement. The decisions are binding upon the Parties, which shall take appropriate measures in line with provisions of the Agreement to implement the decisions taken. It may also adopt recommendations. Such decisions or recommendations are adopted by agreement between the Parties, following the completion of respective internal procedures.

2.3. The envisaged act of the EU- Georgia Association Council

The European Commission is to adopt a proposal for a Council decision establishing the Union position on the decision to be taken in the Association Council in relation to the amendment of Annex XXII (approximation of Tax legislation).

The purpose of the envisaged act is to propose an amendment of Annex XXII of the Agreement.

The envisaged act will become binding on the parties in accordance with Article 406 of the Agreement, which provides: ‘For the purpose of attaining the objectives of this Agreement, the Association Council shall have the power to take decisions within the scope of this Agreement. The decisions shall be binding upon the Parties, which shall take appropriate measures, including, if necessary, action by bodies established under this Agreement, in line with provisions of this Agreement to implement the decisions taken’.

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

The present proposal for a Council decision establishes the Union position on the decision to be taken in the Association Council established by the Agreement in relation to the amendment of Annex XXII (approximation of Tax legislation) of the Association Agreement.

The act, which the Association Council is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 406 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part.

The amendment of the Annex XXII is necessary in order to reflect the evolution of the Georgian national legislation that has taken place in the taxation areas since the conclusion of negotiations of the Agreement in November 2013.

The two parties shall develop their cooperation and harmonise policies in counteracting and fighting fraud and smuggling of excisable products. This cooperation will include, inter alia, the gradual approximation of excise duty rates on tobacco products.

The proposal is consistent with the Parties’ obligations set out in Article 283 and 285 of the Agreement.

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 EU-Georgia Association Council is a body set up by an agreement, namely the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, on the other part.

Article 406(3) of the Agreement provides that the Association Council shall have the power to update or amend the Annexes to this 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.

Article 283 of the Agreement provides that the Parties shall develop their cooperation and harmonise policies in counteracting and fighting fraud and smuggling of excisable products. This cooperation will include, inter alia, the gradual approximation of excise duties on tobacco products, as far as possible, taking into account the constraints of the regional context, and in line with the World Health Organisation Framework Convention on Tobacco Control. To that end, the Parties will look to strengthen their cooperation within the regional context.

Article 285 of the Agreement provides that Georgia will carry out approximation of its legislation to the EU acts and international instruments referred to in Annex XXII to this Agreement in accordance with the provisions of that Annex.

The act which the EU-Georgia Association Council is called upon to adopt constitutes an act having legal effects.

The envisaged act will be binding under international law in accordance with Article 406 of the Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed 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. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act is to amend Annex XXII (Approximation of tax legislation) related to excise duties on tobacco products in line with Georgian commitments to approximate its legislation to the Agreement.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Article 207 in conjunction with Article 218(9) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 285 of the Agreement, in conjunction with Article 207 and Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EU-Georgia Association Council will amend Annex XXII it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States of the one part, and Georgia, of the other part ('the Agreement') was concluded by the Union by Council Decision 2014/494/EU and entered into force on 1 July 2016.
- (2) Pursuant to Article 406(3) of the Agreement, the Association Council has the power to update or amend the Annexes to the Agreement.
- (3) Pursuant to Article 283 of the Agreement the Parties shall develop their cooperation and harmonise policies in counteracting and fighting fraud and smuggling of excisable products. This cooperation will include, inter alia, the gradual approximation of excise rates on tobacco products, as far as possible, taking into account the constraints of the regional context, and in line with the World Health Organisation Framework Convention on Tobacco Control. To that end, the Parties will look to strengthen their cooperation within the regional context.
- (4) Pursuant to Article 285 of the Agreement, Georgia will carry out approximation of its legislation to the EU acts and international instruments referred to in Annex XXII to this Agreement in accordance with the provisions of that Annex.
- (5) The Association Council, during its eighth session/meeting is to adopt decision regarding the amendment of Annex XXII.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Association Council, as the envisaged decision will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the eighth session or meeting of the EU-Georgia Association Council shall be based on the draft of the annex attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*