



Brussels, 29.5.2017
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2017/0105 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the Union within the Sanitary and Phytosanitary 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

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 by the Sanitary and Phytosanitary Sub-Committee under 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') on the modification of Annex V of the Agreement. The Agreement was signed on 27 June 2014, and is provisionally applied in part, since 1 January 2016.

The proposed modification aims to implement the provisions of Chapter 4 (Sanitary and Phytosanitary Measures) of Title IV (Trade and trade-related matters) of the Agreement. In particular, in Article 64(4) of the Agreement Ukraine committed to submit a list of Union sanitary and phytosanitary *acquis* to which it intends to approximate its domestic legislation. That list is to be added to Annex V of the Agreement, by decision of the EU-Ukraine Sanitary and Phytosanitary Sub-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 free-trade area between the parties. This proposal implements the Agreement's provisions that aim to boost agricultural trade between the parties and in particular improve agricultural export capacity of Ukraine, on the basis of the Union *acquis*.

- **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 set up by the Agreement is the Treaty on the Functioning of the European Union ('TFEU'), 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 Ukraine.

- **Choice of the instrument**

This proposal is in accordance with Article 218(9) of the 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**

Ukraine prepared the list of Union *acquis* to which it intends to approximate its domestic legislation, in line with appropriate domestic procedures. EU stakeholder consultations are not applicable to this proposal.

- **Collection and use of expertise**

The Union made its expertise in sanitary, phytosanitary and animal welfare matters available to the authorities of Ukraine for the purpose of preparing the list of Union *acquis* intended for approximation by that partner country.

- **Impact assessment**

The trade and trade-related provisions of the Agreement have been subject to the Commission DG Trade's Trade Sustainability Impact Assessment of 2007, 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 Ukraine. This proposal does not have any 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 committed to report annually on the implementation of Title IV (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 amendment of Annex V to the Agreement. In accordance with Article 64 of the Agreement, that Annex is to list the Union *acquis* to which the Ukraine intends to approximate its legislation in the area of sanitary, phytosanitary and animal welfare measures, for the purpose of achieving a status of equivalence for a product or a group of products, as provided for in Article 66 of the Agreement.

Ukraine prepared such a list of Union *acquis* in accordance with its domestic procedures, submitted the proposal in June 2016, and finalised it recently.

The EU-Ukraine Sanitary and Phytosanitary Sub-Committee is empowered to take a decision on modification of Annex V in accordance with Article 74 of the Agreement. In line with the provisions of paragraph 2 of that Article, the Sub-Committee monitors the implementation of Chapter 4 (Sanitary and Phytosanitary Measures) of Title IV (Trade and trade-related matters) of the Agreement and takes decisions, as appropriate, on the modification of Annexes IV to XIV to the Agreement.

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 486(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 Ukraine, of the other part, ('the Agreement') provide for the provisional application of the Agreement in part, as specified by the Union.
- (2) Article 1 of Council Decision 2014/691/EU¹ specifies the provisions of the Agreement to be applied provisionally, including the provisions on the sanitary, phytosanitary and animal welfare measures and the related Annexes IV to XIV of the Agreement. In accordance with Article 486(4) of the Agreement, the provisional application of those provisions is effective from 1 January 2016.
- (3) Article 64 of the Agreement provides that Ukraine is to gradually approximate its sanitary and phytosanitary and animal welfare law to that of the Union as set out in Annex V to that Agreement.
- (4) Article 64(4) of the Agreement commits Ukraine to submit a list of the Union acquis regarding sanitary, phytosanitary and animal welfare to which it intends to approximate its domestic legislation. That approximation list is to serve as a reference document for the implementation of Chapter 4 (Sanitary and Phytosanitary Measures) of Title IV (Trade and trade-related matters) of the Agreement, and is to be added to Annex V to the Agreement. Accordingly, Annex V to the Agreement is to be modified by a decision of the Sanitary and Phytosanitary Sub-Committee, as set out in Article 74 of the Agreement.
- (5) Ukraine submitted the above-mentioned list of the Union acquis to the European Commission in June 2016.

¹ Council Decision 2014/691/EU of 29 September 2014 amending Decision 2014/668/EU 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 289, 3.10.2014, p. 1–2)

- (6) It is therefore appropriate to establish the position to be taken on behalf of the Union within the Sanitary and Phytosanitary Sub-Committee in relation to the modification of Annex V to the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union within the Sanitary and Phytosanitary 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 ('the Agreement'), in relation to the modification of Annex V of the Association Agreement shall be to support the draft Decision in Annex.
2. Minor changes to the draft Decision may be agreed to by the representatives of the Union within the Sanitary and Phytosanitary Sub-Committee without further decision of the Council.

Article 2

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

Done at Brussels,

For the Council
The President