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Proposal for a

**COUNCIL DECISION**

**on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL/BACKGROUND**

The attached proposal constitutes the legal instrument for authorising the signature and provisional application of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part.

Relations between the EU and Ukraine are currently based on the Partnership and Co-operation Agreement which entered into force in 1998. At the 13<sup>th</sup> EU-Ukraine Summit in Paris in 2008, the leaders of the EU and Ukraine agreed that the Partnership and Co-operation Agreement should be succeeded by an Association Agreement.

The EU-Ukraine Association Agreement is the first of a new generation of Association Agreements with Eastern Partnership countries. Negotiations of this comprehensive and ambitious Agreement between the EU and Ukraine were launched in March 2007. In February 2008, following the decision of accession of Ukraine to the WTO, the EU and Ukraine launched negotiations on a Deep and Comprehensive Free Trade Area (DCFTA), as a core element of the Association Agreement.

The Association Agreement aims to accelerate the deepening of political and economic relations between Ukraine and the EU, as well as Ukraine's gradual access to parts of the EU Internal Market including by setting up a DCFTA. It is a concrete way to exploit the dynamics in EU-Ukraine relations, focusing on support to core reforms, on economic recovery and growth, governance and sector co-operation. The Agreement also constitutes a reform agenda for Ukraine, based on a comprehensive programme of approximation of Ukraine's legislation to EU norms, around which all partners of Ukraine can align themselves and focus their assistance. EU assistance to Ukraine is linked with the reform agenda as it emerges from the Agreement. The Comprehensive Institutional Building Programme is particularly important in this regard.

At the 15th Ukraine-EU Summit of 19 December 2011, the EU and the President of Ukraine noted that a common understanding on the text of the Association Agreement was reached. On 30 March 2012, the chief negotiators of the European Union and Ukraine initialled the text of the Association Agreement. The trade negotiators from both sides initialled the DCFTA part of the Agreement on 19 July 2012.

On 10 December 2012, the Foreign Affairs Council adopted Conclusions on Ukraine, expressing the EU's commitment to the signing of the Association Agreement, including the DCFTA, as soon as the Ukrainian authorities demonstrate determined action and tangible progress in the three areas (elections, selective justice, and overall reforms as set out in the Association Agenda), possibly by the time of the Eastern Partnership Summit in Vilnius in November 2013. The Council also indicated that the signature of the Agreement could be accompanied by opening for provisional application of parts of the Agreement. The provisional application is foreseen in view of keeping mutual economic interests and shared values in equilibrium, and the common will of the EU and Ukraine to start implementing and enforcing various parts of the Agreement in order to advance an early reform impact on sector specific issues before the conclusion of the Agreement.

As requested by the 10 December Council Conclusions, the High Representative and the Commission are monitoring and keeping the Council informed about progress achieved by

Ukraine in meeting the requirements set out by the Council conclusions, including in the context of the preparations of the June 2013 EU-Ukraine Cooperation Council and November 2013 Eastern Partnership Summit in Vilnius.

## **2. RESULTS OF THE NEGOTIATIONS**

Member States have been regularly informed and consulted in the relevant Council Working Groups, notably in COEST and Trade Policy Committee (TPC), at all stages of the negotiations. The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Association Agreement is acceptable to the Union.

The final content of the Association Agreement can be summarised as follows:

The Agreement establishes an association between the Union and its Member States of the one part and Ukraine of the other part. This constitutes a new stage in the development of EU-Ukraine contractual relations, aiming at political association and economic integration and leaving open the way for further progressive developments.

The overall aims of the association focus on promoting a gradual rapprochement between the parties on the basis of common values; providing enhanced political dialogue; promoting, preserving and strengthening peace and stability in both the regional and international dimensions; establishing conditions for enhanced economic and trade relations leading towards Ukraine's gradual access to parts of the EU Internal Market; enhancing Justice, Freedom and Security (JFS) cooperation with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms, and establishing conditions for increasingly close co-operation in other areas of mutual interest.

General Principles of the Agreement include a specific set of "essential elements", the violation of which by one of the Parties could give rise to specific measures under the Agreement, including the suspension of rights and obligations. These elements are respect for democratic principles, human rights and fundamental freedoms as defined in relevant international instruments; respect for the rule of law; promotion of respect for sovereignty and territorial integrity, inviolability and independence; and countering the proliferation of weapons of mass destruction, related materials and means of delivery.

Other General Principles of the Agreement relate to the principles of a free market economy, good governance, the fight against corruption, the fight against trans-national organized crime and terrorism, the promotion of sustainable development and effective multilateralism.

The Agreement sets out the aims of an enhanced and strengthened political dialogue promoting gradual convergence on foreign and security matters with the aim of Ukraine's ever deeper involvement in the European security area. The Agreement establishes a number of fora for the conduct of political dialogue, and provides for dialogue and co-operation on domestic reform based on the common principles set out by the Parties. There are also provisions for intensified dialogue on foreign and security policy, including CSDP, for the promotion of peace and international justice by ratifying and implementing the Rome Statute of the ICC, and for joint efforts on regional stability, conflict prevention, crisis management, military/technological co-operation, anti-terrorism, anti-proliferation and disarmament and arms control.

In the field of JFS, the Agreement pays particular attention to the rule of law and to the reinforcement of judicial institutions and practices. The Agreement sets out the framework for co-operation on migration, asylum and border management, on personal data protection, money laundering and terrorism financing and on anti-drugs policy. This Title contains provisions on movement of persons, including on readmission, on visa facilitation and on the gradual steps towards a visa-free regime in due course (provided that relevant conditions for well-managed and secure mobility are in place). Treatment and mobility of workers are also covered, as is a commitment to further development of judicial co-operation in civil and criminal matters - making full use of relevant international and bilateral instruments.

The Association Agreement foresees a wide range of sector cooperation, focusing on support to core reforms, economic recovery and growth, governance and sector co-operation in more than 30 areas, such as: energy, transport, environment protection, industrial and small and medium enterprise cooperation, social development and protection, equal rights, consumer protection, education, training and youth as well as cultural cooperation. In all of these areas, enhanced co-operation starts from the basis of current frameworks, both bilateral and multilateral, with the aim of more systematic dialogue and exchange of information and good practice. Key to the sectoral co-operation chapters is a comprehensive menu of regulatory approximation set out in annexes to the Agreement. Specific schedules for transposition and implementation by Ukraine of selected parts of the EU *acquis* will provide a focus for on-going co-operation, and will form the core of Ukraine's domestic reform and modernization agenda.

The Agreement includes an updated institutional framework encompassing co-operation and dialogue fora from the Summit level down the level of technical subcommittees. Specific decision-making roles are foreseen for an Association Council, and by delegation for an Association Committee, which may also meet in a specific configuration to address trade issues. Fora for civil society, notably the representative organisations for social partners, trade-unions and employers, and parliamentary co-operation are also foreseen. The Agreement also includes provisions on monitoring, fulfilment of obligations and dispute settlement (including separate provisions for trade-related issues).

With regards to the Free Trade Area part of the Agreement (DCFTA), the Commission has reached the objectives set out in the negotiating directives to dismantle import duties on substantially all trade, while providing a strong binding framework to ban all arbitrary trade-restrictive measures, including export duties and quantitative export restrictions. The DCFTA foresees specific, time-bound provisions for sensitive products and issues, especially through transitional periods.

In terms of technical barriers to trade, Ukraine will progressively adapt its technical regulations and standards to those of the EU. Negotiations for an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) will ensure that in specific sectors Ukrainian legislation and market surveillance systems will be in line with those in the EU, so that trade between the Parties will take place under the same conditions as between EU Member States.

As regards trade in animals, plants and their products the DCFTA will provide for the alignment of SPS and animal welfare legislation to the EU's and will ensure the setting up of a rapid consultation mechanism to solve SPS-related trade irritants, including a specific rapid alert and early warning system for veterinary and phyto-sanitary emergencies.

Building on current cooperation on customs matters, the Protocol on mutual administrative assistance in customs matters provides a stronger legal framework for efforts to ensure the correct application of customs legislation and the fight against infringement.

As regards establishment, the DCFTA provides for national treatment and most favoured nation treatment of companies, subject to limited reservations, and the possibility to access the internal market in the fields of financial, telecommunications, postal and courier, and international maritime services - following a process of legislative approximation when Ukraine fully and effectively implements the *EU acquis* in these fields.

The DCFTA will provide high levels of protection for all EU agricultural Geographical Indications (GIs), not only those relating to wines and spirits, and any new products added to the list of protected GIs through regular consultations. Moreover, the DCFTA includes provisions on copyright, designs (including unregistered ones), and patents which complement and up-date the TRIPS Agreement and include provisions for the enforcement of IPRs based on the EU's internal rules.

In terms of integration of the public procurement markets, the DCFTA constitutes an unprecedented example in allowing possible access of Ukraine, as a non EEA Member to the EU Public Procurement Market, following a period of transition during which Ukraine will adopt current and future EU legislation on public procurement. As a result, suppliers and service providers will have mutual market access to the public procurement markets, exception made for the defence sector.

With the implementation of the DCFTA, Ukraine will align its competition law and enforcement practice to that of the *EU acquis* in a number of fields. State-controlled enterprises will be subject to the same provisions, ensuring that no discrimination by monopolies will be allowed.

The section on subsidies is particularly significant in so far as it contains a commitment on behalf of Ukraine to adopt a domestic system of state aid control similar to what exists in the EU and to establish an operationally independent authority entrusted with the control of state aid. On trade-related energy issues, the DCFTA introduces binding provisions on pricing, including via the prohibition of dual pricing, on transit of energy products with a view to ensuring the security of supply, and on non-discriminatory treatment of energy-related investments.

Commitments on the enforcement of multilateral labour and environmental standards are provided for, along with a commitment to refrain from waiving or derogating from such standards in a manner that affects trade or investment between the parties.

Effective settlement procedures based on the model of the WTO Dispute Settlement Understanding will provide for swift resolution of trade disputes, including by allowing the affected party to impose proportionate sanctions, with faster procedures for urgent energy disputes.

Specific provisions on transparency and dialogue with the civil society and stakeholders have also been agreed, as well as administrative cooperation especially in the customs sector.

In perspective, Ukraine's closer economic integration with the EU through the DCFTA will be a powerful stimulant to the country's economic growth. As a core element of the Association Agreement, the DCFTA will create business opportunities in both the EU and

Ukraine and will promote real economic modernization and integration with the EU. Higher standards of products, better services to citizens, and above all Ukraine's readiness to compete effectively in international markets should be the result of this process.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

On the part of the Union, the legal basis for the signature and provisional application of this Agreement is Article 217, in conjunction with Article 218(5) and the second subparagraph of Article 218(8), as well as Article 218(7) of TFEU.

The attached proposal constitutes the legal instrument for the signature and provisional application of the Association Agreement.

In light of the above-mentioned results - and provided that the Ukrainian authorities demonstrate determined action and tangible progress in the three areas identified by the 10 December 2012 Council Conclusions on Ukraine – the Commission proposes that the Council decides that the Association Agreement between the European Union and its Member States, of the one part, and Ukraine on the other part should be signed on behalf of the Union and establishes appointment of the person(s) duly empowered to sign on behalf of the Union.

The proposal foresees that parts of the Agreement will be applied provisionally by the Union without it prejudicing the allocation of competences in accordance with the Treaties.

With a view to taking into account the enhanced role of the European Parliament, the Commission considers that the Council should send the notification referred to in Article 486(4) of the Agreement only after a certain lapse of time so as to allow the European Parliament to express its views. The Commission services and the EEAS are ready to work with the Council and the European Parliament so that selected parts of the Association Agreement, including its DCFTA, can be provisionally applied in 2014.

The fact that the Commission has submitted its proposal as an agreement of the Union and its Member States and Ukraine is related to the genesis of this Agreement under the rules of the Treaty before the entry into force of the Treaty of Lisbon.

Proposal for a

## **COUNCIL DECISION**

**on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(5) and the second subparagraph of Article 218(8) thereof, as well as Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 22 January 2007 the Council authorised the Commission to open negotiations with Ukraine for the conclusion of a new Agreement between the European Union and Ukraine to replace the Partnership and Cooperation Agreement.
- (2) Taking into account of the close historical relationship and progressively closer links between the Parties as well as their desire to strengthen and widen relations in an ambitious and innovative way, the negotiations on the Association Agreement were successfully concluded by the initialling of the Agreement in 2012.
- (3) Therefore, the Agreement should be signed on behalf of the Union and applied on a provisional basis in accordance with its Article 486, pending its conclusion at a later date and the attached Declaration(s) be approved.
- (4) Article 486 of the Agreement provides for the provisional application of the Agreement before its entry into force,
- (5) Pursuant to Article 218(7) of the Treaty on the Functioning of the European Union, it is appropriate for the Council to authorise the Commission to approve modifications to be adopted by the Association Committee in its Trade configuration pursuant to Article 465(4) of the Agreement, as proposed by the Sub-Committee on Geographical Indications pursuant to Article 211 of the Agreement.
- (6) It is appropriate to set out the relevant procedures for the protection of geographical indications which are given protection pursuant to the Agreement.
- (7) The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.

HAS ADOPTED THIS DECISION:

*Article 1*

The signing of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

*Article 2*

The Declaration(s) attached to this Decision shall be approved on behalf of the Union.

*Article 3*

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement and by the Member State holding the Presidency of the Council.

*Article 4*

1. Pending its entry into force, the following parts of the Agreement shall be applied provisionally, in accordance with Article 486 of the Agreement and subject to the notifications provided for therein:

- Title I;
- Title II;
- Title III: Articles 14, 15, 19-22;
- Title IV;
- Title V: Chapter 1(with the exception of Article 342), Chapters 6, 7, 12, 17, 18, 20, 26, 28, and Articles 353 and 428;
- Title VI;
- Title VII, with the exception of Article 479(1), in so far as necessary for the provisional application of this Agreement;
- Annexes I to XXVI, Annex XXVII, with the exception of nuclear issues, Annexes XXVIII to XXXVI, XXXVIII to XLI, XLIII and XLIV as well as the Protocols I to III.

2. The date from which the Agreement will be provisionally applied will be published in the *Official Journal of the European Union* by the Council General Secretariat.

*Article 5*



For the purposes of Article 211 of the Agreement, modifications of the Agreement through decisions of the Sub-Committee on Geographical Indications shall be approved by the Commission on behalf of the Union. Where interested parties cannot reach agreement following objections relating to a geographical indication, the Commission shall adopt such a position on the basis of the procedure laid down in Article 57(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs<sup>1</sup>.

#### *Article 6*

1. A name protected under Sub-section 3 “Geographical Indications” of Chapter 9 of Title IV of the Agreement may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits conforming to the corresponding specification.

2. In accordance with Article 207 of the Agreement, the Member States and the institutions of the Union shall enforce the protection provided for in Articles 204 to 206 of Title IV of the Agreement, including at the request of an interested party.

#### *Article 7*

This Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.

#### *Article 8*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council  
The President*

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<sup>1</sup> OJ L 343 14.12.2012, p.1