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2017/0252 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union within the Customs 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 Georgia, of the other part, as regards the replacement of Protocol I to that Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation, by a new protocol which refers to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be adopted on behalf of the Union in the Customs Sub-Committee established by the Association Agreement ('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, in connection with the envisaged adoption of a decision as regards the replacement of Protocol I to that Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation, by a new protocol which refers to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin[1] ('the Convention')

2. CONTEXT OF THE PROPOSAL

2.1 Protocol I to the Association Agreement

The Agreement establishes a preferential trade regime – the Deep and Comprehensive Free Trade Area (DCFTA). This regime increases market access between the EU and Georgia. Protocol I to the Agreement concerns the definition of the concept of 'originating products' and methods of administrative cooperation. The agreement entered into force on 1 July 2016.

2.2. The EU-Georgia Customs Sub-Committee

Article 38 of Protocol I provides that the Customs Sub-Committee established by the Agreement may decide to amend Protocol I to the Association Agreement.

2.3. The envisaged act of the EU-Georgia Customs Sub-Committee

The EU-Georgia Customs Sub-Committee is to adopt a decision regarding the replacement of Protocol I to the Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation, by a new protocol which refers to the Convention.

The purpose of the envisaged act is to ensure the effective implementation of the Convention.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The Convention lays down provisions on the origin of goods traded under relevant Agreements concluded between the Contracting Parties. The EU signed the Convention on 15 June 2011. Georgia requested to accede to the Convention on 23 September 2015 and with its Decision No 1 of 28 September 2016[2], the Joint Committee of the Convention decided that Georgia should be invited to accede to the Convention.

The EU and Georgia deposited their instrument of acceptance with the depositary of the Convention on 26 March 2012 and 17 May 2017 respectively. As a consequence, in application of its Article 10(3), the Convention entered into force in relation to the EU and Georgia on 1 May 2012 and on 1 July 2017 respectively.

Article 6 of the Convention provides that each Contracting Party shall take appropriate measures to ensure that the Convention is effectively applied. The proposed decision of the EU-Georgia Customs Sub-Committee is a procedural step necessary for achieving the main objective of the Convention, which is to replace the protocols on rules of origin in the

[1] OJ L 54, 26.2.2013, p. 4.
[2] OJ L 329, 3.12.2016, p. 118.

Agreements between Contracting Parties to the Convention by a Protocol which refers to the Convention.

No recourse to a stakeholder's consultation was therefore necessary.

Furthermore, it has not been necessary to conduct an impact assessment, since the proposed amendments are technical in nature and do not affect the substance of the protocol on rules of origin currently in effect.

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 notion 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 are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'.

4.1.2. Application to the present case

The EU-Georgia Customs Sub-Committee 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, of the other part.

The act which the EU-Georgia Customs Sub-Committee is called upon to adopt constitutes an act having legal effects.

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

The procedural legal basis for the proposed decision, therefore, 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 adopted on behalf of the Union. 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 relate to the common commercial policy.

The substantive legal basis of the proposed decision, therefore, is Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207 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 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 of 16 June 2014[3] and entered into force on 1 July 2016.

(2) Pursuant to Article 38 of Protocol I to the Agreement, the Customs Sub-Committee established by the Agreement may adopt amendments to the provisions of Protocol I.

(3) The EU-Georgia Customs Sub-Committee is to adopt a decision on the replacement of Protocol I to the Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation, by a new protocol which refers to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin[4] ('the Convention').

(4) It is appropriate to establish the position to be adopted on behalf of the Union in the EU-Georgia Customs Sub-Committee, as the decision will be binding upon the Union.

(5) The Convention lays down provisions on the origin of goods traded under relevant agreements concluded between the Contracting Parties. The Convention entered into force in relation to the Union and Georgia on 1 May 2012 and on 1 July 2017 respectively.

(6) Article 6 of the Convention provides that each Contracting Party is to take appropriate measures to ensure that the Convention is effectively applied. To that effect, Protocol I of the Agreement should be replaced by a new protocol which, with regard to the rules of origin, refers to the Convention.

[3] OJ L 261, 30.8.2014, p. 1.
[4] OJ L 54, 26.2.2013, p. 4.

(7) As the act of the EU-Georgia Customs Sub-Committee will amend Protocol I to the agreement, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

(8) In the EU-Georgia Customs Sub-Committee, the Union is to be represented by the Commission in accordance with Article 17(1) of the Treaty on European Union (TEU),

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union within the Customs 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 Georgia, of the other part, shall be based on the draft decision of the Customs Sub-Committee attached to this Decision.

Minor changes to the draft decision of the Customs Sub-Committee may be agreed to by the representatives of the Union in the Customs Sub-Committee without further decision of the Council.

Article 2

After its adoption, the decision of the Customs Sub-Committee shall be published in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President