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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Association Committee in Trade configuration 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 part on the European Union and Ukraine granting each other internal market treatment with respect to the sector of roaming on public mobile communications networks

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the Council decision establishing the position to be taken on the European Union's behalf in the Association Committee in Trade configuration (the 'Trade Committee') in connection with the envisaged adoption of a decision to grant reciprocal internal market treatment with respect to the sector of roaming on public mobile communications networks. This proposal is pursuant to Article 4(3) of Annex XVII (Regulatory approximation) to 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 part¹ (the 'Agreement').

Based on the Union's monitoring and formal assessment, in accordance with Appendix XVII-6 of Annex XVII to the Agreement, and the assessment the Union completed for the purpose of Article 4(2) of Annex XVII to the Agreement, as submitted by the Commission and endorsed by the Council, the proposed act aims to include Ukraine in the Union's internal market with regard to the sector of roaming on public mobile communications networks. The proposed act will enable end users of mobile services to benefit, subject to certain exceptional limitations, from regulated roaming services at their domestic retail prices.

2. CONTEXT OF THE PROPOSAL

2.1. The Association Agreement

The Agreement aims to: (i) create the conditions for enhanced economic and trade relations leading towards Ukraine's gradual integration into the internal market of the Union, including by setting up a Deep and Comprehensive Free Trade Area, as stipulated in Title IV (Trade and Trade-related Matters) of the Agreement; and (ii) support Ukrainian efforts to complete the transition to a functioning market economy by means of, among other things, the progressive approximation of its legislation to that of the Union. The Agreement entered into force on 1 September 2017. Since then, Ukraine has requested further integration with regard to roaming on public mobile communications networks in the Union, in particular through internal market treatment for the purpose of such roaming. Granting internal market treatment requires approximation to the Union roaming *acquis* and the full enactment and complete and full implementation thereof in Ukrainian law. The Union has assessed that these conditions are fulfilled and should, on this basis, inform the Trade Committee and propose that the Trade Committee decides that the Parties grant each other internal market treatment with regard to the sector of roaming on public mobile communications networks.

2.2. The Association Committee in Trade configuration

Pursuant to Article 465(4) of the Agreement, all issues related to Title IV (Trade and Trade-related Matters) of the Agreement shall be addressed in the Trade Committee. According to Article 4(3) of Annex XVII to the Agreement, that Committee may decide that the Parties grant each other internal market treatment in the services sector concerned by regulatory approximation. Pursuant to Article 465(3) of the Agreement, these decisions shall be binding upon the Parties, which shall take appropriate measures to implement them. The Trade Committee shall adopt its decisions by agreement between the Parties.

2.3. The envisaged act of the Association Committee in Trade configuration

The Trade Committee is to adopt a decision to grant reciprocal internal market treatment with regard to the sector of roaming on public mobile communications networks ('the envisaged act').

¹ OJ L 161, 29.5.2014, p. 3, ELI: http://data.europa.eu/eli/agree_internation/2014/295/oj

The purpose of the envisaged act is for the Parties to the Agreement to grant each other internal market treatment as set out in Article 4(3) to (7) of Annex XVII to the Agreement.

This is in line with the objective of Ukraine's gradual regulatory approximation to the Union *acquis* as laid down in the preamble to the Agreement and Article 124 of the Agreement, which specifically concerns regulatory approximation in electronic communications.

The envisaged act will become binding on the Parties in accordance with Article 465(3) of the Agreement, which provides that: 'The Association Committee shall have the power to adopt decisions in the cases provided for in this Agreement and in areas in which the Association Council has delegated powers to it. These decisions shall be binding upon the Parties, which shall take appropriate measures to implement them. The Association Committee shall adopt its decisions by agreement between the Parties'.

As of the date determined by the envisaged act, the Union roaming *acquis*, as specified in Appendix XVII-3 of Annex XVII to the Agreement, shall be read in accordance with points 1 to 6 of Appendix XVII-1 of Annex XVII to the Agreement, unless otherwise provided in Appendix XVII-3 of Annex XVII to the Agreement.

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

The position to be adopted on the Union's behalf is to support the adoption of the envisaged act by the Trade Committee.

Annex XVII to the Agreement provides for regulatory approximation between the Parties in several sectors, including telecommunication services. Once the approximation gradually extended to all elements of the Union *acquis* referred to in Appendix XVII-3 of Annex XVII to the Agreement is fulfilled, approximation may lead to Ukraine's gradual integration into the Union internal market through the reciprocal granting of internal market treatment, in accordance with Article 4(3) of Annex XVII to the Agreement. Ukraine requested further integration in the area of roaming. Decision No 1/2023 of the EU-Ukraine Association Committee in Trade configuration² complemented Appendix XVII-3 of Annex XVII to the Agreement with the relevant acts relating to roaming. On 7 November 2024, Ukraine notified the Union that it considered that the conditions for enacting and implementing the Union *acquis* for roaming were met and requested a comprehensive assessment. Decision No 1/2025 of the EU-Ukraine Association Committee in Trade configuration³ introduced additional specific adaptations to Part A of Appendix XVII-3 of Annex XVII to the Agreement. On 6 June 2025, Ukraine supplemented its initial notification after signing into law its last remaining transposition measure.

Pursuant to Article 4(2) of Annex XVII to the Agreement, the Union carried out a comprehensive assessment and determined on its basis that Ukraine fulfils the conditions for enacting and implementing the Union *acquis* in the sector of roaming on public mobile communications networks. Pursuant to Article 4(3) of Annex XVII to the Agreement the Union informed the Trade Committee about the positive result of its comprehensive assessment.

² Decision No 1/2023 of the EU-Ukraine Association Committee in Trade configuration of 24 April 2023 modifying Appendix XVII-3 (Rules applicable to telecommunication services) of Annex XVII to 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 [2023/930] (OJ L 123, 8.5.2023, p. 38, ELI: <http://data.europa.eu/eli/dec/2023/930/oj>).

³ Decision No 1/2025 of the EU-Ukraine Association Committee in Trade configuration of 13 March 2025 modifying Part A of Appendix XVII-3 (Rules applicable to telecommunication services) of Annex XVII to 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.

On this basis, the Union should propose that the Trade Committee decides that the Parties grant each other internal market treatment with respect to the sector of roaming on public mobile communications networks, pursuant to Article 4(3) of Annex XVII to the Agreement.

This decision implements the Union's common commercial policy towards an Eastern Partner country and candidate country based on the provisions of the Agreement. It is consistent with the objective of Ukraine's gradual regulatory approximation to the Union *acquis* as laid down in the preamble to 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'⁴.

4.1.2. Application to the present case

The Trade Committee is a body established by the Agreement. The decision the Trade Committee shall adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 465(3) of the Agreement. As of the date determined by the Parties in the envisaged act, the Union roaming *acquis* specified in Appendix XVII-3 of Annex XVII to the Agreement, will need to be applied in the Union in accordance with points 1 to 6 of Appendix XVII-1 of Annex XVII to the Agreement, unless otherwise provided in Appendix XVII-3 of Annex XVII to the Agreement. The envisaged act does not supplement or amend the institutional framework of the Agreement. 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. 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

Article 207 TFEU is the legal basis for the Union's common commercial policy. In particular, the first subparagraph of Article 207(4) TFEU provides the legal basis for trade in services, with the exception of transport services, with regard to non-EU countries, including stipulations on the regulatory framework conditions for the supply of such services.

⁴ 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.

The main objective and content of the envisaged act relates to the Union's common commercial policy because the act concerns trade in telecommunication services with Ukraine. Therefore, the substantive legal basis of the proposed Council decision is Article 207 TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

The decision of the Trade Committee on the reciprocal granting of internal market treatment with respect to the sector of roaming on public mobile communications networks will produce rights and obligations in the Union and Ukraine. It is, therefore, 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(4), first subparagraph, 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 Ukraine, of the other part⁵ (the ‘Agreement’) entered into force on 1 September 2017.
- (2) Pursuant to Article 4(3) of Annex XVII to the Agreement, the Association Committee in Trade configuration (the ‘Trade Committee’) may decide that the Parties grant each other internal market treatment with respect to the services sectors concerned by regulatory approximation.
- (3) In the course of 2025, the Trade Committee should adopt a draft Decision on the European Union and Ukraine granting each other internal market treatment with respect to the sector of roaming on public mobile communications networks.
- (4) As stated in the preamble to the Agreement and in accordance with Article 124 of the Agreement, the Parties to the Agreement recognise the importance of the approximation of Ukraine’s existing legislation to that of the European Union, meaning that Ukraine is to ensure that existing legislation and future legislation should gradually be made compatible with the Union *acquis*.
- (5) Ukraine has requested further integration with regards to the roaming sector in the Union, in particular through internal market treatment for the purpose of roaming services.
- (6) Decision No 1/2023 of the EU-Ukraine Association Committee in Trade configuration⁶ complemented Appendix XVII-3 (Rules applicable to

⁵ OJ L 161, 29.5.2014, p. 3, ELI: http://data.europa.eu/eli/agree_international/2014/295/oj.

⁶ Decision No 1/2023 of the EU-Ukraine Association Committee in Trade configuration of 24 April 2023 modifying Appendix XVII-3 (Rules applicable to telecommunication services) of Annex XVII to 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 [2023/930] (OJ L 123, of 8.5.2023, p. 38, ELI: <https://eur-lex.europa.eu/eli/dec/2023/930/oj>).

telecommunication services) of Annex XVII to the Agreement with the relevant Union acts relating to roaming on public mobile communications networks.

- (7) Pursuant to Article 4(2) of Annex XVII to the Agreement, on 7 November 2024, Ukraine notified the Union that it considered that the conditions for enacting and implementing the Union *acquis* in the sector of roaming on public mobile communications networks were met and requested the Union to carry out a comprehensive assessment.
- (8) On 6 June 2025, Ukraine supplemented its initial notification after signing into law its last remaining transposition measure.
- (9) Decision No 1/2025 of the EU-Ukraine Association Committee in Trade configuration⁷ introduced certain additional specific adaptations to Part A of Appendix XVII-3 of Annex XVII to the Agreement.
- (10) Pursuant to Article 4(2) of Annex XVII to the Agreement, the Union carried out a comprehensive assessment and determined on its basis that Ukraine fulfils the conditions for enacting and implementing the Union *acquis* in the sector of roaming on public mobile communications networks.
- (11) Pursuant to Article 4(3) of Annex XVII to the Agreement the Union informed the Trade Committee about the positive result of its comprehensive assessment.
- (12) Against this background, in accordance with Article 4(3) of Annex XVII to the Agreement, the Union and Ukraine should grant each other internal market treatment with respect to the sector of roaming on public mobile communications networks.
- (13) It is therefore appropriate to set out the position to be taken on the Union's behalf in the Trade Committee as the Decision on the European Union and Ukraine granting each other internal market treatment with respect to the sector of roaming on public mobile communications networks will be binding upon the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the course of 2025 in the Association Committee in Trade configuration (the 'Trade 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 part, as regards the European Union and Ukraine granting each other internal market treatment with respect to the sector of roaming on public mobile communications networks shall be based on the draft Decision of that Committee attached to this Decision.

Article 2

⁷ Decision No 1/2025 of the EU-Ukraine Association Committee in Trade configuration of 13 March 2025 modifying Part A of Appendix XVII-3 (Rules applicable to telecommunication services) of Annex XVII to 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.

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

Done at Brussels,

*For the Council
The President*