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EUROPEAN COMMISSION

Brussels, 28.7.2010
COM(2010)407 final

2010/0218 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of a Protocol to the Partnership and Co-operation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and Ukraine, of the other part, on a Framework Agreement between the European Union and Ukraine on the general principles for the participation of Ukraine in Union programmes

(presented by the Commission)

EXPLANATORY MEMORANDUM

As part of the European Neighbourhood Policy, the gradual opening-up of certain Union programmes and agencies to the participation of European Neighbourhood Policy partner countries represents one of many measures to promote reform, modernisation and transition in the European Union's neighbourhood. This policy aspect is outlined in the Commission Communication "on the general approach to enable European Neighbourhood Policy partner countries to participate in Community agencies and Community programmes"¹.

The Council endorsed this approach on 5 March 2007².

Based upon this Communication and those conclusions, the Council, on 18 June 2007, issued directives to the Commission to negotiate Framework Agreements with Algeria, Armenia, Azerbaijan, Egypt, Georgia, Israel, Jordan, Lebanon, Moldova, Morocco, the Palestinian Authority, Tunisia and Ukraine, on the general principles for their participation in Community programmes³.

The June 2007 European Council⁴ reaffirmed the paramount importance of the European Neighbourhood Policy and endorsed a Presidency Progress Report⁵ that had been submitted to the General Affairs and External Relations Council (GAERC) meeting on 18/19 June as well as the related Council Conclusions⁶. This report recalled the Council directives to negotiate relevant additional protocols, identifying Israel, Morocco and Ukraine as being likely to be the first partner countries to benefit from these measures. Negotiations with Israel concluded in September 2007 leading to the signature of a Protocol in April 2008⁷ while those with Morocco have concluded.

In June 2007, it was decided to start negotiations with Ukraine. Negotiations with Ukraine have since been completed to the satisfaction of the Commission. The text of the protocol negotiated with Ukraine is attached.

The Commission herewith submits proposals for a Council Decision on the conclusion of the Protocol. This protocol contains a Framework Agreement on the general principles for the participation of Ukraine in Union programmes. It contains standard stipulations that are intended to be applied to all European Neighbourhood Policy partner countries with which

¹ COM (2006) 724 final of 4 December 2006;

² GAERC conclusions of 5 March 2007;

³ Council Decision (restricted) authorising the Commission to negotiate Protocols [...], Doc 10412/07;

⁴ Presidency Conclusions – Brussels, 21/22 June 2007, Doc 11177/07;

⁵ Presidency Progress Report on "Strengthening the European Neighbourhood Policy", Doc 10874/07;

⁶ Conclusions on Strengthening the European Neighbourhood Policy, adopted by the Council (General Affairs and External Relations) on 18 June 2007, Doc 11016/07;

⁷ OJEU L129/40-43 of 17.5.2008.

such protocols are to be concluded. The negotiated text also foresees that the Parties shall provisionally apply the provisions of this Protocol from the date of its signature.

According to 218(6)(a) of the Treaty on the Functioning of the European Union, the European Parliament shall be requested to give its consent to the conclusion of this Protocol.

In parallel, the Commission submits a proposal for a Council Decision on the signature and provisional application of the said Protocol.

The Council is invited to adopt the following proposed Decision.

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on the conclusion of a Protocol to the Partnership and Co-operation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and Ukraine, of the other part, on a Framework Agreement between the European Union and Ukraine on the general principles for the participation of Ukraine in Union programmes

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 19, 114, 168, 169, 172, 173 (3), 188, 192 and 352, in conjunction with Article 218(6)(a) and the second subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Protocol to the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and Ukraine, of the other part, on a Framework Agreement between the European Union and Ukraine on the general principles for the participation of Ukraine in Union programmes (hereinafter referred to as "the Protocol") was signed on behalf of the Union on ...
- (2) With regard to some of the programmes covered by the Protocol, the Treaty does not provide for powers other than those under Article 352,
- (3) The Protocol should be concluded,

HAS ADOPTED THIS DECISION:

Article 1

The Protocol to the Partnership and Co-operation Agreement between the European Communities and their Member States, of the one part, and Ukraine, of the other part, on a Framework Agreement between the European Union and Ukraine on the general principles for the participation of Ukraine in Union programmes (hereinafter referred to as "the Parties") is hereby approved on behalf of the European Union and its Member States.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council shall give the notification provided for in Article 10 of the Protocol.

Article 3

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

Done at Brussels,

For the Council
The President

PROTOCOL

to the Partnership and Co-operation Agreement between the European Communities and their Member States, of the one part, and Ukraine, of the other part, on a framework Agreement between the European Union and Ukraine on the general principles for the participation of Ukraine in Union programmes

THE EUROPEAN UNION, hereinafter referred to as “the Union”,

of the one part,

and

Ukraine,

of the other part,

hereinafter referred to as “the Parties”

Whereas

- (1) Ukraine entered into a Partnership and Co-operation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and Ukraine, of the other part, (hereinafter referred to as “the Agreement”) on 1 March 1998 (Official Journal of the European Communities L 49 of 19 February 1998).
- (2) The Brussels European Council of 17/18 June 2004 welcomed the Commission’s proposals for a European Neighbourhood Policy (ENP) and endorsed the Council conclusions of 14 June 2004.
- (3) The Council has, on numerous further occasions, repeatedly concluded in favour of this policy.
- (4) The Council, on 5 March 2007, expressed support for the general and global approach outlined in the Commission’s Communication of 4 December 2006, COM (2006) 724 final, to enable ENP partners to participate in Community agencies and Community programmes on their merits and where the legal bases so allow.
- (5) Ukraine has expressed its wish to participate in a number of Union programmes.
- (6) The specific terms and conditions, in particular, including financial contribution and reporting and evaluation procedures, regarding the participation of Ukraine in each particular programme should be determined by agreement between the European Commission, acting on behalf of the Union, and the competent authorities of Ukraine,

HAVE AGREED AS FOLLOWS:

Article 1

Ukraine shall be allowed to participate in all current and future programmes of the Union opened to the participation of Ukraine in accordance with the relevant provisions adopting these programmes.

Article 2

Ukraine shall contribute financially to the general budget of the European Union corresponding to the specific programmes in which Ukraine participates.

Article 3

Ukraine's representatives shall be allowed to take part, as observers and for the points which concern Ukraine, in the management committees responsible for monitoring the programmes to which Ukraine contributes financially.

Article 4

Projects and initiatives submitted by participants from Ukraine shall, as far as possible, be subject to the same conditions, rules and procedures pertaining to the programmes concerned as applied to Member States.

Article 5

The specific terms and conditions regarding the participation of Ukraine in each particular programme, in particular the financial contribution payable and reporting and evaluation procedures, shall be determined by agreement between the Commission, acting on behalf of the Union, and the competent authorities of Ukraine (Memorandum of Understanding).

If Ukraine applies for external assistance of the Union to participate in a given Union programme on the basis of Article 3 of Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument or pursuant to any similar Regulation providing for external assistance of the Union to Ukraine a that may be adopted in the future, the conditions governing the use by Ukraine of external assistance of the Union shall be determined in a financing agreement, respecting in particular Article 20 of Regulation (EC)No 1638/2006.

Article 6

Each Memorandum of Understanding concluded pursuant to Article 5, shall stipulate, in accordance with the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, that financial control or audits or other verifications, including administrative investigations will

be carried out by, or under the authority of, the European Commission, the European Anti-Fraud Office and the Court of Auditors.

Detailed provisions shall be made on financial control and auditing, administrative measures, penalties and recovery enabling the European Commission, the European Anti-Fraud Office, and the Court of Auditors to be granted powers equivalent to their powers with regard to beneficiaries or contractors established in the Union.

Article 7

The present Protocol concerning a Framework Agreement shall apply for the period for which the Partnership and Co-operation Agreement between the European Communities and their Member States, of the one part, and Ukraine, of the other part, is in force.

This Protocol shall be signed and approved by the Parties in accordance with their respective procedures.

Either Contracting Party may denounce this Protocol by written notification to the other Contracting Party. This Agreement shall terminate six months after the date of such notification.

Termination of the Protocol following denunciation by any of the parties shall have no influence on the checks and controls to be carried out under the provisions laid down in Articles 5 and 6 where appropriate.

Article 8

No later than three years after the date of entry into force of this Protocol, and every three years thereafter, both Contracting Parties may review the implementation of this Protocol on the basis of the actual participation of Ukraine in one or more Union programmes.

Article 9

This Protocol shall apply, on the one hand, to the territories in which the Treaty on the Functioning of the European Union is applied and under the conditions laid down in this Treaty, and, on the other hand, to the territory of Ukraine.

Article 10

This Protocol shall enter into force on the first day of the month following the date on which the Parties notify each other through diplomatic channels of the completion of their procedures necessary for its entry into force.

Pending its entry into force, the Parties agree that, notwithstanding the completion of their internal procedures, they shall provisionally apply the provisions of this Protocol from the date of its signature, pending its conclusion at a later date.

Article 11

This Protocol shall form an integral part of the Agreement.

Article 12

This Protocol shall be drawn up in duplicate in the official languages of the Parties, each of these texts being equally authentic.

Done at Brussels, this...day of ...in the year...

For the Government of Ukraine

For the European Union