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2022/0386 (NLE)

Proposal for a

# COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between the European Union and the Republic of Moldova on the Carriage of Freight by Road, as regards the rules of procedure of the Joint Committee and the continuation of the Agreement**

# EXPLANATORY MEMORANDUM

## 1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between the European Union and the Republic of Moldova on the Carriage of Freight by Road signed in Lyon on 29 June 2022[1] (hereinafter "the Agreement"), as regards

- the adoption of the rules of procedure of the Joint Committee in accordance with Article 6(6) of the Agreement;
- the continuation of the Agreement in accordance with Article 6(2) therein.

## 2. CONTEXT OF THE PROPOSAL

### 2.1. Summary of the Agreement

The Agreement aims at temporarily facilitating road freight transport between and through the Republic of Moldova (hereinafter "Moldova") and of the European Union, by granting additional rights of transit and carriage of goods between Moldova and the EU following the illegal aggression of Ukraine by Russia and the significant disruptions it brings for the road transport sector in Moldova. It currently applies until 31 March 2023.

A Joint Committee was established to supervise and monitor the application and implementation of the Agreement. It decides in particular on the adoption of its rules of procedure and on the continuation of the Agreement. As regards the continuation of the Agreement, the Joint Committee shall decide at the latest three months before the expiry of the Agreement, that is to say at the latest on 31 December 2022. According to Article 6(5) of the Agreement, the Joint Committee shall adopt its decisions by consensus.

The Moldovan authorities and the Commission have tentatively agreed that the first meeting of the Joint Committee would take place on 15 December 2022.

### 2.2. Monitoring of the Agreement

Article 6(1) of the Agreement introduced an obligation for the monitoring of the Agreement through, in particular, a periodic review of its functioning in light of its objectives. In that context, the Moldovan authorities have provided the Commission with data on the implementation of this Agreement. These data cover in particular the third quarter of 2022, i.e. the first three months of application of the Agreement, and show the following:

- **The Agreement has successfully supported the Moldovan economy by substantially increasing the exports from Moldova to the EU.** Moldovan exports to the EU in the third quarter of 2022 (€282.7 M) have increased in value by 17.5% when compared to the third quarter of 2021. This results from increased exports of cereals (+97.2%), vegetal oils (+1377.8%) and fruits and wine (+22%). The EU represents now 60% of the total exports from Moldova, and this part is still expected to be considerably increased.

[1] OJ L 181, 7.7.2022, p. 4.

- **The Agreement has also been very beneficial as regards the EU.** EU exports to Moldova in the third quarter of 2022 (€387.5 M) have increased by 41% when compared to the third quarter of 2021. Exports of oil products in particular have been multiplied by about factor 4 in volume. The exports from the EU to Moldova have been higher than the imports to the EU from Moldova.

- **The rights conferred to Moldovan hauliers by the Agreement have not resulted in a surge of Moldovan trucks on EU roads**. In the third quarter of 2021, 13255 road transport operations by Moldovan hauliers had taken place in the EU against 14983 in the third quarter of 2022, which represents an increase of 13%. In fact, EU hauliers have benefited much more from the implementation of the Agreement (increase of the number of road transport operations by EU hauliers in Moldova by 73%, by comparison of the third quarter of 2021 with the third quarter of 2022) even if the number of road transport operations to Moldova by EU hauliers remains much lower than the number of road transport operations by Moldovan hauliers to the EU (3327 EU operations in the third quarter of 2021, as compared to 5572 in the third quarter of 2022). It can therefore safely be concluded that **the Agreement has not worked at the expense of EU hauliers.** At the same time, the number of permits granted by Russia to Moldovan hauliers has been more than divided by two (4406 in the third quarter of 2021, against 1943 in the third quarter of 2022). This shows that Moldovan road transport operators managed to find alternative markets in the EU to compensate the loss of economic perspectives in Russia.

- **The Agreement**, together with a similar road transport agreement between Moldova and Ukraine**, has played an essential role in the context of the Solidarity Lanes.** It has allowed for a smooth flow of goods from Ukraine, easing the pressure on the Member States bordering this country. A significant and unprecedented number of essential goods left Ukraine to the EU via Moldova. This was the case of cereals (96602 tonnes in transit through Moldova from Ukraine to the EU in the third quarter of 2022, against 917 tonnes in the third quarter of 2021) and of vegetal oil (22708 tonnes in the third quarter of 2022, against 503 tonnes in the third quarter of 2021). For instance, an important increase of the exports of oil from Ukraine to the EU via Moldova could be observed, with 503 tonnes transported in the third quarter of 2021 against more than 22708 tonnes in the third quarter of 2022. Similarly, in the third quarter of 2021, 917 tonnes of grains from Ukraine transited via Moldova to reach the EU, while in the third quarter of 2022 more than 96000 tonnes took the same route.

- **The Agreement** has also significantly **reduced the burden** for the transport industry and the State authorities in relation to the administrative formalities linked to issuing permits.

### 2.3. The Joint Committee

Article 6 of the Agreement established a Joint Committee to supervise and monitor the application and implementation the Agreement, and periodically review its functioning in light of its objectives. According to that provision, the Joint Committee is composed by representatives of the Parties. Its decisions are taken by consensus and are binding on the Parties.

According to Article 6(2), the Joint Committee shall be convened, at the latest three months before the expiry of the Agreement, in order to assess and decide the need for the continuation of the Agreement, and the duration thereof.

According to Article 6(6) of the Agreement, the Joint Committee is to adopt its rules of procedure.

### 2.4. The envisaged act of the Joint Committee as regards its rules of procedure

During its first meeting, the Joint Committee is to adopt a decision regarding the adoption of the rules of procedure of the Joint Committee, in accordance with Article 6(5) and 6(6) of the agreement. Their purpose is to underpin the organisation and functioning of the Joint Committee, in order to allow for the proper implementation of the Agreement.

### 2.5. The envisaged act of the Joint Committee as regards the continuation of the Agreement

During its first meeting, the Joint Committee is to adopt a decision regarding the continuation of the Agreement until 31 December 2025, in accordance with Article 6(2) and 6(5) of the Agreement.

The reasons for that are fourfold. First, it results from the monitoring of the Agreement that it has provided benefits for the trade of both the EU and Moldova. The increase of road transport services has also been beneficial to road transport operators of both parties. There is therefore no reason not to prolong an Agreement which, although designed in the first place to help the Moldovan economy in the context of Russia's war of aggression against Ukraine, has also provided real benefits to the EU. Second, the Agreement has allowed Moldova to start redirecting its trade from the east towards the EU, and has therefore contributed to the progressive integration of the Moldovan economy into the western economy. Together with a comparable road transport agreement signed with Ukraine, it has also eased the export of Ukrainian goods, contributing to the Solidarity Lanes and keeping afloat two economies that the EU is bound to support in the short to long term. These elements, which also have a clear political meaning in the current geopolitical context, should be encouraged and confirmed by the proposed continuation. Third, the Agreement should also be understood as facilitating the reconstruction of Ukraine in due course, beyond Russia's war of aggression against this country. Finally, the EU is closely involved in the international Moldova Support Platform – any step that could be interpreted as withdrawing support already granted to Moldova would convey a negative signal and place the EU in an inconsistent and possibly self-contradictory position internally and externally in the context of this Platform.

The continuation of the agreement until the 31 December 2025 is necessary, because the conditions justifying the conclusion of the original agreement continue to prevail, and probably for quite some time. The Russian aggression against Ukraine is intensifying, and most observers do not foresee any end to this aggression in a near future. This also means that maritime transport via the Black Sea Ports, which could be one of Moldova's transit routes for its exports, remains very limited. The UN Black Sea Grain Initiative has brought a partial solution. However, the extension of this initiative is itself uncertain and its scope remains for the moment limited to grain. The continuing military operations on Moldova's eastern flank, and the associated destruction of transport infrastructure in the related areas, which had been transit areas for Moldova's exports in the past, will remain a limiting factor in the foreseeable future, impeding Moldova's access to its traditional markets.

### 2.6. Road Transport Agreement between the EU and Ukraine

The Commission will soon submit a proposal for a Council Decision establishing the Union position on the extension of the duration of the Agreement between the European Union and Ukraine on the Carriage of Freight by Road, signed in Lyon on 29 June 2022[2]. For the reasons mentioned above, and in particular the role played by Moldova in the context of the Solidarity Lanes and the existence of the road transport agreement between Ukraine and Moldova, the Commission is of the opinion that the end date of the agreement with Ukraine should be the same as for Moldova, i.e. 31 December 2025.

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

The position to be adopted on behalf of the Union should therefore be to support the adoption of the draft decision of the Joint Committee attached to this proposal.

## 4. LEGAL BASIS

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for Council 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'.

The Joint Committee is a body set up by an agreement, namely the Agreement between the European Union and the Republic of Moldova on the Carriage of Freight by Road.

The decision, which the Joint Committee is called upon to adopt, constitutes an act having legal effects. First, the envisaged act on the adoption of the rules of procedure of the Joint Committee will be binding under international law in accordance with Article 6(5) and 6(6) of the Agreement; second, the envisaged act on the extension of the duration of the Agreement will also be binding under international law, in accordance with Article 6(2) and (5) of 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.

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.

The main objective and content of the envisaged act relate to road transport.

[2] OJ L 179, 6.7.2022, p.1.

The substantive legal basis of the proposed decision is Article 91 TFEU.

## 5. PUBLICATION OF THE ENVISAGED ACT

It is appropriate to publish the decision of the Joint Committee 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 91 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement between the European Union and the Republic of Moldova on the Carriage of Freight by Road[3] ("the Agreement") was signed by the Union and provisionally applies from 29 June 2022.

(2) Article 6(1) of the Agreement establishes a Joint Committee to supervise and monitor the application and implementation of the Agreement and periodically review its functioning in light of its objectives.

(3) The Joint Committee is to adopt its rules of procedure.

(4) As set out in Article 5(1) of the Agreement, the Agreement is to apply until 31 March 2023. The Joint Committee is however to be convened at the latest three months before the expiry of the Agreement in order to assess and decide the need for the continuation of the Agreement.

(5) In order for both the European Union and the Republic of Moldova to continue benefitting from the Agreement, it should be renewed until 31 December 2025.

(6) In order to ensure the proper implementation of the Agreement the Joint Committee's rules of procedure should be adopted.

(7) Therefore the Joint Committee, during its meeting on 15 December 2022, is to adopt a decision adopting its rules of procedure and on the need for the continuation of the Agreement, including the duration thereof.

(8) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Joint Committee on the adoption of the rules of procedure and the continuation of the Agreement, as its decisions will be binding on the Union,

[3] OJ L 181, 7.7.2022, p.4.

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the Joint Committee established by Article 6 of the Agreement between the European Union and the Republic of Moldova on the Carriage of Freight by Road ("the Agreement"), as regards the adoption of its rules of procedure and the continuation of the Agreement, including the duration thereof, shall be based on the draft decision of the Joint Committee as attached to this Decision.

Minor changes to the draft Decision of the Joint Committee may be agreed to by the representatives of the Union within the Joint Committee without a further Council Decision.

*Article 2*

The decision of the Joint 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*