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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 the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, 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 the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part.

Since the European Atomic Energy Community (EAEC) is a Party to the Agreement, a separate procedure applies to the signing and conclusion of this Agreement by the Commission on behalf of the EAEC.

Relations between the European Union (EU) and the Republic of Moldova are currently based on the Partnership and Cooperation Agreement which entered into effect in July 1998. Negotiations of the comprehensive and ambitious Association Agreement between the EU and the Republic of Moldova were launched in January 2010. In January 2012, the EU and the Republic of Moldova also launched negotiations on the Deep and Comprehensive Free Trade Area (DCFTA) part, as a core element of the Association Agreement.

The Association Agreement aims to accelerate the deepening of political and economic relations between the Republic of Moldova and the EU, as well as to advance the Republic of Moldova's gradual economic integration with the EU Internal Market in selected areas, inter alia through a DCFTA, as an integral part of the Agreement.

The Agreement is a concrete way to exploit the dynamics in EU-Moldova relations, focusing on support to core reforms, on economic recovery and growth, governance and cooperation in different sectors. The Agreement also constitutes a reform agenda for the Republic of Moldova, based on a comprehensive programme of approximation of the Republic of Moldova's legislation to EU norms and standards, around which all partners of the Republic of Moldova are invited to align themselves and focus their assistance. Future EU assistance to the Republic of Moldova is linked with the reform agenda as it emerges from the Agreement. In view of preparing and facilitating the implementation of the Association Agreement, an Association Agenda has been prepared.

Following the 15th Plenary in March 2013 and the 7th DCFTA round in June 2013, the EU and the Republic of Moldova finalised the negotiations on the Association Agreement. On 29 November 2013, the European Union and the Republic of Moldova initialled the text of the Association Agreement, including the DCFTA part.

In line with Article 465 of the Association Agreement, it is foreseen to provisionally apply parts of the Agreement. Provisional application is foreseen in view of keeping mutual economic interests and shared values in equilibrium, and the common will of the EU and the Republic of Moldova to start implementing and enforcing the eligible parts of the Agreement in order to advance an early reform impact on sector specific issues before the conclusion of the Agreement.

2. RESULTS OF THE NEGOTIATIONS

The Council has been regularly informed and consulted in the relevant Council Working Groups, notably in COEST and the 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 the Republic of Moldova of the other part. This constitutes a new stage in the development of EU-Moldova 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; strengthening the framework for 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 the Republic of Moldova's gradual economic integration with the EU internal market in selected areas; enhancing justice, freedom and security cooperation with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms, and establishing conditions for increasingly close cooperation in other areas of mutual interest.

The *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; 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 organised crime and terrorism, the promotion of sustainable development and effective multilateralism.

The Agreement sets out the aims of a strengthened *political dialogue* promoting gradual convergence on foreign and security matters. The Agreement provides for dialogue and cooperation on domestic reform based on the common principles set out by the Parties. There are also provisions for intensified dialogue and cooperation on foreign and security policy, including on Common Security and Defence Policy, for the promotion of peace and international justice by implementing the Rome Statute of the International Criminal Court, and for joint efforts on anti-terrorism, anti-proliferation and disarmament and arms control. The Agreement further reiterates the Parties' commitment to a sustainable solution to the Transnistrian issue, in full respect of the sovereignty and territorial integrity of the Republic of Moldova as well as to facilitating jointly post-conflict rehabilitation.

In the field of *justice, freedom and security*, the Agreement pays particular attention to the rule of law and to the effective functioning of institutions in the areas of law enforcement and the administration of justice. The Agreement sets out the framework for cooperation on migration, asylum and border management, on personal data protection, money laundering and terrorism and on anti-drugs policy. The Agreement 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. The commitment to combat crime, corruption and other illegal activities and the further development of judicial cooperation in civil and criminal matters is also covered - making full use of relevant international and bilateral instruments.

The Association Agreement also foresees a wide range of sector cooperation, focusing on support to core reforms, economic recovery and growth, governance and sector co-operation in 28 areas, such as: public administration reform, management of public finances, energy,

transport, environmental protection and promotion, industrial and small and medium enterprise cooperation, social policies, consumer protection, agriculture and rural development, cross-border and regional level cooperation, education, training, civil service cooperation and youth as well as cultural cooperation. In all of these areas, enhanced cooperation 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 cooperation parts of the Agreement is a comprehensive menu of gradual approximation set out in the annexes to the Agreement. Specific schedules for approximation and implementation by the Republic of Moldova of selected parts of the EU *acquis* will provide a focus for on-going cooperation, and will form the core of the Republic of Moldova's domestic reform and modernisation agenda.

The Agreement includes an updated institutional framework encompassing cooperation and dialogue fora. 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 and parliamentary cooperation are also foreseen. The Agreement also includes provisions on monitoring, approximation, fulfilment of obligations and dispute settlement (including separate provisions for trade-related matters).

With regard to the DCFTA part of the Agreement, 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, selected tariff-rate quotas, and the anti-circumvention mechanism for sensitive agricultural products.

In terms of technical barriers to trade, the Republic of Moldova 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 Moldovan legislation and market surveillance systems will be in line with those in the EU, so that trade between the Parties can 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 Moldova's sanitary and phyto-sanitary and animal welfare legislation to the EU's SPS and animal welfare legislation which would consequently lead to further trade facilitation. The DCFTA 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 to ensure the correct application of customs legislation and the fight against customs fraud.

As regards establishment, the DCFTA provides for national treatment and most favoured nation treatment of companies, subject to limited reservations. With regard to trade in services, the DCFTA foresees a wide market access, as well as the possibility to liberalise further the market access, including as a result of approximation by the Republic of Moldova with the EU *acquis* in the fields of financial, telecommunications/electronic commerce, postal and courier, and international maritime transport services.

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. The Agreement includes the provisions of the EU-Republic of

Moldova Agreement on Geographical Indications which entered into force on 1 April 2013, including its annexes. It foresees a mechanism enabling full protection of new indications which may be added to the Agreement on Geographical Indications before the Association Agreement enters into force. 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 will allow access of the Republic of Moldova, a non-EEA Member to the EU public procurement market, following a period of transition during which the Republic of Moldova will approximate current and future EU legislation on public procurement. Further access to the EU procurement market for bids below the value thresholds may be discussed once approximation has been successfully completed. As a result, suppliers and service providers will have mutual market access to the public procurement markets, exception made for the defence sector.

Through the DCFTA, the Republic of Moldova will ensure implementation of comprehensive competition laws, ensure effective implementation of the principles of undistorted competition and subject state monopolies, state enterprises or enterprises entrusted with special or exclusive rights to abide to those competition laws.

The section on subsidies is particularly significant in so far as it contains a commitment of the Republic of Moldova to adopt a domestic system of state aid control similar to that of 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 the prohibition of dual pricing, on uninterrupted transit of energy goods with a view to ensuring the security of supply, on the independence of regulatory authorities in the energy field, and to clarify the relationship with Moldova's commitments under the Energy Community Treaty.

Commitments to pursue sustainable development in trade and to abide by multilateral commitments in this respect are provided for, while ensuring the right to regulate own levels of domestic environmental and labour protection. The DCFTA includes 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 a swifter resolution of bilateral trade disputes, including by allowing the affected party to impose proportionate sanctions, with even faster procedures for urgent disputes on trade-related energy matters.

Specific provisions on transparency and dialogue with the civil society and stakeholders have also been agreed to ensure a consultative, open and predictable nature of policy-making in trade-related areas. Furthermore, the DCFTA contains disciplines facilitating the conduct and assessment of approximation processes in trade-related areas.

The Republic of Moldova'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 the Republic of Moldova and will promote real economic modernisation and integration with the EU. Higher standards of products, better services to citizens, and above all the Republic of Moldova's ability 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. A separate legal instrument applies to the European Atomic Energy Community.

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

In light of the above-mentioned results of negotiations, the Commission proposes that the Council decides that the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of 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.

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

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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 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 15 June 2009, the Council authorised the Commission to open negotiations with the Republic of Moldova for the conclusion of a new Agreement between the European Union and the Republic of Moldova to replace the Partnership and Cooperation Agreement.
- (2) Taking into account 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 finalised by the initialling of the Agreement on 29 November 2013.
- (3) Therefore, the Agreement should be signed on behalf of the Union and applied on a provisional basis in accordance with its Article 465, pending its conclusion at a later date.
- (4) Article 465 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 Sub-Committee on Geographical Indications pursuant to Article 306 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 the European Atomic Energy Community and their Member States, of the one part, and the Republic of

Moldova, of the other part (hereinafter "the Agreement"), 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 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.

Article 3

1. Pending its entry into force, in accordance with Article 465 of the Agreement and subject to the notifications provided for therein, the following parts of the Agreement shall be applied provisionally between the Union and the Republic of Moldova:
 - Article 1;
 - Title I;
 - Title II;
 - Title III: Articles 12-18;
 - Title IV: Chapters 1, 3, 5, 9, 12, 13, Chapter 14 (with the exception of Article 77(ninth indent)), Chapters 15, 16, 17, 26, and 28, as well as Articles 37, 46, 57, 102 and 116;
 - Title V;
 - Title VI;
 - Title VII: with the exception of Article 456(1), to the extent that the provisions of this Title are limited to the purpose of ensuring the provisional application of this Agreement as defined in this paragraph;
 - Annexes I to XIII, Annexes XV to XXXIV, XXXV as well as the Protocols I to IV.
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 4

For the purposes of Article 306 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 foodstuffs¹.

¹ OJ L 343 14.12.2012, p.1

Article 5

1. A name protected under Sub-Section 3 “Geographical Indications” of Chapter 9 of Title V 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 301 of the Agreement, the Member States and the institutions of the Union shall enforce the protection provided for in Articles 297 to 300 of the Agreement, including at the request of an interested party.

Article 6

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 7

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

Done at Brussels,

*For the Council
The President*