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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	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 Ukraine on the Carriage of Freight by Road, as regards the rules of procedure of the Joint Committee and the continuation of the Agreement

Delegations will find attached document COM(2023) 46 final.

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2023/0017 (NLE)

Proposal for a

COUNCIL DECISION

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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 Ukraine on the Carriage of Freight by Road signed in Lyon on 29 June 2022¹ (hereinafter “the Agreement”), as regards

- the adoption of the rules of procedure of the Joint Committee in accordance with Article 7(6) of the Agreement;
- the continuation of the Agreement in accordance with Article 7(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 Ukraine and the European Union, by granting additional rights of transit and carriage of goods between Ukraine and the EU following the illegal aggression against Ukraine by Russia and the significant disruptions it brings for all transport modes in Ukraine. It also includes measures to facilitate the recognition of driver documents. It currently applies until 30 June 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 March 2023. According to Article 7(5) of the Agreement, the Joint Committee shall adopt its decisions by consensus.

2.2. Monitoring of the Agreement

Article 7(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 Ukrainian 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 contributed to enabling the export of Ukrainian agricultural goods via the Solidarity Lanes.** Until 1 August 2022, the Solidarity Lanes were the only trade corridors available to Ukraine for the export of its agricultural products. In its first month of application (July 2022), the Agreement enabled the export of almost half a million tonnes of Ukrainian agricultural goods – a significant increase compared to 320,000 tonnes exported in June 2022.

¹ OJ L 179, 6.7.2022, p. 4.

- Since 1 August 2022, the Black Sea Grain Initiative has also facilitated the export of more Ukrainian grain, oilseeds and related products from three of Ukraine's Black Sea ports. **The Agreement has however complemented exports via the Black Sea, and thus contributed to global food security and to Ukraine's economy.** Indeed, agricultural exports via road have continued to increase even after the start of the Black Sea Grain Initiative, reaching 640,000 tonnes in October 2022.
- **The Agreement has facilitated the export of other Ukrainian goods not covered by the Black Sea Grain Initiative.** Indeed, the latter only covers grain, oilseeds and related products. Therefore, the Agreement has enabled the export of other agricultural goods, such as poultry meat and fruits. In July, August and September 2022, agricultural goods not covered by the scope of the Black Sea Grain Initiative represented almost half of all agricultural exports moved by road.
- The Agreement has also facilitated the export of non-agricultural goods, in particular industrial products, which cannot be exported under the Black Sea Grain Initiative. Non-agricultural exports via road in June, July and August 2022 have brought back more than USD 1.6 billion to Ukrainian businesses, providing much-needed support to Ukraine's economy.
- Furthermore, many uncertainties remain concerning the Black Sea Grain Initiative, which is also limited in duration (extended on 18 November 2022 for additional 120 days). Bottlenecks have also been reported in the inspections, encouraging many stakeholders to rely on the Solidarity Lanes instead – including road transport. In this context, **the Agreement provides a safety net to Ukrainian farmers and businesses, and also to global food security.**
- The Agreement has also authorised the transit of Ukrainian goods (both agricultural and non-agricultural) by road through the EU to third countries. In July, September and August 2022, the Agreement enabled the export of Ukrainian goods to third countries for a value of more than USD 1bn, bringing an additional source of income to Ukraine's economy.
- At the same time, **the Agreement has helped Ukraine import the goods it needs – such as food, humanitarian aid or energy.** As an example, Romania set up dedicated convoys of trucks to bring much-needed fuel to Ukraine.
- **The Agreement has also been beneficial for the EU.** The exports from Member States to Ukraine have increased by 38.3% if we compare the period between April and June 2022 before the signature of the Agreement (USD 4,222 million) and the period between July and September 2022 immediately following the signature of the Agreement (USD 5,849 million). The exports by road from the EU to Ukraine remain higher than the imports by road to the EU from Ukraine. The Commission closely monitors the impact of imports on EU markets.
- The rights conferred to Ukrainian hauliers by the Agreement have resulted in an increase of about 40% in the number of road transport operations by Ukrainian hauliers on EU roads. More precisely, 106,641 road transport operations by Ukrainian hauliers had taken place on EU roads in July, August and September 2021 against 152,534 in July, August and September 2022, which represents an increase by 43%.

- The Agreement has also significantly reduced the burden for the Ukrainian road transport industry and the State authorities in relation to the administrative formalities linked to issuing permits. It has also given a medium term perspective to this industry by allowing a better planning of its activity.
- The Agreement has allowed the Member States' authorities to access a system for the verification of driving licences, improving significantly the fight against fraud and forgery. Actions are still ongoing for the implementation of the verification tools for digital driving licences and certificates of professional competence.

2.3. The Joint Committee

Article 7 of the Agreement established a Joint Committee to supervise and monitor the application and implementation of the Agreement, and periodically review its functioning in light of its objectives. According to that provision, the Joint Committee is composed of representatives of the Parties. Its decisions are taken by consensus and are binding on the Parties.

According to Article 7(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 7(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 7(5) and 7(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 7(2) and 7(5) of the Agreement.

The reasons for the extension are many-fold:

- First, the monitoring of the Agreement has shown that it has played an essential role in the context of the Solidarity Lanes, therefore providing a lifeline to Ukrainian farmers and also contributing to global food security. While Ukrainian Black Sea ports remained unavailable, the Agreement facilitated the export of Ukrainian grain, oilseeds and related products via road. Since the Black Sea Grain Initiative was established, the export of Ukrainian grain via road has continued to increase, thus further complementing exports via the Black Sea.

- Second, the Agreement has facilitated the export of Ukrainian non-agricultural goods, not covered by the Black Sea Grain Initiative. It has therefore helped in keeping the Ukrainian economy afloat.
- Third, the Agreement has facilitated EU exports to Ukraine and therefore provided benefits to the EU. It has enabled Ukraine to import the goods it needs from the EU, in particular much-needed energy and humanitarian aid.
- Fourth, the Agreement has not produced a dramatic increase of the number of Ukrainian road transport operators on EU roads. EU transport operators remain reluctant to go to Ukraine because transport on the Ukrainian territory is most often not covered by EU insurance companies and because EU drivers are not keen to go to Ukraine for obvious reasons. The Agreement does therefore not create a competitive threat to EU transport operators, and this is not likely to change during the period for which the extension is proposed.
- Fifth, the Agreement should also be understood as facilitating the reconstruction of Ukraine in due course, beyond Russia's war of aggression against this country.

The prolongation of the Agreement must therefore be understood as an answer to the European Council which, in its meeting of 20 and 21 October 2022 called “the European Union to continue to improve the efficiency of all the Solidarity Lanes” as they “have made possible the export of significant volumes of Ukrainian crops, agricultural products and fertilisers to the countries most in need”².

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 remains very fragile. 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 agri-food products and fertilizers. The continuing military operations in Ukraine in its Eastern and Southern flanks, and the associated destruction of transport infrastructure in the related areas, will remain a limiting factor in the foreseeable future, impeding Ukraine exports to its traditional markets.

Finally, the prolongation of the Agreement will allow to continue the support to competent authorities of the EU Member States in their fight against fraud and forgery.

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.

² Conclusions of the European Council meeting (20 and 21 October 2022); point 15; EUCO 31/22 of 21.10.2022.

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 Ukraine 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 7(5) and (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 7(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.

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 Ukraine on the Carriage of Freight by Road³ (“the Agreement”) was signed by the Union and provisionally applies from 29 June 2022.
- (2) Article 7(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 6(1) of the Agreement, the Agreement is to apply until 30 June 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 Ukraine to continue benefitting from the positive effects of the Agreement on facilitating road freight transport between and through Ukraine and the European Union and on ensuring well-functioning Solidarity Lanes in the context of Russia’s war of aggression against Ukraine, it should be prolonged 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 is to adopt a decision establishing its rules of procedure and on the need for the continuation of the Agreement, including the duration thereof.

³ OJ L 179, 6.7.2022, p.4.

- (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,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Joint Committee established by Article 7 of the Agreement between the European Union and Ukraine 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