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## COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Recommendation for a COUNCIL DECISION Authorising the opening of negotiations on an agreement on the carriage of goods by road between the European Union and Ukraine

Delegations will find attached document COM(2022) 167 final.

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EUROPEAN  
COMMISSION

Brussels, 6.4.2022  
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Recommendation for a

## **COUNCIL DECISION**

**Authorising the opening of negotiations on an agreement on the carriage of goods by  
road between the European Union and Ukraine**

## **EXPLANATORY MEMORANDUM**

### **1. Context of the recommendation**

The Commission hereby recommends to the Council to authorise the opening of negotiations for a time-limited agreement on the carriage of goods by road between the Union and Ukraine (hereafter referred to as “the Agreement”) to address repercussions of Russia’s unprovoked and unjustified military aggression against Ukraine and to nominate the Commission as Union negotiator. Negotiating directives are also attached to the recommendation.

### **2. Background**

Road freight transport between the Union and Ukraine is currently governed to a large extent by a number of bilateral transport agreements between EU Member States and Ukraine. These agreements impose quotas arrangements on hauliers from both sides regarding transit and bilateral trade. According to a study prepared in 2014<sup>1</sup>, a total of 560,680 quotas were granted on a bilateral basis to Ukraine by the 25 Member States with which Ukraine had bilateral road transport agreements at that time. In 2019, the number was slightly lower (552.875 quotas, among which 1750 multiple quotas). Quotas regularly require certain Euro emission values.

Alongside the permits that are based on the abovementioned bilateral agreements, the International Transport Forum (ITF) operates a multilateral quota system that provides for multilateral licences for the international carriage of goods by road by transport undertakings established in a Member country of the European Conference of Ministers of Transport (ECMT). The licences apply to carriage of goods between ECMT Member countries or in transit through the territory of one or several of those countries. However, the number of quotas within the ECMT system is quite low in comparison to the quotas issued under the bilateral agreements (although the comparison is not rigorous, as the ECMT quotas concern annual licences, whereas the bilateral agreements in question regard permits for single trips). In 2022, 4000 annual licences were attributed to Ukrainian operators.

In 2006, Ukraine acceded to the Agreement on the work of crews of vehicles engaged in international road transport (AETR)<sup>2</sup> to which all EU Member States are also contracting parties. As a consequence, Ukrainian operators carrying out goods on the Union territory must comply with the same driving time, breaks and rest periods of those applying in the Union in accordance with Regulation (EC) 561/2006<sup>3</sup>.

In view of the military aggression undertaken by Russia against Ukraine, the transport situation has become very difficult for this country. Important transport routes for the carrying of goods via the Black Sea are blocked or have been destroyed by Russian military forces, and the Ukrainian airspace is closed for civilian transport. The rail network is currently prioritised for the transport of passengers and refugees and it remains very vulnerable to the Russian bombardments.

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<sup>1</sup> Study on the economic impact of an agreement between the EU and the Ukraine prepared by ICF, TRT and DIW Econ, Final Report, 14 October 2014.

<sup>2</sup> Signed in Geneva, 1 July 1970.

<sup>3</sup> Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85

Therefore, in order to help the Ukrainian economy under hard duress, it is appropriate to urgently conclude an agreement between the Union and Ukraine which will last until the impact of the war on transport infrastructures and operations remains severe, and by which the strained and vulnerable rail network, blocked civilian airspace and blocked Black Sea ports can to the greatest extent possible be replaced by enhanced road transport alternatives to carry goods between the EU and Ukraine. This is very important for the trade in grain, fuel, foodstuffs and other goods, which needs to be urgently addressed to reduce food insecurity within Ukraine and avoid exacerbating the refugee outflows. The Agreement will also include clauses on the recognition of driving licenses and certificates of professional competence for Ukrainian drivers transporting goods to the EU. The Agreement will apply to the territory of Ukraine controlled by the legitimate government of Ukraine and so recognised by the European Union.

The conclusion of such an agreement is in the interest of the Union, not only because the Union has an interest in the stabilisation of the Ukrainian State and economy, but also because Ukraine is an important supplier of products such as grain and other foodstuffs, and because EU hauliers will obtain reciprocal transport rights to the territory of Ukraine.

### 3. Consistency with other Union policies

This agreement is consistent with the current EU external relations policy with Ukraine. The Government of Ukraine has requested such an agreement as an urgent measure.

The conclusion of an agreement on the carriage of goods by road with Ukraine would also be in line with the Association Agreement signed on 27 June 2014 between the Union and Ukraine, as it envisages in its Article 136 possible future special road agreements with a view to assuring a coordinated development and progressive liberalisation of transport between the Parties.

### 4. Legal basis, subsidiarity and Proportionality

- **Legal basis**

The procedural legal basis for a decision authorising the opening of negotiations of an agreement between the Union and a third country and addressing directives to the negotiator is Article 218(3) and (4) TFEU.

- **Union competence**

Article 216(1) TFEU establishes that:

*“The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.”*

This Agreement falls under the Union transport policy and is necessary in order to achieve one of the objectives referred to in the Treaties, which is “to contribute to free and fair trade”, and its conclusion is foreseen in Article 136 of the Association Agreement with Ukraine.

The conclusion of international agreements on road transport of goods is also explicitly provided for in a legislative act of the Union.

In particular, Article 1 of Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market establishes in its paragraphs 2 and 3 that:

*"2. In the event of carriage from a Member State to a third country and vice versa, this Regulation shall apply to the part of the journey on the territory of any Member State crossed in transit. It shall not apply to that part of the journey on the territory of the Member State of loading or unloading, as long as the necessary agreement between the Community and the third country concerned has not been concluded.*

*3. Pending the conclusion of the agreements referred to in paragraph 2, this Regulation shall not affect:*

*(a) provisions relating to the carriage from a Member State to a third country and vice versa included in bilateral agreements concluded by Member States with those third countries;*

*(b) provisions relating to the carriage from a Member State to a third country and vice versa included in bilateral agreements concluded between Member States which, under either bilateral authorisations or liberalisation arrangements, allow loading and unloading in a Member State by hauliers not established in that Member State."*

Furthermore, *its conclusion may affect common rules or alter their scope* as established by the ECJ jurisprudence. In particular, the Court in paragraph 201 of its Opinion 2/15 of 16 May 2017<sup>4</sup> stated as follows:

*"201 As the Court has already determined, where an agreement between the European Union and a third State provides for the application, to the international relations covered by that agreement, of rules that will overlap to a large extent with the common EU rules applicable to intra-Community situations, that agreement must be regarded as capable of affecting or altering the scope of those common rules. Despite there being no contradiction with those common rules, the meaning, scope and effectiveness of the latter may be affected (see, inter alia, Opinion 1/03 (New Lugano Convention) of 7 February 2006, EU:C:2006:81, paragraphs 143 and 151 to 153; Opinion 1/13 (Accession of third States to the Hague Convention) of 14 October 2014, EU:C:2014:2303, paragraphs 84 to 90; and judgment of 26 November 2014, Green Network, C-66/13, EU:C:2014:2399, paragraphs 48 and 49). "*

The market access envisaged in this Recommendation certainly overlaps with the market access provisions adopted by the Union as regards international road haulage transport referred above.

In view of the above, the Union has exclusive external competence under Article 3(2) TFEU to conclude the envisaged agreement.

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<sup>4</sup> ECLI:EU:C:2017:376.

- **Commission's duty to consult**

Taking into account the judgment of the Court of Justice of 16 July 2015 in case C-425/13<sup>5</sup>, clarifying the roles of the different institutions for the purpose of the application of Article 218(2) and (4) TFEU in accordance with the principles of institutional balance and mutual sincere cooperation laid down in Article 13(2) TEU, it is necessary to reflect these clarifications.

It is appropriate that the Commission provides the Council and the special committee designated by it with all the information necessary for them to monitor the progress of the negotiations, such as, in particular, the general aims announced and the positions taken by the other parties throughout the negotiations. The Commission will report in writing to the Council and to the special committee designated by it on the outcome of the negotiations in a way that allows the Council to exercise its institutional prerogatives.

In order to comply with the obligation of respecting the institutional balance laid down in Article 13(2) TEU and the obligation established in Article 218(10) TFEU, the Commission will inform the European Parliament to the same extent.

- **Proportionality**

The Recommendation complies with the proportionality principle for the following reasons:

The envisaged agreement is the most efficient instrument to enhance EU-Ukraine road transport relations, since it removes the need for quotas in bilateral agreements between EU Member States and Ukraine.

The proposed agreement will not impose any additional administrative or financial burden neither on Member States' authorities nor on the industry compared to the current situation. It should on the opposite reduce the administrative burden for both the industry and the Member States. In addition, it will delete the need for transport permits for EU hauliers for the indicated categories of transport rights (transit and bilateral rights), which will reduce the burden for the EU transport industry.

5. **Budgetary implications**

The Recommendation has no implication for the Union budget.

6. **Other elements**

- **Detailed explanation of the specific provisions of the Recommendation**

The Council Decision will authorise the opening of negotiations for an agreement on the carriage of goods by road between the Union and Ukraine to address repercussions of Russia's aggression against Ukraine, and will nominate the Commission as Union negotiator. The negotiating directives which are attached to the Decision give a broad description of the scope of the envisaged agreement.

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<sup>5</sup> ECLI:EU:C:2015:483.

Recommendation for a

## COUNCIL DECISION

### **Authorising the opening of negotiations on an agreement on the carriage of goods by road between the European Union and Ukraine**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Negotiations should be opened with a view to concluding an agreement between the Union and the Republic of Ukraine on the carriage of goods by road. It is appropriate that the agreement applies until the impact of Russia's unprovoked and unjustified aggression against Ukraine on transport infrastructures and operations remains severe.
- (2) The Commission should be designated as negotiator.
- (3) The negotiations should be conducted by the Commission in consultation with the [name of the special committee to be inserted by the Council],

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Commission is hereby authorised to negotiate, on behalf of the Union, an agreement between the European Union and the Republic of Ukraine on the carriage of goods by road.

#### *Article 2*

The negotiation directives are set out in the Annex.

#### *Article 3*

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

#### *Article 4*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*