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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 the Republic of Moldova

Delegations will find attached document COM(2022) 168 final.

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EUROPEAN
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Brussels, 6.4.2022

COM(2022) 168 final

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 the Republic of Moldova

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 Moldova (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 Moldova is currently governed to a large extent by a number of bilateral transport agreements between EU Member States and Moldova. These agreements provide for quotas arrangements for hauliers from both sides regarding transit and bilateral trade. According to information from the Moldovan National Agency of Road Transport, a total of 15,000 quotas were granted by Estonia, Lithuania, Latvia, Poland, Slovakia, Hungary, and Slovenia to Moldova. Of this total amount, 14,320 are transit or bilateral quotas, and 680 universal quotas. Of all the quotas attributed by these countries to Moldova for 2022, only 8,647 quotas (only about 60% of the total) were left by 17 March 2022.

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, 1,430 annual licences and 1,752 short-term licences were attributed to Moldovan operators.

Moldova is party to the Agreement on the work of crews of vehicles engaged in international road transport (AETR)¹ to which all EU Member States are also contracting parties. As a consequence, Moldovan 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) 561/2006².

In view of the military aggression undertaken by Russia against Ukraine, the transport situation has become very difficult for Moldova. The war in Ukraine forces Moldovan road transport operators to search for alternative routes to avoid transiting the territory of Ukraine,

¹ Signed in Geneva, 1 July 1970.

² 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

which has so far been the only way to reach the third country markets in the East of Ukraine. However, Moldovan carriers do not have sufficient permits for the necessary transit of the Member States through which such transit would be necessary. This endangers the fulfilment of long-term contracts for the supply of goods (especially agricultural products) with their trading partners in the above-mentioned countries. There is also an increased need for bilateral transports operations between Moldova and the EU, which the current set of permits cannot match. An extension of transport rights for Moldovan hauliers and the granting of reciprocal rights for EU hauliers could also allow the EU to export more goods to Moldova, which is therefore also in the interest of the EU. At the same time, Moldova might need to further adjust its economic and transport patterns in order to respond to the impact of the war on the international markets.

Therefore, in order to help the Moldovan economy which is under great difficulties, while this country has already provisionally hosted more than 350,000 refugees coming from Ukraine and transiting to other countries, it is appropriate to urgently conclude an agreement between the Union and Moldova by which the blocked transit routes through Ukraine can, to the best possible extent, be replaced by enhanced road transport alternatives through the EU and bilateral road transport between Moldova and the EU can be enhanced. Such an agreement should last for as long as the impact of the war on transport operations and the Ukrainian transport infrastructure remains severe.

Such an agreement is also in the interest of the EU, since the EU has an interest in the stabilisation of the Moldovan economy, also with a view to the fact that the country has to deal with an influx of refugees fleeing the war, and an interest to mitigate the impact of the Russian aggression on the security situation of the EU and its borders. In addition, EU hauliers will obtain reciprocal transport rights to the ones granted to Moldovan hauliers, which will be positive for the EU economy.

Article 80(c) of the Association Agreement calls to enhance the main transport links between the territories of the EU and Moldova, and its Article 82 calls for cooperation improving the movement of goods, increasing fluidity of transport flows between the Republic of Moldova, the EU and third countries in the region, by removing administrative, technical and other obstacles.

3. Consistency with other Union policies

This agreement is consistent with the current EU external relations policy with Moldova. The Government of Moldova has requested an agreement as an urgent measure. Such an agreement will also complement the EU support granted to Moldova in March 2022 to help the Moldovan authorities to provide assistance to people fleeing from the Russian invasion of Ukraine. The conclusion of a time-limited agreement on the carriage of goods by road with Moldova for the duration of transport impediments caused by the war in Ukraine would also be in line with the Association Agreement signed on 27 June 2014 between the Union and Moldova³.

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.

³ OJ L260 of 30 August 2014, page 4.

- **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”.

In addition, the conclusion of international agreements on road transport of goods is 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."

Moreover, Art. 82 of the Association Agreement between the Union and Moldova stipulates that the cooperation between the two parties shall aim at improving the movement of passengers and goods and increase the fluidity of transport flows between the Union and the Republic of Moldova.

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 2017⁴ 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

⁴ ECLI:EU:C:2017:376.

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.

To the extent that the existing bilateral agreements are not superseded by the envisaged agreement, they may continue to apply as a matter of the envisaged agreement. Once that agreement is terminated, the existing bilateral agreements may again apply independently unless and until the Union concludes another agreement with Moldova in the field of road transport.

- **Commission's duty to consult**

Taking into account the judgment of the Court of Justice of 16 July 2015 in case C-425/13⁵, 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-Moldova road transport relations, since it removes the need for quotas in bilateral agreements between Member States and Moldova as regards transit.

The proposed agreement will not impose any additional administrative or financial burden neither on Member States' authorities nor on the industry. It should on the opposite reduce the administrative burden for both the industry and the Member States, since the granting of reciprocal rights to the ones of Moldovan hauliers for EU hauliers (transit rights and the rights

⁵ ECLI:EU:C:2015:483.

of bilateral international carriage) will remove the need for permits for EU operators and thereby reduce the administrative 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 Moldova 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.

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 the Republic of Moldova

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 Moldova on the carriage of goods by road. It is appropriate that the agreement applies for as long as the impact of Russia's aggression against Ukraine on transport operations and Ukrainian transport infrastructures 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 Moldova on the carriage of goods by road.

Article 2

The negotiating 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*