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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Draft DECISION OF THE EU-REPUBLIC OF MOLDOVA CUSTOMS SUB-COMMITTEE concerning the mutual recognition of the authorised economic operator programme of the Republic of Moldova and the authorised economic operator programme of the European Union
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DRAFT

DECISION No .../2022
OF THE EU-REPUBLIC OF MOLDOVA CUSTOMS SUB-COMMITTEE
of ...

concerning the mutual recognition
of the authorised economic operator programme of the Republic of Moldova
and the authorised economic operator programme of the European Union

THE EU-REPUBLIC OF MOLDOVA CUSTOMS SUB-COMMITTEE,

Having regard to 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 part¹, and in particular Title V, Chapter 5, thereof,

¹ OJ EU L 260, 30.8.2014, p. 4.

Whereas:

- (1) Title V, Chapter 5, 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 ('the Agreement') is aimed at strengthening cooperation in the area of customs to ensure the implementation of the objectives of that Chapter and further facilitate trade, while ensuring effective control, security and prevention of fraud.
- (2) Article 197, point (j), of the Agreement provides for the commitment of the Parties to establish, where relevant and appropriate, mutual recognition of trade partnership programmes and customs controls, including equivalent trade facilitation measures.
- (3) Security and safety, and the facilitation of the international trade supply chain, can be significantly enhanced through mutual recognition of the respective trade partnership programmes, namely of the national authorised economic operator (AEO) programme in the Republic of Moldova and the AEO programme in the Union;
- (4) The two AEO programmes are based on internationally recognised security standards advocated by the SAFE Framework of Standards to Secure and Facilitate Global Trade adopted by the World Customs Organization in June 2005 ('SAFE Framework').

- (5) Mutual recognition allows the Parties to provide facilitative benefits to economic operators who have invested in supply-chain security and have been authorised under their respective programmes.
- (6) Site visits and a joint evaluation of the AEO programmes in the Union and in the Republic of Moldova have revealed that their qualification standards for security and safety purposes are compatible and lead to equivalent results.
- (7) Article 200(1) of the Agreement establishes the Customs Sub-Committee. Pursuant to Article 200(3), point (b), of the Agreement, it is empowered to adopt decisions on mutual recognition of customs controls and trade partnership programmes, and mutually agreed benefits,

HAS ADOPTED THIS DECISION:

Article 1
Definitions

For the purposes of this Decision, the following definitions apply:

- (1) “Customs Authority” means the customs authority of a Member State of the Union or the customs authority of the Republic of Moldova, hereinafter referred to collectively as “Customs Authorities”;
- (2) “economic operator” means a person involved in the international movement of goods;
- (3) “personal data” means any information relating to an identified or identifiable individual;
- (4) “Programme” means:
 - (a) in the Union: the European Union authorised economic operator (AEO) status (security and safety) granted under Article 38(2), point (b), of Regulation (EU) No 952/2013 of the European Parliament and of the Council¹;

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ EU L 269, 10.10.2013, p. 1).

- (b) in the Republic of Moldova: the AEO programme covering the AEO Security and Safety authorisation and the combined AEO Customs Simplifications/Security and Safety (AEOC/AEOS) authorisation, with economic operators from areas outside the control of the government only eligible for an AEO authorisation once all AEO criteria can be assessed and evaluated by central competent authorities, i.e., the headquarters of the customs administration of the Republic of Moldova;
- (5) “Programme Members” means economic operators holding AEO status in the Union and economic operators holding membership status in the Republic of Moldova as referred to in point (4) when referred to collectively.

Article 2

Mutual recognition and implementation of this Decision

1. The Programmes of the Union and of the Republic of Moldova are hereby mutually recognised to be compatible and equivalent and the corresponding AEO statuses granted are mutually accepted.
2. The Parties shall implement this Decision through their respective Customs Authorities.

Article 3
Compatibility

The Customs Authorities shall cooperate to maintain the compatibility and equivalence between their Programmes, in particular with respect to the following matters:

- (a) the application process for granting the AEO status and membership;
- (b) the assessment of applications;
- (c) the granting of the AEO status and membership;
- (d) the managing, monitoring, suspension and re-assessment, and revocation of the AEO status and membership;
- (e) promoting cooperation between Customs Authorities and environmental authorities to promote AEO status and membership compliance with international environmental standards.

The Parties shall ensure that their trade partnership programmes operate within the relevant standards of the SAFE Framework.

Article 4

Benefits

1. Each Customs Authority shall provide benefits to Programme Members of the other Customs Authority that are comparable to the benefits that it provides to its Programme Members.
2. The benefits referred to in paragraph 1 include:
 - (a) fewer security- and safety-related controls: each Customs Authority takes the status of a Programme Member granted by the other Customs Authority favourably into account in its risk assessment in order to reduce inspections or controls and in other security- and safety-related measures;
 - (b) the recognition of business partners during the application process: each Customs Authority takes the status of a Programme Member granted by the other Customs Authority into account with a view to treating the Programme Member as a secure and safe partner when assessing the business partners' requirements for applicants under its own Programme;
 - (c) priority treatment at customs clearance: each Customs Authority takes the status of a Programme Member granted by the other Customs Authority into account in ensuring priority treatment, expedited processing, simplified formalities and expedited release of the shipments where the Programme Members are involved;

- (d) business continuity mechanism: both Customs Authorities endeavour to establish a business continuity mechanism to respond to disruptions in trade flows due to increases in security alert levels, border closures or natural disasters, hazardous emergencies or other major incidents by which priority cargos related to Programme Members should be facilitated and expedited to the extent possible by the Customs Authorities;
 - (e) the giving of priority to the inspection of consignments covered by exit or entry summary declarations lodged by a Programme Member, if the Customs Authority decides to proceed with an inspection.
- 3. Following the review process referred to in Article 7(3), each Customs Authority may provide, in cooperation with other government authorities in its territory, further facilitation benefits, which may include streamlining processes and increasing the predictability of movement at the border, to the extent possible.
- 4. Each Customs Authority:
 - (a) may suspend the benefits provided to Programme Members of the other Customs Authority under this Decision;
 - (b) shall, within a reasonable time, communicate the suspension described under point (a) and the reasons for the suspension to the other Customs Authority;

- (c) may only proceed with a suspension pursuant to point (a) for reasons equivalent to those for which it would suspend the Programme Members from its Programme.
- 5. Each Customs Authority shall, when it deems appropriate, report irregularities involving Programme Members of the other Customs Authority's Programme to that Customs Authority for the purpose of ensuring immediate analysis of the appropriateness of the benefits and status granted by the other Customs Authority.
- 6. For greater certainty, this Decision does not limit a Party or a Customs Authority from requesting information pursuant to the mutual administrative assistance referred to in Article 198 of the Agreement or other applicable instrument between the Parties, or between the Customs Authorities.

Article 5

Exchange of information and communication

- 1. The Customs Authorities shall enhance their communication in order to implement this Decision effectively by:
 - (a) providing each other with the details on their Programme Members in accordance with paragraph 3;
 - (b) providing each other with updates on the operability and development of their Programmes in a timely manner;

- (c) exchanging information regarding supply-chain security policy and trends; and
 - (d) ensuring effective communication through the competent services of the European Commission and the customs administration of the Republic of Moldova to enhance risk-management practices with respect to supply-chain security.
2. Exchange of information and communication in the framework of this Decision shall occur between the competent services of the European Commission and the customs administration of the Republic of Moldova.
3. Upon receiving consent from its Programme Member, each Customs Authority shall send to the other Customs Authority the following details about that Programme Member:
- (a) name;
 - (b) address;
 - (c) membership status, namely authorised, suspended, revoked or cancelled;
 - (d) validation or authorisation date when available;
 - (e) unique identification number (for example: EORI or AEO numbers); and

- (f) other details that may be mutually determined between the Customs Authorities, subject, when applicable, to any necessary safeguards.

For greater certainty, the details referred to in point (c) of the first subparagraph do not include the reasons for suspension, revocation or cancellation.

- 4. The Customs Authorities shall exchange the information referred to in paragraph 3 in a systematic manner by electronic means.

Article 6

Treatment of information

- 1. Each Customs Authority shall:
 - (a) unless otherwise provided in this Decision, use any information, including any personal data, received under this Decision for the sole purpose of the implementation of this Decision, including monitoring and reporting; and
 - (b) notwithstanding point (a), obtain the prior written approval from the Customs Authority that sent the information to use the information for other purposes. Such use shall be subject to any restrictions laid down by that authority.

2. Each Customs Authority shall:
 - (a) treat information received under this Decision as confidential; and
 - (b) provide at least the same level of protection to information received under this Decision as it provides to information received from Programme Members of its Programme.
3. Notwithstanding paragraph 1, point (a), a Customs Authority may use the information received under this Decision in any judicial or administrative proceedings instituted for failure to comply with its customs law, including in its records of evidence, reports and testimonies. The Customs Authority that has received the information shall notify the Customs Authority that has sent that information prior to such use.
4. Each Customs Authority shall:
 - (a) only disclose information received under this Decision for the purpose for which it was received; and

- (b) notwithstanding point (a), when it is required to disclose information in judicial or administrative proceedings or when required to disclose information by its law, inform the sending Customs Authority in advance and in writing of the disclosure unless prevented from doing so by law or due to an ongoing investigation. In that case, it shall inform the sending Customs Authority as soon as possible after the disclosure.

5. Each Customs Authority shall:

- (a) ensure that the information it sends is accurate and regularly updated;
- (b) adopt or maintain appropriate deletion procedures;
- (c) promptly notify the other Customs Authority if it determines that information it has sent to the other Customs Authority is inaccurate, incomplete or unreliable, or if its receipt or further use contravenes this Decision;
- (d) take all measures it deems appropriate, including supplementation, deletion or correction of information referred to in point (c), to safeguard against erroneous reliance on such information; and
- (e) only retain information received under this Decision as long as necessary for the purpose of implementing this Decision, except when otherwise required under its law, or for the purposes of judicial or administrative proceedings.

6. Further to paragraphs 4 and 5, each Customs Authority shall ensure in particular that:
- (a) security safeguards are in place (including electronic safeguards) to control, on a need-to-know basis, access to information received from the other Customs Authority under this Decision;
 - (b) information received from the other Customs Authority under this Decision is protected from unauthorised access, dissemination, alteration, deletion or destruction;
 - (c) information received from the other Customs Authority under this Decision is not disclosed to any private person or legal person, to any State or international body that is not party to the Agreement, or to any other public authority of the Union or the Republic of Moldova, except when required in judicial or administrative proceedings, or when required by its law; and
 - (d) information received from the other Customs Authority under this Decision is stored at all times in secure electronic or paper storage systems, and that logs or documentation are kept on all access, disclosure and use of information received from the other Customs Authority.

7. Each Customs Authority shall:
 - (a) ensure the personal data of a Programme Member of the other Customs Authority, as it relates to its access, correction and timing thereof, or temporary suspension of use, is treated in a manner at least equivalent to the personal data of its Programme Member; and
 - (b) publish information to inform its Programme Members about the applicable process for requests referred to in point (a) under its law.
8. Each Customs Authority shall provide that Programme Members have access, as it relates to their personal data, to administrative redress or judicial review regardless of their nationality or country of residence.
9. The Customs Authorities shall publish information to inform Programme Members of their options of seeking administrative redress or judicial review.

10. Compliance with the provisions of this Article by each Customs Authority is subject to review by their respective relevant authority, which ensures that complaints relating to non-compliance in the treatment of information are received, investigated, responded to and appropriately redressed. Those authorities are:
- (a) in the Union: the European Data Protection Supervisor or its successor, and the Member States' data protection authorities;
 - (b) in the Republic of Moldova: the National Centre for Personal Data Protection or its successor within the customs administration of the Republic of Moldova.

Article 7

Consultation, monitoring and review

1. The Customs Authorities shall resolve any issues related to the implementation of this Decision through consultations under the auspices of the Customs Sub-Committee.
2. Both Parties shall cooperate closely regarding the implementation of this Decision and shall monitor this regularly by means of periodical on-site joint monitoring visits to identify possible strengths and weaknesses in Programmes of both Parties.

3. The Customs Sub-Committee shall review the implementation of this Decision regularly. This review process may include, in particular:
- (a) exchanges of views on details exchanged and AEO benefits referred to in Article 4 granted to Programme Members, including any future details or AEO benefits referred to in Article 4;
 - (b) exchanges of views on security provisions such as protocols to be followed during and after a serious security incident (business resumption) or when conditions merit suspension of mutual recognition;
 - (c) examination of the suspension of the benefits referred to in Article 4; and
 - (d) review of the implementation of Article 6.

Article 8

Final provisions

1. The Customs Sub-Committee may amend this Decision. The amendment shall enter into force in accordance with the procedure described in Article 9.

2. A Customs Authority may suspend cooperation under this Decision at any time by providing the other Customs Authority with 30 days' written notice. Such notice is also provided to the competent services of the European Commission and to the customs administration of the Republic of Moldova. Notwithstanding the suspension of the cooperation under this Decision, the Customs Authorities shall continue to comply with Article 6(1), (2) and (4) to (6) in order to ensure the protection of information.
3. Either Party may terminate this Decision at any time by notifying the other Party through diplomatic channels. This Decision shall terminate 30 days after the written notification is received by the other Party. Notwithstanding the termination of this Decision, the Customs Authorities shall continue to comply with Article 6(2), (4) and (6) in order to ensure the protection of information.

Article 9
Entry into force

This Decision shall enter into force on the first day of the month following the date on which the Republic of Moldova has notified the Union of the completion of the procedures necessary for its entry into force.

Done at ..., ...

For the Customs Sub-Committee
The Chair
