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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	General Secretariat of the Council
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the EU-Republic of Moldova Customs Sub-Committee as regards the adoption of the decision concerning the mutual recognition of the Authorised Economic Operators Programme of the Republic of Moldova and the Authorised Economic Operators Programme of the European Union

Delegations will find attached document COM(2022) 311 final.

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EU-Republic of Moldova Customs Sub-Committee as regards the adoption of the decision concerning the mutual recognition of the Authorised Economic Operators Programme of the Republic of Moldova and the Authorised Economic Operators Programme of the European Union

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf in the European Union - Republic of Moldova Customs Sub-Committee in connection with the envisaged adoption of a Decision concerning the Mutual Recognition of Authorised Economic Operators between the European Union and Republic of Moldova.

1.1. Context of the proposal

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 referred to as the “Agreement¹”) aims among other to reduce tariffs that European firms face when exporting to Republic of Moldova and to make customs procedures more efficient. In addition, the agreement facilitates trade further by the gradual approximation of Moldovan legislation, rules and procedures, including standards, to those of the EU party of that agreement². The Agreement entered into force in July 2016.

The Customs Sub-Committee, established in accordance with Article 200(1) of the Agreement shall perform its duties as provided for in Article 200(2) and (3) of the Agreement. The Customs Sub-Committee shall inter alia adopt practical arrangements, measures and decisions to implement Chapter V and Protocols II and III to the Agreement, including on exchange of information and data, mutual recognition of customs controls and trade partnership programmes, and mutually agreed benefits. The Customs Sub-Committee is composed of representatives of the European Commission and of Republic of Moldova, responsible for customs and customs-related matters. A representative of the European Commission or of Republic of Moldova who is responsible for customs related matters shall act as its Chair.

1.2. The envisaged act of the Customs Sub-Committee

The Customs Sub-Committee adopts practical arrangements, measures, decisions and recommendations as provided for in Article 200 of the Agreement. These shall be adopted by consensus between the Parties after the completion of Article 11 (3) of the rules of procedures of the EU Republic of Moldova Customs Sub-Committee for their adoption³. The decisions shall be binding upon the Parties, which shall take appropriate measures to implement them.

The Customs Sub-Committee may adopt the decision by written procedure if the Parties so agree. The written procedure shall consist of an exchange of notes between the two Chairs, acting in agreement with the Parties. Once the text is agreed, the decision shall be signed independently and successively by a representative of each Party.

¹ 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

² 2014/492/EU: Council Decision of 16 June 2014 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

³ Decision No 1/2015 of the EU –Republic of Moldova Customs Sub-Committee adopting its Rules of Procedure from 20 May 2015

Both the EU and Republic of Moldova have in place Authorised Economic Operators (AEO) programmes providing facilitations to economic operators who have invested in their supply chain security and have been authorised by the customs administrations of the relevant country.

The purpose of the envisaged act is to provide for the mutual recognition of AEO programmes between the European Union and the Republic of Moldova.

The decision shall be binding upon the Parties at the date of its adoption. Position to be taken on the Union's behalf.

The present proposal recognises that the European Union and Republic of Moldova (the “Parties”) are committed to strengthening their customs cooperation in accordance with the Agreement. It affirms the commitment of the Parties to facilitate trade and increase supply-chain security through trade partnership programmes.

The 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 the Authorised Economic Operator Program adopted by Republic of Moldova and the Authorised Economic Operator programme (“AEO”) of the EU. This is why it is proposed that the Union recognise the AEO programme of Republic of Moldova, while Republic of Moldova would recognise the AEO programme of the EU.

2. LEGAL BASIS

2.1. Procedural legal basis

2.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for 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*’⁴.

2.1.2. Application to the present case

The Customs Sub-Committee is a body set up by the Agreement.

The act which the Customs Sub-Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 200 of the Association Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

⁴ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

2.2. Substantive legal basis

2.2.1. Principles

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.

2.2.2. Application to the present case

The main objective and content of the envisaged act is to facilitate trade between the parties by mutually recognising the Authorised Economic Operators according to Article 197 (j) and Article 200 (3) (b) of chapter 5 on Customs and Trade Facilitation of Title V of the Agreement, which concerns trade and trade-related matters. Consequently, the envisaged act is within the scope of the common commercial policy referred to in Article 207.

The substantive legal basis of the proposed decision, therefore, is Article 207 TFEU.
Conclusion.

The legal basis of the proposed decision should be Article 207, in conjunction with Article 218(9) TFEU.

Proposal for a

COUNCIL DECISION

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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(s) 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) 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 was concluded by Council Decision 2014/493/EU⁵ on 30 August 2014 and entered into force on 1 July 2016.
- (2) Article 192 of the Association Agreement calls on customs authorities to develop customs cooperation of widest possible scope.
- (3) Pursuant to Article 200 of the Association Agreement, the Customs Sub-Committee is established and may take the measures necessary for customs cooperation.
- (4) Pursuant to Article 200(3) (b) of the Association Agreement, the Customs Sub-Committee set up by the Association Agreement may adopt a decision on mutual recognition of customs controls and trade partnership programmes, and mutually agreed benefits.
- (5) The Customs Sub-Committee, during its eighth meeting in 2022, or by written procedure if the Parties so agree, is to adopt a decision concerning the mutual recognition of the Programme of Authorised Economic Operator of Republic of Moldova and the Authorised Economic Operators Programme of the European Union.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Customs Sub-Committee, as the decision on mutual recognition of Authorised Economic Operators Programme will be binding on the Union.

⁵ OJ L [260], [30.8.2014], p. [4-738].

- (7) In order to allow for the prompt application of the measures provided for in the decision concerning the Mutual Recognition of AEO, this decision should enter into force on the date of its adoption,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the eight meeting of the Customs Sub-Committee or by written procedure if the parties agree so, established by 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, with regard to mutual recognition of the Programmes of Authorised Economic Operators of the Republic of Moldova and the European Union, shall be based on the attached draft decision of the Customs Sub-Committee.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*