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From:	General Secretariat of the Council
To:	Delegations
Subject:	EU-Western Balkans Transport Community: The closer association of Ukraine, the Republic of Moldova and Georgia - Non-paper from the Commission

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In view of the next meeting of the Working Group on Transport - Intermodal Questions and Networks on 23 September 2022, the Commission services have provided the attached non-paper.

NON-PAPER

ON THE CLOSER ASSOCIATION OF UKRAINE, THE REPUBLIC OF MOLDOVA AND GEORGIA WITH
THE TRANSPORT COMMUNITY

AND ON THE REVISION OF THE TRANSPORT COMMUNITY TREATY

1. Political context

On 17 June 2022, the Commission presented its Opinions on the application for EU membership submitted by Ukraine, Georgia and the Republic of Moldova (the associated partners) as invited by the Council.¹ The European Council of 23-24 June 2022 confirmed the Commission assessment and recognised the European perspective of Ukraine, the Republic of Moldova and Georgia. In granting the status of candidate country to Ukraine and the Republic of Moldova and calling on Georgia to address the priorities identified in the Commission's Opinion before granting such status, the European Council noted that the **future of these countries and their citizens lies within the European Union.**²

In view of this historic decision by the EU Member States, and to put the associated partners on an equal footing with the other candidate countries and potential candidates for EU accession, **the EU should pursue the closer association with Ukraine, the Republic of Moldova and Georgia with immediate effect.** This includes enhancing cooperation in the area of transport, with the aim to enhance connectivity and closer transport market integration.

In May 2022 already, the Commission adopted the **EU-Ukraine Solidarity Lanes action plan**, establishing alternative transport routes to facilitate Ukraine's export and imports, in particular to address threats to global food security. Russia's war of aggression against Ukraine accelerates the need to **reshape connectivity patterns in the EU's eastern neighbourhood** by improving all transport links westwards towards the EU in the perspective of closer ties between Ukraine, the Republic of Moldova, Georgia and the EU.

¹ https://ec.europa.eu/neighbourhood-enlargement/news/european-commission-recommends-council-confirming-ukraine-moldova-and-georgias-perspective-become-2022-06-17_en

² <https://www.consilium.europa.eu/en/press/press-releases/2022/06/24/european-council-conclusions-23-24-june-2022>

The **Transport Community Treaty (TCT)**, which includes the Union and the six Western Balkan Partners (WB6)³, aims to bring about the progressive integration of transport markets of the WB6 into the EU transport market on the basis of the relevant acquis, including in the areas of technical standards, interoperability, safety, security, traffic management, social policy, public procurement and environment, for all modes of transport excluding air transport.

The TCT set-up could therefore serve as an effective model to also pursue the closer association between the EU and Ukraine, the Republic of Moldova and Georgia in the transport field.

DELETED A closer association to the TCT would have a precedent in the Energy Community Treaty, which already covers the associated partners and the WB6.

Immediately after the European Council summit of 23-24 June 2022, the Commission services held dedicated exchanges with the Intermodal and COWEB Council Working Parties on the possible closer association of the three concerned countries with the TCT. On these occasions, Member States requested written input from the Commission and invited it to approach the WB6 on the matter. The present information note responds to these requests.

2. Reinforcing cooperation with Ukraine, the Republic of Moldova and Georgia in the short-term

Legal considerations

The **DELETED** goal of granting these three countries TCT membership is likely to take some time, **DELETED**. **The establishment of a more systematic participation of the associated partners as observers could therefore be the first step** to ensure closer association between the EU, the WB6, and Ukraine, the Republic of Moldova and Georgia, in view of their European perspective.

³ Albania, Bosnia and Herzegovina, North Macedonia, Kosovo* (*the designation of which is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the ICJ Opinion on the Kosovo declaration of independence), Montenegro, and Serbia.

Closer partnership in the areas of transport with non-TCT members is already envisaged, for example, through Article 39 of the TCT, which allows the Contracting Parties to consult with each other in the framework of the Regional Steering Committee at the request of any Contracting Party. Such consultation can focus on various aspects of possible developments in relations between Contracting Parties and third countries in transport, and on the functioning of the significant elements of bilateral or multilateral agreements concluded in this field.

Article 22 of the TCT creates the possibility for observer status in the Ministerial Council, but this is only open to EU Member States. However, the TCT Regional Steering Committee (RSC) rules of procedure allow for the Presidency (held by a Western Balkan Partner) and the Vice-Presidency (held by a representative of the EU), where appropriate, to agree to invite representatives of other states, international organisations or other bodies to attend, on an ad hoc basis, specific meetings of the Steering Committee or one or more parts thereof. **These observers may participate in the discussions** and may make statements upon permission or when invited to do so by the Presidency, but they cannot vote in the Steering Committee. **DELETED**

Similar arrangements on an ad hoc basis and for specific meetings apply to the Technical Committees and to the Social Forum of the TCT. The rules of procedure of the Budget Committee stipulate that its meetings are not public, but the Chair may invite other participants where appropriate.

Given the European perspective granted to the associated partners, the Commission considers it might be appropriate to **go beyond the current possibilities** for closer association of the associated partners arising from Article 39 of the TCT and from the ad hoc observer status laid down in the rules of procedure of the RSC and of other bodies of the TCT, by ensuring the **more systematic participation of the Partner countries as observers**.

The intention of ensuring such a systematic participation could be first expressed at a relevant political level **with the signing of a joint statement at Ministerial level**, between the current contracting parties of the TCT and the Ministers in charge of Transport in the associated partners. Such a statement would underline the need to reinforce their cooperation within the Transport Community, in particular by referring to the possibility for the associated partners to **participate more systematically as observers**.

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Financial considerations for the more systematic participation as observers

The **practical modalities** of this closer association of Ukraine, the Republic of Moldova and Georgia with the Transport Community could entail their **more systematic participation as observers in most working bodies of the Transport Community**: Regional Steering Committee, Technical Committees, Budget Committee and Social Forum. **DELETED**

The specific modalities underpinning the more systematic participation of the associated partners as observers, to be finalised in the course of discussions with the TCT contracting parties, would have **financial implications**. Such practical modalities are estimated to result in **up to EUR 820,000** needed per year⁴ to ensure the closer association of Ukraine, the Republic of Moldova and Georgia in the Transport Community, **DELETED**

The estimations presented **will still need to be adjusted** as the closer association of Ukraine, the Republic of Moldova and Georgia progresses and their specific needs for technical assistance and

⁴ **DELETED**

capacity-building are analysed in further detail. The presented estimations are based on current prices and current rules covering participation costs.

Supporting the needs of Ukraine, the Republic of Moldova and Georgia as more systematic observers would require financial resources. Commission services are exploring options to identify the source of such finance, taking into account budgetary constraints, current budgetary ceilings, as well as the current programming and commitments.

It is important to note that the Commission services are currently reflecting on the cooperation with Ukraine, the Republic of Moldova and Georgia more broadly. **DELETED** Reflections to this end should also take place into the larger context of relief, recovery and reconstruction support.

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3. Considerations regarding Treaty revision

Legal considerations

In order to allow for additional countries to accede to the TCT, a Treaty revision is required. Article 42 of the TCT lays down that the Treaty can be reviewed at the request of any Contracting Party, and at any event, five years after its entry into force (i.e., by 2024).

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Policy considerations

The Transport Community Treaty sets out the **progressive opening of transport markets** between the Western Balkans Partners, and between the WB6 and the EU, **subject to the transitional arrangements** between the EU and each of the WB6, as elaborated in Article 40 of the TCT and on Protocols I-VI accompanying the TCT.

The modalities listed in the Protocols envisage two transitional periods delineated by the level of implementation of the EU acquis listed in Annex I TCT and of the state aid and competition rules included in Annex III TCT.

Article 40(2) of the TCT establishes that the gradual transition of each Western Balkan Partner to the **full application of the Transport Community shall be subject to assessments** carried out by the European Commission in cooperation with the concerned Western Balkan Partner. Upon positive assessment, the Western Balkan Partner would be granted access rights to the transport market of the Union under the terms established in the Treaty. This market integration concerns notably rail, maritime, road and inland navigation.

It should be noted that EU rules on **market access on road transport are excluded from the modalities of the Transport Community Treaty**.

Achieving transport market integration can therefore **support the European integration process** of the associated partners, by bringing them closer (physically and in terms of regulatory alignment) to the EU and confirming their European perspective.

Financial considerations of full TCT membership

A TCT revision to include the full membership of Ukraine, the Republic of Moldova and Georgia could also have implications for infrastructure funding needs, as TCT modalities support the process of the indicative extension of the [Trans-European Transport Network](#) (TEN-T) through focus on transport policy development and project prioritisation.

The Economic and Investment Plan (EIP) for the Western Balkans sets out a substantial investment package of up to EUR 9 billion of EU funding for the region to help reduce the cost of financing for both public and private investments and to reduce the risk for investors, aiming to mobilise and leverage an additional EUR 20 billion in public and private investments. Of this, around EUR 5 billion (of which EUR 2 billion in grants) is being channelled towards transport to meet TEN-T standards and to address the objectives of the Green Agenda in the Western Balkans.

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The revision of the TCT to allow the full membership of the associated partners will mostly also have implications for **the financing of the Transport Community itself**.

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4. Position of the WB6

Following the conclusions of the COWEB discussion on TCT revision on 27 June, the Commission has started exploring the matter of more systematic participation for the associated partners as observers and TCT expansion with the WB6 as Contracting Parties to the TCT that will also have to give their agreement.

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In this regard, the Commission intends to **pursue further discussions with the WB6** following reactions from EU Member States to the considerations raised in this information note.

5. Conclusion and next steps

In view of the analysis of the legal, policy and budgetary implications presented in this non-paper, the Commission would **recommend pursuing preparations for the full membership** of Ukraine, the Republic of Moldova and Georgia in the Transport Community.

DELETED it might be wise to also **pursue in parallel the immediate establishment of a more systematic participation as observers** in the Transport Community for the three countries, pending budget availability.

In pursuit of this course of action, the Commission will come back to the Council with more information on a proposal for a joint Ministerial statement between the current contracting parties of the TCT and the Ministers in charge of Transport in the associated partners, with the view to be **signed during the next TCT Ministerial Council meeting**, scheduled to take place in Brussels in mid-November 2022.
