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**COVER NOTE**

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 503 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Association Committee in Trade configuration 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 as regards the modification of Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) to that Agreement

Delegations will find attached document COM(2023) 503 final.

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Encl.: COM(2023) 503 final



EUROPEAN  
COMMISSION

Brussels, 1.9.2023  
COM(2023) 503 final

2023/0308 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Association Committee in Trade configuration 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 as regards the modification of Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) to that Agreement**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns a Council decision to establish the position to be taken on the EU's behalf in the Association Committee in Trade configuration ('Trade Committee') in connection with an envisaged adoption of a decision to modify Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) 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 ('Moldova'), of the other part ('the Agreement') in order to include EU acts relevant to roaming on public mobile communications networks, and other recent EU *acquis* relating to telecommunications and postal and courier services.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Association Agreement**

According to Article 1(2), the Agreement aims to establish conditions for enhanced economic and trade relations leading towards Moldova's gradual integration into the EU internal market, including by setting up a Deep and Comprehensive Free Trade Area as stipulated in Title V (Trade and Trade-related Matters) of the Agreement, and to support Moldova's efforts to develop its economic potential via international cooperation, including through the approximation of its legislation to that of the European Union. The Agreement entered into force on 1 July 2016. Moldova has requested further liberalisation with regards to the roaming sector, and to update the Agreement to include recent EU *acquis* on telecommunications and postal and courier services.

Applying reciprocally between the EU and Moldova the "roam like at home" rules requires approximation by Moldova to the EU roaming *acquis*, by the full enactment and complete and full implementation thereof in Moldovan law, and a subsequent further Decision by the Trade Committee.

#### **2.2. The Association Committee in Trade configuration**

Pursuant to Article 436(3) of the Agreement, the Association Council is to have the power to update or amend the Annexes to the Agreement. Pursuant to Article 438(2) of the Agreement, the Association Council may delegate to the Association Committee any of its powers, including the power to take binding decisions. By Decision No 3/2014<sup>1</sup> the Association Council delegated the power to update or amend the Annexes to the Agreement which relate, inter alia, to Chapter 6 (Establishment, trade in services and electronic commerce) of Title V (Trade and Trade-related Matters) of the Agreement to the Association Committee meeting in Trade configuration, to the extent that there are no specific provisions in Chapter 6 relating to the update or the amendment of those Annexes. There are no specific provisions in Chapter 6 relating to the update or the amendment of the Annexes. The Trade Committee can therefore take binding decisions to update or amend Annexes to the Agreement which relate to relevant chapters of Title V of the Agreement. The Trade Committee adopts its decisions by agreement between the Parties.

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<sup>1</sup> Decision No 3/2014 of the EU-Republic of Moldova Association Council of 16 December 2014 on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration (OJ L 110, 29.4.2015, p. 40).

### **2.3. The envisaged act of the Association Committee in Trade configuration**

The Trade Committee is to adopt a decision to modify Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) to the Agreement ('the envisaged act').

The purpose of the envisaged act is to modify the aforementioned Annexes in order to include relevant EU acts relevant to roaming on public mobile communications networks and other recent EU *acquis* relating to telecommunications and postal services. This is consistent with the objective of Moldova's gradual regulatory approximation to the Union *acquis* as laid down in the preamble to the Agreement and Articles 102, 230 and 240 of the Agreement, which concern regulatory approximation in telecommunication, postal and courier services sectors specifically.

The envisaged act will become binding on the Parties to the Association Agreement in accordance with Article 438(3) of the Agreement, which provides that: 'The Association Committee shall have the power to adopt decisions in the cases provided for in this Agreement and in areas in which the Association Council has delegated powers to it. These decisions shall be binding upon the Parties, which shall take appropriate measures to implement them. The Association Committee shall adopt its decisions by agreement between the Parties'.

## **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

The position to be adopted on the Union's behalf is to support the adoption of the envisaged act by the Trade Committee.

Modifying Annex XXVIII-B (Rules applicable to telecommunication services) is necessary in order to add to the EU *acquis* regarding telecommunication services already included in the Annex the relevant EU acts relevant to roaming on public mobile communications networks and other recent EU *acquis* relating to telecommunication services. It is also necessary to delete certain acts already included in the Annex where they have been replaced or amended by more recent acts.

Modifying Annex XXVIII-C (Rules applicable to postal and courier services) is necessary in order to add to the EU *acquis* regarding postal and courier services already included in the Annex recent EU *acquis* relating to postal and courier services.

The relevant EU acts are listed in Annexes 1 and 2 of the envisaged act.

This decision implements the European Union's common commercial policy towards an Eastern Partner country based on the provisions of the above-mentioned Association Agreement. It is consistent with the objective of Moldova's regulatory approximation to the EU *acquis* as laid down in the preamble and Article 2 of the Agreement which sets out its objectives.

## **4. LEGAL BASIS**

### **4.1. Procedural legal basis**

#### *4.1.1. 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’<sup>2</sup>.

#### *4.1.2. Application to the present case*

The Trade Committee is a body established by the Association Agreement. The decision the Association Committee in trade configuration shall adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 438(3) of the Agreement. The envisaged act does not supplement or amend the institutional framework of the Agreement. Therefore, the procedural legal basis for the proposed Council decision is Article 218(9) TFEU.

### **4.2. Substantive legal basis**

#### *4.2.1. 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 European 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.

#### *4.2.2. Application to the present case*

Article 207 TFEU is the legal basis for the European Union’s common commercial policy. In particular, the first subparagraph of Article 207(4) TFEU provides the legal basis for trade in services with regard to third countries including stipulations on the regulatory framework conditions for the supply of such services.

The main objective and content of the envisaged act relates to the European Union's common commercial policy because the act concerns trade in telecommunication and postal and courier services with Moldova. Therefore, the substantive legal basis of the proposed Council decision is Article 207 TFEU.

### **4.3. Conclusion**

The legal basis of the proposed Council decision should be the first subparagraph of Article 207(4) TFEU in conjunction with Article 218(9) TFEU.

## **5. PUBLICATION OF THE ENVISAGED ACT**

As the decision of the Association Committee will amend the Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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<sup>2</sup> 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.

Proposal for a

## COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Association Committee in Trade configuration 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 as regards the modification of Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) to that Agreement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, 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<sup>1</sup> ('the Agreement') entered into force on 1 July 2016.
- (2) Article 436(3) of the Agreement provides that the EU-Republic of Moldova Association Council ('the Association Council') is to have the power to update or amend the Annexes to the Agreement.
- (3) Pursuant to Article 438(2) of the Agreement, the Association Council may delegate to the Association Committee any of its powers, including the power to take binding decisions.
- (4) By Decision No 3/2014<sup>2</sup> the Association Council delegated the power to update or amend the Annexes to the Agreement which relate, inter alia, to Chapter 6 (Establishment, trade in services and electronic commerce) of Title V (Trade and Trade-related Matters) of the Agreement to the Association Committee meeting in Trade configuration, to the extent that there are no specific provisions in Chapter 6 relating to the update or the amendment of those Annexes. There are no specific provisions in Chapter 6 relating to the update or the amendment of the Annexes.
- (5) The Association Committee in Trade configuration should adopt the envisaged act on modifying Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) in the course of 2023.

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<sup>1</sup> OJ L 260, 30.8.2014, p. 4.

<sup>2</sup> Decision No 3/2014 of the EU-Republic of Moldova Association Council of 16 December 2014 on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration (OJ L 110, 29.4.2015, p. 40).

- (6) As stated in the preamble to the Agreement and in accordance with Articles 230 and 240 of the Agreement, the Parties recognise the importance of the approximation of Moldova's existing legislation to that of the European Union, meaning that Moldova is to ensure that existing laws and future legislation will be gradually made compatible with the EU *acquis*. In addition, Article 102 of the Agreement provides that the Republic of Moldova shall carry out approximation of its legislation to the EU acts and international instruments referred to in Annex XXVIII-B to the Agreement, according to the provisions of that Annex.
- (7) Moldova has requested further integration with regards to the roaming sector in the European Union, and to update the Agreement to include recent EU *acquis* on telecommunications and postal and courier services.
- (8) Considering that Annex XXVIII-B (Rules applicable to telecommunication services) to the Agreement should be complemented by the relevant EU acts relating to roaming on public mobile communications networks, and other recent EU *acquis* relating to telecommunication services, it is necessary to add the relevant acts to the Annex. It is also necessary to delete certain acts already included in the Annex where they have been replaced or amended by more recent acts.
- (9) Considering that Annex XXVIII-C (Rules applicable to postal and courier services) should be complemented by recent EU *acquis* relating to postal and courier services, it is necessary to add the relevant acts to the Annex.
- (10) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Association Committee in Trade configuration, as the envisaged act modifying Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) to that Agreement will be binding upon the Union,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf in the course of 2023 in the Association Committee in Trade configuration 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, as regards the modification of Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) to that Agreement shall be based on the draft Decision of that Committee attached to this Decision.

#### *Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*