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#### NOTE

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| From:    | General Secretariat of the Council                                                                                                                                                                        |
| To:      | Delegations                                                                                                                                                                                               |
| Subject: | EU-Western Balkans Transport Community: State-of-play of engagement with the Transport Community Treaty Observing Participants of Ukraine, the Republic of Moldova, and Georgia<br>- Commission non-paper |

In view of the meeting of the working party on Transport – Intermodal Questions and Networks, on 24 September, delegations will find in the annex a non-paper provided by the Commission services on the above-mentioned subject.

**COMMISSION SERVICES NON-PAPER****ON THE STATE-OF-PLAY OF ENGAGEMENT WITH THE TRANSPORT COMMUNITY TREATY  
OBSERVING PARTICIPANTS OF UKRAINE, THE REPUBLIC OF MOLDOVA AND GEORGIA****AND****PROPOSED NEXT STEPS****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 as invited by the Council<sup>1</sup>. 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 light of this, the Commission proposed to pursue an immediate closer engagement with Ukraine, Georgia and the Republic of Moldova in the field of transport, in particular as regards the work of the Transport Community.

On 15 November 2022, the Contracting Parties of the Transport Community Treaty<sup>2</sup> (“TCT” or “the Treaty”) and the Ministers in charge of transport from Ukraine, Georgia and the Republic of Moldova endorsed a joint statement on cooperation for the development of the transport sectors<sup>3</sup>. This political document formed the basis of involvement of the latter three countries as observing participants in the work of the Transport Community. It also envisaged, at a later stage, **the possibility of full membership in the TCT for Ukraine, Georgia and the Republic of Moldova**. Such a development would reflect the level of engagement between the EU and the three countries in analogous regional organisations in other policy areas, with Ukraine, the Republic of Moldova and Georgia already being full members of the Energy Community Treaty since 2011, 2010, and 2017, respectively.

<sup>1</sup> [https://ec.europa.eu/neighbourhood-enlargement/news/european-commission-recommends-council-confirming-ukraine-moldova-and-georgias-perspective-become-2022-06-17\\_en](https://ec.europa.eu/neighbourhood-enlargement/news/european-commission-recommends-council-confirming-ukraine-moldova-and-georgias-perspective-become-2022-06-17_en)

<sup>2</sup> The [Transport Community Treaty](#), which entered into force on 1 May 2019.

<sup>3</sup> <https://www.transport-community.org/wp-content/uploads/2022/12/Item-5-Joint-statement-on-strengthening-cooperation-between-TCT-and-Moldova-Ukraine-Georgia-final-9.pdf>

The general context for the closer cooperation with the three countries was defined by the roll-out of significant bilateral and multilateral financial and policy support, in particular for Ukraine in the context of Russia's war of aggression and for Moldova due to its direct impact. In particular, the collaboration with these two countries in the transport sector has intensified as part of the **EU-Ukraine Solidarity Lanes action plan**, establishing alternative transport routes to facilitate Ukraine's export and imports, and also helping to keep goods moving in and out of the Republic of Moldova.

The European Council of 14-15 December 2023 granted Georgia the status of candidate country and decided to open accession negotiations with Ukraine and the Republic of Moldova. The accession negotiations for the latter two countries were formally launched at two intergovernmental conferences in Luxembourg on 25 June 2024.

Following Georgia's adoption of the law on the transparency of foreign influence, the European Council of 27-28 June 2024 stated that the law represents backsliding on the steps set out in the Commission's recommendation for candidate status. The European Council called on Georgia's authorities to clarify their intentions by reversing this course of action which jeopardises Georgia's EU path, de facto leading to a halt of the accession process.

In order to pursue an accelerated political engagement, on 8 November 2023 the European Commission adopted a new Growth Plan for the Western Balkans, with the aim of bringing some of the benefits of membership to the region in advance of accession, boost economic growth and accelerate much needed socio-economic convergence. The objective is to enable partners to step up reforms and investments to significantly accelerate the speed of the enlargement process and the growth of their economies. A dedicated EUR 6 billion Reform and Growth Facility for the Western Balkans was also proposed for the period 2024-2027, out of which EUR 2 billion for EU grants. The European Council of 1 February 2024 confirmed the additional EUR 2 billion as part of the MFF mid-term review.

The **Ukraine Facility**<sup>4</sup>, which entered into force on 1 March 2024, foresees up to €50 billion of stable financing, in grants and loans, for the period 2024 to 2027, to support Ukraine's recovery, reconstruction, and modernisation on its path towards the EU, as it continues to defend itself from Russian aggression.

The present non-paper describes the state of engagement between the Transport Community and the observing participants of Ukraine, the Republic of Moldova and Georgia **in view of delivering on the possibility for their full membership**.

## **2. Reinforcing cooperation between Ukraine, the Republic of Moldova and Georgia and the Transport Community – progress so far**

Following the endorsement of the joint statement on the closer cooperation of the observing participants in the work of the Transport Community, the TCT Secretariat was tasked with establishing and maintaining a continuous working relationship with Ukraine, the Republic of Moldova and Georgia.

In the period since the endorsement of the joint statement, much progress has been achieved in the closer engagement with the observing participants. The TCT Secretariat has introduced them to the work of the Transport Community and involved them in the work of the TCT technical committees, the Regional Steering Committee and in the TCT Ministerial-level meetings. During this period, the TCT Secretariat has prepared regular updates of the state-of-play of engagement with Ukraine, the Republic of Moldova and Georgia. These documents have been shared with the Intermodal Working Party as part of the preparatory work on the coordination of Union positions ahead of TCT Regional Steering Committee meetings in 2023 and 2024.

During the period between December 2022 and November 2023, the observing participants attended 38 events organised by the TCT Secretariat – including also active participation from representatives from Ukraine, despite the very difficult circumstances in the country<sup>5</sup>. This is evidence of the **importance granted by the observing participants to their closer engagement with the work of the Transport Community**.

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<sup>4</sup> <https://www.consilium.europa.eu/media/69874/20240201-special-euco-conclusions-en.pdf>

<sup>5</sup> 92 participants from Georgia and the Republic of Moldova attended events and meetings in-person, whereas 11 participants from Georgia and 17 from the Republic of Moldova attended online since the beginning of 2023. Participants from Ukraine attended the meetings with 10 representatives in person and 19 participants attended events and meetings online, their engagement and efforts continuously expanding despite the very difficult circumstances.

Besides supporting the active participation in the various meetings of the Transport Community, the TCT Secretariat has also progressed with **incorporating the observing participants into some of the major TCT deliverables**, such as the action plans, acquis implementation and TEN-T reports<sup>6</sup>. In that context, during the December 2023 TCT Ministerial Council meeting, the TCT Secretariat presented the draft action plans and initial reports on the transposition of EU Acquis and compliance with the TEN-T network by the observing participants, putting the latter on an equal footing with the Western Balkan Partners as far as these important TCT deliverables are concerned. The action plans for the observing participants are being finalised over the course of 2024 and are scheduled to be presented during the TCT Ministerial Council in December 2024.

As this non-paper shows, in the short period of time since the elaboration of the joint statement on the closer cooperation between Ukraine, the Republic of Moldova, Georgia and the Transport Community, **much progress has been achieved**. Further engagement to provide dedicated technical assistance is foreseen imminently (see section on financial considerations below).

For most intents and purposes, **the observing participants of Ukraine, the Republic of Moldova and Georgia can therefore be considered as being integrated in the Transport Community as practically full members already**, apart from the lack of voting rights and contribution to the TCT budget.

### **3. Considerations stemming from possible full membership for Ukraine, the Republic of Moldova and Georgia in the TCT**

#### Legal considerations

In order to allow for additional countries to accede to the Transport Community Treaty, a Treaty revision is required. The TCT does not explicitly regulate the procedure for accession of new member countries, and no new members have acceded thereto after its initial conclusion. Against this background, the Commission will explore the possibility to operationalise the revision of the TCT to allow for this expanded membership through a Protocol amending the Treaty and as part of the periodic revision of the TCT pursuant to Article 42 of the TCT.

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<sup>6</sup> <https://www.transport-community.org/observing-participants/>

It should be noted that preparatory work has already started to deliver on the provision of Article 42 of the TCT, which requires the review of the Treaty five years after its entry into force. An informal working group, headed by the TCT Secretariat, and including representatives of the Western Balkan Partners, EU Member States and the Commission, was established as part of the exploratory talks on the possible TCT revision. Representatives of Ukraine, the Republic of Moldova and Georgia have also been invited to the meetings of the working group in their capacity as observing participants.

In this context, and **upon positive reception from EU Member States** of the conclusions of this non-paper, the Commission will consider an authorisation to open negotiations on the full membership of the observing participants of the TCT, possibly as part of an overall authorisation to negotiate on the revision of the TCT.

#### Policy considerations

The Transport Community Treaty sets out the **progressive integration of transport markets** of the Western Balkans Partners into the EU transport markets, **subject to the transitional arrangements** laid down in Article 40 and on Protocols I-VI accompanying the TCT.

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

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** to be carried out by the European Commission in cooperation with the concerned Western Balkan Partner. Upon positive assessment by the European Union, the Western Balkan Partner would be granted access rights to transport markets of the Union under the terms established in the Treaty. This market integration concerns notably rail, maritime and inland waterway transport.

Upon potential accession as full members to the TCT, similar progressive opening of the rail, maritime and inland waterway transport markets between the EU and Ukraine, Georgia and the Republic of Moldova would also be established. Policy considerations arising from this include, for example, different gauges in Ukraine and the Republic of Moldova when it comes to rail transport, or the need to boost maritime connections when it comes to Georgia (given its geographical location).

It should also be noted that the observing participants have already benefitted from policy support stemming from their closer engagement with the Transport Community, in particular when it comes to the provision of technical assistance by the TCT Secretariat and support on (monitoring) acquis implementation and TEN-T development, as described in the previous section. Such benefits are likely to increase with full membership of the observing participants in the TCT, thereby also supporting their EU membership aspirations.

It cannot be excluded that additional policy considerations from the potential full membership of the observing participants in the TCT might arise in the course of the ongoing process on reviewing the Treaty. In this regard, it should be noted, for example, that EU market access on road transport is currently excluded from the Transport Community Treaty.

#### Financial considerations of full TCT membership

In order to account for their status of observing participants (without voting rights) and to avoid imposing additional costs on the regular TCT budget (to which the Western Balkan Partners also contribute), the financial resources associated with the closer engagement described in section 2 of this non-paper are covered through an EU grant financed under the Neighbourhood, Development and International Cooperation Instrument (NDICI)-Global Europe financing instrument. In this respect, the European Commission put in place a two-phase programme, providing EUR 0.17 million for initial engagement in 2023 and EUR 3.2 million through a dedicated regional programme for 2024 and 2025 to further enhance the countries' participation in the Transport Community, including through the provision of **dedicated technical assistance**.

When it comes to **potential full membership** of the observing participants in the TCT, estimates of the financial implications suggest that the TCT budget would need to **initially increase** to up to EUR 4.6 million, representing an approximate **increase of 50%** relative to the 2024 TCT budget (EUR 3.12 million). The increased TCT budget would cover the hiring of additional staff<sup>7</sup> and associated costs<sup>8</sup>, the upgrade of IT databases<sup>9</sup>, and technical assistance and capacity-building support<sup>10</sup>. This increase represents a higher-bound estimate, with the effect on the annual TCT budget likely to be lower over the medium-term once one-off expenses have been incorporated.

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<sup>7</sup> Based on preliminary indications from the TCT Secretariat, there would be a need for 7 additional staff being hired initially. Estimated costs for additional staff would be around EUR 450,000 per year.

<sup>8</sup> Such as office equipment, possible education allowance, moving and relocation costs, etc.

<sup>9</sup> E.g. TODIS, WBRSO – estimated at around EUR 650,000 one-off investment.

<sup>10</sup> Estimation of EUR 450,000.

Upon the potential accession of Ukraine, the Republic of Moldova and Georgia to the TCT as full members, Annex V of the TCT, which records the contributions of the TCT contracting parties to the budget, will need to be revised. The below table summarises **an estimation of the possible budgetary burden in an enlarged TCT**. It is based on (a slightly modified version of) the current burden-sharing formula, in which the EU contributes 80% to the TCT budget, with the other TCT contracting parties covering the remaining 20%<sup>11</sup>. Such a modification of the burden-sharing formula as compared to the current formula in place<sup>12</sup> would be aimed at minimising the financial impact on the current non-EU Contracting Parties from the Western Balkans, as well as on the observing participants, in particular Ukraine.

**Table 1. Indicative sharing of the budgetary burden in an enlarged TCT**

|                                  | % contribution to TCT budget | amount of contribution in absolute terms, EUR for enlarged TCT | amount of contribution in absolute terms, EUR for current set-up (as per 2024 TCT budget) | increase/decrease in absolute terms (EUR) compared to current TCT set-up |
|----------------------------------|------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| EU27                             | 80.00%                       | 3680000                                                        | 2496960                                                                                   | 1183040.00                                                               |
| Albania                          | 1.82%                        | 83720                                                          | 99878.4                                                                                   | -16158.40                                                                |
| BiH                              | 1.92%                        | 88320                                                          | 110802.6                                                                                  | -22482.60                                                                |
| Kosovo *                         | 1.67%                        | 76820                                                          | 80214.84                                                                                  | -3394.84                                                                 |
| Montenegro                       | 1.60%                        | 73600                                                          | 74284.56                                                                                  | -684.56                                                                  |
| N. Macedonia                     | 1.75%                        | 80500                                                          | 89890.56                                                                                  | -9390.56                                                                 |
| Serbia                           | 2.62%                        | 120520                                                         | 169169.04                                                                                 | -48649.04                                                                |
| Ukraine <sup>^</sup>             | 5.05%                        | 232300                                                         | n/a                                                                                       | n/a                                                                      |
| Republic of Moldova <sup>^</sup> | 1.74%                        | 80040                                                          | n/a                                                                                       | n/a                                                                      |
| Georgia <sup>^</sup>             | 1.83%                        | 84180                                                          | n/a                                                                                       | n/a                                                                      |

<sup>11</sup> The slight modification consists in the following: out of the 20% to be split among the non-EU Contracting Parties, 1.5% are fixed per each of 9 partners, and the remaining 6.5% are split according to GDP weight.

<sup>12</sup> As per the current budgetary-sharing formula, each non-EU partner contributes for 2% to the budget and the remaining 8% are distributed among the six non-EU partners according to their share in total non-EU GDP. It should be noted that the current burden-sharing formula underestimates the size/share of the EU contribution, which is set at 80%. If GDP weight is used instead, the EU contribution would amount to close to 98% of the TCT budget in the current set-up.

#### 4. Positions of the Western Balkan Partners

Over the course of 2023, the European Commission has held a number of bilateral discussions with the Western Balkan Partners on the closer involvement of the observing participants in the work of the TCT. Overall, strong support can be noted for the initiative to integrate more closely Ukraine, the Republic of Moldova and Georgia in the work of the TCT going forward towards full membership, with a notable caveat concerning the **bilateral relations between one particular Western Balkan Partner and the observing participants**. This section summarises the stated positions of the Regional Partners on full membership prospects for Ukraine, the Republic of Moldova and Georgia.

**Albania** has raised no particular issues with the closer involvement of the Trio in the work of the TCT. During a bilateral meeting in the margins of the Connectivity Summit in Budva, Albania stated that it is supportive of the TCT extension to Ukraine, the Republic of Moldova and Georgia.

During a bilateral meeting in the margins of the Connectivity Summit in Budva, **Bosnia and Herzegovina** underlined its support for the extension of the TCT to Ukraine, the Republic of Moldova and Georgia.

During dedicated discussions in March 2023, **Kosovo\*** underlined that it has no major issues with full membership in the TCT for the observing participants, but would need to address certain concerns with one of the observing participants first. These issues concern ongoing Central European Free Trade Agreement (CEFTA) negotiations on moving away from the United Nations Interim Administration Mission in Kosovo (UNMIK) reference as the basis for Kosovo participation. Earlier, during the elaboration of the draft joint statement, the Kosovo representatives in the TCT had noted that Ukraine, the Republic of Moldova and Georgia do not recognise Kosovo's declaration of independence. From Kosovo's perspective, therefore, the issue of full TCT membership for these three countries should be carefully examined in further detail.

**Montenegro** has raised no particular issues with the closer involvement of the Trio in the work of the TCT. During a bilateral meeting in the margins of the Connectivity Summit in Budva, Montenegro expressed support for the Trio joining the TCT as full members and inquired about the budgetary and Secretariat staffing implications.

**North Macedonia** has raised no particular issues with the closer involvement of the Trio in the work of the TCT. During a bilateral meeting in the margins of the Connectivity Summit in Budva, North Macedonia stated that it supports the observing participants' accession to the TCT.

**Serbia** has raised no particular issues with the closer involvement of the Trio in the work of the TCT. During a bilateral meeting in the margins of the Connectivity Summit in Budva, the Serbian representative noted there is currently no official position of the government of Serbia regarding the TCT full membership for the observing participants. Such a position would be established upon a more formal approach from the EU concerning possible accession of Ukraine, the Republic of Moldova and Georgia to the TCT.

## **5. Positions of the observing participants**

All three observing participants have previously expressed interest to join the TCT as full members. The latest bilateral exchanges with the observing participants on full membership took place in mid-October 2023 in the margins of the TCT Regional Steering Committee meeting.

At that time, the Commission presented to Ukraine, the Republic of Moldova and Georgia the positions of the Western Balkans Contracting Parties on the prospects of full membership for the observing participants, including concerning matters of bilateral nature that would need to be addressed with one particular Western Balkan Partner. The Commission also delineated possible financial implications (i.e., contributions to the TCT budget).

On the occasion, Ukraine and the Republic of Moldova reaffirmed their strong interest in joining the TCT as full members. Georgia requested more time to analyse the matter, notably in expectation of the outcome of the December 2023 European Council. In earlier exchanges, during the elaboration of the draft joint statement, Georgia raised concerns regarding the potential impact of its non-recognition of Kosovo on its accession to the TCT.

Although no dedicated discussion took place with Georgia since the latest bilateral exchanges with the observing participants in October 2023, and in spite of prior indications from the Georgian side that it was still looking thoroughly into the legal and procedural aspects before entering into further discussion on next steps regarding possible TCT full membership, **on 2 August 2024, Georgia formally requested to become a contracting party to the Transport Community.** In light of this, in principle, **the current approach of taking steps towards the full membership of all three observing participants can be kept.**

However, in light of Georgia's democratic backsliding, including the enactment of the Law on transparency of foreign influence, which jeopardises Georgia's EU path and has de facto led to a halt of the accession process, the decision to take concrete steps towards Georgia's full membership to the TCT should be deferred. This deferral aligns with discussions at the European Council in June 2024. Regardless however, considering Georgia's candidate status, it is essential to maintain the possibility of full membership in the Transport Community should the situation improve in the future.

## 6. Conclusions and proposed next steps

As this non-paper shows, in the short period of time since the elaboration of the joint statement on the closer cooperation between Ukraine, the Republic of Moldova, Georgia and the Transport Community, **much progress has been achieved**. For most intents and purposes, the observing participants of Ukraine, the Republic of Moldova and Georgia **can already be considered as being integrated in the Transport Community as practically full members**, apart from the lack of voting rights and contribution to the TCT budget.

This initiative is to be seen in light of the current geo-political context, and the need to deliver on the political commitments undertaken by EU leaders in recent Summits vis-à-vis the (potential) candidate countries, **firmly anchoring** the Western Balkan Partners, Ukraine, the Republic of Moldova and Georgia on their respective European paths and taking every possibility to **deliver on enhanced integration prior to accession** (which characterises the Transport Community objectives) to the maximum extent possible.

The analysis of the legal, policy and budgetary implications presented in this non-paper presents a strong case for **launching formal steps for the full membership of Ukraine and the Republic of Moldova** while keeping the decision for Georgia to join the Transport Community on hold for the time being. Upon positive reaction from the EU Member States, the Commission will consider a formal recommendation to authorise the opening of negotiations for a protocol on the accession of Ukraine and the Republic of Moldova as full members of the Transport Community Treaty, possibly in the context of the ordinary review of the TCT.