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Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Association Council 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 further market opening with respect to the sector of roaming on public mobile communications networks and on amending Annex XXVIII-B (Rules applicable to telecommunication services) to that Association Agreement**

{SWD(2025) 174 final}

## **EXPLANATORY MEMORANDUM**

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

This proposal concerns the Council decision setting out the position to be taken on the EU's behalf in the Association Council as regards the envisaged adoption of a decision (the 'envisaged act') to: (i) grant further reciprocal market opening with respect to the sector of roaming on public mobile communications networks and determine the conditions applicable to this measure; and (ii) amending Annex XXVIII-B (Rules applicable to telecommunication services) 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 part<sup>1</sup> (the 'Agreement'). This envisaged act is pursuant to Article 436(1), Article 449 and Article 452(2) of the Agreement.

Based on the EU's monitoring, in accordance with Article 450 of the Agreement, and the assessment the EU completed for the purpose of Article 451 of the Agreement, as submitted by the Commission in the form of a Commission staff working document, the envisaged act aims to further integrate the Republic of Moldova ('Moldova') into the EU's internal market with respect to the sector of roaming on public mobile communications networks and to determine the conditions applicable to this measure.

Taking into account the EU's assessment of approximation and monitoring, in accordance with Articles 449 and 450 of the Agreement, the envisaged act also aims to amend Annex XXVIII-B to the Agreement, to clarify the scope of the EU roaming *acquis*.

The envisaged act will enable end users of mobile services to benefit, subject to certain exceptional limitations, from regulated roaming services at their domestic retail prices when travelling between the EU and Moldova.

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

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

The Agreement aims to: (i) create the conditions for enhanced economic and trade relations leading towards Moldova's further integration into the internal market of the EU, 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 (ii) support Moldova's efforts to complete the transition to a functioning market economy by means of, among other things, the progressive approximation of its legislation to that of the EU. The Agreement entered into force on 1 July 2016. Since then, Moldova has requested further integration with regard to roaming on public mobile communications networks in the EU, in particular through further reciprocal market opening for the purpose of such roaming. Granting further reciprocal market opening requires approximation to the EU roaming *acquis* and the effective implementation and enforcement of this *acquis* in Moldovan law. Before reciprocal further market opening can be granted, the Parties to the Agreement (the 'Parties') need to agree, based on an assessment by the EU, that the relevant *acquis* has been implemented and is being enforced. What constitutes the relevant *acquis* for roaming also needs to be clearly defined in Annex XXVIII-B to the Agreement.

#### **2.2. Association Council**

Pursuant to Article 436(1) and (3) of the Agreement, the Association Council has the power to take decisions within the scope of the Agreement, including to update or amend the annexes to the Agreement, without prejudice to any specific provisions under Title V (Trade and Trade-related

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<sup>1</sup> OJ L 260 30.8.2014, p. 4, ELI: [http://data.europa.eu/eli/agree\\_international/2014/492/2023-10-06](http://data.europa.eu/eli/agree_international/2014/492/2023-10-06)

Matters) of the Agreement. According to Article 452(2) of the Agreement, the Association Council agrees to further market opening, as defined in Title V (Trade and Trade-related Matters) of the Agreement, if the Parties agree that the necessary measures covered by the same title have been implemented and are being enforced. Pursuant to Article 436(1) of the Agreement, these decisions are binding upon the Parties, which must take appropriate measures to implement them. The Association Council must adopt its decisions by agreement between the Parties.

### **2.3. Envisaged act of the Association Council**

The purpose of the envisaged act is for the Parties to grant each other further market opening in the field of roaming, in accordance with the conditions set out in the same envisaged act. The envisaged act is also to amend Annex XXVIII-B to the Agreement, in order to clarify the scope of the EU roaming *acquis* and distinguish it from the EU telecommunications *acquis*, of which roaming forms a part.

This is in line with the objective of Moldova's gradual regulatory approximation to the EU *acquis* as laid down in the preamble to the Agreement and Article 448 of the Agreement.

The envisaged act will become binding on the Parties in accordance with Article 436(1) of the Agreement, which provides: 'For the purpose of attaining the objectives of this Agreement, the Association Council shall have the power to take decisions within the scope of this Agreement. Such decisions shall be binding upon the Parties, which shall take appropriate measures, including, if necessary, action of bodies established under this Agreement, to implement the decisions taken'.

As of the date determined by the envisaged act, the EU roaming *acquis*, as specified in Annex XXVIII-B to the Agreement, must be read in accordance with Article 3(1) of the envisaged act, unless otherwise provided in the Agreement.

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

The position to be adopted on the EU's behalf is to support the adoption of the envisaged act by the Association Council.

Annex XXVIII-B to the Agreement provides for regulatory approximation between the Parties in several sectors, including telecommunication services. Once the approximation has been gradually extended to cover all aspects of the EU *acquis* referred to in Annex XXVIII-B to the Agreement, agreement by the Parties in the Association Council that the approximation has been completed leads to the reciprocal granting of further market opening, in accordance with Article 452(2) of the Agreement. Moldova requested further integration limited to the sector of roaming on public mobile communications networks. Decision No 1/2023 of the EU-Moldova Association Committee in Trade Configuration<sup>2</sup> complemented Annex XXVIII-B to the Agreement with the relevant acts relating to roaming. On 9 May 2025, Moldova notified the EU that it considered that it had completed the regulatory approximation, with regard to the EU *acquis* for roaming and requested an assessment in this respect. On 3 June 2025 and on 20 June 2025, Moldova supplemented its initial notification after adopting its remaining transposition measures.

Pursuant to Articles 409 and 451 of the Agreement, the EU carried out an assessment and determined on its basis that Moldova has completed the regulatory approximation with the EU

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<sup>2</sup> Decision No 1/2023 of the EU-Republic of Moldova Association Committee in Trade Configuration of 6 October 2023 amending Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) 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 part [2023/2434] (OJ L, 2023/2434, 31.10.2023, ELI: <http://data.europa.eu/eli/dec/2023/2434/oj>).

*acquis* in the sector of roaming on public mobile communications networks. Pursuant to Article 452(2) of the Agreement, the EU should propose that the Association Council agree that the result of the assessment is positive.

At the same time, taking into account the EU's assessment of approximation and monitoring, in accordance with Articles 449 and 450 of the Agreement, it is appropriate to amend Annex XXVIII-B to the Agreement, to clarify the scope of the EU roaming *acquis*. Certain provisions of the EU acts constituting the EU roaming *acquis*<sup>3</sup> are not relevant to a decision on granting further market opening for roaming because, for instance, they are not related to roaming, or they set out obligations exclusively for the European Commission. Therefore, these provisions should be excluded from the scope of the regulatory approximation obligation in view of granting further market opening for roaming. It is important to specify that due to its general scope of applicability, which goes beyond roaming in view of a possible decision on further market opening for the telecommunications sector, the full text of Directive (EU) 2018/1972 remains relevant to transpose.

This decision implements the EU's common commercial policy towards an Eastern Partnership country and candidate country based on the provisions of the Agreement. It is consistent with the objective of Moldova's gradual regulatory approximation to the EU *acquis* as laid down in the preamble to the Agreement.

## **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>4</sup>.

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<sup>3</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36–214, ELI: <http://data.europa.eu/eli/dir/2018/1972/oj>), Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (OJ L 115, 13.4.2022, p. 1, ELI: <https://eur-lex.europa.eu/eli/reg/2022/612/oj>), Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (OJ L 321, 17.12.2018, p. 1, ELI: <https://eur-lex.europa.eu/eli/reg/2018/1971/oj>), Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016 laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment (OJ L 344, 17.12.2016, p. 46, ELI: [https://eur-lex.europa.eu/eli/reg\\_impl/2016/2286/oj](https://eur-lex.europa.eu/eli/reg_impl/2016/2286/oj)), and Commission Delegated Regulation (EU) 2021/654 of 18 December 2020 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate (OJ L 137, 22.4.2021, p. 1, ELI: [https://eur-lex.europa.eu/eli/reg\\_del/2021/654/oj](https://eur-lex.europa.eu/eli/reg_del/2021/654/oj)).

<sup>4</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.

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

The Association Council is a body set up by the Agreement. The decision the Association Council is to adopt constitutes an act having legal effects. It will be binding under international law in accordance with Article 436(1) of the Agreement. As of the date determined by the Parties in the envisaged act, the EU roaming *acquis* specified in Annex XXVIII-B to the Agreement, will need to be applied in the EU in accordance with Article 3(1) of the envisaged act, unless otherwise provided in 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 EU'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 Union's common commercial policy. In particular, the first subparagraph of Article 207(4) TFEU provides the legal basis for trade in services, with the exception of transport services, with regard to non-EU countries, including stipulations on the regulatory framework conditions for the supply of such services.

The main objectives and content of the envisaged act relates to the EU's common commercial policy because the act concerns trade in telecommunication 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 Article 207 TFEU in conjunction with Article 218(9) TFEU.

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

The decision of the Association Council on the reciprocal granting of further market opening with respect to the sector of roaming on public mobile communications networks and for amending Annex XXVIII-B to the Agreement will produce rights and obligations in the EU and Moldova. It is, therefore, appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Association Council 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 further market opening with respect to the sector of roaming on public mobile communications networks and on amending Annex XXVIII-B (Rules applicable to telecommunication services) to that Association 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) Pursuant to Article 452(2) of the Agreement, if the Parties agree that the necessary measures are being implemented and enforced, the EU-Republic of Moldova Association Council (the ‘Association Council’) is to agree on further market opening with respect to the sector concerned by regulatory approximation.
- (3) Article 436(3) of the Agreement provides that the Association Council is to have the power to update or amend the Annexes to the Agreement.
- (4) The Association Council is to adopt a Decision on the Union and Moldova granting each other further market opening with respect to the sector of roaming on public mobile communications networks and for amending Annex XXVIII-B to the Agreement in the course of 2025.
- (5) Article 1(2), point (g), of the Agreement provides that the aim of the Agreement is, inter alia, to establish conditions for enhanced economic and trade relations leading towards gradual integration of the Republic of Moldova (‘Moldova’) in the Union internal market, including by setting up a Deep and Comprehensive Free Trade Area, which will provide for far-reaching regulatory approximation and market access liberalisation, in compliance with the rights and obligations arising out of World Trade Organization membership and the transparent application of those rights and obligations.
- (6) As stated in the preamble to the Agreement and in accordance with Article 448 of the Agreement, the Parties to the Agreement recognise the importance of the

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<sup>1</sup> OJ 260 30.8.2014, p. 4, ELI: [http://data.europa.eu/eli/agree\\_international/2014/492/2023-10-06](http://data.europa.eu/eli/agree_international/2014/492/2023-10-06)

approximation of Moldova's existing legislation to that of the EU, meaning that Moldova is to ensure that existing legislation and future legislation should be made compatible with the Union *acquis*.

- (7) Moldova has requested further integration with regard to the roaming sector in the Union, in particular through further market opening for the purpose of roaming services.
- (8) Decision No 1/2023 of the EU-Moldova Association Committee in Trade configuration<sup>2</sup> complemented Annex XXVIII-B (Rules applicable to telecommunication services) to the Agreement with the relevant Union acts relating to roaming on public mobile communications networks.
- (9) Pursuant to Article 407(3) of the Agreement, on 9 May 2025, Moldova notified the Union that it considered it had completed the regulatory approximation with respect to the Union *acquis* in the sector of roaming on public mobile communications networks.
- (10) On 3 and 20 June 2025, Moldova supplemented its initial notification after adopting its remaining transposition measures.
- (11) Pursuant to Articles 409 and 451 of the Agreement, the Union carried out an assessment and determined on its basis that Moldova had completed the regulatory approximation with the Union roaming *acquis*.
- (12) On this basis, it is appropriate for the Association Council to decide pursuant to Article 452(2) of the Agreement on the reciprocal market opening with respect to the sector of roaming on public mobile communications networks between the Union and Moldova.
- (13) To ensure legal certainty as regards the scope of the Union roaming *acquis*, it should be specified in Annex XXVIII-B to the Agreement which provisions are relevant for that purpose.
- (14) The Decision on the Parties' reciprocal granting of further market opening with respect to the sector of roaming on public mobile communications networks and for amending Annex XXVIII-B will be binding upon the Union.
- (15) It is therefore appropriate to establish the position to be taken on the Union's behalf in the Association Council,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf in the course of 2025 in the Association Council 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 European Union and Moldova granting each other further market opening with respect to the sector of roaming on public mobile

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<sup>2</sup> Decision No 1/2023 of the EU-Republic of Moldova Association Committee in Trade Configuration of 6 October 2023 amending Annex XXVIII-B (Rules applicable to telecommunication services) and Annex XXVIII-C (Rules applicable to postal and courier services) 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 part [2023/2434] (OJ L, 2023/2434, 31.10.2023, ELI: <http://data.europa.eu/eli/dec/2023/2434/oj>).

communications networks and for amending Annex XXVIII-B to that Association Agreement shall be based on the draft Decision of that Association Council attached to this Decision.

*Article 2*

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council*  
*The President*