



**MEMORANDUM OF UNDERSTANDING
BETWEEN THE EUROPEAN COMMISSION,
THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA
AND THE GOVERNMENT OF UKRAINE
ON THE EUROPEAN COMMISSION BORDER ASSISTANCE MISSION
TO THE REPUBLIC OF MOLDOVA AND TO UKRAINE**

The European Commission and the Governments of the Republic of Moldova and of Ukraine have reached an understanding as follows:

ARTICLE I – MANDATE

1. The Border Assistance Mission operating under the auspices of the European Commission and its implementing partner / operator, and in close cooperation with the OSCE, will promote coordinated action of and assist the Governments of the Republic of Moldova and of Ukraine in areas involving border, customs and fiscal matters. It will provide practical advice to relevant authorities in the Republic of Moldova and in Ukraine on issues related to border, customs and fiscal matters and will support actions undertaken for the benefit of the Moldovan and Ukrainian Border Guards, Customs Administration, other law enforcement agencies, and other relevant state agencies under the European Community Rapid Reaction Mechanism and the Tacis programme. Attention will also be drawn to the envisaged project aiming at setting up a system to exchange information on customs data and border traffic between the relevant administrations of Moldova and Ukraine.
2. The Border Assistance Mission will assist and advise officials of the Border Guards, Customs Administration, other law enforcement agencies and other relevant state agencies on matters relating to the control and auditing of cargo and passenger traffic, including revenue collection and accounting procedures applied by the officials of the Border Guards, the Customs Administration, and other law enforcement agencies wherever such procedures are applied, be it at the frontier of the territory of respectively Moldova and Ukraine, at inland police stations and customs posts designated for the checking of documents and the clearance of goods, and at regional and central headquarters' offices of relevant administrations.
3. The purpose of the Border Assistance Mission is set out in detail in annex.
4. The activities of the Border Assistance Mission will take place in accordance with the provisions of this Memorandum of Understanding.



ARTICLE II – COORDINATING ARRANGEMENTS

1. The European Commission Border Assistance Mission will report regularly in writing to the European Commission (HQ and Delegations in Kiev and Chisinau), to the EU Special Representative for Moldova, and to the Governments of the Republic of Moldova and of Ukraine on the activities and findings of the Border Assistance Mission, including the development of all assistance projects in progress.
2. The Border Assistance Mission and its staff (hereinafter referred to as experts) will have no authority to enforce the laws of respectively Moldova and Ukraine, and they will refrain from any action or activity incompatible with the advisory or audit nature of their duties.
3. The experts of the Mission, when carrying out any assistance, will have the right to make unannounced visits to any location on the Ukrainian-Moldovan state border, including all Border Units and Customs Posts, along transit itinerary and to offices of transit, such as Odessa and Illichevsk, to any inland police station or Customs Post or Revenue accounting office, to be present and to observe customs clearance in progress, to examine and to copy customs import documents and supporting commercial records, and official books and records that do not include State secrets, including those held on computers. The tasks envisaged by this paragraph will be performed with due account of the legislation of Ukraine and the Republic of Moldova.
4. The processing of commercial data of legal persons by the experts shall be governed by the principles of business secrecy under Article 287 of the Treaty on the European Community (Consolidated version, 24 December 2002)
5. The experts of the Mission, in any case of doubt, may request the head of the relevant customs or border guards unit (e.g., Head of the customs post, Head of the shift, Head of the Border post, Head of the border patrol) to order the re-examination and re-assessment of any consignment of goods on which customs duty or other revenue collected at importation has already been assessed and collected. While the request is being processed, the vehicle or persons in question shall not be allowed to move/leave the premises of the customs or border post.
6. The Mission will provide assistance in preventing the smuggling of persons and goods subject to border and customs control respectively and in particular those goods bearing high rates of duty, including excise duty.
7. This assistance will be provided initially for a period of 24 months which can be extended subject to agreement between the Governments of the Republic of Moldova



- and of Ukraine and the European Commission, to be confirmed through an exchange of letters.
8. The Moldovan and Ukrainian authorities undertake to provide suitably qualified personnel to work alongside the officers of the Border Assistance Mission, wherever the assistance is provided, and who will have the authority to enforce the laws of respectively Moldova and Ukraine. The action of the officers of the Border Assistance Mission will be restricted in accordance with paragraph 2 above.
 9. The Border Assistance Mission is authorized to set up a logistic base in Odessa and, subject to agreement with respectively the Moldovan and Ukrainian authorities and the Mission, elsewhere should the need arise. The number and nature of vehicles and personnel to be deployed may vary in agreement with the Moldovan and Ukrainian authorities and the Mission, depending on the operational needs.
 10. The Moldovan and Ukrainian authorities agree to provide technical services for the vehicles of the Border Assistance Mission sufficient to implement its activities.
 11. The Mission will operate from 1 December 2005
 12. Experts will wear civilian dress and will not carry arms.
 13. The number of experts participating in the mission is set at an estimated 50 seconded staff and approximately 10 core staff. Additional experts can be sent to reinforce the mission with the agreement of the Governments of the Republic of Moldova and of Ukraine.
 14. Personnel belonging to the Border Assistance Mission will carry their national passports. They will be temporarily included in the Diplomatic list of the Delegation of the European Commission to Ukraine, as Personnel Belonging to the Border Mission, for the entire duration of the Border Mission. They will also carry a service card issued by the European Commission certifying their status as attached to the Mission. The European Commission will inform the Governments of the Republic of Moldova and of Ukraine of the arrival and departure of personnel of the Border Mission.

ARTICLE III – PRIVILEGES AND IMMUNITIES

1. The expatriate personnel of the Border Assistance Mission, shall, on the territories of the Republic of Moldova and of Ukraine, enjoy such privileges and immunities and be subject to such obligations as correspond to those laid down in the Vienna Convention of 1961 on Diplomatic Relations and respectively accorded to and assumed by Diplomatic Missions accredited to the Republic of Moldova and to



Ukraine, in accordance with the provisions of the agreement between the Commission of the European Communities and the Government of the Republic of Moldova on the Establishment and the Privileges and Immunities of the Delegation of the Commission of the European Communities in the Republic of Moldova of 28 June 2005, and in accordance with the provisions of the agreement between the Commission of the European Communities and the Government of Ukraine on the Establishment and the Privileges and Immunities of the Delegation of the Commission of the European Communities in Ukraine of September 1993. For the period of their mission, these personnel shall be provided by the Moldovan and Ukrainian Ministries of Foreign Affairs with diplomatic identity cards, and licensing plates for their vehicles such as those of the European Commission Delegation diplomatic staff.

2. The privileges and immunities provided for in this Article will be granted to experts during their mission, and thereafter, with respect to acts previously performed during their mission.
3. For the purpose of conducting its activities, the Border Assistance Mission and its experts will enjoy, together with its vehicles and equipment, freedom of movement within the territories of the Republic of Moldova and of Ukraine, within the framework of the fulfillment of its duties.
4. The Border Assistance Mission to the Republic of Moldova and to Ukraine will be able to use all roads and bridges without payment of taxes and dues. The members of the staff of the Mission have the right to cross the Ukrainian-Moldovan state border at local, interstate and international check-points through the state border. The vehicles and staff of the Border Assistance Mission can be subject to border controls only when crossing the Moldova-Ukraine state border. If such controls are applied these will be limited to the strictly necessary and carried out without any delay.
5. The personnel of the Border Assistance Mission will have access to appropriate telecommunications equipment of the Host Parties for the purpose of its activities.
6. Personnel of the Border Assistance Mission will enjoy the right of unrestricted communication by its own radio (including satellite, mobile and hand-held radio) telephone, telegraph, facsimile or any other means. The Governments of the Republic of Moldova and of Ukraine will provide in the shortest possible time frequencies on which such radios can operate. The personnel of the Border Assistance Mission will not use other radio frequencies if that has not been otherwise previously agreed with respectively the Government of the Republic of Moldova and of Ukraine.
7. The Border Assistance Mission will be implemented in accordance with the financing agreement signed by the European Commission and the government of the Republic of Moldova (29 September 2004) and in accordance with the financing agreement signed by the European Commission and the government of Ukraine (11 April 2005)



for the implementation of the TACIS Regional Action Programme 2004. The financing agreement is intended inclusive of the annexes thereto: the General Conditions (Annex I) and the Technical and Administrative Provisions (Annex II).

8. In particular, on the basis of article 9 of the General Conditions (annex I) to the financing agreement for the TACIS regional Action Programme 2004,
 - Experts shall be exempt from taxation by the Republic of Moldova and by Ukraine on salaries received from the European Commission directly or through its selected implementing partner for this Mission, EU Member States and any other international organisation providing assistance and on any income received from outside Moldova and Ukraine.
 - The Governments of the Republic of Moldova and of Ukraine recognize the right of the Border Assistance Mission and the operator contracted by the European Commission for the implementation of this mission, subject to its compliance with the procedures established for the movement of goods across the customs border of the Republic of Moldova and of Ukraine, to import to the customs territory of the Republic of Moldova and of Ukraine and to export from their customs territories goods which are for official (service) use of the Mission, exempt from customs inspection and the payment of taxes and dues, in accordance with the normal rules for Diplomatic Missions in the Republic of Moldova and in Ukraine.

ARTICLE IV – ASSISTANCE, COMPENSATION, LEGAL RESPONSIBILITIES AND DURATION

1. The Governments of the Republic of Moldova and of Ukraine will accept legal responsibility for all activities of the Border Assistance Mission and its experts carried out under this Memorandum of Understanding as well as for any actions undertaken, directly or indirectly, in response to the reports of recommendations of the Border Assistance Mission or the experts.
2. The Governments of the Republic of Moldova and of Ukraine will provide the European Commission and its selected implementing partner for this mission with all information with regard to the application of this Memorandum and will render full cooperation and assistance necessary for the fulfillment of the tasks of the Border Assistance Mission as specified in this Memorandum of Understanding. In particular the Governments of the Republic of Moldova and of Ukraine will appoint English speaking Officers (one each) to act as primary point of contact to the Border Assistance Mission.



3. Amendments and additions to this Memorandum of Understanding shall be subject to the mutual agreement of the Parties and shall be laid down in a written annex to this Memorandum of which this annex shall be an integral part.
4. Disputes on the interpretation or implementation of the provisions of this Memorandum of Understanding shall be solved through negotiations between the parties
5. This Memorandum of Understanding will enter into force from the date of its signature and will remain in force until such time as the Governments of the Republic of Moldova and of Ukraine or the European Commission informs the other, 15 days in advance, of its intention to terminate this Memorandum of Understanding.

Done at Palanca on the 7 October 2005,

In nine copies, three each in the English, Moldovan and Ukrainian languages, whereby all the versions will be authentic. In case of discrepancies, the English language version will have precedence.

For the European Commission

For the Government of the Republic of Moldova

For the Government of Ukraine



ANNEX

Overall objectives

- a) Contribute to the implementation of the EU ENP Action Plans with Moldova and Ukraine, the implementation of the June 2004 Council conclusions on Moldova, and the February 2005 Council conclusions on Ukraine, in particular as regards outstanding border management issues in Moldova and Ukraine
- b) Build up appropriate operational and institutional capacity in Moldova and Ukraine to ensure effective border control and surveillance.
- c) Contribute to the settlement of the Transnistria conflict by strengthening border control and border surveillance in Moldova and Ukraine, thus reducing possible security threats originating from this region.
- d) Improve transnational cooperation on border management.

Specific objectives

- a) To audit the border control and surveillance measures by the Moldovan and Ukrainian border guards and customs authorities on the basis of, respectively, relevant Moldovan and Ukrainian legislation. Particular attention in this regard will be paid to the Moldova-Ukraine State border.
- b) To provide suggestions about possible upgrading of the Moldovan and Ukrainian border guards' and customs authorities' administrative capacity.
- c) To ensure the implementation of effective border control and surveillance measures in Moldova and Ukraine, with particular attention to the entire Moldova-Ukraine State border. This will be done by strengthening the Ukrainian and Moldovan border guards' and customs' capacity.
- d) To improve the efficiency of procedures at border crossing points, with a view to ensuring more effective control of persons and vehicles crossing the border.
- e) To prevent trafficking in persons, smuggling of goods and the proliferation of weapons also through the supply of necessary infrastructure, equipment and provision of advice and training.
- f) To reinforce the surveillance of the green border through the delivery of relevant equipment and training. Support to joint border surveillance activities conducted by the Moldovan and Ukrainian border guards can be provided as relevant.
- g) To increase customs revenue and to create the necessary conditions for the correct implementation of the national trade policy of the partner countries by upgrading the administrative and operational capacity of their customs administration and by fighting corruption.



- h) To improve cooperation between Moldova and Ukraine in cross-border information sharing and joint operations. The Border Assistance Mission will closely coordinate activity with the planned TACIS project for the introduction of a system to exchange information between Moldova and Ukraine on the movement of goods and people across the Moldova-Ukraine State border, and will support the implementation of this project.
- i) To make a positive contribution towards the settlement of the conflict in Transnistria and, in case a settlement is achieved within the duration of this action, to promote post settlement consolidation.