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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Administrative Committee for the Customs Convention on the international transport of goods under cover of TIR Carnets as regards the proposal to amend the Convention

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Administrative Committee established by the Customs Convention on the International Transport of goods under cover of TIR¹ carnets of 14 November 1975 ('the TIR Convention') in connection with the envisaged adoption of several technical amendments to the TIR Convention.

2. CONTEXT OF THE PROPOSAL

2.1. The Customs Convention on the International Transport of goods under cover of TIR Carnets

The TIR Convention aims to facilitate the international carriage of goods from customs offices of departure to customs offices of destination and through as many countries as necessary. The Agreement entered into force in 1978. As of February 2024, there are 78 parties to the Convention, including 77 states and the European Union.

The European Union is a contracting party to the TIR Convention² since 20 June 1983 and all Member States are also contracting parties.

2.2. The Administrative Committee

The Administrative Committee, established by Article 58 *bis*, acts within the framework of the TIR Convention. It is the highest body of the Convention, monitors its application and considers and adopts amendments to the TIR Convention. Proposals are put to the vote and each state, which is a party and is represented at a session of the Administrative Committee, has one vote. The Union has exclusive competence in customs governed by the TIR Convention. However, the Union, as a customs and economic union, does not have voting rights in addition to those of its Member States, in accordance with Article 52(3) of the TIR Convention. All Member States are parties with voting rights.

Amendments to the TIR Convention are adopted by a two-thirds majority of parties present and voting. A quorum consisting of not less than one third of the states which are parties is required to take a decision.

2.3. The envisaged act of the Administrative Committee

In October 2024, during its eighty-third session or any of the following session(s), the Administrative Committee is to take a decision regarding the adoption of the proposed amendments to the TIR Convention ('the envisaged act').

The purpose of the envisaged act is to better frame the end of the relationship between the international organisation responsible of the TIR guarantee chain and a TIR national association. In addition, it will lead to more flexibility in the use of the certificate of approval for a TIR vehicle.

The envisaged act will become binding on the parties in accordance with Article 60 of the TIR Convention³. Article 60 concerns a special procedure for amending Annexes 1 to 10 of

¹ TIR stands for "Transports Internationaux Routiers" or "International Road Transports".

² Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva OJ L 252/1.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009D0477-20220625>

the TIR Convention and provides: *“Any proposed amendment to Annexes 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 considered in accordance with paragraph 1 and 2 of Article 59 shall come into force on a date to be determined by the Administrative Committee at the time of its adoption, unless by a prior date determined by the Administrative Committee at the same time, one-fifth or five of the States which are Contracting parties, whichever number is less, notify the Secretary-General of the United Nations of their objection to the amendment. Determination by the Administrative Committee of date referred to in this paragraph shall be by two-thirds majority of those present and voting”*.

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

The Union supports the proposal for an amendment of Annex 6, new explanatory note 8.10 (e) of the TIR Convention, to introduce an early warning mechanism between stakeholders in case of a dispute between the international organisation and a national association which could potentially impact the functioning of the TIR guarantee chain. This amendment proposal is accompanied by an amendment of Annex 6, explanatory note 0.6.2 bis-1, which introduces a prior notice period of at least six months, before the termination of an agreement between the international organisation and a national association.

These mechanisms had been requested by the Romanian authorities, supported by the Commission and the other Member States, to avoid in the future a crisis between a national association and the international organisation, presenting the customs authorities with a “fait accompli” without sufficient time to authorise a new national association to issue TIR carnets.

Therefore, those two mechanisms will enhance the stability of the TIR guarantee chain within the EU.

The Union also supports the amendments to Annex 3, paragraph 4 and to Annex 4, model certificate of approval of a road vehicle, page 4, important notice, paragraph 3, which aim to prolong the validity of the certificate of approval of a road vehicle from two to three years as well the introduction of a new paragraph 6 in Annex 4, model certificate of approval of a road vehicle, page 4 on important notice, which leads to the acceptance of the certificate of approval until the last date of validity to start a TIR transport even if the transport ends later. These amendments simplify the use of the certificate by TIR holders and reinforce the attractiveness of the TIR Convention.

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’*⁴.

⁴ 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 Administrative Committee is a body set up by an agreement, namely the TIR Convention⁵.

The act which the Administrative Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 60 of the TIR Convention.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed 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 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

The main objective and content of the envisaged act relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is the first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed 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 act of the Administrative Committee will amend the TIR Convention, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

⁵ Article 58 bis of the TIR convention in its consolidated version of 2009 (Council Decision of 28 May 2009 publishing in consolidated form the text of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 as amended since that date (*OJ L 165*, 26.6.2009, p. 1–94))

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Customs Convention on the international transport of goods under cover of TIR carnets of 14 November 1975 (the ‘TIR Convention’) was approved on behalf of the European Economic Community by Council Regulation (EEC) No 2112/78⁶ and entered into force in the Community on 20 June 1983⁷.
- (2) A consolidated version of the TIR Convention was published as an Annex to Council Decision 2009/477/EC⁸. According to Article 1 of this Decision, future amendments to the TIR Convention are to be published in the Official Journal of the European Union indicating their date of entry into force.
- (3) Pursuant to Article 60 of the TIR Convention, the Administrative Committee for the TIR Convention (the ‘Administrative Committee’) may adopt amendments to Annexes 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 by a two-thirds majority of the contracting parties present and voting.
- (4) The Administrative Committee, during its eighty-third session in October 2024 or at a subsequent session, is to adopt several amendments to the Annexes of the TIR Convention.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Administrative Committee, as the amendments will be binding on the Union.
- (6) To better frame the end of the relationship between the international organisation and a national association it is necessary to introduce a new warning mechanism and a prior legal notice period before the termination of their agreement. In addition, the use of the certificate of approval of a road vehicle will be simplified by extending its validity period and by introducing the possibility for its use until its end date of validity.

⁶ Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva (OJ L 252, 14.9.1978, p. 1).

⁷ OJ L 31, 2.2.1983, p. 13.

⁸ Council Decision of 28 May 2009 publishing in consolidated form the text of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 as amended since that date (OJ L 165, 26.6.2009, p. 1–94).

- (7) The position to be adopted on behalf of the Union in the Administrative Committee should therefore be based on the draft amendments attached to this Decision. This is without prejudice to the possibility that exists for non-substantial minor changes to the draft amendments, to be agreed by the representatives of the Union and by the Member States when a formal vote is taken in the Administrative Committee without further decision of the Council.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the eighty-third session or one of the subsequent sessions of the Administrative Committee for the Customs Convention on the international transport of goods under cover of TIR carnets (the “TIR Convention”) shall be based on the draft amendments attached to the Decision.

Article 2

The position referred to in Article 1 shall be expressed by the Commission. The Member States of the Union shall express the Union position when a formal vote is taken in the Administrative Committee for the TIR Convention, acting jointly in the interest of the Union.

Article 3

This Decision is addressed to the Commission and to the Member States of the Union.

Done at Brussels,

For the Council
The President