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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on a common transit procedure as regards amendments to that 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 EU-CTC¹ Joint Committee on common transit ('the Joint Committee') in connection with the envisaged adoption of a decision amending an Appendix to the Convention of 20 May 1987 on a common transit procedure.

2. CONTEXT OF THE PROPOSAL

2.1. The Convention

The Convention of 20 May 1987 on a common transit procedure ('the Agreement') aims to facilitate the movements of goods between the European Union and other countries that are Contracting Parties to the Convention. It extends the Union customs transit procedure² to the Contracting Parties to the Convention other than the European Union and sets out the obligations on traders and customs authorities for goods transported under this procedure from one Contracting Party to another. The Agreement entered into force on 1 January 1988.

The European Union is a party to the Agreement³. The other Contracting Parties are the Republic of Iceland, the Republic of North Macedonia, the Kingdom of Norway, the Republic of Serbia, the Swiss Confederation, the United Kingdom, the Republic of Türkiye and Ukraine. These countries are referred to in the Convention as common transit countries.

2.2. The Joint Committee

The Joint Committee is to administer the Convention and to ensure its proper implementation. The Committee, by means of decisions, adopts amendments to the Appendices to the Convention.

The Joint Committee's decisions are adopted by mutual agreement⁴ by the Contracting Parties as stipulated by Article 14 (2) of the Convention.

2.3. The envisaged act of the Joint Committee

The Joint Committee in accordance with Articles 15(3) and 20 of the Convention, is to adopt a decision regarding the amendment of the Appendix IIIa to the Convention ('the envisaged act').

The purpose of the envisaged act is to align the Convention with the amended Annex B of the Commission Delegated Regulation (EU) 2015/2446⁵ ('the Delegated Act') and Annex B of Commission Implementing Regulation (EU) 2015/2447⁶ ('the Implementing Act') which lay down the common data element requirements, formats and codes for the transit declaration.

¹ Common transit countries

² Articles 226 and 227 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1)

³ OJ L 226, 13.8.1987, p. 2.

⁴ No objection raised by any Contracting Party.

⁵ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1)

⁶ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code ([OJ L 343, 29.12.2015, p. 558](#)).

These acts were amended, respectively in December 2020⁷ and February 2021⁸, to ensure inter-operability between the customs electronic systems used for the different types of declarations and notifications. Therefore, Appendix IIIa to the Convention, which replicates the Annex B of the Delegated Act and the Annex B of the Implementing Act, should be amended accordingly.

Following the changes in the structure of Appendix IIIa to the Convention, corrections are required in Appendix I with regard to the references to the sections of Appendix IIIa.

The envisaged act will become binding on the parties in accordance with their own legislation, in line with Article 15 of the Convention which provides: ‘It shall be the responsibility of the Joint Committee to administer this Convention and ensure its proper implementation. Decisions taken under points (a) to (d) shall be put into effect by the Contracting Parties in accordance with their own legislation’.

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

The proposed position is to support an amendment of the Appendix IIIa to the Convention in order to align it with the Union law.

The Union customs law governing the Union transit arrangements and, in particular, the amended Annex B of the Delegated Act and Implementing Act, which lays down the common data element requirements, formats and codes for the transit declaration.

The proposed position is consistent with the common commercial policy.

The proposed amendments to the Convention will result in tangible benefits for both, traders and customs administrations by aligning the Convention with the current Union legislation and, hence, creating uniform conditions for the harmonised implementation of the provisions concerning the Union transit and the common transit procedure.

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*’⁹.

⁷ Commission Delegated Regulation (EU) 2021/234 of 7 December 2020 amending Delegated Regulation (EU) 2015/2446 as regards common data requirements, and Delegated Regulation (EU) 2016/341 as regards the codes to be used in certain forms ([OJ L 63, 23.02.2021, p. 1](#))

⁸ Commission Implementing Regulation (EU) 2021/235 of 8 February 2021 amending Implementing Regulation (EU) 2015/2447 as regards formats and codes of common data requirements, certain rules on surveillance and the competent customs office for placing goods under a customs procedure ([OJ L 63, 23.02.2021, p. 386](#)).

⁹ 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 Joint Committee is a body set up by an agreement, namely the Convention on a common transit procedure. Article 15(3) a) of the Convention stipulates that the EU-CTC Joint Committee shall adopt amendments to the Appendices to the Convention by means of decisions.

The act which the Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Articles 15(3) and 20 of the 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 ensuring efficient border crossing procedures. The main objective and content of the envisaged act therefore relates to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will amend the Convention and its Appendix, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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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 Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Pursuant to Article to letter (a) of Article 15(3) of the Convention of 20 May 1987 on a common transit procedure¹⁰ [the Convention], the Joint Committee established by that Convention is to adopt, by decision, amendments to the Appendix to the Convention.
- (2) Annex B of the Commission Delegated Regulation (EU) 2015/2446 ('the DA') has been amended in December 2020¹¹ and February 2021¹². It lays down the data element requirements for the transit declaration to better harmonise the common data elements for the exchange and storage of information between customs authorities as well as between customs authorities and economic operators. Such horizontal harmonisation was necessary to ensure inter-operability between the customs electronic systems used for the different types of declarations and notifications. Annex A1a of Appendix IIIa mirrors Annex B of the DA and should therefore be amended accordingly.
- (3) Annex B of the Commission Implementing Regulation (EU) 2015/2447 ('the IA'), has been amended in December 2020¹³ and February 2021¹⁴. It lays down the formats and codes of the common data elements for the transit declaration, to better harmonise the formats and codes of the common data elements for the storage of information and for its exchange between customs authorities, as well as between customs authorities and

¹⁰ [OJ L 226, 13.8.1987, p. 2.](#)

¹¹ Commission Delegated Regulation (EU) 2021/234 of 7 December 2020 amending Delegated Regulation (EU) 2015/2446 as regards common data requirements, and Delegated Regulation (EU) 2016/341 as regards the codes to be used in certain forms ([OJ L 63, 23.02.2021, p. 1](#))

¹² Commission Implementing Regulation (EU) 2021/235 of 8 February 2021 amending Implementing Regulation (EU) 2015/2447 as regards formats and codes of common data requirements, certain rules on surveillance and the competent customs office for placing goods under a customs procedure ([OJ L 63, 23.02.2021, p. 386](#)).

¹³ Commission Delegated Regulation (EU) 2021/234 of 7 December 2020 amending Delegated Regulation (EU) 2015/2446 as regards common data requirements, and Delegated Regulation (EU) 2016/341 as regards the codes to be used in certain forms ([OJ L 63, 23.02.2021, p. 1](#))

¹⁴ Commission Implementing Regulation (EU) 2021/235 of 8 February 2021 amending Implementing Regulation (EU) 2015/2447 as regards formats and codes of common data requirements, certain rules on surveillance and the competent customs office for placing goods under a customs procedure ([OJ L 63, 23.02.2021, p. 386](#)).

economic operators. The formats and codes of the common data elements needed to be harmonised to ensure that the electronic customs systems used for the various types of declarations and notifications are inter-operable once the common data requirements have been harmonised. Annex A1a of Appendix IIIa mirrors Annex B of the IA and should therefore be amended accordingly.

- (4) In combination with the increasing digitalisation of transit procedures as depicted in Appendix IIIa and to better address the prevailing economic needs the person who presents the goods at the customs office of departure should be allowed, like the holder of the procedure, to request the customs office of departure to provide them with a transit accompanying document or a transit/security accompanying document – T(S)AD.
- (5) For the same reasons as above and to ensure a facilitated yet harmonised approach across the Union and in the common transit countries, transshipments of containers and similar intermodal transport units should be waived, under certain conditions, from the list of incidents that require customs intervention.
- (6) The movement of goods under the transit procedure will be simplified by removing at departure the obligation for the customs authorities to print a T(S)AD once the new computerised transit system (NCTS) is upgraded to version 5. The T(S)AD needs then only to be printed upon request of the holder of the procedure. At the customs office of transit and at the customs office of destination the movement reference number can be presented by means other than paper.
- (7) As the business continuity procedure is only rarely applied it is useful to stipulate that the customs authorities need to issue the necessary comprehensive guarantee certificates or guarantee waiver certificates only upon request of the holder of the procedure.
- (8) It is necessary to correct a typo which appears in Article 111 a (1) of the Convention.
- (9) The Convention should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Appendix I to the Convention is amended as set out in Annex A to this Decision.

Appendix IIIa to the Convention is amended as set out in Annex B to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President