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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	1 March 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 70 final
Subject:	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

Delegations will find attached document COM(2022) 70 final.

Encl.: COM(2022) 70 final



Brussels, 1.3.2022
COM(2022) 70 final

2022/0050 (NLE)

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 the Appendices to the Convention of 20 May 1987 on a common transit procedure²

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 procedure³ 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 Agreement⁴. 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 and the Republic of Turkey. Those countries are referred to in the Convention as common transit countries.

2.2. The Joint Committee

The task of 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 agreement⁵ by the Contracting Parties as stipulated by Article 14 (2) of the Convention.

2.3. The envisaged act of the Joint Committee

In early 2022, by means of a written procedure, the Joint Committee is to adopt a decision regarding the amendment of the Appendices I, IIIa and IV to the Convention ('the envisaged act').

The purpose of the envisaged act is to reflect in the Convention changes that were made in the Union Customs Code's ('UCC')⁶ Delegated Act and Implementing Act concerning the transit

¹ Common transit countries

² OJ L 226, 13.08.1987, p. 2

³ 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)

⁴ OJ L 226, 13.8.1987, p. 2.

⁵ No objection raised by any Contracting Party.

⁶ 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)

procedure and the customs status of Union goods. They are, in particular, Annex B of the Commission Delegated Regulation (EU) 2015/2446⁷ ('the Delegated Act') and Annex B of Commission Implementing Regulation (EU) 2015/2447⁸ ('the Implementing Act') which lay down the common data requirements, formats and codes for the transit declaration.

The amendments, adopted respectively in December 2020⁹ and February 2021¹⁰, were necessary 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.

In addition, it is necessary to revise Appendix IV to the Convention, laying down the rules on mutual assistance for the recovery of claims, in order to align them with the respective modernised Union rules as amended by the Commission Implementing Regulation (EU) No 2017/1966¹¹. They introduce a number of refinements and the use of a standard form for the communication for the recovery request. These rules are important as they safeguard the financial interests of the common transit countries, of the EU Member States and of the European Union.

The envisaged act will become binding on the parties in accordance with Article 2 of the envisaged act, which provides that a decision shall enter into force on the day of its adoption.

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

The proposed position is to amend the Appendices I, IIIa and IV to the Convention in order to align them with the following:

- 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 requirements, formats and codes for the transit declaration;
- the modernised Union rules on mutual assistance for the recovery of claims.

The proposed position is consistent with the common commercial policy.

⁷ 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)

⁸ 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](#)).

⁹ 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](#))

¹⁰ 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](#)).

¹¹ Commission Implementing Regulation (EU) 2017/1966 of 27 October 2017 amending Implementing Regulation (EU) No 1189/2011 as regards the communication of assistance requests and the follow-up to those requests ([OJ L 279/38, 28.10.2017, p 38](#))

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’*¹².

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 can adopt amendments to the Appendices to the Convention by means of decisions.

The act that 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.

¹² 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.

4.2.2. *Application to the present case*

The main objective and content of the envisaged act is ensuring efficient border crossing procedures. Therefore, it relates to the common commercial policy.

As a consequence, 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 Appendices, it is 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 EU-CTC Joint Committee established by the Convention of 20 May 1987 on a common transit procedure as regards amendments to that Convention

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) The Convention on a common transit procedure ('the Agreement') was concluded by the Union by Council Decision of 15 June 1987 concerning the conclusion of a Convention between the European Community, the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation on a common transit procedure¹³ and entered into force on 1 January 1988.
- (2) Pursuant to Article 15(3)(a) of the Agreement, the Joint Committee may adopt, by means of decisions, amendments to the Appendices to the Agreement.
- (3) The Joint Committee is to adopt a decision on the amendment of the Appendices I, IIIa and IV to the Agreement in early 2022.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the decision will be binding on the Union.
- (5) Annex B of the Commission Delegated Regulation (EU) 2015/2446¹⁴ and Commission Implementing Regulation (EU) 2015/2447¹⁵ have been amended respectively, in December 2020¹⁶, and February 2021¹⁷. These annexes lay down the common data

¹³ [OJ L 226, 13.8.1987, p. 1.](#)

¹⁴ 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](#))

¹⁵ 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](#)).

¹⁶ 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](#)).

requirements, formats and codes for the transit declaration, in order to better harmonise the common data elements for the storage of information and for its exchange between customs authorities, as well as between customs authorities and economic operators. The amendments were necessary to ensure inter-operability between the customs electronic systems used for the different types of declarations and notifications. Therefore, Appendix IIIa to the Agreement, which replicates the Annex B of the Delegated Act and the Annex B of the Implementing Act, should be amended accordingly.

- (6) The amendments to Appendix IIIa to the Agreement resulted in the renumbering of paragraphs and sections. Therefore, references to Appendix IIIa in Appendix I need to be aligned with the new numbering.
- (7) Appendix IV to the Agreement sets the rules on mutual assistance for the recovery of claims. These rules are important as they safeguard the financial interests of the common transit countries, of the EU Member States and of the European Union. These rules need to be revised in order to align them with the respective modernised Union rules.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in an upcoming meeting of the Joint Committee or by means of a written procedure shall be based on the draft act of the Joint Committee attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

¹⁷ 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](#)).