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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 601 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(2018) 601 final.

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2018/0309 (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

• Reasons for and objectives of the proposal

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the EU-CTC[1] Joint Committee on common transit ("the Joint Committee") in connection with the envisaged adoption by the Joint Committee of a decision amending a number of Annexes in Appendix III to the Convention of 20 May 1987 on a common transit procedure[2] ("the Convention").

2. CONTEXT OF THE PROPOSAL

2.1. The Convention on a common transit procedure

The Convention aims to facilitate the movement of goods between the European Union and other countries which are Contracting Parties to the Convention. It entered into force on 1 January 1988.

The European Union is a contracting party to the Convention.

Countries which are Contracting Parties to the Convention, but not members of the Union 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 adopts, by means of decisions, amendments to the Appendices to the Convention.

The Joint Committee's decisions are adopted by mutual agreement by the Contracting Parties.

2.3. The envisaged act of the Joint Committee

The United Kingdom of Great Britain and Northern Ireland ("the United Kingdom"), being a Member State of the European Union, has applied the Convention since its entry into force in 1988. However, when the United Kingdom withdraws from the European Union, the Convention will automatically cease to apply to the United Kingdom. Therefore, if the United Kingdom wishes to use a common transit procedure for movement of goods between the Contracting Parties and the United Kingdom also after the withdrawal from the European Union, it must accede to the Convention as a separate Contracting Party.

Should the transitional arrangements agreed between the EU and United Kingdom negotiators enter into force as part of the withdrawal agreement currently being negotiated pursuant to Article 50 of the Treaty on European Union, the international agreements to which the Union is party, including the Convention, will apply to and in the United Kingdom from the date of withdrawal until 31 December 2020. The United Kingdom's accession to the Convention will therefore be effective only in such situation as from the date when Union law (including this Convention) no longer apply to and in the United Kingdom.

The accession of the United Kingdom to the Convention would require modifications of the guarantee documents where Contracting Parties to the Convention are mentioned. The name

[1] Common Transit Countries

[2] OJ L 226, 13.8.1987, p. 2

"the United Kingdom" will be deleted from the part designated for the Member States of the Union and placed in the part designated for the common transit countries.

The Commission is invited to adopt the present draft proposal for a Decision and to transmit it to the Council.

The Joint Committee's decision amending the Convention will become binding on the Contracting Parties in accordance with Article 3 of that decision, which provides for its entry into force on the date the accession of the United Kingdom to the Convention as a separate contracting party becomes effective and subject to it.

In accordance with Article 15(3) of the Convention, decisions amending the Convention are to 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 amend the Annexes in Appendix III to the Convention which refer to the United Kingdom as a Member State of the Union in order to reflect that the United Kingdom, as from its effective accession to the Convention, is a separate Contracting Party. The amendments are therefore of a technical nature.

The proposed position is consistent with the common commercial policy.

4. LEGAL BASIS

4.1. Procedural legal aspects

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."*

Article 15(3)(a) of the Convention stipulates that the Joint Committee adopts, by decisions, amendments to the Appendices to the Convention.

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.

The decision which the Joint Committee is called upon to adopt constitutes an act having legal effect. That decision will be binding under international law in accordance with Article 20 of the Convention.

While the United Kingdom will not be a third country when the Joint Committee decides on these amendments to the Appendices it is however necessary to prepare the technical adaptations to the Appendices so that they could apply as soon as the United Kingdom becomes a separate Contracting party.

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

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

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.

The amendments to the Appendices to the Convention in view of the United Kingdom's accession to the Convention pursue the objective of 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. Conclusions

The legal basis for the proposed Decision should be Article 207 TFEU in conjunction with Article 218(9) TFEU.

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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) The Convention on a common transit procedure[3] ("the Convention") was concluded between the European Economic 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 20 May 1987 and entered into force on 1 January 1988.

(2) The United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") has expressed its wish to accede to the Convention as a separate Contracting Party from the date the Convention no longer applies to and in the United Kingdom.

(3) The accession of the United Kingdom to the Convention as a separate Contracting Party will require appropriate adaptations of the guarantee documents shown as specimens in certain Annexes to Appendix III to the Convention in order to delete the reference to the United Kingdom as a Member State of the European Union and add the reference to the United Kingdom as a common transit country

(4) Pursuant to Article 15(3)(a) of the Convention, the Joint Committee set up by that Convention may adopt, by decision, amendments to the Appendices to the Convention. It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the decision to amend the Convention will be binding on the Union.

(5) The Convention ensures efficient border crossing procedures for trade between the Contracting Parties.

(6) As the Joint Committee Decision will amend the Convention, it is appropriate to publish it in the Official Journal of the European Union after its adoption,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the EU-CTC Joint Committee set up by the Convention of 20 May 1987 on a common transit procedure as regards amendments to the

[3] OJ L 226, 13.8.1987, p.2

Appendices to that Convention shall be based on the draft act of that Joint Committee attached to this Decision.

Article 2

After its adoption, the Decision of the EU-CTC Joint Committee shall be published in the Official Journal of the European Union.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President