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**PROPOSAL**

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	10 September 2025
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2025) 506 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the 28th Congress of the Universal Postal Union

Delegations will find attached document COM(2025) 506 final.

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EUROPEAN  
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Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the 28<sup>th</sup> Congress of the  
Universal Postal Union**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be taken on the Union's behalf by Member States in the 28th Congress of the Universal Postal Union (hereafter referred as UPU) in connection with a report of the UPU Council of Administration that the Congress will take note of and its Annex I which contains an interpretation which considers an EU Act as incompatible with UPU rules as well as proposals relating to security and customs submitted to Congress (proposals 9 and 15). These proposals also relate to further work of the bodies of the UPU (Council of Administration, Postal Operations Council) in the Dubai cycle and possible changes to the UPU legal Acts (Constitution, Convention) to be proposed at the 29th Universal Congress in 2029.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Universal Postal Union**

The Universal Postal Union Convention (hereafter UPU Convention) aims to regulate international mail exchanges and standardise and facilitate the relevant procedures and charges. The Agreement entered into force in 1874 and established the Universal Postal Union. In 1948, the UPU became a specialized agency of the United Nations. The Universal Postal Union is the global representative body which coordinates postal policies among member countries and facilitates a uniform worldwide postal system.

While the EU is not a Member of the UPU, all its Member States are members. However, the European Union's position as a formal observer (represented by the European Commission) was agreed at the 2012 Congress in Doha<sup>1</sup>.

#### **2.2. The UPU Congress**

The Congress of the UPU is the supreme authority of the Postal Union and consists of plenipotentiary representatives of its member countries. It meets, in principle, every four years. The Congress exercises all the powers coming within the scope of the UPU which have not been expressly entrusted to another body by the Acts of the Union. These include the power to amend the Constitution of the UPU, the Universal Postal Convention and the Special agreements. The Congress can also adopt resolutions, decisions, recommendations and formal opinions, which together make up the Decisions of Congress.

#### **2.3. The envisaged act of the UPU Congress**

At the 28th Congress of the UPU it is proposed that the report prepared by the UPU Council of Administration be taken note of and that approval be granted for a proposal of a general nature relating to the further work in developing the customs policy and regulatory framework (proposal 9). Furthermore, another proposal (proposal 15) has been tabled by the United States of America which contains elements related to transport security and customs. Further work of the bodies of the UPU will be undertaken based on these proposals in the Dubai cycle and possibly modifications to the Acts (Constitution, Convention) may be proposed for the 29th Universal Postal Congress in 2029.

The purpose of proposal 9 is to address the concerns expressed by certain UPU member countries through the UPU secretariat about a potential contradiction of the Union Customs

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<sup>1</sup> Council Document 9341/12 of 8 May 2012; Resolution C 78 of the Universal Postal Congress (Doha 2012).

Code<sup>2</sup> with the UPU Acts with regards to the provisions regulating the exchange and collection of the electronic advance data i.e. in the context of the EU in relation to the entry summary notifications (ENS) provisions.

Those member countries seek to make a legal distinction between ‘transit/transshipment’ on the one hand and ‘import’ (i.e. goods with final destination in the EU) on the other hand, implying that the UCC and its Electronic Advance Data (EAD) requirements supported by the Import Control System 2 (ICS2) is "legally valid/applicable" only for import. These members have insisted that the principle of "Freedom of Transit" as enshrined in Article 1 of the UPU Constitution is thus considered to be infringed/violated by virtue of the legal requirements of the UCC for the submission of ENS into ICS2, specifically Article 113(a)(2) and (4) of the UCC Delegated Act<sup>3</sup>.

At the 4th Extraordinary Congress of the UPU held in Riyadh in 2023, following on from a discussion on the challenges posed to UPU designated operators by the requirements of electronic advance data regulatory regimes, a taskforce was established to analyse the legal, operational, regulatory and technical issues associated with emerging customs and security requirements in relation to the EAD, in particular focusing on the European Union’s measures under the ICS2.

The task force was assisted by the legal adviser of the UPU International Bureau (UPU IB), which has conducted its own legal assessment of the potential impact of the EU measures on, and consistency with, the fundamental principles of a single postal territory and freedom of transit under the UPU Acts (in particular the principles of non-discrimination between domestic and international items).

The UPU IB legal adviser’s legal assessment opines that the EU’s EAD requirements (in the form of the ENS), specifically those which concern goods which are never intended to be imported, but rather move through the EU, are in contradiction with these fundamental principles. The argument put forward is that the UCC provisions discriminate against the treatment of the international postal items as compared with the domestic items in the context of these ‘transit movements’, by requesting postal operators in third countries to lodge ENS for packages sent via the EU, whilst exempting from that obligation packages sent by a postal operator in the EU to another Member State, Norway or Switzerland.

Proposal 15, submitted by the United States of America, concerns the commencement of work to enhance the implementation, enhancement and update of the standards and protocols within the UPU related to dangerous and prohibited goods in order to enhance transport safety and security as well as combating the utilisation of international mail flows for the transport of dangerous and prohibited items.

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

The subject matter of the proposals to be presented at the forthcoming Universal Postal Union (UPU) Congress falls firmly under the exclusive competency of the European Union. All Member States apply the same customs tariff and rules. The Union customs legislation (UCC) establishes important customs security measures aimed to ensure that customs administrations are able to address the risks to the security and safety of the Union and its residents or to

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<sup>2</sup> 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

<sup>3</sup> 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

transport supply chains before the goods enter the Union customs territory. This is supported by the new ICS2 and EAD, which needs to be provided to customs authorities via the ICS2 by the trade operators, including postal operators. Hence, there is the need to establish one single position with respect to the report prepared by the UPU IB and which puts into question the compatibility of the EU measures with respect to the UPU Convention.

These measures are consistent with the international rules and standards developed under the World Customs Organisation (WCO), International Civil Aviation organisation (ICAO) as well as the UPU frameworks.

It has been the consistent position of the European Commission and Member States that the UCC provisions regarding the lodgement of the ENS to perform anticipated risk analysis for safety and security purposes in case of transit/transshipment do not violate the principle of “freedom of transit” as enshrined in Article 1 of the UPU. The fact that postal consignments under the UPU Convention are transiting in the EU customs territory and, therefore, are subject to customs supervision and may be subject to customs controls does not mean that they are not “free” to transit.

Moreover, “freedom of transit” under the UPU Acts does not mean that the customs supervision or customs control rules do not apply to this movement of goods. The UCC does not provide any exemption from customs controls and customs supervision (respective definitions in Article 5 (3) and (27) of the UCC), which must be performed to ensure compliance with the customs legislation and other legislations governing all types of movement of the goods.

Furthermore, “freedom of transit” is not an absolute principle. Article 8 of the UPU Convention imposes that the Member countries and their designated operators adopt and implement a proactive security strategy at all levels of postal operations to maintain the safe and secure transport and transit of mail between them. Transit is not, therefore, excluded under the UPU Convention when applying security measures. That, under their perspective, consists of maintaining and enhancing the general public's confidence in the postal services provided by designated operators. In addition, there is no evidence that in the UPU there has ever been the understanding that “freedom of transit” or “single postal territory” “expressly” (art. 23) limits the sovereign right of member countries to legislate appropriate customs and security controls for the import, export, or transit of postal goods.

Finally, there is no discrimination between third country and EU postal operators. Although the European Union is not a member of the UPU, its common customs policy is a fundamental reality accepted by all UPU parties in the WTO, WCO or bilateral trade relations. The Union’s Internal Market and Customs Union implies that related regulations and requirements previously applied between its Member States have been eliminated on the basis of the introduction of common requirements applicable at the external border of the European Union. The electronic advance data (EAD) requirements imposed by the Union Customs Code implementation of the ICS2 system for the protection of safety and security apply to all incoming goods without exception. This is a requirement established by EU law, that has to be complied with without exception. The distinction between EU Member States and third countries is justified because of the harmonised controls established at EU level. Therefore, EU Member States and third countries are not in the same regulatory situation.

The enhancement of the standards and protocols of the UPU pertaining to the provision of EAD for the purposes of safety and security is a welcome initiative.

Given the fact that the EU is not a member of the UPU in its own right and that it is the Member States of the EU who hold membership of the UPU, there is an obligation for Member States to act jointly in the interest of the Union.

It is the intention of this Council Decision that Member States have a co-ordinated position to assert that the EU customs security measures under the UCC are compatible with the UPU acts, and their fundamental principles, and that the EU and its Member States support the continued work to address practical and operational issues related to EAD requirements, while at the same time ensuring adherence to the ENS requirements of the EU.

#### **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.*’

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement<sup>4</sup>.

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*’<sup>5</sup>.

###### *4.1.2. Application to the present case*

The UPU Congress is a body set up by an agreement, namely the UPU Convention.

The report which the UPU Congress is called upon to approve constitutes an act having legal effects, as the envisaged act contains legal interpretations according to which certain EU legislation adopted under the UCC are incompatible with the UPU Convention. Adoption of such a report could therefore decisively influence EU legislation.

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 envisaged act pursues objectives and has components in the area of customs cooperation in the framework of the customs Union, the common commercial policy and the internal market. These elements of the envisaged act are inseparably linked without one being

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<sup>4</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

<sup>5</sup> 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.

incidental to the other.

Therefore, the substantive legal basis of the proposed decision is Article 33 of the TFEU.

#### 4.3 Conclusion

The legal basis of the proposed decision should be Article 33, in conjunction with Article 218(9) TFEU.

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the 28<sup>th</sup> Congress of the Universal Postal Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 33, 114 and 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The UPU Convention ('the Agreement') entered into force in 1874. The EU is not a member of the UPU, whereas all EU Member States are parties to the UPU.
- (2) By means of Regulation (EU) No 952/2013 (the Code) together with Commission Delegated Regulation (EU) 2015/2446, the Union ensures security and safety at its external borders by requiring the submission of certain electronic data on all goods entering the customs territory of the Union, including goods in postal consignments (electronic advanced data). This requirement is justified to mitigate the potential threat to the transport supply chains, security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers.
- (3) Pursuant to Articles 10(3), 13, 14(2), 16, 18 and 19(2) of the UPU Rules of Procedure for Congress, the UPU may take note of and approve proposals submitted, specifically in this instance in Committee 3 of the UPU Congress.
- (4) The 28<sup>th</sup> Congress of the UPU is called upon to take note of a report containing a legal opinion written by a member of the UPU Secretariat, which calls into question the compatibility of the Union's legislative framework on electronic advanced data with certain principles enshrined in the UPU constitution as well as the internationally established legal nature of the customs Union. Furthermore, the 28<sup>th</sup> UPU Congress is called to approve a resolution in the form of a proposal of a general guidance (Proposal 9) the intention of which is to use this report and legal opinion as a basis for continuation of work on reviewing customs regulatory issues.
- (5) The 28<sup>th</sup> Congress of the UPU is also to examine a proposal submitted by the United States of America to orientate the work of the UPU Policy Cycle and the associated working groups and committees towards the enhancement and expansion of the UPU standards, guidance and implementation related to transport safety and security and the combatting of dangerous and prohibited goods in international mail.
- (6) It is appropriate therefore to establish the position to be taken on the Union's behalf in the 28<sup>th</sup> UPU Congress, to preserve the Union and its Member States' rights and interests.
- (7) It should be therefore ensured that a co-ordinated position is to be taken by Member States to actively support the compatibility of the Union's legislative framework



regarding the safety and security requirements for goods entering the customs territory of the Union with the UPU Constitution and Acts.

- (8) As the EU is not a Member of UPU, the Union's position is to be expressed by the Member States of the Union that are members of the UPU Congress, acting jointly,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf at the 28th Congress of the Universal Postal Union is set out in the Addendum to this Decision

*Article 2*

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the UPU Congress, acting jointly.

*Article 3*

This Decision shall enter into force on the day of its adoption.

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*

## ANNEX

### **Position to be taken by the Member States on behalf of the European Union within the Universal Postal Union 28th Congress on customs requirements for electronic advanced information.**

#### **Congress-Doc 42**

##### **Item on the agenda 1: Congress is called to take note of the report (report §§ 1 to 20 and Annexes 1 and 2)**

The Union position on this point to the agenda shall be to vote against the taking note of the report.

In doing so, they shall disagree with the assessment made by the legal adviser regarding the compatibility of the Union's legislative provisions for the submission of EAD.

Member States should emphasise that there is full consistency of the EU customs security requirements with the UPU acts and fundamental principles.

Member States should highlight the specificities of the EU's internal market and detail that controls at internal borders within the EU were abolished and that the EU should be treated, from postal as well as customs and security point of view, as a single entity. It should also be highlighted that the Kingdom of Norway and the Swiss Confederation have agreed to apply the same security and safety measures in force in the EU, including being part of ICS2, and therefore trade between these countries and the EU is exempt from the requirement to lodge entry and exit summary declarations.

Member States should note that the UPU principles of the single postal territory and freedom of transit are not absolute and unqualified obligations, that would override any other public policy objectives including safety and security.

##### **Item on the agenda 2: Congress is called to approve the proposal of a general nature relating to the further work in developing the customs policy and regulatory framework (proposal 9 of the Report):**

The Union position shall be to continue to express commitment to actively support the work during the next policy cycle and declare a readiness to engage in addressing practical and operational implementation issues with regards to the ICS2 processes impacting third countries postal operators, whilst continuing to fully observe and defend the EU requirements.

Member States should continue to state their objection to the inclusion in Proposal 9 of the legal assessment of the member of the UPU secretariat which is disputed by the EU and its Member States for its wholly inaccurate classification of the EU's EAD requirements as being contrary to the UPU Constitution and its legal acts. Member States should aim to amend, at the 28<sup>th</sup> UPU

Congress, the disputed instruction with a view to remove the reference of this legal assessment to serve as a basis of further review of the custom's regulatory issues.

In the case Proposal 9 would be adopted without appropriate change to the disputed paragraph, Member States should express their disagreement in writing to the UPU Congress, the UPU International Bureau and the UPU Council of Administration.

**Position to be taken with respect to the Proposal 15 submitted by the United States of America**

Member States should take note of the proposal submitted by the United States of America and indicate their support for the general principles contained within the proposal.

Member States should indicate their willingness to discuss the specific work streams proposed by the United States of America within the context of ensuring the safety and security of goods within the international mail, without creating an overly burdensome entry procedure or imposing any obligations on designated postal operators in excess of those applied to other stakeholders in the supply chain.