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**COEST 485**

**PROPOSAL**

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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 6 September 2024 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2024) 397 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 the simplification of formalities in trade in goods and in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on a Common transit procedure as regards invitations to Georgia to accede to those Conventions |

Delegations will find attached document COM(2024) 397 final.

Encl.: COM(2024) 397 final

EUROPEAN
COMMISSION

Brussels, 6.9.2024
COM(2024) 397 final

2024/0220 (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 the simplification of formalities in trade in goods and in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on a Common transit procedure as regards invitations to Georgia to accede to those Conventions**

# EXPLANATORY MEMORANDUM

## 1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf within the European Union (EU) - Common transit countries (CTC) Joint Committee established by the Convention of 20 May 1987 on the simplification of formalities in trade in goods[1], and within the EU-CTC Joint Committee established by the Convention of 20 May 1987 on a Common transit procedure[2] ("the EU-CTC Joint Committees"), concerning the envisaged adoption by each of the Joint Committees of a Decision as regards the invitation to Georgia to accede to, respectively, the Convention on the simplification of formalities in trade in goods and to the Convention on a common transit procedure ("the Conventions")

## 2. CONTEXT OF THE PROPOSAL

### 2.1. The Conventions

The Conventions aim to facilitate the movement of goods between the European Union and other countries, which are Contracting Parties to the Conventions. They entered into force on 1st January 1988.

The European Union (not its individual Member States) is a party to the Conventions which establish measures facilitating the movement of goods between the European Union, and the other contracting parties namely the Republic of Iceland, the Republic of North Macedonia, the Kingdom of Norway, the Swiss Confederation, the Republic of Türkiye, the Republic of Serbia and the United Kingdom of Great Britain and Northern Ireland and Ukraine.

Countries which are Contracting Parties of the Conventions, but not members of the Union, are common transit countries ("CTC").

### 2.2. The Joint Committees

The task of the EU-CTC Joint Committees is to administer the Conventions and to ensure their proper implementation. These Joint Committees, by means of decision, invite third countries to accede to the Conventions.

The EU-CTC Joint Committees' decisions are adopted by mutual agreement of Contracting Parties.

### 2.3. The envisaged acts of the Joint Committees

Georgia expressed its wish to accede to the Conventions when it has complied with the legal, structural and information technology requirements, which are preconditions for accession.

In accordance with the provision of Article 11(3) of the Convention on the simplifications of formalities in trade in goods (SAD Convention) and with the provisions of Article 15(3) of the Convention on a common transit procedure (CTC Convention), the EU-CTC Joint Committees shall by decision invite a third country within the meaning of, respectively, Article 1(2) of the SAD Convention and Article 3(1)(c) of the CTC Convention, to accede to the Conventions in accordance with the procedure set out in, respectively, Article 11a of the SAD Convention and Article 15a of the CTC Convention.

The EU-CTC Joint Committees launch such invitation where the country proves that it is in a position to conform to the detailed rules for the application of provisions of the Conventions.

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1 OJ L 134 22.05.1987, p.2

2 OJ L 226 13.8.1987, p. 2.

Mandated by the EU-CTC working groups on common transit and the simplification of formalities in trade, a monitoring team concluded on 27 June 2024 that Georgia is ready to join the Conventions. The team mainly examined the adaptation of the structures necessary to manage the procedure and the implementation of the New Computerised Transit System (NCTS) allowing the application of the common transit procedure.

At their next sessions or by means of a written procedure, the EU-CTC Joint Committees plan to adopt the draft Decision No 1/2024 of the EU-CTC Joint Committee on the simplification of formalities in trade in goods and the draft Decision No 2/2024 of the EU-CTC Joint Committee on common transit in order to invite Georgia to accede to the Conventions (Annex I and Annex II to this Decision).

The EU-CTC Joint Committees' Decisions inviting Georgia to accede to the Convention shall become binding on the Contracting Parties in accordance with Article 2 of the Decisions, which provides that "This Decision shall enter into force on the day of its adoption".

In accordance with Article 11(3) of the Convention of the simplification of formalities in trade in goods and Article 15(3) of the Convention on a common transit procedure, this type of decisions 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 favourable to an invitation to Georgia to accede to the Conventions.

The Communication of 2001[3] from the European Commission to the European Parliament and the Council on a Strategy to prepare the candidate countries for accession to the 1987 EC-EFTA Conventions on a common transit procedure and on the simplification of formalities in trade in goods, followed by the Communication of 2010[4] from the European Commission to the European Parliament and the Council on a Strategy to prepare certain neighbouring countries for the accession to both Conventions and the Council Conclusions of 14 April 201[5]1 confirming the approach foresee support for a number of countries in their efforts to join the Conventions. Georgia is part of these countries.

The aim is to facilitate trade between Georgia, the European Union and other common transit countries. These invitations should result in substantial and tangible benefits for traders and for customs administrations by simplifying transit and customs formalities, reducing costs, facilitating the movement of goods and possibly increasing trade.

Therefore, the Commission proposes to the Council a favourable Union position for the accession of Georgia to the Conventions.

The proposed Decisions are consistent with European Union policies in the fields of trade and transport.

3 COM(2001) 289 final
4 COM(2010) 668 final
5 8636/11

## 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 11(3) of the Convention on the simplification of formalities in trade in goods and Article 15(3) of the Convention on a common transit procedure stipulate that the EU-CTC Joint Committee by decision invite a third country within the meaning of, respectively, Article 1(2) and Article 3(1)(c), to accede to the Conventions.

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*'[6].

*4.1.2. Application to the present case*

The EU-CTC Joint Committee is a body set up by Article 10 of the Convention on the simplification of formalities in trade in goods and by Article 14 of the Convention on a common transit procedure.

The Decisions, which the EU-CTC Joint Committees are called upon to adopt, constitute an act having legal effects. Those Decisions will be binding under international law in accordance with Article 15 of the Convention on the simplification of formalities in trade in goods and Article 20 of the Convention on a common transit procedure.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decisions 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 acts relate to common commercial policy.

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

### 4.3. Conclusion

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

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6 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.

## 5. PUBLICATION OF THE ENVISAGED ACT

After their adoption, the Decisions of the Joint Committees referred to in Articles 1 and 2 shall be published in the Official Journal of the European Union.

2024/0220 (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 the simplification of formalities in trade in goods and in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on a Common transit procedure as regards invitations to Georgia to accede to those Conventions**

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 of 20 May 1987 on the simplification of formalities in trade in goods[7] and the Convention of 20 May 1987 on a common transit procedure[8] ('the Conventions') were 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) Georgia has expressed its wish to accede to the Conventions once it has complied with the requirements for its accession.

(3) Pursuant to Article 11(3) of the Convention on the simplification of formalities in trade in goods, the EU-Common Transit Countries (CTC) Joint Committee set up by that Convention may adopt, by decision, invitations to third countries to accede to that Convention.

(4) Pursuant to Article 15(3) of the Convention on a common transit procedure, the EU-CTC Joint Committee set up by that Convention may adopt, by decision, invitations to third countries to accede to that Convention.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the EU-CTC Joint Committees established by the Conventions, as the decisions to invite Georgia to accede to the Conventions will be binding on the Union.

(6) The Conventions will ensure efficient border crossing procedures between Georgia and the parties to the Conventions.

(7) The position of the Union within the Joint Committees established by the Conventions should therefore be favourable to an invitation to Georgia to accede to those Conventions and be based on the draft Decisions reflecting that position.

(8) In order to facilitate Georgia's timely accession, it is necessary to adopt this decision without delay.

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7 OJ L 134, 22.5.1987, p. 2.

8 OJ L 226, 13.8.1987, p. 2.

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 the simplification of formalities in trade in goods as regards an invitation to Georgia to accede to that Convention shall be based on the draft Decision of that Joint Committee set out in Annex I to this Decision.

*Article 2*

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 as regards an invitation to Georgia to accede to that Convention shall be based on the draft Decision of that Joint Committee set out in Annex II to this Decision.

*Article 3*

After its adoption, the decisions of the Joint Committees referred to in Articles 1 and 2 shall be published in the Official Journal of the European Union

This decision is addressed to the Member States.

Done at Brussels,

*For the Council*
*The President*