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**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	29 November 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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No. Cion doc.:	COM(2024) 559 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the EU–Türkiye Customs Cooperation Committee established under the Association Agreement between the European Community and Turkey as regards the adoption of a decision on the use of A.TR movement certificates issued electronically

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Delegations will find attached document COM(2024) 559 final.

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Encl.: COM(2024) 559 final



EUROPEAN  
COMMISSION

Brussels, 29.11.2024  
COM(2024) 559 final

2024/0310 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the EU–Türkiye Customs Cooperation Committee established under the Association Agreement between the European Community and Turkey as regards the adoption of a decision on the use of A.TR movement certificates issued electronically**

## EXPLANATORY MEMORANDUM

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

This proposal concerns the decision establishing the position to be taken on the European Union's behalf in the Customs Cooperation Committee. The Committee was established under the Association Agreement between the European Community and Turkey, signed at Ankara on 12 September 1963 (Association Agreement). The position to be taken by the EU in the Customs Cooperation Committee concerns the envisaged adoption of a Committee decision on the use of A.TR movement certificates issued electronically.

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

#### **2.1. The customs union between the EU and Türkiye**

One of the aims of the Association Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the European Union and Türkiye. To attain its objectives, the Association Agreement provides for a customs union. The rules for implementing the final phase of the customs union are laid down in Decision No 1/95 of the EC–Turkey Association Council of 22 December 1995<sup>1</sup> (known as the ‘basic Decision’), which establishes the conditions for the free movement of goods between the Parties.

Decision No 1/2006 of the Customs Cooperation Committee of 26 July 2006<sup>2</sup> (known as the ‘bridging legislation’) lays down implementing customs provisions for Decision 1/95, applicable to trade in goods between the Parties of the customs union and with third countries and establishes that the documentary evidence that the conditions for implementing the provisions on free circulation laid down in the basic Decision are met, shall be the A.TR movement certificate, the specimen of which is contained in Annex I to the same Decision.

#### **2.2. The Customs Cooperation Committee**

The Customs Cooperation Committee was established by Decision No 2/69 of the Association Council of 15 December 1969<sup>3</sup>. Article 2 of that Decision stipulates that the Customs Cooperation Committee is responsible for ensuring administrative cooperation between the Parties with a view to ensure the correct and uniform application of the customs provisions of the Association Agreement and for carrying out any other tasks in the customs field which the Association Committee may entrust to it.

#### **2.3. The envisaged act of the Customs Cooperation Committee**

At its next meeting or by exchange of letters, the Customs Cooperation Committee is to adopt a decision regarding the use of A.TR movement certificates issued electronically (‘the envisaged act’).

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<sup>1</sup> OJ L 35, 13.2.1996, p. 1.

<sup>2</sup> OJ L 265, 26.9.2006, p. 18-38 – corrigendum OJ L 267, 27.9.2006, p. 48.

<sup>3</sup> Decision not published.

The purpose of the envisaged act is to provide the customs authorities of the Parties with a sound legal framework for accepting movement certificates issued electronically when submitted at importation in the context of the EU–Türkiye customs union.

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

During the COVID-19 pandemic, the Commission issued Information note No 1 dated 31 March 2020 inviting the customs authorities of the EU Member States and of the EU partner countries to accept movement certificates issued electronically with a digital signature, stamp or cachet of the competent authorities, or a copy in paper or electronic form (scanned or available online). These measures were also applicable to the A.TR movement certificates for the purpose of free circulation of goods within the EU–Türkiye customs union.

Since the exceptional circumstances that led to the adoption of these flexible measures were no longer considered relevant, it was decided that the measures in place were no longer applicable as of 1 May 2024.

However, the EU and Türkiye acknowledge that the experience of trade under the measures adopted due to the COVID-19 pandemic was positive and consider it appropriate to establish a proper legal framework to re-introduce these good practices.

Pending the adoption of the envisaged act, the Parties agreed to accept electronically issued A.TR movement certificates (in particular those issued by the Turkish authorities using their MEDOS system and without wet-ink signature) starting from 8 July 2024, provided that the act to be adopted has a retroactive effect as of that date.

It is therefore appropriate to provide for retroactive application of the envisaged act as of 8 July 2024 to ensure continuity in the good practices re-established as of that date.

The envisaged act constitutes a legal basis for the acceptance of A.TR movement certificates issued electronically. However, it does not establish any obligation for the Parties to issue A.TR movement certificates electronically. At the moment the EU has no electronic system for issuance of certificates, therefore EU Member States will continue to issue A.TR certificates on paper. Hence, even if an A.TR certificate is electronically issued, its submission to the EU MS as importing country will be still done on paper or sent electronically in pdf format. The validity and authenticity of such certificates will be verified by customs officials manually.

DG TAXUD envisages to develop a central solution for digitalising all paper-based procedures enabling Economic Operators and Customs Authorities to proceed with issuance of movement certificates digitally. Once the EU system of electronic certificate of proofs of origin will be developed and deployed by Commission, Member States are expected to connect with the system via EU CSW-CERTEX to streamline the work of customs officials. A legal base is needed for the establishment of a central IT solution for issuance and validation of certificates by the EU Member States.

This position would be consistent with the position taken by the EU in the Joint Committee of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (‘the PEM Joint Committee’) in connection with the envisaged adoption of a PEM Joint Committee Recommendation as regards the use of movement certificates issued electronically. The EU’s position in the PEM Joint Committee was based on the same assumptions and was pursuing the same objectives.

The position to be taken by the European Union in the Customs Cooperation Committee should be established by the Council.

## **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 effect’ 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>4</sup>.

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

The Customs Cooperation Committee is a body set up by an agreement, namely the Association Agreement between the European Community and Turkey.

The act which the Customs Cooperation Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will become applicable in the Parties in accordance with Article 24 of the Association Agreement and Article 28, paragraphs 1 and 3 of Decision No 1/95 of the EC–Turkey Association Council of 22 December 1995.

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.

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

The main objective and content of the envisaged act relate to the common commercial policy and to the implementation of the EU–Türkiye customs union. The envisaged act is therefore intended to facilitate trade between the Parties by establishing flexible measures related to the use of A.TR movement certificates issued electronically when submitted at importation.

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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, paragraphs 61 to 64.

The legal basis of the proposed decision should be Article 207(4), first subparagraph, in conjunction with Article 218(9) TFEU.

#### **4.3. Conclusion**

The legal basis of the proposed decision should be Article 207(4), first subparagraph, in conjunction with Article 218(9) TFEU.

#### **5. PUBLICATION OF THE ENVISAGED ACT**

As the act of the Customs Cooperation Committee will be applicable by both Parties, including the EU and its Member States, 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–Türkiye Customs Cooperation Committee established under the Association Agreement between the European Community and Turkey as regards the adoption of a decision on the use of A.TR movement certificates issued electronically**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement establishing an Association between the European Community and Turkey, signed at Ankara on 12 September 1963<sup>1</sup> (Association Agreement), defines the scope and content of the association relationship, while the final phase of the customs union is defined in Decision No 1/95 of the Association Council, established by Article 6 of the Association Agreement, of 22 December 1995<sup>2</sup>, which entered into force on 31 December 1995.
- (2) Pursuant to Article 24 of the Association Agreement, the Association Council may decide to set up committees to assist in the performance of its tasks.
- (3) Decision No 2/69 of the Association Council of 15 December 1969<sup>3</sup> established the Customs Cooperation Committee.
- (4) Article 28, paragraphs 1 and 3 of Decision No 1/95 of the Association Council tasked the Customs Cooperation Committee with laying down the appropriate measures to implement the customs provisions contained in the same Decision.
- (5) Article 6.1 of Decision No 1/2006 of the Customs Cooperation Committee of 26 July 2006<sup>4</sup> establishes that the A.TR movement certificate constitutes the documentary evidence that the conditions for implementing the provisions on free circulation laid down in Decision 1/95 are met.
- (6) At the beginning of 2020, due to the COVID-19 pandemic, contacts between the customs authorities of the EU partner countries and economic operators were suspended in a number

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<sup>1</sup> OJ L 361, 31.12.1977, p. 29.

<sup>2</sup> OJ L 35, 13.2.1996, p. 1

<sup>3</sup> Decision not published.

<sup>4</sup> OJ L 265, 26.9.2006, p. 18-38 – corrigendum OJ L 267, 27.9.2006, p. 48.

of countries. It was therefore considered appropriate to adopt exceptional measures applicable on a reciprocal basis, aimed at accepting movement certificates issued electronically with a digital signature, stamp or cachet of the competent authorities, or a copy in paper or electronic form (scanned or available online).

- (7) Those measures were also applicable to the A.TR movement certificates for the purpose of free circulation of goods within the EU–Türkiye customs union.
- (8) Since the exceptional circumstances that led to the adoption of these flexible measures were no longer considered relevant, it was decided that the measures in place were no longer applicable as of 1 May 2024.
- (9) The European Union and Türkiye acknowledged that the experience of trade under the exceptional measures adopted due to the COVID-19 pandemic was positive and considered it appropriate to establish a proper legal framework to re-introduce these good practices. To this effect, a decision of the Customs Cooperation Committee constitutes an appropriate legal basis.
- (10) As of 8 July 2024, the Parties agreed to accept electronically issued A.TR movement certificates provided that an ad hoc decision of the EU–Türkiye Customs Cooperation Committee is adopted, with a retroactive effect as of 8 July 2024, to ensure continuity to the good practices re-established as of that date, without prejudice to actions undertaken by the customs administrations of both parties during the period from 1 May 2024 to 8 July 2024, and not affecting rights granted to individuals during the same period.
- (11) The Customs Cooperation Committee is expected to adopt a decision on the use of A.TR movement certificates issued electronically.
- (12) It is appropriate to establish the position to be taken on the European Union’s behalf within the Customs Cooperation Committee as the decision will become applicable in the Union,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be adopted on behalf of the European Union within the EU–Türkiye Customs Cooperation Committee under the Association Agreement between the European Community and Turkey shall be based on the draft decision of the Customs Cooperation Committee attached to this Decision.

#### *Article 2*

This Decision is addressed to the Commission.



Done at Brussels,

*For the Council*  
*The President*