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PROPOSAL

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
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Administrative Committee for the TIR Convention as regards the proposal to amend the Customs Convention on the international transport of goods under cover of TIR carnets

Delegations will find attached document COM(2019) 131 final.

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Administrative Committee for the TIR Convention as regards the proposal to amend the Customs Convention on the international transport of goods under cover of TIR carnets

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 Administrative Committee established by the Customs Convention on the International Transport of goods under cover of TIR[1] carnets ("the TIR Convention") in connection with the envisaged adoption of amendments concerning TIR associations and customs offices involved in TIR operations.

2. CONTEXT OF THE PROPOSAL

2.1. The Customs Convention on the International Transport of goods under cover of TIR carnets

The Customs Convention on the International Transport of goods under cover of TIR carnets of 14 November 1975 ("The TIR Convention") aims to facilitate the international carriage of goods from customs offices of departure to customs offices of destination and through as many countries as necessary. The TIR Convention entered into force in 1978. As of January 2019, there are 76 parties to the Convention, including 75 states and the European Union. The European Union is a party to the TIR Convention[2] since 20 June 1983. All Member States are parties to the TIR Convention.

2.2. The Administrative Committee

The Administrative Committee is acting within the framework of the Customs Convention on the International Transport of goods under cover of TIR carnets. The role of the Administrative Committee is to consider and adopt amendments to the TIR Convention. Proposals are put to the vote and each State, which is a party and is represented at a session of the Administrative Committee, has one vote. The Union has exclusive competence in the area of customs governed by the TIR Convention. However, the Union, as an international organisation, does not have voting rights. All Member States are parties with voting rights.

Amendments to the TIR Convention are adopted by a two-thirds majority of parties present and voting. A quorum consisting of not less than one third of the States which are parties is required to take a decision.

2.3. The envisaged act of the Administrative Committee

The Administrative Committee will meet in 2019 on the following dates: 7 February and 17 October. At one of its meetings, or during an exceptional session, the Administrative Committee is to take a decision on the adoption of the proposed amendments to the Customs Convention on the International Transport of goods under cover of TIR carnets ('the envisaged act').

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1 TIR stands for "Transports Internationaux Routiers" or "International Road Transports".

2 Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva OJ L 252/1.

The purpose of the envisaged act is to: (i) clarify which authorities may authorise association(s) to act as guarantor; (ii) increase the number of customs offices of departure and/or destination, which may be involved in a TIR transport operation; and (iii) require the publication of information about limitations on the number of available customs offices of departure and/or destination opened for TIR operations.

The envisaged act will become binding on the parties in accordance with articles 59 and 60 of the TIR Convention. Article 59 concerns amendments to the main body of the TIR Convention and provides: "Except as provided for under Article 60, any proposed amendment communicated in accordance with the preceding paragraph shall come into force with respect to all Contracting Parties three months after the expiry of a period of twelve months following the date of communication of the proposed amendment during which period no objection to the proposed amendment has been communicated to the Secretary-General of the united Nations by a State which is a Contracting Party. If an objection to the proposed amendment has been communicated in accordance with paragraph 3 of this Article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever."

Article 60 concerns amendments to the Annexes of the TIR Convention and provides: "Any proposed amendment to Annexes 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 considered in accordance with paragraph 1 and 2 of Article 59 shall come into force on a date to be determined by the Administrative Committee at the time of its adoption, unless by a prior date determined by the Administrative Committee at the same time, one-fifth or five of the States which are Contracting parties, whichever number is less, notify the Secretary-General of the United Nations of their objection to the amendment. Determination by the Administrative Committee of date referred to in this paragraph shall be by two-thirds majority of those present and voting".

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

The Union shares the objectives of the proposed amendments of the TIR Convention and its Explanatory Notes. Notably, the Union supports the clarification as to which authorities are competent to authorise guaranteeing associations; the increase in the number of customs offices involved in a TIR operation; and the requirement to make publically available the information about limitations on the number of available customs offices of departure and/or destination opened for TIR operations.

More specifically, the proposal for an amendment to Article 6, paragraph 1 of the TIR Convention to replace the word "Each" by "The customs authorities or other competent authorities of a" is based on a request from the Russian Federation to reflect the fact that given the different administrative arrangements that exist in various Contracting Parties, the competent authority to authorise a guaranteeing association may not always be the customs administration. The proposed wording is a compromise solution as several Contracting Parties, including the European Union, expressed concerns on the initial proposal to delete the term 'customs authorities' altogether, due to requirements of national or international legislation. The proposed amendment would broaden the scope of the provision to provide the necessary flexibility.

The proposal for an amendment to Article 18 line 3 of the TIR Convention to replace the word 'four' by 'eight' and add a new paragraph "Customs authorities may limit the maximum number of customs offices of departure (or destination) on their territory to less than seven but

not less than three" is a major amendment. By doubling the number of Customs Offices, which may be involved in a TIR operation the proposed amendment would strengthen the competitiveness of the TIR system and provide a notable facilitation to the transport industry. At the same time, based on a proposal from the Russian Federation, the possibility would be kept for Contracting Parties to limit the number of customs offices involved on their territory, so as to avoid potential risks for their State budget. This proposed amendment should be considered together with the proposed new Explanatory Note to Article 18.

The proposal for a new Explanatory Note to Article 18 of the TIR Convention was elaborated by the TIR Executive Board (mandated by the Administrative Committee). It aims at complementing the proposed amendment of Article 18 which enables for Parties to have a lesser number of customs offices of departure and/or destination on their territory. The proposed new Explanatory Note requires that if, in a Party, customs authorities limit the maximum number of customs offices of departure (or destination) on their territory, this information must be publically available and also provided to the TIR Executive Board. This mechanism would avoid legal and logistical difficulties for the transport industry in case of such limitations.

The proposal for an amendment to the Explanatory Note to Article 6, paragraph 2 of the TIR Convention to replace the words "country may approve" by "Contracting Party may authorize" is to increase coherence of the text and is of technical nature.

The proposed amendment to Annex 9, Part I, paragraph 1 to the TIR Convention, which would replace the words "Contracting Parties" by "Customs authorities or other competent authorities of a Contracting Party" aims to broaden the scope of the provision to provide more flexibility, given the different administrative arrangements that exist in various parties. Similarly to the amendment of Article 6 paragraph 1 described above, this proposed amendment is based on proposal from the Russian Federation. As such the proposal would broaden the scope of the provision to provide the necessary flexibility.

Consultations on the proposed amendments were carried out with the Members States within the Customs Expert Group for TIR (Geneva coordination). Further consultations took place during sessions of the Working Party on Customs Questions Affecting Transport of the United Nations Economic Commission for Europe (UNECE).

Internal coordination, as well as the joint discussions with Member States in the framework of the Customs Expert Group for TIR clearly showed that there is no opposition to the proposed amendments.

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'*[3].

4.1.2. Application to the present case

The Administrative Committee is a body set up by an agreement, namely the Customs Convention on the International Transport of goods under cover of TIR carnets.

The act which the Administrative Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 59 and 60 of the Customs Convention on the International Transport of goods under cover of TIR carnets.

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

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 main objective and content of the envisaged act relate to the common commercial policy.

The substantive legal basis of the proposed decision, therefore, is Article 207 TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Administrative Committee will amend the Customs Convention on the International Transport of goods under cover of TIR carnets and its Annexes, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

[3] Judgment of the Court of Justice of 7 October 2014, Germany v Council, Case C-399/12, ECLI:EU:C:2014:2258, paragraphs 61to 64.

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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 Customs Convention on the International Transport of goods under cover of TIR carnets of 14 November 1975 ('the TIR Convention') was approved on behalf of the European Economic Community by Council Regulation (EEC) No 2112/78[4] and entered into force in the Community on 20 June 1983[5].

(2) Pursuant to Article 59 and 60 of the TIR Convention, the Administrative Committee may adopt amendments by a two-thirds majority of Contracting Parties present and voting.

(3) The Administrative Committee, during an extraordinary session in June 2019, is to adopt several amendments of the TIR Convention and its Annexes.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Administrative Committee, as the amendments will be binding on the Union.

(5) In order to reflect the different administrative arrangements that exist in various Contracting Parties, it is necessary to broaden the scope of actors under Article 6, of the TIR Convention, the corresponding Explanatory note, and of Annex 9 of the TIR Convention, to allow authorities other than customs authorities to authorise an association to act as guarantor for persons using the TIR procedure.

(6) In order to facilitate the application of the TIR Convention by the logistics chain and improve competitiveness of the international transport concerned by the TIR Convention, it is necessary to amend Article 18 to increase the number of customs offices, which may be involved in a TIR operation. At the same time, the possibility is

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[4] Council Regulation (EEC) No 2112/78 of 25 July 1978 concerning the conclusion of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 at Geneva (OJ L 252, 14.9.1978, p. 1).

[5] OJ L 31, 2.2.1983, p. 13.

provided for customs authorities of a Contracting Party to limit the number of customs offices, which may be involved in a TIR operation in its territory, provided they inform the public and the TIR Executive Board of such limitations,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the sixty-ninth or seventieth session of the Administrative Committee shall be based on the draft amendments attached to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President