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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	23 April 2019
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 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(2019) 189 final.

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2019/0095 (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

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 the Appendices 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 movements of goods between the European Union and other countries that are Contracting Parties to the Convention. It extends the Union customs transit procedure[3] to the Contracting parties to the Convention other than the European Union and sets out the obligations on traders and customs authorities for goods transported under this procedure from one Contracting Party to another. It entered into force on 1 January 1988.

The European Union is a Contracting Party to the Convention. The other Contracting Parties are the Republic of Iceland, the Republic of North Macedonia, the Kingdom of Norway, the Republic of Serbia, the Swiss Confederation and the Republic of Turkey. Those countries 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, by means of decisions, adopts amendments to the Appendices to the Convention.

The Joint Committee's decisions are adopted by mutual agreement[4] by the Contracting Parties as stipulated by Article 14 (2) of the Convention.

2.3. The envisaged act of the Joint Committee

In May or June 2019 the Joint Committee is to adopt by means of a written procedure a decision in order to amend the Appendices to the Convention.

The Convention has been amended recently on two occasions, in April 2016 and in December 2017[5], in order to align it with provisions in the Union Customs Code ("UCC")[6] and its Delegated and Implementing Acts concerning transit arrangements and the customs status of Union goods.

Further amendments are proposed to reflect other changes in the relevant EU law. There are as follows:

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1 Common Transit Countries

2 OJ L 226, 13.8.1987, p. 2

3 Articles 226 and 227 of 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)

4 No objection raised by any Contracting Party.

5 As a result of the Joint Committee Decisions No 1/2016 of 28 April 2016 and No 1/2017 of 5 December 2017. Those Decisions entered into force, respectively, on 1 May 2016 and on 5 December 2017.

6 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

Article 84 of Commission Delegated Regulation (EU) 2015/2446[7], which lays down the conditions to be fulfilled by applicants in order to be authorised to use a comprehensive guarantee with a reduced amount or a guarantee waiver, was amended in June 2018[8]. The amendment concerns the removal of the requirement for sufficient financial resources as a stand-alone condition, because the practical experience in the Member States showed that this condition was interpreted in a too restrictive way and focused only on the availability of cash. The assessment of the capacity of an applicant to pay the full amount of debt should therefore be integrated in the assessment of his financial standing. As the conditions to be fulfilled are identical for Union and for common transit procedures, Article 75 of the Appendix I of the Convention replicates Article 84 of the Commission Delegated Regulation (EU) 2015/2446. Therefore, Article 75 of the Appendix I of the Convention needs to be amended in line with the new Article 84 of the abovementioned Delegated Regulation.

Article 24 (2) of Commission Delegated Regulation (EU) 2016/341[9] allowed, until 1 May 2018, the use of the so called 'transit level II simplification for air transport' which allows the operator to base a transit declaration on an electronic manifest. Since 1 May 2018, the provisions concerning the new transit simplification (i.e. the use of the electronic transport document (ETD) as a transit declaration) applies for air transport. Therefore, all references to the outdated transit level II simplification included in Appendix I of the Convention have to be deleted.

Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[10] was repealed by Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data[11], which apply from 25 May 2018. Therefore, all references to Directive 95/46/EC in Appendix I of the Convention need to be replaced with references to Regulation (EU) 2016/679.

In addition, the so called "T2 corridor", which allows for the movement of Union goods through common transit countries while keeping their customs status, is currently limited to goods not placed under the export procedure as stipulated in Article 2(2)(a) of Appendix II. This restriction, which stems from the fact that the current provision on the "T2 corridor" is placed in Title I of Appendix II, was not intended as Member States reported that previously export goods were moved through the corridor. Therefore, Article 2a on the "T2 corridor" should be removed from Title I of Appendix II of the Convention and placed into a new Title Ia for which the limits on the use of the "T2 corridor" do not apply.

According to the "Prespa Agreement" signed in June 2018 the previous name of the country "the former Yugoslav Republic of Macedonia" has been replaced by the name "the Republic of North Macedonia". The Republic of North Macedonia is a common transit country and the

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7 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, OJ L 343, 29.12.2015, p. 1

8 Commission Delegated Regulation (EU) 2018/1118 of 7 June 2018 amending Delegated Regulation (EU) 2015/2446 as regards the conditions for a reduction of the level of the comprehensive guarantee and the guarantee waiver, OJ L 204, 13.8.2018, p. 11.

9 Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) N)952/2013 of the European Parliament and the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446, OJ L 69, 15.3.2016, p.1

10 OJ L 281, 23.11.1995, p.31

11 OJ L 119, 4.5.2016, p.1

Convention contains references to the name of the country and to the respective country code, so it is necessary to make the appropriate changes in Appendix III and in Appendix IIIa.

The process to establish an EU common position on the draft Decision concerning the further amendments to the Convention should be relatively smooth as the content is based on EU rules that were already agreed by Member States (in particular in the provisions of the Union Customs Code Delegated Acts).

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 2 of that Decision, which provides for its entry into force on the day of its adoption.

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 BEHALF OF THE UNION

The proposed position is to amend Appendices to the Convention in order to align them with the following:

The Union customs law governing the Union transit arrangements and, in particular, the new Article 84 of Commission Delegated Regulation (EU) 2015/2446, as amended by Commission Delegated Regulation (EU) 2018/1118; and the new provisions concerning the transit simplification for air transport.

The Union law on the protection of natural persons with regards to the protection of personal data and on the free movement of such data (in particular, Regulation (EU) 2016/679, which repealed Directive 95/46/EC).

The provisions on the customs status of Union goods in relation to the T2 corridor.

The outcome of the “Prespa Agreement” regarding the name “the Republic of North Macedonia”.

By ensuring full alignment of the Convention with the current Union legislation and, hence, creating uniform conditions for the consistent implementation of the provisions concerning the Union transit and the common transit procedure, the proposed amendments to the Convention would result in substantial and tangible benefits for both traders and customs administrations.

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 EU-CTC 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 Articles 15(3) and 20 of the Convention.

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

Therefore, the procedural legal basis for the proposed Decision, therefore, 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 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. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the EU-CTC Joint Committee will amend the Convention, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

2019/0095 (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

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[12] ("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) Pursuant to point (a) of Article 15(3) of the Convention, the Joint Committee established by that Convention may adopt, by decisions, amendments to the Appendices to the Convention.

(3) Provisions of the Convention concerning the protection of personal data exchanged for the purpose of the application of the Convention should contain a reference to Regulation (EU) 2016/679 of the European Parliament and of the Council[13].

(4) Article 84 of Commission Delegated Regulation (EU) 2015/2446[14], which lays down the conditions to be fulfilled by applicants in order to be authorised to use a comprehensive guarantee with a reduced amount or a guarantee waiver, has been amended[15]. As a result of the amendment, the requirement of sufficient financial resources was removed as a stand-alone condition because the practical experience in the Member States showed that that condition was interpreted too restrictively and focused only on the availability of cash. The assessment of the capacity of economic operators to pay the full amount of debt should therefore be integrated in the assessment of their financial standing. Article 75 of Appendix I to the Convention, which mirrors the provisions of Article 84 of Commission Delegated Regulation (EU) 2015/2446, should be amended accordingly.

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12 OJ L 226, 13.8.1987, p. 2.

13 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

14 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 (OJ L 343, 29.12.2015, p. 1).

15 Commission Delegated Regulation (EU) 2018/1118 of 7 June 2018 amending Delegated Regulation (EU) 2015/2446 as regards the conditions for a reduction of the level of the comprehensive guarantee and the guarantee waiver (OJ L 204, 13.8.2018, p. 11).

(5) Since 1 May 2018 the provisions concerning the new transit simplification – the use of the electronic transport document (ETD) as a transit declaration for air transport – apply according to Article 24(1) of Commission Delegated Regulation (EU) 2016/341[16] . The previous transit simplification for air which allowed the operator to base a transit declaration on an electronic manifest was allowed to be used only until 1 May 2018. Therefore, all references to that outdated transit simplification for air transport in the Convention should be amended accordingly.

(6) Currently, the conditions under which goods transported through the T2 corridor keep their customs status of Union goods are laid down in Title I of Appendix II to the Convention the scope of which is limited to goods not placed under the export procedure. It was not the intention to establish such restriction for Union goods moved through the T2 corridor. Therefore, Article 2a of Appendix II to the Convention should be deleted from Title I and a new Article should be introduced into a new Title Ia under which no such restriction would apply.

(7) Following the notification by North Macedonia, to the United Nations and to the European Union, of the entry into force of the Prespa Agreement as of 15 February 2019, the country previously denominated as "the former Yugoslav Republic of Macedonia" has changed its name to "the Republic of North Macedonia". Therefore, the name and the code of the country in Appendix III and in Appendix IIIa to the Convention should be modified.

(8) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee as the amendments to that Convention, if approved, will be binding on the Union.

(9) 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 Joint Committee established by the Convention of 20 May 1987 on a common transit procedure as regards the amendments to the Appendices to that Convention shall be based on the draft act of that Joint Committee attached to this Decision.

Minor changes to the draft Decision may be agreed to by the representatives of the Union in the Joint Committee, without further Decision of the Council.

[16] Commission Delegated Regulation (EU) 2016/341 of 17 December 2015 supplementing Regulation (EU) N)952/2013 of the European Parliament and the Council as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446, OJ L 69, 15.3.2016, p.1

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President