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2021/0002 (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 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

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 early 2021 the Joint Committee is to adopt by means of a written procedure a decision regarding the amendment of the Appendices I and III of the Convention ('the envisaged act').

The purpose of the envisaged act is to align the Convention with provisions in the Union Customs Code ('UCC')[5] and its Delegated and Implementing Acts concerning the transit procedure and the customs status of Union goods, as well as to bring necessary changes to the appendices of the Convention following the withdrawal of the UK from the Union[6] and the UK's accession to the Convention. They are as follows:

Article 311 of Commission Implementing Regulation (EU) 2015/2447[7] ('the Implementing Act'), which lays down the request to transfer the recovery of the customs debt was amended

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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 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

6 OJ L 29, 31.1.2020, p. 7

7 Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code) (OJ L 343, 29.12.2015, p. 558)

in September 2019[8]. The amendment set the rules for the request to transfer the recovery where the customs authority of a country involved in a transit operation obtains evidence that the events giving rise to the debt occurred in its territory. In these cases, that authority should request the country of departure to transfer to it the responsibility to start the recovery. The country of departure should confirm within a certain period whether it transfers the competency to start the recovery to the requesting customs authority. Therefore, Article 50 of the Appendix I to the Convention, which replicates Article 311 of the Implementing Act, should be amended accordingly.

Annex 72-04 of the Implementing Act, which describes the business continuity procedure for Union transit was amended and applied from 30 June 2020[9]. In order to allow for more flexibility in the business continuity procedure in transit and to reduce the formalities and costs incurred by the customs authorities, the validity of the paper comprehensive guarantee certificates and guarantee waiver certificates were prolonged. Article 79 of Appendix I to the Convention and Point 19.3., Chapter III, Annex II of Appendix I to the Convention, which mirrors point 19.3, Chapter III, Part I, Annex 72-04 of the Implementing Act, should be amended accordingly.

When the UCC ceases to apply to and in the United Kingdom, with the exception of Northern Ireland, the United Kingdom will accede to the Convention as a separate Contracting Party[10] and the Protocol on Ireland/Northern Ireland annexed to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[11] will apply. The Convention contains references to EU Members States, common transit countries and the respective country codes. It is therefore necessary to make appropriate changes to the Appendix III of the Convention to distinguish the United Kingdom in respect of Northern Ireland and indicate that the UCC, in particular as regards the guarantee provisions, applies in Northern Ireland.

The EU position on the draft Joint Committee Decision concerning the further amendments to the Convention is based on EU rules that were already agreed by the Council (in particular in the provisions of the Union Customs Code delegated and implementing acts). The content related to the application of the Protocol on Ireland/Northern Ireland is in line with that Protocol.

The envisaged act will become binding on the parties in accordance with Article 2 of that Decision, which provides for its entry into force on the day of its adoption.

The provisions related to the validity of the paper comprehensive guarantee certificates and guarantee waiver certificates should apply retroactively from 30 June 2020. Equal conditions should be granted to guarantors under the Union law and the Convention. The extended validity period of the certificates is already in effect from 30 June 2020 in the Union customs legislation.

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8 Commission Implementing Regulation (EU) 2019/1394 of 10 September 2019 amending and correcting Implementing Regulation (EU) 2015/2447 as regards certain rules on surveillance for release for free circulation and exit from the customs territory of the Union (OJ L 234, 11.9.2019, p. 1)

9 Commission Implementing Regulation (EU) 2020/893 of 29 June 2020 amending Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 206, 30.06.2020, p. 8)

10 Decision No 1/2018 of the EU-CTC Joint Committee of 4 December 2018 as regards an invitation to the United Kingdom to accede to the Convention on a common transit procedure [2018/1987] (OJ L 317, 14.12.2018, p. 47)

11 OJ L 29, 31.1.2020, p. 102

The provisions related to the application of the Protocol on Ireland/Northern Ireland will apply from the moment when the UCC ceases to apply to and in the United Kingdom, with the exception of Northern Ireland where the UCC will continue to apply after that date, and the United Kingdom accedes to the Convention as a separate Contracting Party.

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 THE UNION'S BEHALF

The proposed position to be taken on behalf of the Union is to amend the Appendices I and III to the Convention in order to align them with the following:

- the Union customs law governing the Union transit arrangements and, in particular, the amended Article 311 of Implementing Act, which lays down the request to transfer the recovery of the customs debt and Annex 72-04 of Implementing Act, with regard to the validity of the paper comprehensive guarantee and guarantee waiver certificates used in the business continuity procedure;

- the application of the Protocol on Ireland/Northern Ireland and, in particular, to distinguish the United Kingdom in respect of Northern Ireland where applicable.

The proposed position is consistent with the common commercial policy.

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.

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 15(3) 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 effects. The envisaged act 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 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 objective of ensuring efficient border crossing procedures for goods. 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 of the proposed decision should be Article 207 TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

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

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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 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 Article 15(3)(a) of the Convention, the Joint Committee set up by that Convention may adopt, by decisions, amendments to the Appendices to the Convention.

(3) The Joint Committee, in early 2021, is to adopt a decision on the amendment of the Appendices I and III of the Convention.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the decision on the amendment of the Appendices I and III of the Convention will be binding on the Union.

(5) Article 311 of Commission Implementing Regulation (EU) 2015/2447[13] ('the Implementing Act'), which lays down the request to transfer the recovery of the customs debt has been amended[14]. According to the new paragraphs (3) and (4) where the customs authority of a country involved in a transit operation obtains evidence that the events giving rise to the debt occurred in its territory, that authority should request the country of departure to transfer to it the responsibility to start the recovery. The country of departure should confirm within a certain period whether it transfers the competency to start the recovery to the requesting customs authority. Therefore, Article 50 of the Appendix I to the Convention, which mirrors the provisions of Article 311 of the Implementing Act, should be amended accordingly.

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12 OJ L 226, 13.8.1987, p. 2.

13 Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code) (OJ L 343, 29.12.2015, p. 558)

14 Commission Implementing Regulation (EU) 2019/1394 of 10 September 2019 amending and correcting Implementing Regulation (EU) 2015/2447 as regards certain rules on surveillance for release for free circulation and exit from the customs territory of the Union (OJ L 234, 11.9.2019, p. 1)

(6) Annex 72-04 of the Implementing Act, which describes the business continuity procedure for Union transit has been amended[15]. In order to allow for more flexibility in the business continuity procedure in transit and to reduce the formalities and costs incurred by the customs authorities, the validity of the paper comprehensive guarantee certificates and guarantee waiver certificates were prolonged. Therefore, Article 79 of Appendix I to the Convention and Point 19.3., Chapter III, Annex II of Appendix I to the Convention, which mirrors point 19.3, Chapter III, Part I, Annex 72-04 of the Implementing Act, should be amended accordingly.

(7) When the UCC ceases to apply to and in the United Kingdom, with the exception of Northern Ireland, the United Kingdom will accede to the Convention as a separate Contracting Party[16] and the Protocol on Ireland/Northern Ireland to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[17] will apply. The Convention contains references to the names of EU Members States, common transit countries and the respective country codes. It is therefore necessary to make appropriate changes to the Appendix III of the Convention to indicate that the United Kingdom is a common transit country and that the UCC, in particular as regards the guarantee provisions, applies in Northern Ireland,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf either in the 33rd meeting or in a subsequent meeting of the Joint Committee or by means of a written procedure as regards the amendments to the Appendices to that Convention shall be based on the draft decision of the Joint Committee attached to this Decision.

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

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

[15] Commission Implementing Regulation (EU) 2020/893 of 29 June 2020 amending Implementing Regulation (EU) 2015/2447 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 206, 30.06.2020, p. 8)

[16] Decision No 1/2018 of the EU-CTC Joint Committee of 4 December 2018 as regards an invitation to the United Kingdom to accede to the Convention on a common transit procedure [2018/1987] (OJ L 317, 14.12.2018, p. 47)

[17] OJ L 29, 31.1.2020, p. 102