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Proposal for a

COUNCIL DECISION

on the position to be adopted on behalf of the European Union within the Joint Committee set up by the Convention of 20 May 1987 on a common transit procedure as regards the proposals for amendments to that Convention

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal is for a Decision establishing the position to be adopted on behalf of the Union in the EU-EFTA Joint Committee on common transit ("the Joint Committee") in connection with the envisaged adoption by the Joint Committee of a Decision on amending the Appendices to the Convention of 20 May 1987 on a common transit procedure ("the Convention")

2. CONTEXT OF THE PROPOSAL

2.1. • The Convention on a common transit procedure

The Convention aims to facilitate the movement of goods between the European Union and other countries which are Contracting Parties to the Convention. It entered into force on 1 January 1988.

The European Union is a Contracting Party to the Convention.

2.2. The EU-EFTA Joint Committee

The task of the EU/EFTA Joint Committee on common transit 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 unanimously by Contracting Parties.

2.3. The Decision of the EU-EFTA Joint Committee

On 5 December 2017, at its 30th meeting, the Joint Committee is expected to adopt a Decision amending the Appendices to the Convention.

The common transit procedure consists of an extension of the Union transit procedure to the non-Union Contracting parties to the Convention ("the common transit countries"). As a result of the EU/EFTA Joint Committee Decision No 1/2016 of 28 April 2016¹, the Convention was amended in order to align it with provisions in the Union Customs Code ("UCC") and its Delegated and Implementing Acts concerning transit arrangements and the customs status of Union goods. That Decision entered into force on 1 May 2016.

Certain provisions of the UCC legal package will apply later than 1 May 2016, taking into account the request from economic operators to have sufficient time to prepare for the new rules and the need to update or deploy relevant customs systems which are scheduled for completion over the next few years. Insofar as the transit procedure is concerned, the provisions concerning the use of the electronic transport document (ETD) as a transit declaration for air transport will apply as of 1 May 2018, at the latest, and certain transit provisions will become applicable only after the upgrade of the electronic transit system. As regards the customs status of Union goods, some of the provisions are not yet applicable, because they also require the deployment of relevant electronic systems.

Therefore, in order to provide the common transit countries also with sufficient time to prepare for the application of the amended provisions and additional data elements that will be required when the new systems and provisions are fully applicable under EU customs legislation, the Convention must be further amended in order to align it fully with the UCC legal package.

¹ OJ L 142 of 31.5.2016, p. 25

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 agreed by Member States and that are included in the UCC that entered into force on 1 May 2016.

The Commission is invited to adopt the draft Decision and to transmit it to the Council.

The Joint Committee Decision amending the Convention shall become binding on the Contracting Parties in accordance with Article 2 of that Decision, which provides that "This Decision shall enter into force on the day of its adoption".

In accordance with Article 15(3) of the Convention, this type of Decision shall be put into effect by the Contracting Parties in accordance with their own legislation.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The proposal amends provisions in the Appendices to the Convention and in the Annexes to those Appendices. The amendments propose the alignment of provisions in the Convention with provisions in the UCC Delegated and Implementing Acts concerning the Union transit arrangements and the customs status of Union goods that will only become applicable on certain dates in the future.

The aim is to improve the functioning of the common transit procedure between the Contracting Parties. The amendments should result in substantial and tangible benefits for traders and for customs administrations by improving clarity and ensuring a smooth transition to the new electronic arrangements.

Proposed instrument: Decision of the EU-EFTA Joint Committee on common transit.

There is no other, more adequate, instrument.

The proposed Decision is consistent with the common policy in the fields of trade and transport.

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/EFTA 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 Article 14 of the Convention.

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 Article 20 of the Convention.

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

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 adopted on behalf of the Union.

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

The simplifications achieved through the Convention and the envisaged amendment concern efficient border crossing procedures and thus the EU's common commercial policy.

4.3. Conclusions

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

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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 ("the Convention") was concluded by the European Union by Council Decision² and entered into force on 1 January 1988.
- (2) Pursuant to Article 15(3)(a) of the Convention, the EU-EFTA Joint Committee on common transit set up by that Convention ("the Joint Committee") may adopt by decision amendments to the Appendices to the Convention.
- (3) On 5 December 2017, during its 30th meeting, the Joint Committee is expected to adopt a Decision amending the Appendices to the Convention.
- (4) It is appropriate to establish the position to be adopted on behalf of the Union in the Joint Committee, as its Decision will be binding upon the Union.
- (5) Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code³ and its Delegated and Implementing acts introduced the possibility to use the electronic transport document (ETD) as a transit declaration for air transport. Those provisions will be fully applicable as of 1 May 2018 at the latest. Moreover, certain provisions on transit and on the customs status of Union goods will only become applicable when the relevant electronic systems have been upgraded or deployed, on the dates indicated in the Annex to Commission Implementing Decision (EU) 2016/578 of 11 April 2016 establishing the Work Programme relating to the development and deployment of the electronic systems provided for in the Union Customs Code⁴.
- (6) To ensure the smooth and efficient functioning of trade between the Union and the Contracting Parties to the Convention, the provisions on the use of the ETD as a transit declaration and on the implementation of the relevant electronic systems should be included in the Appendices to the Convention. Those amendments are indispensable for the further alignment of the Convention with Union legislation.
- (7) All Member States of the Union expressed their positive opinion as regards the proposed amendments in the EU-EFTA Working Group on common transit.

² OJ L 226, 13.8.1987, p. 2

³ OJ L 269, 10.10.2013, p. 1.

⁴ OJ L 99, 15.4.2016, p. 6.

- (8) 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.
- (9) In the Joint Committee, the Union is to be represented by the Commission in accordance with Article 17(1) of the Treaty on European Union (TEU). The position of the Union concerning the proposed amendment should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the Union at the meeting of the EU-EFTA Joint Committee on common transit ("the Joint Committee") concerning amendments to the Appendices to that Convention shall be based on the draft Decision No 1/2017 of the EU-EFTA Joint Committee on common transit 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.

Article 2

After its adoption, the Decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*