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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 the simplification of formalities in trade in goods as regard the proposals for amendments to that Convention

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be adopted on behalf of the Union in the EU-EFTA Joint Committee on the Simplification of Formalities in Trade in Goods ("the Joint Committee") in connection with the envisaged adoption by the Joint Committee of a Decision on amending the Annexes to the Convention of 20 May 1987 on the Simplification of Formalities in Trade in Goods ("the Convention").

2. CONTEXT OF THE PROPOSAL

2.1 The Convention on the Simplification of Formalities in Trade in Goods

The Convention aims to facilitate the trade between the European Union and other countries which are Contracting Parties to the Convention by introducing a single document based on a declaration form that shall serve as declaration for export, transit or import. The Convention 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 EU-EFTA Joint Committee administers the Convention and ensures its proper implementation. The Committee, by means of decisions, adopts amendments to the Annexes of the Convention.

The decisions of the Joint Committee 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 Annexes to the Convention.

The Convention on the simplification of formalities in trade in goods extends the use of the single administrative document and the data required for the purpose of the different customs procedures to the non-Union Contracting Parties to the Convention.

The data-related provisions of the UCC legal package will apply later than 1 May 2016, taking into account the need to update or deploy relevant Trans-European and national electronic customs systems which are scheduled for completion over the next few years, and the request from economic operators to have sufficient time to prepare for the new rules and adapt their customs systems accordingly.

Therefore, in order to provide also the non-Union Contracting Parties to the Convention with sufficient time to prepare for the application of the amended provisions and data requirements when those are fully applicable under the Union customs legislation, the Convention has to be amended in order to be fully aligned with the UCC legal package.

The process to establish an EU common position on the draft Decision concerning the amendments to the Convention on the simplification of the formalities in trade in goods 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 11(3) of the Convention, this type of Decision shall be put into effect by the Contracting Parties in accordance with their own legislation.

- **Consistency with existing policy provisions in the policy area**

The amendment to the Convention is aimed at its alignment with certain provisions of the UCC Delegated and Implementing acts concerning the common data requirements for customs declarations which will be applicable as of certain dates in the future.

That alignment is to improve the simplification of formalities in trade in goods among the Contracting Parties. The improvements should result in substantial and tangible benefits for traders and for customs administrations.

- **Consistency with other Union policies**

The proposed Decision is consistent with the common policy in trade.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The proposal amends provisions in the Annexes to the Convention. The amendments propose the alignment of certain provisions in the Convention to the provisions in the UCC Delegated and Implementing Acts concerning the data requirements used for the purpose of import, export and transit customs declarations that will only become applicable on certain dates in the future.

The aim is to maintain the harmonisation of the data requirements used for customs declarations in the context of trade 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 the Simplification of Formalities in Trade in Goods.

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 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 11(3) of the Convention stipulates that the EU/EFTA Joint Committee adopts by decisions amendments to the Annexes to the Convention.

4.1.2. Application to the present case

The Joint Committee is a body set up by Article 10 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 15 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 customs formalities 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 the simplification of formalities in trade in goods ("Convention") was concluded by the European Union by Council Decision¹ and entered into force on 1 January 1988.
- (2) Pursuant to Article 11(3) of the Convention, the EU-EFTA Joint Committee on the simplification of formalities in trade in goods set up by that Convention ("Joint Committee") may adopt by decision amendments to the Annexes to the Convention.
- (3) On 5 December 2017, during its 30th meeting, the Joint Committee is expected to adopt a Decision amending the Annexes 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 Code² and its Delegated and Implementing acts laid down common data requirements for customs declarations as well as the formats and codes to those common data requirements. Those provisions will be fully applicable where the relevant electronic systems have been upgraded or deployed as foreseen 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 Code³.
- (6) To ensure the smooth and efficient functioning of trade between the Union and the Contracting Parties to the Convention, the provisions on the data requirements for customs declarations included in the Annexes to the Convention should be aligned to those included in the respective Union legislation.
- (7) All Member States of the Union expressed their positive opinion as regards the proposed amendments within the EU-EFTA Working Group on the simplification of formalities in trade in goods.

¹ OJ L 134, 22.05.1987, p. 2

² OJ L 269, 10.10.2013, p. 1.

³ OJ L 99, 15.4.2016, p. 6.

- (8) As the Decision of the Joint Committee 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 Joint Committee concerning amendments to the Convention shall be based on the draft Decision No 1/2017 of the 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.

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