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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Administrative Committee for the Customs Convention on the international transport of goods under cover of TIR Carnets as regards the proposal to amend the 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 Administrative Committee established by the Customs Convention on the International Transport of goods under cover of TIR¹ carnets ("the TIR Convention") in connection with the envisaged adoption of several amendments to the TIR Convention.

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 Agreement entered into force on 1978. As of November 2019, there are 76 parties to the Convention, including 75 states and the European Union. The European Union is a contracting party to the TIR Convention² since 20 June 1983, and all Member States are contracting 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 a customs and economic union, does not have voting rights in addition to those of its Member States, in accordance with Article 52(3) of the Convention. 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

On October 2020, during its seventy-third session, the Administrative Committee is to take a decision regarding the adoption of the proposed amendments to the Customs Convention on the International Transport of goods under cover of TIR carnets ('the envisaged act').

The purpose of the envisaged act is to:

Introduce the mandatory usage, by the competent authorities, of the electronic International TIR Data Bank (ITDB) instead of the paper Model Authorization Form (MAF) to transmit to the TIR Executive Board (TIRExB) holder's authorisation or withdrawal of authorisation to use TIR Carnets.

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.

Attain the mandatory publication of the Customs offices list approved for accomplishing TIR operations in ITDB.

Allow Contracting Parties to grant, in line with national legislation, to duly authorised persons, greater facilities in the application of the provisions of the Convention.

Clarify the text of the TIR Convention on the use of prescribed itinerary within a customs Union and update the maximum guaranty amount for alcohol/Tabaco TIR Carnet.

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

This package of amendments will enhance the modernisation of the TIR Convention, already well engaged with the historic adoption of the legal framework of the future eTIR International system at the seventy-two session of the Administrative Committee in February 2020. It will also clarify technical aspects in the text of the TIR Convention.

First, by introducing the mandatory use of a ITDB application for the transmission of data of authorized TIR holders to TIRExB as well as by creating a reliable online international database of customs offices open to the TIR, the contracting parties to the TIR Convention ease the conditions of the future digitalisation of the TIR Carnet and strengthen the reliability of TIR data.

To achieve this goal, Article 38, its related Explanatory notes and Annex 9 will be amended in order to oblige guaranteeing associations to transmit immediately all the particulars of persons authorized to use the TIR procedure to TIRExB. In addition, a new Explanatory note to Article 45 will specify that the publication of the list of the Customs offices of departure, Customs offices en route and Customs offices of destination approved for accomplishing TIR operations have to be done in an electronic application supervised by TIRExB (ITDB).

The Union already uses the ITDB and supports the mandatory use of the ITDB by all TIR Contracting Parties as it will contribute to the general goal, in line with the customs policy of the Union, of a wider computerisation of the TIR procedure by further facilitating the real time electronic data exchange between Contracting Parties, associations and international organizations.

Second, by creating a new Explanatory note to Article 49 in Annex 6, Contracting Parties will be able, on a voluntary basis, to introduce greater facilities in the application of the provisions of the Convention.

Those facilities would be granted only, if they include the application of technologies to ensure the good conduct of the TIR procedure, clear instructions for authorised persons to perform specific duties which are normally entrusted pursuant to the TIR Convention to customs authorities and the use of a system of record-keeping enabling customs authorities to carry out customs control and to supervise the procedure.

The Union supports the new possibility for Contracting Parties to propose greater facilities to TIR authorised holder in order to maintain its appeal for economic operators.

At last, the amendments of Article 20 and of the Explanatory Note to Article 8 could be considered as technical as they respectively clarify the use of the a prescribed route within a customs union and update the maximum sum per tobacco/alcohol TIR carnets which may be claimed from the guaranteeing association.

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 large support for the proposed amendments. The European Data Protection Supervisor has been consulted by letter of 23 March 2020 and did not reply by 11 June 2020 despite a reminder.

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.

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

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 Agreement.

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.

Therefore, the substantive legal basis of the proposed decision is the first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be the first subparagraph of Article 207(4) TFEU, 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.

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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 the first subparagraph of Article 207(4) TFEU, 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 2112/78⁴ and entered into force in the Community on 20 June 1983⁵.
- (2) A consolidated version of the TIR Convention was published as an Annex to Council Decision 2009/477/EC, according to which the Commission is to publish future amendments to the TIR Convention in the *Official Journal of the European Union* indicating their date of entry into force.
- (3) Pursuant to Articles 59 and 60 of the TIR Convention, the Administrative Committee for the TIR Convention (the ‘Administrative Committee’) may adopt amendments to the TIR Convention and its Annexes by a two-thirds majority of the contracting parties present and voting.
- (4) The Administrative Committee, during its seventy-third session on 15 October 2020 or a subsequent session, is to adopt several amendments to the TIR Convention and its Annexes.
- (5) 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.
- (6) In order to accelerate the modernisation of the TIR regime, it is necessary to introduce mandatory electronic transmission of data by the competent authorities to the TIR Executive Board concerning TIR Carnet holders’ authorisations and withdrawals of such authorisations and to create a reliable online international database of customs offices that accept TIR movements by amending Article 38 of the TIR Convention and Annex 9 to the TIR Convention and by creating a new Explanatory Note to Article 45 of the TIR Convention.

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.

- (7) In order to enhance the attractiveness of the TIR Convention both for economic operators and for customs authorities, it is necessary to introduce a possibility for the contracting parties to grant to duly authorised persons greater facilities in the application of the provisions of the TIR Convention by creating a new Explanatory Note to Article 49 of the TIR Convention.
- (8) In order to clarify the provisions of the TIR Convention, it is necessary to specify the use of a prescribed route within customs unions by amending Article 20 of the TIR Convention and increase the recommended maximum amount that may be claimed from the guaranteeing associations for tobacco and alcohol TIR carnets by amending the Explanatory Note to Article 8 of the TIR Convention.
- (9) The position to be adopted on behalf of the Union in the Administrative Committee should therefore be based on the draft amendments attached to this Decision. This is without prejudice to the possibility that exists for non-substantial minor changes to the draft amendments, to be agreed by the representatives of the Union in the Administrative Committee for the TIR Convention without another decision of the Council.
- (10) The Union's position should be expressed by the Commission. The Member States of the Union should express the Union position when a formal vote is taken in the Administrative Committee, acting jointly, in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the seventy-third session or one of the subsequent sessions of the Administrative Committee for the Customs Convention on the international transport of goods under cover of TIR carnets (the 'TIR Convention') shall be based on the draft amendments attached to this Decision.

Article 2

The position referred to in Article 1 shall be expressed by the Commission. The Member States of the Union shall express the Union position when a formal vote is taken in the Administrative Committee for the TIR Convention, acting jointly in the interest of the Union.

Article 3

This Decision is addressed to the Member States and the Commission.

Done at Brussels,

For the Council
The President