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2019/0199 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union within the Administrative Committee for the International Convention on the Harmonization of Frontier Controls of Goods**

## **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 International Convention on the Harmonization of Frontiers Controls of Goods (“the Harmonization Convention”) in connection with the envisaged adoption of amendments to Article 7 of Annex 8 of the Harmonization Convention as regards the frequency of the reporting mechanism.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The International Convention on the Harmonization of Frontiers Controls of Goods**

The International Convention on the Harmonization of Frontiers Controls of Goods (“the Harmonization Convention”) aims to facilitate, and so develop, international trade through the harmonisation (where appropriate) of the various frontier controls that are applied to the movement of goods. The Harmonisation Convention, signed in Geneva on 21 October 1982, was approved on behalf of the Community by Council Regulation (EEC) No 1262/84 of 10 April 1984<sup>1</sup> which entered into force on 12 September 1987. There are currently 58 Contracting Parties to the Convention, including the European Union and its Member States.

#### **2.2. The Administrative Committee**

The Administrative Committee acts within the framework of the Harmonization Convention. Its role is to consider and adopt amendments to the Harmonization Convention. Proposals are put to a vote and each State, which is a Contracting 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 Harmonisation Convention. The Union, as a regional economic organization, shall have in case of voting only a number of votes equal to the total votes allotted to its Member States which are also Contracting Parties to the Convention. As all EU Member States are Contracting Parties to the Convention, the Union has 28 votes.

Amendments to the Harmonization Convention are adopted by a two-thirds majority of the members 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**

At its twelfth session, the Administrative Committee is likely to take a decision on the adoption of the proposed amendments to the Harmonization Convention (‘the envisaged act’).

The purpose of the envisaged act is to decrease the frequency of the reporting mechanism on progress made to improve border crossing procedures for international road transport. Currently, each Contracting Party to the Convention are requested to fill and send to the UNECE secretariat a draft questionnaire on the implementation of Annex 8 to the Convention (publication of legal provisions, infrastructure, application etc.). The envisaged act will change the timeline for reporting from two to five years, which will let enough time to get result that is interesting.

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<sup>1</sup> OJ L 126, 12.5.1984, p. 1–2

The envisaged act will become binding on the parties in accordance with Article 22 of the Harmonization Convention. Article 22 concerns proposed amendments to the Convention and provides: “*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 12 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 or by a regional economic integration organization, itself a Contracting Party, which then acts within the conditions specified in article 16, paragraph 2, of the Convention.*”

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

The Union shares the objective of a reasonable approach for the frequency of the reporting mechanism on progress made to improve border crossing procedures for international road transport. Currently these global surveys take place every two years, meaning that every two years each Contracting Party (including the European Union) has to report on the progress made. The current frequency of the reporting mechanism is burdensome for Contracting Parties because the questionnaire requires often at national level an inter-ministerial coordination between customs and transport authorities. Moreover, as discussed and coordinated in the TIR Customs Expert Group with Members States, it is expected that the surveys will bring similar results when conducted every five years.

It is therefore proposed that the Union supports the amendment proposal of Article 7 of Annex 8, of the Harmonized Convention which aims at extending the frequency of the reporting mechanism from two to five years.

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.

### **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 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement<sup>2</sup>.

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*’<sup>3</sup>.

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<sup>2</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, Case C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

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

#### *4.1.2. Application to the present case*

The Administrative Committee is a body set up by an agreement, namely the International Convention on the Harmonization of Frontiers Controls of Goods.

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 22 of the International Convention on the Harmonization of Frontiers Controls of Goods.

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 customs and external trade policy.

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

### **4.3. Conclusion**

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

## **5. PUBLICATION OF THE ENVISAGED ACT**

As the act of the Administrative Committee will amend Annex 8 of the International Convention on the Harmonization of Frontiers Controls of Goods, 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 International Convention on the Harmonisation of Frontier Controls of Goods ('the Convention'), 1982 was approved by Council Regulation (EEC) No 1262/84<sup>4</sup>.
- (2) Pursuant to Article 22 of the Convention, the Administrative Committee may adopt amendments by a two-thirds majority of Contracting Parties present and voting.
- (3) The Administrative Committee, at its twelfth session, is to adopt an amendment of Article 7 of Annex 8.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Administrative Committee, as the amendments to the Convention will be binding on the Union.
- (5) The Union supports the new Article 7 of Annex 8 to the Convention as by decreasing the frequency of the reporting mechanism on progress made to improve border crossing procedures for international road transport, Member States face less administrative formalities.
- (6) The position to be adopted on behalf of the Union within the Administrative Committee for the Convention should therefore be based on the draft amendments attached to this Decision,

**HAS ADOPTED THIS DECISION:**

### *Article 1*

The position to be taken on the Union's behalf in the twelfth or a subsequent session of the Administrative Committee shall be to support the draft amendment attached to this Decision.

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<sup>4</sup>

OJ L 126, 12.05.1984, P 1

*Article 2*

Editorial changes to the draft amendment referred to in Article 1 may be agreed by the representative of the Union in the Administrative Committee.

*Article 3*

This decision shall enter into force on the date of its adoption.

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*