



Brussels, 15.10.2019  
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2019/0222 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Council for Trade in  
Goods of the World Trade Organisation as regards the rules of procedure of the  
Committee on Trade Facilitation**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal establishes the position to be taken on the Union's behalf in the World Trade Organisation (WTO) in connection with the proposed adoption of the rules of procedures of the Committee on Trade Facilitation ("the Committee"), pursuant to the WTO Trade Facilitation Agreement ("the Agreement").

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

#### **2.1. The Trade Facilitation Agreement**

The Agreement, to which the EU is a party<sup>1</sup>, was adopted at the 9<sup>th</sup> Bali Ministerial WTO Ministerial Conference in 2013 with the aim of simplifying, modernising and facilitating export and import processes among WTO members. It contains provisions on speedier, simplified, more transparent and more efficient procedures at the border, expediting the movement, release and clearance of goods, including goods in transit and sets out measures for effective cooperation among customs and other appropriate authorities on trade facilitation and customs compliance. The Agreement entered into force on 22 February 2017.

#### **2.2. The envisaged act of the Council on Trade in Goods**

Article 23.1 of the Agreement establishes the Committee on Trade Facilitation and provides that "the Committee shall establish its own rules of procedure". To that end, a proposal was made by Japan, Argentina, Norway and Paraguay which received the full support at the last meeting of the WTO Trade Facilitation Committee on 25 June 2019. The proposed rules are of an administrative nature and ensure the efficient organisation and proceedings during the meetings of the Trade Facilitation Committee.

In accordance with Article IV.6 of the Marrakesh Agreement establishing the WTO, the rules of procedure of subsidiary bodies such as the Trade Facilitation Committee need to be approved by the WTO Council on Trade in Goods in order to enter into force.

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

The rules of procedure are of an administrative nature. They aim at ensuring an efficient functioning of the Trade Facilitation Agreement. It is in the interest of the EU to adopt these rules that received full support at the meeting of the Trade Facilitation Committee so that the Committee works well and monitors efficiently the implementation of the Trade Facilitation Agreement. These rules are based on the Rules of Procedure of the General Council of the WTO<sup>2</sup> and adjusted only to meet the specific needs of the Trade Facilitation Committee. For example, Rule 1 of the Rules of Procedure of the General Council is complemented by an obligation that the Committee meets at least once a year, which is not the case for the General Council. Another illustration is that the invitation for the meetings should preferably be issued three weeks before the meetings in order to facilitate the preparation of the positions that sometimes can be complex, in particular when related to aid associated to the implementation of certain commitments. In the General Council, meetings can be convened at very short notice if there is an urgency and normally within 10 working days (Rule 2).

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<sup>1</sup> Council Decision (EU) 2015/1947 of 1 October 2015 OJ L 284; 30.10.2015 p 1-2.

<sup>2</sup> Document WT/L/161 of 25.7.1996 "Rules of procedure for sessions of the Ministerial Conference and meetings of the General Council.

## **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’<sup>3</sup>.

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

The World Trade Organisation is an international organisation set up by the Marrakesh Agreement establishing the WTO. (The WTO "Agreement"). The Trade Facilitation Committee has been established as a subsidiary body under the authority of the Council on Trade in Goods.

The act which the Council on Trade in Goods is called upon to adopt constitutes an act having legal effects. The envisaged act does not supplement or amend the institutional framework of the Agreement. It only approves the rules for the functioning of the Committee on Trade Facilitation.

Therefore, the procedural legal basis for the proposed decision is Article 207(3) and (4) in conjunction with 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 behalf of the EU. 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 component.

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

The main objective and content of the envisaged act relates to the common commercial policy. Therefore, the substantive legal basis of the proposed decision is the first subparagraph of Article 207(4) of the TFEU.

### **4.3. Conclusion**

The legal basis of the proposed decision should be the first subparagraph of Article 207(4) of the TFEU in conjunction with Article 218(9) TFEU.

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

Not applicable.

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<sup>3</sup> 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.

Proposal for a

## **COUNCIL DECISION**

### **on the position to be taken on behalf of the European Union in the Council for Trade in Goods of the World Trade Organisation as regards the rules of procedure of the Committee on Trade Facilitation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular first subparagraph of Article 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on Trade Facilitation (“the Agreement”) was concluded by the Union on the basis of Council Decision (EU) 2015/1947<sup>4</sup> and entered into force on 22 February 2017.
- (2) Pursuant to Article 23.1 of the Agreement, the Committee on Trade Facilitation may establish its own rules of procedure.
- (3) Pursuant to Article IV.6 of the Marrakesh Agreement Establishing the World Trade Organisation, the rules of procedure of the Committee on Trade Facilitation are subject to the approval of the Council for Trade in Goods.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Council for Trade in Goods, as the envisaged decision will be binding on the Union.
- (5) It is appropriate to agree with the proposed rules of procedure, which will enable the Committee on Trade Facilitation to operate efficiently. They are based on the Rules of Procedure of the General Council of the World Trade Organisation with adjustments to meet the specific needs of the Committee on Trade Facilitation,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union’s behalf in the meeting of the Council for Trade in Goods as regards the adoption of the rules of procedure of the Committee on Trade Facilitation, shall be to support their adoption, as set out in the Annex.

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<sup>4</sup> Council Decision (EU) 2015/1947 of 1 October 2015 on the conclusion, on behalf of the European Union, of the Protocol Amending the Marrakesh Agreement establishing the World Trade Organisation (OJ L 284, 30.10.2015, p. 1).

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*