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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 in 1978. As of November 2020, 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 TIR 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

In February 2021, during its seventy-fourth 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 adapt the model of the TIR carnet to the increase of the number of customs offices of departure and/or destination, which may be involved in a TIR transport operation.

The envisaged act will become binding on the parties in accordance with Articles 59 and 60 of the TIR Convention.

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.

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*”.

Position to be taken on the Union's behalf:

The Union supports the proposal for an amendment of Annex 1 of the TIR Convention and the update of the models of layout of TIR carnet as it is in line with previous adopted amendments of Article 18, which increased the maximum number of customs office that may be used during a TIR transport.

In detail, as proposed by the European Commission, both Version 1 and 2 of the model of the TIR carnets layout will be updated³. The Version 1 is the standard version of the TIR carnet, currently used in practice, and the Version 2 is the Tobacco/alcohol TIR carnet, not used for the time being. For the sake of consistency and in order to avoid further changes in the future, it is necessary to modify the two models simultaneously. The new models will be attached the annex of the Council decision proposal.

These changes will have a positive impact on the ground, since they will allow economic operators to benefit from greater flexibility in the choice of their customs offices of departure and destination.

This is a favourable development, which will improve the attractiveness of the TIR Convention. The European Union supports this initiative, which can facilitate the use of international transit regime.

3. LEGAL BASIS

3.1. Procedural legal basis

3.1.1. 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.*’

³ In the Annex of this proposal the new layout of TIR carnet are available: in case they do not appear in legiswrite, please run DQC tools checks.

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’⁴.

3.1.2. 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.

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.

3.2. Substantive legal basis

3.2.1. 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.

3.2.2. 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.

3.3. 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.

4. 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.

⁴ 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.

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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), 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 2112/78⁵ and entered into force in the Community on 20 June 1983⁶.
- (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-fourth session on 9-12 February 2021 or a subsequent session, is to adopt several amendments to the Annexes of the TIR Convention.
- (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 take into account the previously adopted amendment to Article 18 of the TIR Convention which have increased the number of customs office, which may be involved in a TIR operation, it is necessary to amend Annex 1 to the TIR Convention and update the layout of Version 1 and 2 of the TIR carnet models.
- (7) 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

⁵ 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).

⁶ OJ L 31, 2.2.1983, p. 13.

Administrative Committee for the TIR Convention without another decision of the Council.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the seventy-fourth 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*