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2022/0218 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on the simplification of formalities in trade in goods and in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on a Common transit procedure as regards invitations to the Ukraine to accede to those Conventions

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 EU-CTC Joint Committee established by the Convention of 20 May 1987 on the simplification of formalities in trade in goods¹, and in the EU-CTC Joint Committee established by the Convention of 20 May 1987 on a Common transit procedure² (“the EU-CTC Joint Committees”), concerning the envisaged adoption by each of the Joint Committees of a Decision as regards the invitation to Ukraine to accede to, respectively, the Convention on the simplification of formalities in trade in goods and to the Convention on a common transit procedure (“the Conventions”).

2. CONTEXT OF THE PROPOSAL

2.1. The Conventions

The Conventions aim to facilitate the movement of goods between the European Union and other countries, which are Contracting Parties to the Conventions. They entered into force on 1st January 1988.

The Conventions establish measures facilitating the movement of goods between the European Union, the Republic of Iceland, the Republic of North Macedonia, the Kingdom of Norway, the Swiss Confederation, the Republic of Türkiye, the Republic of Serbia and the United Kingdom of Great Britain and Northern Ireland.

The European Union is a Contracting Party to the Conventions.

Countries which are Contracting Parties of the Conventions, but not members of the Union, are common transit countries (“CTC”).

2.2. The envisaged EU-CTC Joint Committees

The task of the EU-CTC Joint Committees is to administer the Conventions and to ensure their proper implementation. The Committees, by means of decision, invite third countries to accede to the Conventions.

The EU-CTC Joint Committees’ decisions are adopted by mutual agreement of Contracting Parties.

2.3. The Decisions of the EU-CTC Joint Committees

Ukraine wished to accede to the Conventions when it has complied with the legal, structural and information technology requirements, which are preconditions for accession.

In accordance with the provisions of Article 11(3) of the Convention on the simplifications of formalities in trade in goods and with the provisions of Article 15(3) of the Convention on a common transit procedure, the EU-CTC Joint Committees shall by decision invite a third country within the meaning of, respectively, Article 1(2) and Article 3(1)(c), to accede to the Conventions in accordance with the procedure set out in, respectively, Article 11a and Article 15a.

The EU-CTC Joint Committees launch such invitation where the country proves that it is in a position to conform to the detailed rules for the application of provisions of the Conventions.

¹ OJ L 134 22.05.1987, p.2

² OJ L 226 13.8.1987, p. 2.

Mandated by the EU-CTC working groups on common transit and the simplification of formalities in trade, a monitoring team concluded on 24 June 2022 that Ukraine is ready to join the Conventions. The team mainly examined the adaptation of the structures necessary to manage the procedure and the implementation of the New Computerised Transit System (NCTS) allowing the application of the common transit procedure established that the conditions of invitations were met, despite difficult circumstances for Ukraine.

At their next sessions or by means of a written procedure, the EU-CTC Joint Committees plan to adopt the draft Decision No 1/2022 of the EU-CTC Joint Committee on the simplification of formalities in trade in goods and the draft Decision No 2/2022 of the EU-CTC Joint Committee on common transit in order to invite Ukraine to accede to the Conventions..

The Joint Committees Decisions inviting Ukraine to accede to the Convention shall become binding on the Contracting Parties in accordance with Article 2 of the Decisions, which provides that “This Decision shall enter into force on the day of its adoption”.

In accordance with Article 11(3) of the Convention of the simplification of formalities in trade in goods and Article 15(3) of the Convention on a common transit procedure, this type of Decisions shall be put into effect by the Contracting Parties in accordance with their own legislation.

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

The proposed position is favourable to an invitation to Ukraine to accede to the Conventions.

The Communication of 2001 from the European Commission to the European Parliament and the Council on a Strategy to prepare the candidate countries for accession to the 1987 EC-EFTA Conventions on a common transit procedure and on the simplification of formalities in trade in goods, followed by the Communication of 2010 from the European Commission to the European Parliament and the Council on a Strategy to prepare certain neighbouring countries for the accession to both Conventions and by the Council Conclusions of 14 April 2011 confirming the approach adopted in those two Communications foresee support for a number of countries in their efforts to join the Conventions.

The accession to the Conventions is part of the EU-Ukraine Association Agreement, as well as of the pre-accession strategy of Ukraine to the European Union. In line with the provisions set out in the EU-Ukraine Association Agreement, it will lead to an alignment of the EU “acquis” in the customs transit area.

The aim is to facilitate trade between Ukraine, the European Union and other common transit countries. These invitations should result in substantial and tangible benefits for traders and for customs administrations by simplifying transit and customs formalities, reducing costs, facilitating the movement of goods and possible increase trade.

The invitations are by the EU-CTC Joint Committees are in line with the Commission’s opinion on the membership application of Ukraine to the European Union and the endorsement of that opinion by the European Council on 23 June 2022 that granted the status of candidate country to Ukraine. It will provide a tangible sign of the European perspective for Ukraine.

Russia’s unprovoked and unjustified military aggression against Ukraine makes it even more urgent for Ukraine to accede to the Conventions to facilitate the movement of goods through its borders efficiently as some transport routes are blocked and, consequently, others are congested.

Therefore, the Commission proposes to the Council a favourable Union position for the accession of Ukraine to the Conventions.

The proposed Decisions are consistent with European Union policies 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 on the simplification of formalities in trade in goods and Article 15(3) of the Convention on a common transit procedure stipulate that the EU-CTC Joint Committee by decision invite a third country within the meaning of, respectively, Article 1(2) and Article 3(1)(c), to accede to the Conventions.

4.1.2. Application to the present case

The EU-CTC Joint Committee is a body set up by Article 10 of the Convention on the simplification of formalities in trade in goods and by Article 14 of the Convention on a common transit procedure.

The Decisions, which the EU-CTC Joint Committee is called upon to adopt, constitutes an act having legal effects. Those Decisions will be binding under international law in accordance with Article 15 of the Convention on the simplification of formalities in trade in goods and Article 20 of the Convention on a common transit procedure.

The envisaged acts do not supplement or amend the institutional framework of the Conventions.

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 common commercial policy.

Therefore, the substantive legal basis of the proposed decision is 207 TFUE.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207 TFUE, 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 of 20 May 1987 on the simplification of formalities in trade in goods³ and the Convention of 20 May 1987 on a common transit procedure⁴ ('the Conventions') were concluded between the European Economic Community, the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation on 20 May 1987 and entered into force on 1 January 1988.
- (2) Ukraine has expressed its wish to accede to the Conventions once it has complied with the requirements for its accession.
- (3) Pursuant to Article 11(3) of the Convention on the simplification of formalities in trade in goods, the EU-CTC Joint Committee set up by that Convention may adopt, by decision, invitations to third countries to accede to that Convention.
- (4) Pursuant to Article 15(3) of the Convention on a common transit procedure, the EU-CTC Joint Committee set up by that Convention may adopt, by decision, invitations to third countries to accede to that Convention.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committees established by the Conventions, as the Decisions to invite Ukraine to accede to the Conventions will be binding on the Union.
- (6) The Conventions are part of the Union acquis and are part of the pre-accession strategy for Ukraine. The Conventions will ensure efficient border crossing procedures between Ukraine and the parties to the Conventions.
- (7) The invitations are in line with the Commission's opinion on the membership application of Ukraine to the European Union and the endorsement of that opinion by the European Council on 23 June 2022 that granted the status of candidate country to Ukraine.

³ OJ L 134, 22.5.1987, p. 2.

⁴ OJ L 226, 13.8.1987, p. 2.

- (8) The position of the Union within the Joint Committees established by the Conventions should therefore be favourable to an invitation to accede to those Conventions and be based on the draft Decisions reflecting that position,
- (9) In accordance with the Conventions a third country invited to become a contracting party is to do so by lodging an instrument of accession and that the accession is to become effective on the first day of the second month following the lodging of the instrument of accession.
- (10) In order to facilitate Ukraine's timely accession, it is necessary to adopt this decision without delay.

HAS ADOPTED THIS DECISION

Article 1

The position to be taken on the Union's behalf in the EU-CTC Joint Committee set up by the Convention of 20 May 1987 on the simplification of formalities in trade in goods as regards an invitation to Ukraine to accede to that Convention shall be based on the draft Decision of that Joint Committee set out in Annex I to this Decision.

Article 2

The position to be taken on the Union's behalf in the EU-CTC Joint Committee set up by the Convention of 20 May 1987 on a common transit as regards an invitation to Ukraine to accede to that Convention shall be based on the draft Decision of that Joint Committee set out in Annex II to this Decision.

Article 3

After its adoption, the Decisions of the Joint Committees referred to in Articles 1 and 2 shall be published in the *Official Journal of the European Union*.

Article 4

This decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*