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Proposal for a

COUNCIL REGULATION

**on the waiver from the requirement to submit entry and exit summary declarations for
Union goods that are moved across the Neum corridor**

EXPLANATORY MEMORANDUM

1. LEGAL CONTEXT OF THE PROPOSAL

Article 2 of the Act concerning the Conditions of Accession of the Republic of Croatia and the Adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty Establishing the European Atomic Energy Community (“the Act concerning the conditions of accession”) provides that, as from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions before accession shall be binding on Croatia under the conditions laid down in those Treaties and acts and the Act concerning the conditions of accession.

Article 43 of the Act concerning the conditions of accession provides that the Council, acting by qualified majority on a proposal from the Commission, shall define the terms under which the requirements for an entry or exit summary declaration may be waived as regards goods that are being moved through the Neum Corridor.

Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005¹ amended Council Regulation (EEC) No 2913/92 of 12 October 1992² establishing the Community Customs Code (“the Code”) in order to provide for an appropriate legal basis for risk analysis.

According to Article 36a (1) of the Code, and subject to certain exemptions or derogations as laid down in Article 181c of Commission Regulation (EEC) No 2454/93 of 2 July 1993³ (“CCIP”) laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, goods brought into the customs territory of the Union shall be covered by a summary declaration (‘entry summary declaration’).

According to Article 182a (1) of the Code and subject to the relevant exemptions or derogations as applicable under Article 842a (3) and (4) CCIP, in the case of goods that leave temporarily the customs territory of the EU without being exported, re-exported or placed under a transit procedure, an exit summary declaration shall be required.

Articles 36b(2) and 182d(2) of the Code require the use of electronic data-processing techniques for lodging those summary declarations in order to allow the electronic exchange of data between customs authorities, with a view of basing customs controls on risk-analysis using automated systems, as required by Article 13 of the Code.

2. THE NEUM CORRIDOR

The Neum Corridor is a part of the territory of Bosnia and Herzegovina accessing the coast of the Adriatic Sea which divides the land territory of Croatia in two parts, thus separating the area surrounding the city of Dubrovnik from the rest of the territory of the country. At present, the Adriatic Highway, a two-lane state road D8 passing through the Neum Corridor,

¹ OJ L 117, 4.5.2005, p. 13.

² OJ L, 302, 19.10.1992, p.1.

³ OJ L 253, 11.10.1993, p.1.

is the only land transport connection between the area of Dubrovnik and the rest of the territory of Croatia. The section of the road that passes through the territory of Bosnia and Herzegovina at Neum is 9.25 km long. There are two border crossing points on the territory of Croatia, situated at both ends of the road mentioned in the Neum Corridor. These are Klek – Neum I, on the western part of the Neum Corridor, and Zaton Doli - Neum II, in the eastern part of the Neum Corridor. It takes about 10 to 15 minutes for a vehicle to travel the distance between these two points.

The local economy in the area surrounding the city of Dubrovnik is primarily focused on tourism which is run mostly by small and medium sized enterprises dependent on supplies of goods from the main territory of Croatia whose value is usually below EUR 10 000 per consignment.

Currently, 89% of the goods transported through the Neum Corridor are goods that have obtained the status of goods in free circulation in Croatia. They pass through the corridor accompanied by paper-based documents equivalent to the T2L document as referred to in Article 317 (2) of Regulation (EEC) N° 2454/92.

The customs authorities of Croatia establish the identity of vehicles and goods, checking the accompanying commercial documents before they leave temporarily the customs territory of Croatia. Customs checks and controls are also to be performed, as appropriate, upon the re-entry of the goods after crossing the Neum Corridor. The capacity for customs controls is to be enhanced at the time of accession of Croatia to the EU.

The application of the customs legislation of the EU as of the date of accession of Croatia will entail the application of the customs formalities, risk analysis and controls for the purposes of safety and security as well as the electronic submission and exchange of information for that purpose. This requires significant investments and efforts to ensure an appropriate IT framework. Given the specific circumstances of the Neum Corridor the application of these measures seems excessively burdensome and disproportionate.

3. LEGAL ELEMENTS OF THE PROPOSAL

By virtue of Article 43 of the Act concerning the conditions of accession, a special act of the Council has to be adopted in order to lay down the conditions for derogation from entry/exit summary declarations as regards goods that are being transported through the Neum Corridor.

In accordance with the European Union common position on that matter¹, the derogations from the submission of entry and exit summary declarations shall apply under the following conditions:

- the goods have Community status,
- the goods are accompanied by commercial (invoice or transport) documents, which should contain at least the set of data required in Article 317(2) CCIP as well as the total value of the goods,

¹ Document 12133/11 of the Council of 28 June 2011.

- the total value of the goods transported by a vehicle shall not exceed EUR 10 000,
- the document in question shall be endorsed by the customs authorities of Croatia upon exit of the goods with official markings (signature, stamps and date and time of exit),
- when deemed necessary, proper sealing of consignments or means of transport is performed at exit from Croatia,
- upon re-entry into the territory of Croatia, the customs authorities shall check the documents, the time spent for crossing the corridor, the seals (if any) and the goods (where appropriate).

The application of these derogations shall not prejudice the requirement to carry out risk analysis and controls for safety and security purposes, exchange of risk information in accordance with Article 4g (2) CCIP and appropriate measures in case of irregularities. Croatia should provide the Commission with sufficient proof that the arrangements applied by the customs authorities are equivalent to the standards of risk analysis laid down in the EU customs legislation.

In addition to the exchange of risk information referred to above, Croatia shall regularly inform the Commission under the agreed procedures of the Common Risk Management Framework of irregularities that have been found and, where applicable, of the measures that have been subsequently adopted.

A review, aimed to verify the proper application of this regime, shall be held two years after the date of accession.

Where appropriate, acting on the basis of a proposal from the Commission, the Council shall amend or terminate this regime.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Accession Treaty of Croatia, and in particular Article 3(4) thereof,

Having regard to the Act concerning the Conditions of Accession of Croatia, and in particular Article 43 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 9 December 2011, the Member States of the Union and Croatia signed the Treaty concerning the accession of the Republic of Croatia to the European Union ("Accession Treaty"). By virtue of Article 3(3) of the Accession Treaty it is to enter into force on 1 July 2013 provided that all the instruments of ratification have been deposited before that date.
- (2) According to Article 2 of the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty Establishing the European Atomic Energy Community ("the Act concerning the conditions of accession"), as from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions before accession shall be binding on Croatia under the conditions laid down in those Treaties and in the Act concerning the conditions of accession.
- (3) The territory of Neum ("Neum Corridor") is a place where the territory of Bosnia and Herzegovina reaches the Adriatic coast, thus separating the area of Dubrovnik from the rest of the territory of Croatia. Tourism is of significant importance for the local economy, which is driven by small and medium sized enterprises dependent on supplies from the rest of the territory of Croatia. The value of such supplies usually does not exceed EUR 10 000 per consignment and 89 % of these goods have the status of goods in free circulation on the territory of Croatia.
- (4) Article 43 of the Act concerning the conditions of accession provides that the Council, acting by qualified majority on a proposal from the Commission is to define the terms under which the requirement for an entry or exit summary declaration may be waived as regards Union goods that are moved across the Neum Corridor.

- (5) According to Articles 36a (1) and 182a (1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹ ("the Community Customs Code"), goods entering or leaving the customs territory of the Union must be accompanied, in advance, by a summary declaration submitted electronically which contains the data necessary for the performance of risk analysis.
- (6) Given the specific characteristics of the local economy it is appropriate to provide for waivers from the obligation to lodge entry and exit summary declarations for Union goods moved across the Neum Corridor.
- (7) Customs authorities should perform effective risk analysis and customs security checks on the basis of the data present on the invoice and transport documents, accompanying the goods.
- (8) The current arrangements derogate from the principle of electronic pre-arrival submission of safety and security data set up under the Community Customs Code. In order to ensure effective and efficient risk analysis and controls for the purposes of safety and security, Croatia should ensure that the border crossing points at the Neum Corridor dispose of the necessary human resources, equipment and control.
- (9) Where a consignment is found not to fulfil the requirements of this Regulation, the consignment in question should not be allowed to re-enter the territory of Croatia unless an assessment of the risk involved has been carried out and effective and targeted measures based upon a risk analysis have been adopted.
- (10) In addition to the exchange of information for the purposes of safety and security as provided under Article 4g (2) of Regulation (EEC) N° 2454/92, Croatia should regularly inform the Commission under the procedures of the Common Risk Management Framework for any irregularities found and, where applicable, of the measures subsequently adopted with regard to the movement of goods across the Neum Corridor.
- (11) An assessment for the purposes of verifying the proper application of this Regulation should be carried out two years after the date of accession,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down the rules under which:

- (a) the requirement for an exit summary declaration is waived for Union goods leaving the territory of Croatia to be moved across the Neum corridor;
- (b) the requirement for an entry summary declaration is waived for Union goods when they re-enter the territory of Croatia after having moved across the Neum corridor.

¹ OJ L 302, 19.10.1992, p.1.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (1) "Union goods" means the goods defined in Article 4(7) of the Community Customs Code;
- (2) "Area of Dubrovnik" means the administrative region of Dubrovnik as established in accordance with the national law of Croatia;
- (3) "Mainland territory of Croatia" means the territory of Croatia except for the area of Dubrovnik;
- (4) "Neum Corridor" means the area which is a part of the territory of Bosnia and Herzegovina that separates the area of Dubrovnik from the mainland territory of Croatia;
- (5) "Customs authorities" means the customs authorities of Croatia at the exit and re-entry border crossing points at the Neum Corridor;
- (6) "Exit" means the exit of goods, either from the area of Dubrovnik into the mainland territory of Croatia through the Neum Corridor, or from the mainland territory of Croatia into the area of Dubrovnik through the Neum Corridor;
- (7) "Re-entry" means the entry of goods into the area of Dubrovnik from the mainland territory of Croatia through the Neum Corridor, or into the mainland territory of Croatia from the area of Dubrovnik through the Neum Corridor.

Article 3

Waiver from the requirement to submit an exit or an entry summary declaration

1. No exit summary declaration shall be required for Union goods upon their exit.
2. No entry summary declaration shall be required for Union goods upon their re-entry.

Article 4

Conditions for the application of the waiver

Article 3 shall apply where the following conditions are met:

- (a) The total value of each consignment of Union goods moved across the Neum Corridor does not exceed EUR 10 000 or its equivalency in local currency;
- (b) The goods referred to under point (a) of this Article are accompanied by invoices or transport documents which:

- i) include at least the particulars referred to in the first subparagraph of Article 317(2) of Commission Regulation (EEC) No 2454/93¹ as well as the total value of the goods;
- ii) are endorsed with official markings by the customs authorities upon exit;
- iii) are presented for verification to the customs authorities upon re-entry.

Article 5

Customs Controls

1. The risk analysis associated to the customs controls applied to Union goods moved across the Neum Corridor may be performed by the customs authorities through means other than automated data-processing techniques.
2. Croatia shall ensure that the border crossing points at exit from and re-entry into its territory of goods moved through the Neum Corridor dispose of all necessary resources, equipment, control facilities and capabilities to ensure the application of this Regulation at the date of its accession.
3. Upon exit, the customs authorities shall:
 - (a) determine a time limit for the movement of Union goods across the Neum Corridor;
 - (b) indicate that time limit together with the date of endorsement of the invoice or transport document as referred to in Article 4(b) ii);
 - (c) where they deem it necessary, seal the space containing the goods or each individual package of goods that are to be moved across the Neum corridor.
4. Upon re-entry, the customs authorities shall:
 - (a) carry out risk analysis primarily for security and safety purpose;
 - (b) verify the invoices or transport documents accompanying the goods;
 - (c) check compliance with the time limit referred to in Article 5 (3)(a);
 - (d) check the integrity of seals, when affixed in accordance with Article 5 (3)(c);
 - (e) where appropriate, physically examine the goods;
 - (f) remove seals as appropriate.
5. Where customs authorities establish that a requirement laid down in this Regulation has not been complied with, they shall allow the re-entry of such a consignment where:

¹ OJ L 253, 11.10.1993, p. 1.

(a) an effective risk analysis has been carried out;

(b) on the basis of the analysis referred to in point (a), the customs authorities have adopted effective measures specifically targeted to prevent risks related to safety and security.

Article 6

Information

Croatia shall inform the Commission about any irregularities found as regards the application of this Regulation as well as concrete measures that have been taken in order to remedy those irregularities no later than two months after the entry into force of this Regulation and at the latest on 1 March 2014.

Article 7

Report

The Commission shall submit a report to the Council providing an assessment of the application of the rules laid down under this Regulation no later than two years after the accession of Croatia.

Article 8

Entry into force

This Regulation shall enter into force on 1 July 2013, subject to the entry into force of the Accession Treaty.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President