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2023/0333 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Working Party on Customs Questions affecting Transport as regards the proposal to amend the Terms of Reference of the Working Party**

## 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 Working party on Customs Questions affecting Transport (WP.30) in connection with the envisaged adoption of several amendments to the Terms of Reference (ToR) of the Working Party.

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

#### **2.1. The Terms of Reference of the Working Party**

The Terms of Reference of the Working Party (“WP.30 ToR”) aims to state the objectives, scope and functioning of the Working Party. They entered into force on October 2017<sup>1</sup>.

#### **2.2. The Working party on Customs Questions affecting Transport**

The Working party on Customs Questions affecting Transport (WP.30) acts within the framework of the policies of the United Nations and the Economic Commission for Europe (ECE) and subject to the general supervision of the Inland Transport Committee (ITC).

More specifically, the WP.30 initiates and pursues actions aimed at the harmonisation and simplification of regulations, rules and documentation for border crossing procedures for inland transport in connection with the United Nation’s 2030 Sustainable Development Agenda.

In addition, the WP.30 administers and monitors the implementation of the Conventions and Agreements on customs and border crossing facilitations under its auspices<sup>2</sup>. It also promotes

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<sup>1</sup> ECE/TRANS/WP.30/294 paragraph 10.

<sup>2</sup>

1. Convention concerning Customs Facilities for Touring, signed in New York on 4 June 1954.
2. Additional Protocol to the Convention concerning Customs Facilities for Touring, relating to the importation of tourist publicity documents and material, signed in New York on 4 June 1954.
3. Customs Convention on the Temporary Importation of Private Road Vehicles, signed in New York on 4 June 1954.
4. Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), of 15 January 1959.
5. Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), of 14 November 1975.
6. Customs Convention on the Temporary Importation for Private Use of Aircraft and Pleasure Boats, of 18 May 1956.
7. Customs Convention on the Temporary Importation of Commercial Road Vehicles, of 18 May 1956.
8. International Convention to Facilitate the Crossing of Frontiers for Passengers and Baggage carried by Rail, of 10 January 1952.
9. International Convention to Facilitate the Crossing of Frontiers for Goods Carried by Rail, of 10 January 1952.
10. Customs Convention concerning Spare Parts Used for Repairing Europ Wagons, of 15 January 1958.
11. Customs Convention on Containers, of 18 May 1956.
12. Customs Convention on Containers, of 2 December 1972.
13. European Convention on Customs Treatment of Pallets Used in International Transport, of 9 December 1960.
14. International Convention on the Harmonization of Frontier Controls of Goods, 21 October 1982.
15. Convention on Customs Treatment of Pool Containers Used in International Transport, 21 January 1994.
16. Convention on International Customs Transit Procedures for the Carriage of Goods by Rail under Cover of SMGS Consignment Notes Geneva, 9 February 2006.

possible extensions of those legal instruments to other regions and encourages the accession of new countries. At last, it cooperates with the Administrative Committees for the TIR Convention (AC.2), the Harmonization Convention (AC.3) and the Convention on Customs Treatment of Pool Containers Used in International Transport (AC.4).

The Working party's participants are the member countries of the ECE and non-member countries of ECE which are Contracting Parties to the legal instrument under WP.30 auspices. Each participant shall have one vote and decisions regarding a legal instrument in force shall be taken only in the presence of at least one-third of the Contracting Parties. Decisions shall normally be taken by consensus. In the absence of consensus, decisions shall be taken by a majority of the participants present and voting.

The Union has exclusive competence in the area of customs. However, the Union, as a customs and economic union, does not have voting rights in addition to those of its Member States. All Member States are parties with voting rights.

### **2.3. The envisaged act of the Working party on Customs Questions affecting Transport**

In October 2023, during its 164<sup>th</sup> session or a following one, the Working party on Customs affecting Transport is to adopt several amendments regarding its Terms of Reference ("WP.30 ToR").

The purpose of the new WP.30 ToR is to align its wording with the new Terms of Reference of the Inland transport Committee (ITC ToR)<sup>3</sup> which have been endorsed by the United Nation's Economic and Social Council (ECOSOC)<sup>4</sup>.

The WP.30 ToR will be applicable as of the moment of their adoption by the WP.30.

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

While the United Nations Economic Commission for Europe (UNECE) is a regional United Nation organisation, some of its activities have global relevance.

On 21 February 2017, the ITC adopted a ministerial resolution, signed by Commissioner Violeta Bulc, on embracing the new era for sustainable inland transport and mobility, which stressed ITC's role as a comprehensive regional and global platform for consideration of all the aspects of inland transport development and cooperation. In particular, the ministers called upon the ITC and its subsidiary bodies to work towards improved regional and inter-continental connectivity with special attention to Euro-Asia transport link projects, as well as participation in the One Belt and One Road Initiative through policy coordination, and facilitation of seamless transport.

To reflect the global role of the ITC and its subsidiary body, the ToR and Rules of Procedures (RoP) of the ITC have been amended in order to adopt the so-called hybrid approach for membership, meaning that non-ECE member States including non-United Nation member(s) can participate as full members in segments of the ITC sessions that deal with legal instruments to which they are contracting parties and remain in a consultative capacity in other parts.

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17. Convention on the Facilitation of Border Crossing Procedures for Passengers, Luggage and Load-Luggage carried in International Traffic by Rail, 19 February 2019.

<sup>3</sup> E/2022/L4 – ECE/TRANS/316)

<sup>4</sup> E/RES/2022/2

Consequently, WP.30, being a subsidiary body of ITC, prepared amendments to its ToR.

The Union support the proposal for amendments.

In particular, the Union agrees with the transformation of the title of the Working Party into a “Global Forum on Customs questions affecting transport including border crossing facilitation”. This new name will acknowledge the global scope of the work of the Working Party on customs questions as well as underline its role in border crossing facilitation.

In addition, the Union accepts the inclusion of the reference of the Inland transport Committee in the new Terms of Reference which will allow the participation of non-United Nation member(s) to the future Global forum. This new reference will replace the reference to the Terms of Reference of the Economic Commission for Europe (ECE) which were only allowing United Nation member(s), members of ECE or contracting party to a Convention under the auspices of the Working Party, to participate to meeting(s).

At last, the Union supports several editorial amendment proposals to clarify the role, the tasks and the relation of the future Global Forum with other inter-governmental and non-governmental organisations.

The draft act, including the proposed amendments, is attached to the annex of the Council decision proposal.

#### **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>5</sup>.

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

The Working Party on Customs Questions affecting Transport is a body set up by the Inland transport Committee of the Economic Commission for Europe established in conformity with a decision of the Economic and Social Council of the United Nations<sup>6</sup>.

The act which the Working Party on Customs Questions affecting Transport is called upon to adopt constitutes an act having legal effects. The envisaged act is capable of decisively influencing the content of EU legislation, namely: customs, transport and border crossing facilitations. This is because EU Member states, and sometime the European Union, are contracting parties of most of the United Nation Conventions under the auspices of the WP.30.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

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<sup>5</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.

<sup>6</sup> ITC official report E/ECE/59 18 February 1948.

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 the first subparagraph of Article 207(4) TFEU.

## **4.3. 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.

Proposal for a

## **COUNCIL DECISION**

### **on the position to be taken on behalf of the European Union in the Working Party on Customs Questions affecting Transport as regards the proposal to amend the Terms of Reference of the Working Party**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The terms of reference of the Working Party on Customs Questions affecting transport ('the WP.30 ToR') entered into force in October 2017.
- (2) Pursuant to its rules of procedures, the Working Party may adopt, by consensus or by vote, a decision on its Terms of Reference or Conventions under its auspices.
- (3) The Working Party, during its 164th session on October 2023 or a subsequent session, is to adopt amendments on its Terms of Reference.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Working Party, as the new Terms of Reference of the Working Party will be capable of decisively influencing the content of Union law on customs, transport and border-crossing facilitations.
- (5) It is necessary to transform the title of the Working Party to acknowledge its role at global level as well as making it possible that non-United Nation member may attend to meeting in the future.
- (6) It is useful to clarify the tasks, the role and the relationship of the Working Party with inter-governmental and non-governmental organisations.
- (7) The position to be taken on behalf of the Union in the Working Party should therefore be based on the draft amendments attached to this Decision. This is without prejudice to the possibility for non-substantial minor changes to the draft amendments, to be agreed by the representatives of the Union in the Working Party without further decision of the Council.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position to be taken on the Union's behalf in the 164th session or in one of the subsequent sessions of the Working Party on Customs Questions affecting Transport on its new Terms of Reference 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 formal vote is taken in the Working Party on Customs Questions affecting Transport, acting jointly in the interest of the Union.

*Article 3*

Minor technical changes to the position referred to in Article 1 may be agreed upon by the representatives of the Union without a further decision of the Council.

*Article 4*

This Decision is addressed to the Member States and to the Commission.

Done at Brussels,

*For the Council  
The President*