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EUROPEAN COMMISSION

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2010/0085 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken by the European Union within the Administrative Committee established by the International Convention on the Harmonization of Frontier Controls of Goods on the proposal to amend that Convention with a new Annex on the facilitation of borders crossing procedures for international rail freight**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **1.1. Grounds for and objectives of the proposal**

The purpose of this Decision is to accept by the European Union the new Annex 9 to the International Convention on the Harmonization of Frontier Controls of Goods.

The purpose of the Annex is to facilitate international trade by reducing, harmonising and co-ordinating procedures and paperwork in connection with the border control of goods in the international rail transport. The Annex essentially contains obligations that aim at reducing delays at rail border crossing points. This concerns introduction of minimum requirements for border (interchange) stations, cooperation between countries at these stations, movement of controls from borders to stations of departure or destination, reduction of time required for controls, reduction of paper documents and use of CIM/SMGS consignment note as a customs document.

#### **1.2. General context**

The International Convention on the Harmonisation of Frontier Controls of Goods (the Harmonisation Convention), signed at Geneva on 21 October 1982, was approved on behalf of the Community by Council Regulation (EEC) No 1262/84 of 10 April 1984 which entered into force on 12 September 1987. There are currently 54 Contracting Parties to the Convention, including the European Union and its Member States.

The Harmonisation Convention introduced measures designed to facilitate, and so develop, international trade through the harmonisation (where appropriate) of the various frontier controls that are applied to the movement of goods. However, it appeared subsequently necessary to further rationalise border crossing formalities.

The UN/ECE Working Party on Customs Questions Affecting Transport at its sessions agreed that the Harmonisation Convention should be revised to include provisions to facilitate the border crossing in the international rail transport. Subsequently, WP.30 produced draft proposals to add a new Annex to the Harmonisation Convention in order to complement the existing provisions.

Formal and final adoption of the new Annex is foreseen at the next meeting of the Administrative Committee for the Harmonization Convention that is scheduled for May 2010. It is expected that all Contracting Parties will be able to accept the new Annex.

#### **1.3. Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

#### **1.4. Consistency with the other policies and objectives of the Union**

The simplifications foreseen are in line with the revised Lisbon strategy.

The facilitation of international trade and the removal of technical obstacles to trade is an objective of the common commercial policy and thus falls under the exclusive competence of the Union. The measures set out in the Annex are consistent with EU legislation.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **2.1. Consultation of interested parties**

#### *Consultation methods, main sectors targeted and general profile of respondents*

Consultations on the proposal were carried out with the Organization for Cooperation between Railways (OSJD) and the Intergovernmental Organization for International Carriage by Rail (OTIF). Consultations took place within the Customs Code Committee meetings and sessions of the UNECE Working Party on Customs Questions Affecting Transport.

#### *Summary of responses and how they have been taken into account*

Favourable opinion.

### **2.2. Collection and use of expertise**

There was no need for external expertise.

### **2.3. Impact assessment**

The current provisions of the Harmonization Convention remain unchanged.

The proposed decision accepts on behalf of the European Union a new Annex to the Harmonization Convention that includes provisions facilitating the border crossing in the international rail transport.

The adoption of this Annex will benefit of the transport business.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **3.1. Summary of the proposed action**

The proposed Decision formally adopts by the European Union the new Annex 9 to the Harmonization Convention

### **3.2. Legal basis**

Articles 207 and 218 of the Treaty on the Functioning of the European Union.

### **3.3. Subsidiarity principle**

The proposal is in conformity with the principle of subsidiarity. It allows the implementation of an amendment to the international agreement which as such respects the principle of subsidiarity.

The proposed amendments were preliminarily adopted by the UNECE Working Party on Customs Questions Affecting Transport and aims at further facilitation in rail transport.

### **3.4. Proportionality principle**

The proposal is in conformity with the principle of proportionality. It allows the implementation of an amendment to the international agreement which as such respects the principle of proportionality.

### **3.5. Choice of instruments**

Proposed instrument: Decision.

International agreements and amendments to these arrangements are normally introduced into the European Union's legal order by way of a Decision.

### **4. BUDGETARY IMPLICATION**

The proposal has no implication for the EU budget.

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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, ninth paragraph thereof,

Whereas:

- (1) The International Convention on the Harmonisation of Frontier Controls of Goods (the Harmonization Convention), signed at Geneva on 21 October 1982, was approved on behalf of the Community by Council Regulation (EEC) No 1262/84 of 10 April 1984 and entered into force on 12 September 1987.
- (2) The Harmonisation Convention introduces measures designed to facilitate, and so develop, international trade through the harmonisation (where appropriate) of the various frontier controls that are applied to the movement of goods.
- (3) Article 22 of that Harmonisation Convention, in conjunction with its Annex 7, provides that the Administrative Committee can adopt amendments to the Convention. These amendments are deemed to be accepted unless a Contracting Party objects within 12 months of the communication by the United Nations, of the proposed amendment to the Contracting Parties.
- (4) The UN/ECE Working Party on Customs Questions Affecting Transport at its sessions decided that that the Convention should be revised to include also provisions to facilitate the border crossing in the international rail transport.
- (5) The new Annex 9 aims at facilitation of international trade by reducing, harmonising and co-ordinating procedures and paperwork in connection with the border crossing and control of goods in the rail transport. This will be achieved by introducing minimum requirements for border (interchange) stations, cooperating at these stations, moving controls from borders to stations of departure or destination, reducing time required for controls, eliminating paper documents and using CIM/SMGS consignments note as customs documents.

- (6) All joint border controls formalities and agreements, as well as border crossing procedures and formalities for rail crews shall follow the rules laid down in the Regulation (EC) No 562/2006<sup>1</sup> of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and the Regulation (EC) No 1931/2006<sup>2</sup> of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention.
- (7) The facilitation of international trade and the removal of technical obstacles to trade is an objective of the common commercial policy and thus falls under the exclusive competence of the European Union.
- (8) All Member States expressed their positive opinion as regards the amendment proposal. The draft produced by the Working Party on Customs Questions Affecting Transport was already discussed within the Customs Code Committee and approved.
- (9) The next session of the Administrative Committee for the Harmonization Convention is scheduled for May 2010 and it is expected that all Contracting Parties to the Convention will be ready to formally adopt proposed amendments of the Harmonization Convention.
- (10) Therefore, the position to be taken by the European Union concerning the proposed amendment should be determined,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The position of the European Union within the Administrative Committee established by the Harmonization Convention on the proposal to amend that Convention with a new Annex 9 on the facilitation of border crossing procedures for international rail freight shall be based on the attached draft Annex.

#### *Article 2*

This Decision is addressed to the Member States.

The Commission shall publish the amendment, once adopted, in the Official Journal of the European Union indicating its date of entry into force.

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<sup>1</sup> OJ L 105, 13.4.2006, p. 1.

<sup>2</sup> OJ L 405, 30.12.2006, p. 1.

Done at Brussels,

*For the Council  
The President*



## ANNEX 9

# FACILITATION OF BORDER CROSSING PROCEDURES

## FOR INTERNATIONAL RAIL FREIGHT

### *Article 1*

#### **Principles**

1. This Annex, supplementing the provisions of the Convention, is intended to define the steps that need to be taken to facilitate and expedite the crossing of borders for international rail freight.
2. The Contracting Parties shall undertake to cooperate in order to standardize as fully as possible formalities and requirements in respect of documents and procedures in all areas connected with the carriage of goods by rail.

### *Article 2*

#### **Definition**

“Border (interchange) station” shall mean a railway station where operational or administrative procedures are performed in view of enabling a border crossing of rail freight. This railway station may be at the border or near the border.

### *Article 3*

#### **Crossing of borders by officials and other persons engaged in international rail transport**

1. The Contracting Parties shall endeavour to facilitate the procedures for granting of visas for locomotive crews, refrigerated unit crews, persons accompanying freight shipments and staff at border (interchange) stations engaged in international rail transport in accordance with national best practice for all visa applicants.
2. The border crossing procedure for the persons listed in paragraph 1, including official documents confirming their status, shall be determined on the basis of bilateral agreements.
3. When a joint control is carried out, the officials of the border, customs and other agencies that conduct controls at border (interchange) stations shall, in the performance of their official duties, cross the State frontier using documents stipulated by the Contracting Parties for their nationals.

#### *Article 4*

##### **Requirements for border (interchange) stations**

To rationalize and expedite the required formalities at border (interchange) stations, the Contracting Parties shall observe the following minimum requirements for border (interchange) stations open to international rail freight traffic:

- (1) Border (interchange) stations shall have buildings (premises), plant, facilities and technical equipment enabling them to carry out daily and round-the-clock controls, if this is justified and is appropriate to the volume of freight traffic;
- (2) Border (interchange) stations where phytosanitary, veterinary and other controls are carried out shall be provided with technical equipment;
- (3) The carrying and traffic capacity of border (interchange) stations and adjacent tracks must be adequate for the volume of traffic;
- (4) Inspection areas must be available, as well as warehousing for the temporary storage of goods subject to customs or other forms of control;
- (5) Equipment, facilities, information technology and communications systems must be available to enable the exchange in advance of information, including on goods approaching border (interchange) stations, as contained in the railway consignment note and customs declaration;
- (6) Sufficient qualified staff of the railway, customs, border and other agencies must be on hand at border (interchange) stations to cope with the freight volumes involved;
- (7) Border (interchange) stations shall have the technical equipment, facilities, information technology and communications systems to be able, prior to the arrival of rolling stock at the border, to receive and use data concerning the technical approval and the technical inspections of the rolling stock made by authorities and railways within the framework of their competence, unless Contracting Parties put in place alternative arrangements to fulfil these functions.

#### *Article 5*

##### **Cooperation between adjacent countries at border (interchange) stations**

In accordance with the provisions of Article 7 of the Convention, Contracting Parties shall coordinate actions with respect to the controls of rolling stock, containers, piggyback semi-trailers and goods as well as the processing of shipping and accompanying documentation and shall endeavour to arrange all forms of joint controls on the basis of bilateral agreements.

#### *Article 6*

##### **Controls**

The Contracting Parties:

- (1) Shall establish a mechanism for reciprocal recognition of all forms of control of rolling stock, containers, piggyback semi-trailers and goods, provided the objectives thereof coincide;
- (2) Shall carry out customs controls relying on the principle of selection on the basis of risk evaluation and management. As a general rule, if required information on the goods has been provided and if the goods are contained in a properly closed and sealed rolling stock unit, container, piggyback semi-trailer or wagon, physical examination shall not be carried out;
- (3) Shall carry out simplified controls at border (interchange) stations and shall, as far as possible, move certain forms of controls to the stations of departure and destination;
- (4) Without prejudice to Article 10 of the Convention, Article 4 of Annex 2, Article 5 of Annex 3 and Article 5 of Annex 4, shall carry out inspections of transit goods only in cases where these are warranted by the actual circumstances or risks.

#### *Article 7*

##### **Time limits**

1. The Contracting Parties shall ensure compliance with the time limits specified in bilateral agreements for technical operations involving the reception and transfer of trains at border (interchange) stations, including all types of controls, and shall endeavour to reduce these time limits by improving the technology and equipment used. The Contracting Parties shall undertake to reach a maximum reduction in the time limit in the coming years.
2. The Contracting Parties shall record delays of the trains or wagons at border (interchange) stations and transmit the information to the parties involved which conduct subsequent analysis and propose measures to reduce the delays.

#### *Article 8*

##### **Documentation**

1. The Contracting Parties shall ensure that shipping and accompanying documents are properly formulated in accordance with the legislation of the importing and transit countries.
2. In their mutual relations, the Contracting Parties shall endeavour to reduce paper documents and to simplify documentation procedures by using electronic systems for the exchange of information corresponding to the information contained in railway consignment notes and customs declarations accompanying the goods, drawn up in accordance with the legislation of the Contracting Parties.
3. The Contracting Parties shall endeavour to provide the customs authorities in advance with information on goods arriving at border (interchange) stations as contained in the railway consignment note and customs declaration. The format, and

the procedure and deadlines for providing the information, shall be determined by the Contracting Parties.

*Article 9*

**Use of the CIM/SMGS railway consignment note**

The Contracting Parties may use, instead of the other shipping documents currently stipulated by international treaties, the CIM/SMGS railway consignment note, which at the same time could be a customs document.