

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION

11568/18 and ADD 1
COM (2018) 576 final and ANNEX F#1
2018/0305(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 an invitation to the United Kingdom to accede to those Conventions.

11693/18 and ADD 1
COM (2018) 601 final and ANNEX
2018/0309(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 a common transit procedure as regards amendments to that Convention.

Submitted by HM Revenue and Customs on 29 August 2018

SUBJECT MATTER

1. These documents cover the position to be taken on the EU's behalf on an invitation to the UK to accede to the Conventions on the simplification of formalities in trade in goods and on a common transit procedure, as a separate Contracting Party, and on the necessary amendments to be made to the Conventions to reflect the UK's accession to these on this basis. The UK's accession to these Conventions and the consequent amendments will apply from the date when the UK is no longer a member of the EU, or when any transitional arrangements between the EU and the UK no longer apply.
2. By virtue of its EU membership, the UK is currently party to the Convention of 20 May 1987 on a common transit procedure and the Convention of 20 May 1987 on the simplification of formalities in trade in goods (hereafter the Conventions). The UK will cease to be party to the Conventions once it leaves the EU. In a letter dated 24 May 2018 to the Commission, the UK communicated its desire to accede to the Conventions as an independent Contracting Party.
3. In order for the UK to accede to the Conventions, an invitation to accede must be issued by the Joint Committee of each Convention. The task of the Joint Committees is to administer the Conventions and to ensure their proper implementation. The Joint Committees invite, by means of decisions, third countries to accede to the Conventions. The Joint Committees' decisions are adopted by mutual agreement by the Contracting Parties to the Conventions. Currently, the Contracting Parties are the EU, Norway, Switzerland, Liechtenstein, Iceland, Turkey, Serbia and the Former Yugoslav Republic of Macedonia. The Joint Committees' decisions inviting the UK to accede to the Conventions will become binding on the Contracting Parties, including the EU, in accordance with Article 2 of each of those decisions, which provide for their entry into force on the day of adoption.
4. Membership of the Conventions allows for the movement of goods under duty suspension across the Contracting Parties. It provides for a simplification of border processes and facilitates customs clearance inland (rather than at the border itself) or the movement of goods across a customs territory without the payment of duties. These arrangements will offer cash-flow benefits to UK and Contracting Parties traders and allow for simpler checks at the border, which reduce the frictions on trade across Contracting Parties.
5. As decisions of the Joint Committees are binding on the Contracting Parties, the first document sets out the proposed position to be taken by the EU on the question of the invitation to the UK to accede to the Conventions from the date when the UK is no longer a member of the EU or when any transitional arrangements between the EU and the UK no longer apply. These should be based on the draft acts of the respective Joint Committees inviting the UK to accede. The draft acts are attached in the annex to the document (11568/18 ADD 1).
6. The second document sets out the proposed position to be taken by the EU in the Joint Committee on amending the Convention on a common transit procedure to take account of the UK's accession as a separate Contracting Party from the date when the UK is no longer a member of the EU or when any transitional arrangements between the EU and the UK no longer apply. The draft act of the

Joint Committee and the amendments to be made to the appendices to that Convention is attached in the annex to the document (11693/18 ADD 1).

7. Once the invitation to accede has been issued, the UK will have to complete its domestic ratification process and lodge its instrument of accession.

SCRUTINY HISTORY

8. These documents have not previously been subject to scrutiny.

MINISTERIAL RESPONSIBILITY

9. The Chancellor of the Exchequer has responsibility for United Kingdom policy on European Union monetary and economic issues. Her Majesty's Revenue & Customs (HMRC) is the Competent Customs Authority and is accountable to Parliament for operational delivery through a nominated Treasury minister, currently the Financial Secretary, who is responsible to the Chancellor of the Exchequer. The Foreign and Commonwealth Secretary is responsible for overall United Kingdom policy towards the European Union.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

10. This is a reserved matter under the UK's devolution settlements. No devolved administration interests arise. However, following a request the devolved administrations have been consulted in the preparation of this Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES

i. Legal basis

Article 207, in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union.

ii. European Parliament Procedure

Ordinary legislative procedure.

iii. Voting procedure

Qualified Majority Voting.

iv. Impact on United Kingdom Law

Domestic Secondary Legislation under the Taxation (Cross-border Trade) Bill will be required to implement the UK's obligation under the Conventions. The Conventions will also need to go through the UK's domestic ratification process as set out in sections 20 to 25 of the Constitutional Reform and Governance Act 2010.

v. Application to Gibraltar

The UK's accession to the Conventions would not apply to Gibraltar.

vi. Fundamental rights analysis

Not applicable.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

11. Not applicable

SUBSIDIARITY

12. While the Customs Union and the subject matter of the Conventions is an area of exclusive EU competence, once the UK leaves the EU it will operate as its own separate customs territory and will need to accede to the Conventions as a Contracting Party in its own right.

13. This decision is consistent with the duty of sincere co-operation.

POLICY IMPLICATIONS

14. Since the Government's decision on 29 March 2017 to start the process of the UK's exit from the European Union, as part of the negotiated Withdrawal Agreement, the UK and EU negotiating teams have reached agreement on the terms of an Implementation Period from 30 March 2019 to 31 December 2020. This was endorsed by the March European Council. During the implementation period the UK would no longer be a Member State of the European Union, but market access would continue on current terms and businesses would be able to trade on the same terms as now up until the end of the Implementation Period. The UK wishes to accede to the Conventions for the Facilitated Customs Arrangement but also in the event of a no-deal scenario. Accession to the Conventions is a requirement under all scenarios.

15. The Government's White Paper '*The Future Partnership between the United Kingdom and the European Union*', published on 12 July 2018, set out the UK's aim to reduce frictions for UK trade with the rest of the world, and promote the greatest possible trade. The UK has expressed its wish to accede to the Conventions to support this strategic objective. The White Paper notes that the UK has already begun the application process for accession.

CONSULTATION

16. This has not been subject to consultation as the UK is a member of the Conventions by virtue of being a member of the EU. It has been always the UK's intention that it accedes to the Conventions in its own right once it leaves the EU.

IMPACT ASSESSMENT

17. Not applicable.


FINANCIAL IMPLICATIONS

18. There will be no direct financial implications for the UK from these proposals, as these are only relating to the invitation to the UK to accede to the Conventions

and to make any necessary changes. There will be ongoing costs related to the operation of the UK's common transit regime.

TIMETABLE

19. The proposals are expected to be discussed in the Customs Union Working Party of the Council on the 10-11 September, with adoption by the Council by 20 September. Once these have been adopted, the Joint Committees of the CTC will confirm the UK's accession by written procedure. The Commission also envisages a meeting of the EU CTC working group on 21 September. The UK and EU-CTC Joint Committees are working towards the invitation to accede being issued in October 2018, this allows the UK legal processes to begin in order for the UK to accede to the Conventions on 29 March 2019.



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