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COMMISSION OF THE EUROPEAN COMMUNITIES

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2009/0074 (ACC)

Proposal for a

COUNCIL DECISION

on a Community position within the Joint Committee established by the Agreement on the European Economic Area on the adaptation of Protocols 10 and 37 on simplification of inspections and formalities in respect of carriage of goods

EXPLANATORY MEMORANDUM

I. General introduction

The attached proposal for a Council Decision constitutes the legal instrument for the signing, provisional application and adoption of the EEA Joint Committee Decision on amending Protocols 10 and 37 to the EEA Agreement with a view to extend the application of the EEA Agreement on customs security measures.

The Community Customs Code¹ and its Implementing Provisions², which lay down the rules for the customs treatment of goods that are imported or exported, were amended in 2005³ and 2006⁴ respectively to introduce provisions on customs security measures. Among these security arrangements is an obligation that traders should submit certain information prior to importing or exporting goods, which will make it possible to carry out a risk analysis of such operations prior to the entry or exit of the consignments in question.

In principle, these security measures apply to trade with all non-member countries. However, the Community Customs Code allows for different rules concerning the obligation to provide pre-arrival and pre-departure information where international agreements provide for special security arrangements. It was thus held necessary and in the mutual interest of the Community and Norway to establish amended rules for customs security in their bilateral trade in goods. Given Norway's geographical position in relation to the Community customs territory, the large number of import/export transactions taking place daily between it and European Union Member States as well as legal links of the EC with Norway based on the EEA Agreement, such an arrangement is needed to ensure in particular that trade runs smoothly while maintaining a high level of security. The negotiations, which started in June 2008, produced an arrangement to abolish the requirement for a prior declaration for goods traded between the Community and Norway. The abolition of this requirement is subject to the condition that the Contracting Parties undertake to guarantee on their respective territories an equivalent level of security through measures based on legislation in force in the Community. In addition to provisions for customs-security measures, the arrangement also includes a set of rules to ensure that the Agreement and the *acquis communautaire* remain in alignment and to provide that, if the equivalence of the respective security measures is no longer maintained, either party may take rebalancing measures, including suspending application of the relevant chapter of the Agreement.

The objective of this proposal is to amend Protocol 10 and Protocol 37 to the EEA Agreement in order to extend their application on customs-security measures.

¹ Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

² Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

³ Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, OJ L 117, 4.5.2005, p. 13).

⁴ Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 360, 19.12.2006, p. 64).

These amendments will apply only in trade between the Community and Norway. Their application can be extended in the future on Iceland and Liechtenstein by a decision of the EEA Joint Committee. However, the agreement on customs security measures between the EC and Switzerland will apply to Liechtenstein.

Pending completion of the internal procedures of the Contracting Parties, the amended Agreement will be implemented provisionally so that the new provisions can be taken into account from 1 July 2009 when the security measures introduced by amendments to the Customs Code and Implementing Provisions will come into force.

These amendments to the EEA Agreement have no financial impact on the budget of the European Community.

II. Amendments to Protocol 10

A. Customs-security measures provided for in the *acquis communautaire* included in Chapter IIa of Protocol 10.

The new Chapter IIa (and Annexes I and II which are referred to in this Chapter) on customs security contains provisions that are equivalent to the provisions added to the Community Customs Code and its Implementing Provisions for the purpose of providing a coordinated and effective response to security concerns in international trade. These provisions cover:

- the requirement that traders provide the customs authorities with details of goods before they are imported into the EU or exported from it;
- the possibility of allowing reliable operators to use a simplified version of the customs-security measures (status of "authorised economic operator");
- the introduction of uniform criteria for selecting risks for control purposes, which will be established using computerised systems.

B. Provisions on measures to ensure the equivalence of customs security

The new article 9f of Protocol 10 lays down that the EEA Joint Committee shall define the rules allowing the contracting parties to ensure the monitoring of the implementation of this Chapter and to verify whether the provisions of this Chapter and Annexes I and II to this Protocol are respected. Monitoring may take the form of regular assessments of the implementation of these provisions, holding of thematic meetings of experts from both parties, and audits of administrative procedures.

In addition, with a view to the equivalence of customs security measures listed in Chapter IIa and in Annexes I and II, Article 9i of the Protocol provides that each contracting party may take appropriate safeguard measures, including the suspension of the provisions of that Chapter, if it finds that the other party does not respect the conditions or equivalency is no longer ensured. Such measures are subject to prior consultation of the EEA Joint Committee.

Unless the EEA Joint Committee decides otherwise, a contracting party may suspend the application of Chapter IIa where the Committee has not decided on amendments to this Chapter that are needed to take into account developments in the relevant Community legislation, with the result that equivalency of customs measures is no longer ensured. If the Community decides on such action, the Commission will notify Norway of the suspension,

which will take effect from the date on which the Community legislation concerned is applied.

III. Amendments to Protocol 37

The Protocol contains a list of committees which assist the European Commission in the exercise of its executive powers.

The Customs Code Committees is added to the list to allow participation of the representatives of Norway to this Committee when, in accordance with Article 101 of the EEA Agreement, this is called for by the good functioning of the EEA Agreement.

IV. Conclusion

Article 1(3) of Council Regulation (EC) No 2894/94⁵ concerning the arrangements for implementing the EEA Agreement envisages that the Council establishes the Community position for Joint Committee Decisions of this nature.

The draft decision of the EEA Joint Committee is submitted for the approval of the Council, after which the Commission will put forward the position of the Community in the EEA Joint Committee at the earliest possible occasion.

⁵ OJ L 305, 30/11/1994, p.6.

Proposal for a

COUNCIL DECISION

on a Community position within the Joint Committee established by the Agreement on the European Economic Area on the adaptation of Protocols 10 and 37 on simplification of inspections and formalities in respect of carriage of goods

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the second subparagraph of Article 300 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Council Regulation (EEC) No 2913/92 introducing the Community Customs Code⁶ and Commission Regulation (EEC) No 2454/93 introducing the implementing provisions of the Code⁷ were amended in 2005⁸ and 2006⁹ respectively in order to include customs security measures. Among other measures, these security arrangements provide for a provision obliging operators, as from 1 July 2009, to submit certain data before goods are imported or exported.
- (2) The amendments on customs security measures stipulate that different rules and time limits may be set concerning the obligation to provide pre-arrival and pre-departure information where international agreements provide for special security amendments.
- (3) Given the volume of trade between the European Community and Norway and the customs security measures introduced in Norway, Norway and the European Communities entered into negotiations with a view to ensure security in trade of goods entering or leaving their territory without impeding the free flow of this trade.
- (4) It is therefore appropriate to amend Protocol 10 on simplification of inspections and formalities in respect of carriage of goods to the EEA Agreement in order to ensure an appropriate level of customs security without impeding legitimate trade between the

⁶ OJ L 302, 19.10.1992, p. 1

⁷ OJ L 117, 4. 5.2005, p. 13.

⁸ Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code – OJ L 117, 4.5.2005, p. 13.

⁹ Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code – OJ L 360, 19.12.2006, p. 64.

parties as well as Protocol 37 containing the list of committees provided for in article 101 of the EEA Agreement.

- (5) These amendments should be introduced by a decision of the Joint Committee established by the Agreement on the European Economic Area.

HAS DECIDED AS FOLLOWS:

Article 1

The position to be adopted by the Community within the EEA Joint Committee on the proposal to amend Protocols 10 and 37 to the EEA Agreement shall be based on the text attached hereto.

Article 2

The Decision of the EEA Joint Committee shall be published in the Official Journal of the European Union.

Done at Brussels,

*For the Council
The President*

ANNEX

Proposal for a

DECISION OF THE EEA JOINT COMMITTEE

No

of

amending Protocol 10 on simplification of inspections and formalities in respect of carriage of goods and Protocol 37 to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area, as amended by the Protocol adjusting the Agreement on the European Economic Area, hereinafter referred to as ‘the Agreement’, and in particular Article 98 and 101 thereof,

Whereas:

- (1) Protocol 10 to the Agreement has not been amended by the EEA Joint Committee.
- (2) Protocol 37 to the Agreement was amended by Decision of the EEA Joint Committee No ... of ...
- (3) Protocol 10 to the Agreement should be amended in the mutual interest of the European Community and the EFTA States to avoid unnecessary restrictions and to provide a set of provisions establishing equivalent customs security measures for the transport of goods coming from and going to third countries.
- (4) The present Decision of the EEA Joint Committee shall not apply to Iceland and Liechtenstein. However, it shall be open to all EFTA States, subject to a new Decision of the EEA Joint Committee.
- (5) The European Community and Norway are determined to improve security in trade of goods entering or leaving their territory without impeding the free flow of this trade.
- (6) In the mutual interest of the European Community and Norway, equivalent customs security measures should be established for the transport of goods coming from and going to third countries, and enter into force simultaneously with the corresponding measures applied by the EU Member States.
- (7) The European Community and Norway are determined to guarantee an equivalent level of security on their respective territories by customs security measures based on the legislation in force in the European Community.
- (8) The customs security measures in question relate to the declaration of security data covering the goods prior to their entry or exit, to the security risk management and its

related customs controls, as well as to the attribution of the mutually recognised status of authorised economic operator.

- (9) It is desirable that Norway be consulted on the development of the European Community's rules relating to customs security measures, and that it be informed about their application. It is therefore necessary to amend Protocol 37 to the Agreement which lists committees to the work of which experts from the EFTA States shall be associated when it is called for the good functioning of the Agreement.
- (10) Insofar as Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data was incorporated into the Agreement by Decision of the EEA Joint Committee No 83/1999¹⁰, Norway provides for an adequate level of protection of personal data,

HAS DECIDED AS FOLLOWS:

Article 1

Protocol 10 to the Agreement shall be amended as specified in the Annex to this Decision.

Article 2

The following point shall be inserted in Protocol 37 (containing the list provided for in Article 101) to the Agreement:

‘27. The Customs Code Committee (Council Regulation (EEC) No 2913/92).’

Article 3

1. This Decision shall enter into force on 1 July 2009 or on the day following the last notification to the EEA Joint Committee under Article 103(1) of the Agreement, whichever is the later¹¹.

2. Pending the notifications referred to in paragraph 1, the European Community and Norway shall apply this Decision provisionally as from 1 July 2009 or from a later date agreed by the European Community and Norway and notified to the other EFTA States and the EFTA Surveillance Authority.

Article 4

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

¹⁰ OJ L 296, 23.11.2000, p. 41.

¹¹ [No constitutional requirements indicated.]

Done at Brussels, .

*For the EEA Joint Committee
The President*

*The Secretaries
to the EEA Joint Committee*

ANNEX

to Decision of the EEA Joint Committee No [...]

Protocol 10 to the Agreement shall be amended as follows:

1. The following paragraphs shall be added in Article 2:
 - ‘3. The customs security measures in Chapter IIa and Annexes I and II to the Protocol shall only apply between the European Community and Norway.
 4. When reference is made to the customs territory of the Contracting Parties in Chapter IIa and Annexes I and II to this Protocol, it covers:
 - the customs territory of the Community,
 - the customs territory of Norway.’
2. The following chapter shall be inserted after Chapter II (PROCEDURES):

‘CHAPTER IIa

CUSTOMS SECURITY MEASURES

Article 9a

Definitions

- (a) "risk" shall mean the likelihood of an event occurring, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory of one of the Contracting Parties and a third country and the presence of goods that are not in free circulation, which pose a threat to the security and safety of the Contracting Parties, to public health, to the environment or to consumers.
- (b) "risk management" shall mean the systematic identification of risk and implementation of all measures necessary for limiting exposure to risk. This includes activities such as collecting data and information, analysing and assessing risk, prescribing and taking action and regular monitoring and review of the process and its outcomes, based on sources and strategies defined by the Contracting Parties or internationally.

Article 9b

General provisions on security

1. The Contracting Parties agree to introduce and to apply to goods entering or leaving their customs territories the customs security measures defined in this Chapter ensuring thus an equivalent level of security at their external borders.

2. The Contracting Parties waive the application of the customs security measures defined in this Chapter where goods are carried between their respective customs territories.

3. Before concluding any agreement with a third country in the area covered by this Chapter, the Contracting Parties shall consult each other in order to ensure the compatibility with the provisions of this Chapter, particularly where that agreement contains provisions that are derogating from the customs security measures referred to in this Chapter. Each Contracting Party shall ensure that agreements with third countries do not create rights and obligations for another Contracting Party unless the EEA Joint Committee decides otherwise.

Article 9c

Pre-arrival and pre-departure declarations

1. Goods brought from third countries into the customs territory of the Contracting Parties shall be covered by an entry declaration (subsequently referred to as an 'entry summary declaration') with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory.

2. Goods leaving the customs territory of the Contracting Parties for third countries, with the exception of goods carried on means of transport only passing through the territorial waters or the airspace of the customs territory without a stop within this territory shall be covered by an exit declaration (subsequently referred to as an 'exit summary declaration').

3. Entry and exit summary declarations shall be lodged before the goods are brought into or leave the customs territory of the Contracting Parties.

4. The production of the entry and exit summary declarations referred to in paragraphs 1 and 2 is optional until 31 December 2010 provided that transitional measures derogating from the obligation to present such declarations are applicable in the Community.

Where, in accordance with the preceding sub-paragraph, the entry or exit summary declaration is not lodged, risk analysis for customs security matters, referred to in Article 9e, shall be carried out by the customs authorities at the latest upon presentation of the goods at arrival or exit, where appropriate on the basis of any declaration covering these goods or any other information available for them.

5. Each Contracting Party shall determine the persons liable for lodging entry or exit summary declarations as well as the authorities competent for accepting such declaration.

6. Annex I to this Protocol establishes:

- the form and the particulars of the entry or exit summary declaration;

- the exceptions from the obligation to lodge an entry or exit summary declaration;
- the place where the entry or exit summary declaration shall be lodged;
- the deadlines for lodging the entry or exit summary declaration;
- any other provision necessary to ensure the application of this article.

7. A customs declaration can be used as an entry or an exit summary declaration provided that it contains all the particulars required for a summary declaration.

Article 9d

Authorised economic operator

1. Each Contracting Party shall grant, subject to the criteria provided for in Annex II to this Protocol, the status of 'authorised economic operator' to any economic operator established in its customs territory.

However, subject to specific conditions, in particular taking into account international agreements with third countries, the requirement of being established in the customs territory of a Contracting Party may be waived for specific categories of authorised economic operators. Moreover, each Contracting Party shall determine whether and under what conditions an airline or shipping company which is not established on its territory but has a regional office there can be granted this status.

An authorised economic operator shall benefit from facilitations with regard to customs controls relating to security.

The status of authorised economic operator granted in one Contracting Party shall, subject to the rules and conditions laid down in paragraph 2, be recognised by another Contracting Party, without prejudice to customs controls, particularly with a view to taking into account the implementation of agreements with third countries providing for a mutual recognition of the status of an authorised economic operator.

2. Annex II of this Protocol establishes:

- the rules for granting the status of authorised economic operator, in particular, the criteria and conditions for granting this status;
- the type of facilitations that may be granted;
- the conditions under which the status is suspended or revoked;
- the procedures to exchange information between the Contracting Parties concerning their authorised economic operators;
- any other provision necessary to ensure the application of this article.

Article 9e

Security related customs controls and security risk management

1. Customs controls other than spot-checks, shall be based on risk analysis using automated data processing techniques.
2. Each Contracting Party shall define its risk management framework, risk criteria and priority control areas related to security.
3. The Contracting Parties recognise the equivalence of their risk managements systems related to security.
4. The Contracting Parties shall co-operate with a view to:
 - exchange information in order to improve and reinforce their risk analyses and efficiency of security controls, and
 - define within an appropriate time span, a common risk management framework, common risk criteria, common priority control areas as well as putting in place an electronic common risk management system.
5. The EEA Joint Committee shall adopt the measures necessary for the application of this article.

Article 9f

Monitoring of the implementation of customs security measures

1. The EEA Joint Committee shall define the rules allowing the Contracting Parties to ensure the monitoring of the implementation of this Chapter and to verify whether the provisions of this Chapter and Annexes I and II to this Protocol are respected.
2. The monitoring shall be ensured by:
 - regular evaluation of the implementation of this Chapter, particularly an evaluation of the equivalency of the customs security measures;
 - an examination with a view to improving the application of the provisions of this Chapter or to modifying them in order to better meet its objectives;
 - the organisation of meetings between experts of both parties to discuss specific issues and a review of administrative procedures, including spot-check visits.
3. The measures taken in compliance with this article shall not infringe the rights of operators concerned.

Article 9g

Protection of professional secrecy and of personal data

Information exchanged by the Contracting Parties in the framework of the provisions of this Chapter is protected by law on professional secrecy and protection of personal data applicable in the Contracting Party to which the information is submitted.

The information shall not be made available to any other persons than the competent authorities in the Contracting Party and shall not be used by these authorities for any other purpose than provided for in this Chapter.

Article 9h

Evolution of legislation

1. All changes in EC legislation relevant to the rights and obligations of the Contracting Parties created by this Chapter and Annexes I and II to this Protocol shall be subject to the procedure stipulated in this article.

2. As soon as the Community is drawing up new legislation in a field which is governed by this Chapter, it shall informally seek advice from experts of the EFTA State concerned according to the procedure stipulated in Article 99 of the Agreement.

3. When amendments to this Chapter and to Annexes I and II to this Protocol are necessary to take into account the development of Community legislation on matters covered by this Chapter and Annexes I and II, they shall be decided in such a manner as to allow applying these amendments simultaneously with those introduced in the Community legislation and with due respect for the internal procedures of the Contracting Parties.

If a decision cannot be adopted in a way allowing such simultaneous application, the Contracting Parties shall where possible and with due respect for their internal procedures, provisionally apply the amendments provided for in the draft decision.

4. For issues which are relevant for the EFTA State concerned, the Community shall ensure the participation as observers of experts from the EFTA State concerned in the Customs Code Committee created by Regulation (EEC) No 2913/92 establishing the Community Customs Code.

Article 9i

Safeguard measures and suspension of the provisions of this Chapter

1. If a Contracting Party does not respect the conditions stipulated in this Chapter or if the equivalency of the customs security measures in the Contracting Parties is no longer ensured, after consultations at the EEA Joint Committee and only for a scope and duration strictly necessary for settling the situation, another Contracting

Party may suspend partially or completely the application of the provisions of this Chapter or take appropriate measures. Articles 112 to 114 of the Agreement apply *mutatis mutandis*.

2. If the equivalency of the customs security measures cannot be assured because the amendments referred to in Article 9h (3) above have not been decided, the application of the Chapter is suspended on the date when the Community legislation concerned is applied, unless the EEA Joint Committee, having examined the measures to maintain its application, decides otherwise.

Article 9j

Public order

The provisions of this Chapter do not prevent prohibitions or restrictions on imports, on exports or on goods in transit, introduced by the Contracting Parties or by the Member States of the Community and justified for reasons of public law and order, public security and public morality, protection of health and life of humans, of the animals or of the plants and of the environment, of protection of the national treasures having an artistic, historical or archaeological value, or of protection of the industrial or commercial property.

Article 9k

The competences of the EFTA Surveillance Authority

In cases concerning the application of this Chapter and Annexes I and II to this Protocol, the EFTA Surveillance Authority shall, before acting, launch the consultations in accordance with Article 109 (2) of the Agreement.

Article 9l

Annexes

The Annexes to this Protocol shall form its integral part.

The following annexes shall be inserted as annexes:

ANNEX I

ENTRY AND EXIT SUMMARY DECLARATIONS

Article 1

Form and content of the entry or exit summary declaration

1. The entry or exit summary declaration shall be lodged using a data processing technique. Commercial, port or transport documentation may be used, provided that it contains the necessary particulars.
2. The entry or exit summary declaration shall contain the particulars laid down for such declaration in Annex 30A of Regulation (EEC) No 2454/93 which sets out the operational details of Regulation (EEC) No 2913/92 establishing the Community Customs Code (subsequently referred to as 'Regulation (EEC) No 2454/93')¹². It shall be completed in accordance with the explanatory notes in that Annex. The summary declaration shall be authenticated by the person making it.
3. The customs authorities shall allow the lodgement of a paper-based entry summary declaration, or any other means replacing it as agreed between the customs authorities, only in one of the following circumstances:
 - (a) the customs authorities' computerised system is not functioning;
 - (b) the electronic application of the person lodging the entry summary declaration is not functioning,

provided that the customs authorities apply the same level of risk management as that applied to entry or exit summary declarations made using a data processing technique.

The paper-based entry summary declaration shall be signed by the person making it. Such paper-based entry summary declarations shall be accompanied, where necessary, by loading lists or other appropriate lists, and shall contain the particulars referred to in paragraph 2.

4. Each Contracting Party shall define the conditions and procedures according to which the person lodging the entry or exit summary declaration can modify one or more of its particulars of the declaration after lodging it to customs authorities.

¹² OJ L 253 of 11.10.1993 as subsequently amended by Regulation (EC) No 1875/2006 (OJ L 360 of 19.12.20.6).

Article 2

Exceptions from the obligation to lodge an entry or an exit summary declaration

1. An entry or an exit summary declaration shall not be required in respect of the following goods:
 - (a) electrical energy;
 - (b) goods entering or leaving by pipeline;
 - (c) letters, postcards and printed matter, including on electronic medium;
 - (d) goods moved under the rules of the Universal Postal Union Convention;
 - (e) goods for which an oral customs declaration or a declaration by simple crossing the border is permitted in accordance with the legislation of the Contracting Parties except for pallets, containers and means of road, rail, air, sea or inland waterway transport carried under a transport contract.
 - (f) goods contained in travellers' personal luggage;
 - (g) goods covered by ATA and CPD Carnets;
 - (h) goods entitled to relief pursuant to the Vienna Convention on diplomatic relations of 18 April 1961, the Vienna Convention on consular relations of 24 April 1963 or other consular conventions, or the New York Convention of 16 December 1969 on special missions.
 - (i) weapons and military equipment brought into or out from the customs territory of a Contracting Party by the authorities responsible for the military defence of the Contracting Parties, in military transport or transport operated for the sole use of the military authorities.
 - (j) the following goods brought into or out from the customs territory of a Contracting Party directly to or from drilling or production platforms operated by a person established in the customs territory of the Contracting Parties:
 - goods which were incorporated in such platforms, for the purposes of their construction, repair, maintenance or conversion;
 - goods which were used to fit to or to equip the said platforms; other provisions used or consumed on the said platforms; and non hazardous waste products from the said platforms;
 - (k) goods in a consignment the intrinsic value of which does not exceed 22 EUR provided that the customs authorities accept, with the agreement of the economic operator, to carry out risk analysis using the information contained in, or provided by, the system used by the economic operator;

- (1) goods moved under cover of the form 302 provided for in the Convention between the Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951.
2. An entry or exit summary declaration is not required in cases provided for in international agreements concluded by a Contracting Party with a third country in the area of security subject to the procedure referred to in Article 9b (3) of the Protocol.
3. An entry or exit summary declaration is not required in the Community in cases provided for in Article 181c, letter j), Article 592a, letter j) and Article 842a, second indent, letter b) of Regulation (EEC) No 2454/93.

Article 3

Place where the entry or exit summary declaration has to be lodged

1. The entry summary declaration shall be lodged at the competent customs office in the customs territory of the Contracting Party where the goods are brought in from third countries. On the basis of the data included in the declaration, that customs office carries out the risks analysis as well as the security customs controls that are deemed necessary, including when the goods are destined for the other Contracting Party.
2. The exit summary declaration shall be lodged at the competent customs office in the customs territory of the Contracting Party where the exit formalities for goods destined for third countries are carried out. However, where an export declaration is used as an exit summary declaration, it shall be lodged at the competent customs office in the customs territory of the Contracting Party where the formalities related to the export to a third country are carried out. That competent office shall carry out the risk analysis on the basis of the data included in the declaration as well as the security customs controls that are deemed necessary.
3. When goods leave the customs territory of a Contracting Party to a third country through the customs territory of the other Contracting Party, the data referred to in Article 1 (2) shall be transmitted by the competent authorities of the first Contracting Party to the competent authorities of the second Contracting Party. The Contracting Parties shall endeavour to establish a connection with a view to using a common system of data transmission, which contains all information necessary to certify the exit of the goods in question.

However, the EEA Joint Committee may determine cases where the transmission of the data is not required provided that such cases do not prejudice the level of security that is guaranteed by this Agreement.

Where the Contracting Parties are unable to carry out the transmission of data referred to in the first sub-paragraph at the date of application of the present Protocol, the exit summary declaration for goods leaving a Contracting Party for a third country through the customs territory of another Contracting Party, except for goods in direct air transportation, shall be lodged only to the competent authorities of the second Contracting Party.

Article 4

Deadlines for lodging an entry or an exit summary declaration

1. Deadlines by which the entry or exit summary declaration is to be lodged are those referred to in Articles 184a and 592b of Regulation (EEC) No 2454/93.
2. Subject to the procedure referred to in Article 9b (3) of the Protocol, the deadlines mentioned in paragraph 1 do not apply where international agreements on security between the Contracting Party and third countries provide otherwise.

ANNEX II
AUTHORISED ECONOMIC OPERATOR

Title I

Granting the status of an authorised economic operator

Article 1

General provisions

1. The criteria for granting the status of authorised economic operator shall include:
 - an appropriate record of compliance with customs requirements,
 - a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls,
 - where appropriate, proven financial solvency, and
 - where applicable, appropriate security and safety standards.
2. Each Contracting Party shall determine the procedure for granting the status of authorised economic operator and the legal effects of the status.
3. The Contracting Parties ensure that their customs authorities control that all the conditions and criteria for granting the status are respected by the authorised economic operator and shall review them in case of an important amendment to the legislation concerned or when new circumstances appear, which raise a reasonable suspicion of the authorities that the operator does no longer comply with the conditions and criteria concerned.

Article 2

Record of compliance

1. The record of compliance with customs requirements shall be considered as appropriate if over the last three years preceding the submission of the application no serious infringement or repeated infringements of customs rules have been committed by any of the following persons:
 - (a) the applicant;
 - (b) the persons in charge of the applicant company or exercising control over its management;
 - (c) if applicable, the applicant's legal representative in customs matters;

- (d) the person responsible in the applicant company for customs matters.
2. The record of compliance with customs requirements may be considered as appropriate if the competent customs authority considers any infringement to be of negligible importance, in relation to the number or size of the customs related operations, and not to create doubts concerning the good faith of the applicant.
3. If the persons exercising control over the applicant company are established or resident in a third country, the customs authorities shall assess their compliance with customs requirements on the basis of records and information that are available to them.
4. If the applicant has been established for less than three years, the customs authorities shall assess his compliance with customs requirements on the basis of the records and information that are available to them.

Article 3

Satisfactory system of managing of commercial and transport records

To enable the customs authorities to establish that the applicant has a satisfactory system of managing commercial and, where appropriate, transport records, the applicant shall fulfil the following requirements:

- (a) maintain an accounting system which is consistent with the generally accepted accounting principles applied where the accounts are held and which will facilitate audit-based customs control;
- (b) allow the customs authority physical or electronic access to its customs and, where appropriate, transport records;
- (c) have an administrative organisation which corresponds to the type and size of business and which is suitable for the management of the flow of goods, and have internal controls capable of detecting illegal or irregular transactions;
- (d) where applicable, have satisfactory procedures in place for the handling of licenses and authorisations connected to importation or / and exportation;
- (e) have satisfactory procedures in place for the archiving of the company's records and information and for protection against the loss of information;
- (f) ensure that employees are made aware of the need to inform the customs authorities whenever compliance difficulties are discovered and establish suitable contacts to inform the customs authorities of such occurrences;
- (g) have appropriate information technology security measures in place to protect the applicant's computer system from unauthorised intrusion and to secure the applicant's documentation.

Article 4

Financial solvency

1. For the purposes of this Article, financial solvency shall mean a good financial standing which is sufficient to fulfil the commitments of the applicant, with due regard to the characteristics of the type of the business activity.
2. The condition relating to the financial solvency of the applicant shall be deemed to be met if his solvency can be proven for the past three years.
3. If the applicant has been established for less than three years, his financial solvency shall be judged on the basis of records and information that are available.

Article 5

Security and safety standards

1. The applicant's security and safety shall be considered to be appropriate if the following conditions are fulfilled:
 - (a) buildings to be used in connection with the operations to be covered by the certificate are constructed of materials which resist unlawful entry and provide protection against unlawful intrusion;
 - (b) appropriate access control measures are in place to prevent unauthorised access to shipping areas, loading docks and cargo areas;
 - (c) measures for the handling of goods include protection against the introduction, exchange or loss of any material and tampering with cargo units;
 - (d) where applicable, procedures are in place for the handling of import and/or export licenses connected to prohibitions and restrictions and to distinguish these goods from other goods;
 - (e) the applicant has implemented measures allowing a clear identification of his business partners in order to secure the international supply chain;
 - (f) the applicant conducts, in so far as legislation permits, security screening on prospective employees working in security sensitive positions and carries out periodic background checks;
 - (g) the applicant ensures that its staff concerned actively participate in security awareness programmes.
2. If the applicant, established in the Contracting Parties, is the holder of an internationally recognised security and/or safety certificate issued on the basis of international conventions, of a European security and/or safety certificate issued on the basis of Community legislation, of an International Standard of the International Organisation for Standardisation, or of a European Standard of the European

standard organisations, or of any other recognised certificate, the criteria provided for in paragraph 1 shall be deemed to be met to the extent that the criteria for issuing these certificates are identical or correspond to those laid down in this Protocol.

Title II

Facilitation granted to authorised economic operators

Article 6

Facilitation granted to authorised economic operators

The customs authorities may grant an authorised economic operator the following facilitations:

- the competent customs office may, before the arrival of the goods into the customs territory or before they leave it, notify the authorised economic operator when, as a result of security and safety risk analysis, the consignment has been selected for further physical control. This notice shall only be provided where it does not jeopardise the control to be carried out. However, the customs authorities may carry out a physical control even where an authorised economic operator has not been notified;
- an authorised economic operator may lodge entry and exit summary declarations comprising the reduced data requirements set out in Annex 30A of Regulation (EEC) No 2454/93; however where an economic operator is a carrier, freight forwarder or customs agent he is entitled to lodge such declarations only on the condition that he is involved in the importation or exportation of goods on behalf of an authorised economic operator.
- an authorised economic operator shall be subject to fewer physical and document-based controls than other economic operators. The customs authorities may decide otherwise in order to take into account a specific threat, or control obligations set out in other legislation;
- where, following risk analysis, the competent customs authority nevertheless selects for further examination a consignment covered by an entry or exit summary declaration or by a customs declaration lodged by an authorised economic operator, it shall carry out the necessary controls as a matter of priority. If the authorised economic operator so requests, and subject to agreement with the customs authority concerned, these controls may be carried out at a place which is different from the place of the customs office involved.

Title III

Suspension and revocation of the status of the authorised economic operator.

Article 7

Suspension of the status

1. The status of authorised economic operator shall be suspended by the issuing customs authority in the following cases:
 - (a) where non-compliance with the conditions or criteria for granting the status has been detected;
 - (b) the customs authorities have sufficient reason to believe that an act, which gives rise to criminal court proceedings and linked to an infringement of the customs rules, has been perpetrated by the authorised economic operator;
 - (c) upon a request of the authorised economic operator when he is temporarily in incapacity to observe the conditions or criteria of granting of the status.
2. In the case referred to in paragraph 1 (b), the customs authority may decide not to suspend the status of authorised economic operator if it considers an infringement to be of negligible importance in relation to the number or size of the customs related operations and not to create doubts concerning the good faith of the authorised economic operator.
3. Where the nature or the level of the threat to citizens' security and safety, to public health or to the environment so requires, suspension shall take place immediately.
4. The suspension shall not affect any customs procedure already started before the date of suspension and not yet completed.
5. Each Contracting Party shall determine duration of the suspension which should allow the authorised economic operator to regularise the situation.
6. When the economic operator concerned has, to the satisfaction of the customs authorities, taken the necessary measures to comply with the conditions and criteria that have to be met by an authorised economic operator, the issuing customs authority shall withdraw the suspension.

Article 8

Revocation of the status

1. The status of the authorised economic operator shall be revoked by the issuing customs authority in the following cases:
 - (a) where serious infringements related to customs rules have been committed by the authorised economic operator and there is no further right of appeal;
 - (b) where the authorised economic operator fails to take the necessary measures during the suspension period referred to in Article 7 (5);

(c) upon request of the authorised economic operator.

2. However, in the case referred to in paragraph 1 (a), the customs authority may decide not to revoke the status if it considers the infringements to be of negligible importance in relation to the number or size of the customs related operations and not to create doubts concerning the good faith of the authorised economic operator.

3. Revocation shall take effect from the day following its notification.

Title IV

Exchange of information

Article 9

Exchange of information

The European Commission and the customs authorities of the relevant EFTA state shall, on a regular basis, exchange the following data concerning the identity of the authorised economic operators:

- (a) the identification number of the operator (TIN in a format compatible with EORI legislation);
- (b) the name and the address of the authorised economic operator;
- (c) the number of the document by which the status of the authorised economic operator has been granted;
- (d) the current status (valid, suspended, withdrawn);
- (e) the periods when the status was modified;
- (f) the date from which the certificate is valid;
- (g) the authority which has issued the certificate.