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EUROPEAN COMMISSION

Brussels, 10.11.2010
COM(2010) 627 final

2010/0307 (NLE)
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Proposal for a

COUNCIL DECISION

on the signing and provisional application of the Protocol extending to customs security measures the Agreement in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra

EXPLANATORY MEMORANDUM

The attached proposal for a Council Decision constitutes the legal instrument for the signing and provisional application of a Protocol between the European Union and the Principality of Andorra with a view to extending to customs security measures the scope of the Agreement in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra concluded on 28 June 1990¹.

The Community Customs Code² and its Implementing Rules³, which lay down the rules for the customs treatment of goods that are imported or exported, were amended in 2005⁴ and 2006⁵ respectively to make provision for customs security measures. Among these security arrangements is a provision 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 European Union and the Principality of Andorra to establish amended rules for customs security in their bilateral trade in goods. Given the geographical position of the Principality of Andorra and the special ties it has with the European Union in the form of a customs union, such an arrangement is needed to ensure in particular that trade runs smoothly while maintaining a high level of security.

Following negotiations, the arrangement consisted in abolishing the requirement for a prior declaration for goods traded between the European Union and the Principality of Andorra. The abolition of this requirement is subject to the condition that the Contracting Parties undertake to guarantee in their respective territories an equivalent level of security through measures based on legislation in force in the European Union.

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.

¹ OJ L 374, 31.12.1990, p. 16.

² Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

³ 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).

⁴ 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).

⁵ 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).

There is a new Article 12h concerning the protection of professional secrecy and personal data. The exchange of personal data in the context of these measures is governed by provisions in Regulation (EC) No 45/2001⁶ for the processing of data by the European Commission, and by Directive 95/46/EC⁷ for the processing of data by Member States. Processing of data by the Principality of Andorra is subject to national data protection legislation. The Principality has ratified Council of Europe Convention No 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data and has a level of protection which is in line with the legislation in force in the European Union.

It is specified that, unlike the customs union, this arrangement also applies to agricultural products.

The objective of this proposal is to authorise the Commission to sign a Protocol amending the Agreement of 28 June 1990 between the European Economic Community and the Principality of Andorra in order to extend its scope to customs security measures. Accordingly, a new Title IIA introducing an "arrangement concerning customs security measures" will be added to the 1990 Agreement. The proposal also states that the Protocol will apply provisionally pending the completion of the procedures required for its conclusion. Consequently, a proposal for a Council Decision concerning the conclusion of this Protocol is submitted separately.

The proposal has no financial implications for the budget of the European Union.

⁶ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁷ Council 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 (OJ L 281, 23.11.1995, p. 31).

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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(4), first subparagraph, in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 16 February 2009 the Council authorised the European Commission to start negotiations with the Principality of Andorra with a view to negotiating a Protocol extending to customs security measures the Agreement in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra concluded on 28 June 1990.
- (2) The European Commission and the Principality of Andorra have completed the above-mentioned negotiations by initialling the Protocol.
- (3) The negotiator should, on behalf of the European Union, sign the negotiated Protocol pending its conclusion at a later date.
- (4) Pending completion of the internal procedures of the Contracting Parties, the Protocol will apply provisionally from 1 January 2011, the date of the last stage of application of the customs security measures introduced in 2005 and 2006 respectively by the amendment of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁸ and of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁹,

HAS ADOPTED THIS DECISION:

Article 1

The European Commission is hereby authorised to sign, on behalf of the European Union, the Protocol extending to customs security measures the Agreement in the form of an Exchange

⁸ OJ L 302, 19.10.1992, p. 1.

⁹ OJ L 253, 11.10.1993, p. 1.

of Letters between the European Economic Community and the Principality of Andorra, and to designate the person empowered to sign it.

The text of the Protocol is attached to this Decision.

Article 2

Pending the completion of the procedures required for its conclusion, the Protocol shall apply provisionally from 1 January 2011 in accordance with Article 3(3) thereof.

The European Commission is authorised to agree on another date for provisional application of the Protocol.

Article 3

The position to be adopted by the European Union in the Joint Committee on matters relating to Title IIA of the Agreement shall be determined by the European Commission.

Article 4

In order to ensure the application of Article 12(i)(1) of the Agreement, the European Commission shall notify the Principality of Andorra of the adoption of European Union acts which constitute a development of the EU law on customs security measures covered by Article 12(b) of the Agreement.

The Commission is authorised to take the necessary measures provided for in Article 12(k) of the Agreement in order to ensure the equivalence of the Contracting Parties' customs security measures.

If, on the date of implementation of the relevant European Union legislation, the Principality of Andorra has not adopted the new provisions and the provisional application of these provisions is not possible, the Commission shall notify the Principality of the suspension of Title IIA of the Agreement in accordance with Article 12(i)(2) thereof.

Article 5

This Decision shall enter into force on the date of its adoption. It shall be published in the Official Journal of the European Union.

Done at

*For the Council
The President*

ANNEX

Protocol extending to customs security measures the Agreement in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra

THE EUROPEAN UNION

of the one part, and

THE PRINCIPALITY OF ANDORRA,

of the other part,

hereinafter referred to respectively as "the European Union", "the Principality of Andorra" and "the Contracting Parties",

Having regard to the Agreement, in the form of an Exchange of Letters between the European Economic Community and the Principality of Andorra, signed in Luxembourg on 28 June 1990 (hereinafter "the Agreement"),

Whereas there is a need to maintain the existing level of controls and formalities on the passage of goods at frontiers between the European Union and the Principality of Andorra and so ensure the smooth flow of trade;

Whereas the Contracting Parties undertake to guarantee in their respective territories an equivalent level of security through measures based on legislation in force in the European Union;

Whereas it is desirable that Andorra be consulted on the development of European Union rules concerning customs security measures, that it take part in the relevant work of the Customs Code Committee and that it be notified of the implementation of such rules;

Whereas the Contracting Parties are determined to improve security in the trade in goods entering or exiting their territories without hampering trade flows;

Whereas, in the interests of the Contracting Parties, equivalent customs security measures should be introduced in respect of the transport of goods to or from third countries;

Whereas, unlike the Agreement itself, the territorial scope of these customs security measures must be defined with reference to the respective customs territories of the Contracting Parties;

Whereas these customs security measures must also apply to agricultural products (Chapters 1 to 24 of the Harmonised System), which are excluded from the customs union established between the Contracting Parties;

Whereas these customs security measures concern the declaration of security data relating to goods prior to their entry and exit, the management of security risks and related inspections and the allocation of authorised economic operator status for mutually recognised security purposes;

Whereas the Principality of Andorra has an adequate level of personal data protection;

Whereas in the case of customs security measures there should be provision for appropriate rebalancing measures, including suspension of the relevant provisions where the equivalence of customs security measures is no longer assured,

AGREE AS FOLLOWS:

Article 1

In order to extend the scope of the Agreement to the customs security measures, the following new Title IIA shall be added:

"Title IIA

ARRANGEMENT CONCERNING CUSTOMS SECURITY MEASURES

CHAPTER I

Monitoring the implementation of customs security measures

Article 12a

Territories covered

This Agreement shall apply, on the one hand, to the Community customs territory and, on the other, to the customs territory of the Principality of Andorra.

Article 12b

Adoption of the Community acquis

1. The Principality of Andorra shall adopt the customs security measures applied by the European Union. "Customs security measures" shall mean the provisions concerning the declaration of goods prior to their entry and exit from this customs territory, authorised economic operators, and customs security checks and risk management, which are applicable in line with the relevant customs legislation in force at all times in the European Union. The Joint Committee referred to in Article 17 shall draw up a detailed list of the provisions concerned.

2. Notwithstanding their exclusion from the customs union between the European Union and the Principality of Andorra pursuant to Article 2, the customs security measures shall also apply to the agricultural products covered by Chapters 1 to 24 of the Harmonised System.

Article 12c

General principles

1. The Contracting Parties undertake to set up and apply to the carriage of goods to and from non-member countries the customs security measures set out in Article 12b(1) and thus to ensure an equivalent level of security at their external borders.

2. The Contracting Parties shall refrain from applying the customs security measures set out in Article 12b(1) to the carriage of goods between their customs territories.

3. The Contracting Parties shall consult each other prior to the conclusion of any agreement with a non-member country relating to customs security measures in order to ensure consistency with this arrangement, particularly if the proposed agreement includes provisions that derogate from the customs security measures set out in this Title.

Article 12d

*Place for lodging entry and
exit declarations*

1. The declaration prior to entry shall be lodged with the competent authority of the Contracting Party into whose customs territory the goods are brought from a non-member country. That authority shall carry out a risk analysis based on information contained in the declaration and any customs controls deemed necessary for security purposes, including cases where goods are destined for the other Contracting Party.
2. The declaration prior to exit shall be lodged with the competent authority of the Contracting Party in whose customs territory the formalities for exportation or, where appropriate, exit to non-member countries are carried out. That competent authority shall carry out a risk analysis based on the data in this declaration together with the customs security controls deemed necessary.
3. When goods destined for a non-member country leave the customs territory of a Contracting Party through the customs territory of the other Contracting Party, the declaration prior to the exit of the goods shall be lodged only with the competent authorities of the second Contracting Party.

Article 12e

Customs security controls and security-related risk management

1. For the purpose of customs security controls, each Contracting Party shall establish a risk management framework, risk criteria and priority areas for security-related customs controls.
2. The Contracting Parties shall recognise the equivalence of their security-related risk management systems.
3. The Contracting Parties shall cooperate with a view to:
 - exchanging information with the aim of improving and strengthening their risk analysis and the effectiveness of security-related customs controls, and
 - establishing in good time a common framework for risk management, risk criteria and common priority areas for controls, and setting up an electronic system to implement joint risk-management.
4. The Joint Committee shall adopt any other measure necessary for the application of this article.

Article 12f

Monitoring the implementation of customs security measures

1. The Joint Committee shall determine how the Contracting Parties are to monitor the implementation of this title and to verify compliance with the customs security measures.
2. This monitoring may take the form of:
 - regular assessments of the implementation of this title, and in particular of the equivalence of customs security measures;

- a review to improve the way in which it is applied or to amend its provisions so that it better fulfils its objectives;
- the organisation of thematic meetings between experts of both Parties and audits of administrative procedures, including on-the-spot visits.

3. The Joint Committee shall ensure that measures taken under this article uphold the rights of economic operators.

Article 12g

Exchange of information concerning authorised economic operators

The Commission and the competent Andorran authorities shall regularly inform each other of the identities of their authorised economic operators for the purposes of security, and include the following information:

- a) the Trader Identification Number (TIN) in a format compatible with Economic Operator Registration and Identification (EORI) legislation;
- b) the names and addresses of authorised economic operators;
- c) the number of the document granting the status of authorised economic operator;
- d) current status (current, suspended, withdrawn);
- e) periods of altered status;
- f) the date on which the certificate becomes effective;
- g) the authority which issued the certificate.

Article 12h

Protection of professional secrecy and personal data

The information exchanged by the Contracting Parties as part of the measures provided for in this title shall enjoy the protection extended to professional secrecy and personal data as defined in the relevant laws applicable in the territory of the recipient Contracting Party.

In particular, this information may not be transferred to persons other than the competent bodies in the Contracting Party concerned, nor may it be used by those bodies for purposes other than those provided for in this Agreement.

CHAPTER II

Management of the arrangement

Article 12i

Development of law

1. As soon as the European Union draws up new legislation relating to customs security measures, it shall seek an informal opinion of Andorran experts.
 2. The European Union shall enable Andorran experts to participate as observers for items concerning them in meetings of the Customs Code Committee, which assists the European Commission in the exercise of its powers in matters covered by Title IIA. The provisions set out in Articles 66 to 68 of Decision No 1/2003 of the EC-Andorra Joint Committee¹⁰ shall apply *mutatis mutandis*.
 3. When the European Commission sends its proposal to the European Parliament and/or Council of the European Union, or its draft implementing measures to the Member States, it shall send a copy to the Principality of Andorra.
- At the request of one of the Contracting Parties, a preliminary exchange of views may take place in the Joint Committee.
4. In the phase prior to the adoption of the new European Union legislation, and at the request of one of their number, the Contracting Parties shall consult each other again on the Joint Committee in a continuous process of information and consultation.
 5. The Contracting Parties shall cooperate during the information and consultation phase with a view to facilitating, at the end of the process, the simultaneous application by the Contracting Parties of the new legislation referred to in paragraph 1.

Article 12j

Agreements with non-member countries

The Contracting Parties agree that agreements concluded by either of them with a non-member country in an area covered by Title IIA shall not create obligations for the other Party, unless the Joint Committee decides otherwise.

Article 12k

Rebalancing measures

1. A Contracting Party may, after consultations within the Joint Committee, take appropriate rebalancing measures, including suspension of Title IIA, if it finds that the other Party is not adhering to its conditions or if the equivalence of the Contracting Parties' customs security measures is no longer assured.

Where any delay could jeopardise the effectiveness of customs security measures, provisional protective measures may be taken, without prior consultation, provided that consultations are held immediately after their adoption.

2. If the equivalence of the Contracting Parties' customs security measures is no longer assured because the amendments provided for in Article 12i have not been adopted by the Principality of Andorra, the European Union may suspend the application of Title IIA, unless the Joint Committee, having considered how to continue its application, decides otherwise.
3. The scope and duration of such measures shall be limited to what is necessary in order to remedy the situation and to secure a fair balance of rights and obligations under this title. A Contracting

¹⁰ OJ L 253, 7.10.2003, p. 3.

Party may ask the Joint Committee to hold consultations about the proportionality of these measures. If the Joint Committee is unable to settle the dispute, it may, where appropriate, decide to submit it to arbitration in accordance with Article 18(2). No question of interpretation of the relevant provisions of EU law may be resolved within this framework.

CHAPTER III

Miscellaneous provisions concerning the arrangement relating to customs security measures

Article 12l

Revision

If a Contracting Party wishes to have this arrangement revised, it shall submit a proposal to that effect to the other Party. The revision shall take effect after the respective internal procedures have been completed.

Article 2

This Protocol shall form an integral part of the Agreement.

Article 3

1. This Protocol shall be approved by the Contracting Parties in accordance with their own procedures. It shall enter into force on [...], provided that the Contracting Parties have notified one another before that date that the requisite procedures have been completed.

2. If this Protocol does not enter into force on [...], it shall enter into force on the day following the date on which the Contracting Parties notify one another that the requisite procedures have been completed.

3. Pending completion of the procedures referred to in paragraphs 1 and 2, the Contracting Parties shall apply this Protocol provisionally from 1 January 2011 or a later date agreed by them.

Article 4

Languages

This Protocol shall be drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish, Swedish and Catalan languages, each of these texts being equally authentic.

Done at ..., ...

For the Principality of Andorra

For the European Union