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Subject: COUNCIL DECISION on the position to be taken on behalf of the European Union within the United Nations Economic Commission for Europe (UNECE) Working Party on Customs Questions affecting Transport and within the UNECE Inland Transport Committee concerning the adoption of the Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail

COUNCIL DECISION (EU) 2018 ...

of ...

**on the position to be taken on behalf of the European Union
within the United Nations Economic Commission for Europe (UNECE) Working Party
on Customs Questions affecting Transport
and within the UNECE Inland Transport Committee
concerning the adoption of the Convention
on the facilitation of border crossing procedures
for passengers, luggage and load-luggage
carried in international traffic by rail**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Russian Federation has proposed a new UNECE Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail ('the draft Convention'). The Organisation for Cooperation between Railways (OSJD) has supported the draft Convention.
- (2) The Working Party on Customs Questions affecting Transport (WP.30) acts within the framework of the policies of UNECE and subject to the general supervision of the Inland Transport Committee (ITC). The role of the WP.30 is to initiate and pursue actions aimed at harmonisation and simplification of regulations, rules and documentation for border crossing procedures for the various modes of inland transport.
- (3) The WP.30 will take a decision on the endorsement of the draft Convention and on its transmission to the ITC for formal approval.
- (4) The Union is represented in the WP.30 and the ITC by the Member States of the Union. All Member States of the Union are members of the WP.30 and the ITC with a right to vote.

- (5) The draft Convention contains general provisions on how to organise border controls of passenger trains. It can be seen as a basis for any multilateral and bilateral agreements in the absence of which none of the elements covered by the draft Convention could work.
- (6) For the Member States of the Union, such multilateral and bilateral agreements can be concluded even without the draft Convention. For the Russian Federation and some other countries represented in the OSJD, the legal framework seems to necessitate such a convention in order to make it easier to conclude multilateral and bilateral agreements.
- (7) The substance of the draft Convention appears to have neither beneficial nor adverse effects for the Member States of the Union. Therefore the Union should not support the draft Convention but has no reason to block its adoption.

- (8) Even if it does not appear to be in the Union's interest to accede to the draft Convention, in accordance with its general policy on institutional aspects, any new international convention should contain a clause allowing for the participation of regional economic integration organisations. The draft Convention does not contain a clause which would allow the Union to accede to the Convention.
- (9) Therefore, the Union position within the WP.30 and the ITC should be neutral if a clause allowing for the participation of regional economic integration organisations is inserted. In that case, the Member States of the Union should abstain. Otherwise the Member States of the Union should vote against the adoption of the draft Convention.
- (10) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.

- (11) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*¹ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC².
- (12) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*³ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁴.

¹ OJ L 176, 10.7.1999, p. 36.

² Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

³ OJ L 53, 27.2.2008, p. 52.

⁴ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

- (13) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU².
- (14) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC³; the United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

¹ OJ L 160, 18.6.2011, p. 21.

² Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons(OJ L 160, 18.6.2011, p. 19).

³ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

- (15) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (16) As regards Bulgaria, Croatia, Cyprus and Romania, the provisions of this Decision constitute provisions building upon, or otherwise relating to, the Schengen *acquis*, within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession, Article 4(2) of the 2005 Act of Accession and Article 4(2) of the 2012 Act of Accession.
- (17) It is appropriate to establish the position to be taken on the Union's behalf within the WP.30 and the ITC as the draft Convention concerns elements on visa formalities that fall within the competence of the Union,

HAS ADOPTED THIS DECISION:

¹ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

Article 1

The position to be taken on the Union's behalf within the UNECE Working Party on Customs Questions affecting Transport and within the UNECE Inland Transport Committee concerning the draft UNECE Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail shall be the following:

The Member States of the Union shall abstain if the clause allowing for the participation of regional economic integration organisations is introduced in the draft Convention. If that clause is not introduced, the Member States of the Union shall vote against.

Article 2

The position referred to in Article 1 shall be expressed by the Member States of the Union.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at ...,

For the Council

The President
