

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 556 final

Brussels, 6 October 1980

Recommendation for a

## COUNCIL DECISION

authorizing the Commission to participate in the  
negotiation of an international convention on the  
harmonization of controls at frontiers

(submitted to the Council by the Commission)

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## EXPLANATORY MEMORANDUM

### Introduction

The Group of Experts on Customs Questions<sup>affecting</sup> Transport, under the Inland Transport Committee of the Economic Commission for Europe, a regional body of the United Nations, has decided to draw up a Convention on the Harmonization of Controls at Frontiers.

The rapporteurs appointed by the Group of Experts on Customs Questions were asked to consider the substance of such a Convention. On the basis of their report, the Executive Secretary of the Economic Commission for Europe has drafted a text to serve as a basis for negotiations.

The Inland Transport Committee of the Economic Commission for Europe has organized a special meeting of the Group of Experts in Geneva from 20 to 24 October 1980 to carry out negotiations.

### Purpose and scope of the Convention

The purpose of the Convention is to make the international transport of goods easier and quicker, by harmonizing more closely the conditions for the controls carried out by the various authorities responsible for checking goods at frontiers, and by reinforcing cooperation between these authorities.

This purpose is to be achieved by:

- coordinating at national level the action of the various departments responsible for controls;
- setting up the necessary framework for the operations of these departments;
- giving the maximum possible national and international publicity to the requirements of laws and regulations applying in the areas covered by the controls;
- ensuring international cooperation, including:
  - mutual recognition of documents, and some harmonization of these documents;

coordinated organization and functioning of departments operating frontier services in adjacent countries;

bilateral or multilateral harmonization of control systems and procedures.

The competence of the Community

The purpose of this Convention is to facilitate the international transport of goods by improving the conditions for frontier controls, and it is a contribution, in the common interest, to the smooth development of world trade. It therefore comes under common commercial policy.

What is more, the Convention applies to several matters for which common rules have been adopted in the form of secondary legislation. For example, the customs controls and other frontier inspections which are the subject-matter of the Convention are in many cases the result of Community legislation such as:

- Council Directive 68/312/EEC on the customs treatment of goods,<sup>(1)</sup> which stipulates at Article 2(1) that all goods entering the customs territory of the Community or coming from a free zone situated in the territory of the Community shall be subject to customs control;
- Council Directive 79/695/EEC on the harmonization of procedures for the release of goods for free circulation,<sup>(2)</sup> which stipulates at Article 9 that the customs authority may examine all or part of the goods entered.

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(1) OJ No L 194, 6.8.1968, p. 13.

(2) OJ No L 205, 13.8.1979, p. 19.

- Council Directive 77/93/EEC on protective measures against the introduction into the Member States of harmful organisms of plants or plant products,<sup>(1)</sup> which stipulates at Article 12 that plants and plant products entering the territory of any of the Member States and coming from non-member countries shall be inspected;
- Council Directive 72/462/EEC on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries,<sup>(2)</sup> which stipulates at Articles 12, 23 and 24 that animals and fresh meat must undergo a health inspection on arrival in the territory of the Community.

The Convention also deals, although subsidiarily, with goods in transit, thus touching upon an area the customs aspects of which are almost exclusively governed by Community secondary legislation.

The above remarks show that this Convention covers fields where the Community external competence is of considerable importance.

The Community is therefore entitled to take part in the negotiation of this convention and to become a Contracting Party.

The following clause, based on that included in the Convention of 27 May 1980 on International multimodal transport, could be adopted for this purpose:

"Regional economic integration organizations composed of sovereign States which are members of the United Nations and which have competence to negotiate, conclude and apply international agreements on matters covered by this Convention may also become Contracting Parties to it."

Moreover, since the Convention provides for a Management Committee whose members would have voting rights, the above clause should be supplemented as follows:

"In matters within their competence since regional economic integration organizations shall, in their own name, exercise the rights and fulfil the responsibilities that this Convention confers on their Member States. In such cases the Member States of the organizations shall not be entitled to exercise such rights independently."

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(1) OJ No L 26, 31.1.77, p. 20.

(2) OJ NO L 302, 31.12.72, p. 28.

It is also important to confine the application of the Convention to the Community's external frontiers, so that trade between the Community Member States would still be exclusively governed by the national laws of the Member States or by Community law. The Convention should therefore include a provision stipulating that Contracting Parties that are part of a regional economic integration organization may notify the Secretary-General of the United Nations that the Convention applies at the external frontiers only of the territory of this organization.

#### Legal basis

The main purpose of the Convention - to facilitate and encourage international trade in goods by simplifying formalities at frontiers - is in line with some aspects of common commercial policy as defined in Article 113 of the Treaty. What is more, the Convention deals mainly with subjects on which the Community has adopted rules of the form of secondary legislation serving the common commercial policy.

Article 113 of the Treaty would thus appear to be the most appropriate provision to be used as a basis for the negotiation and conclusion of the Convention by the Community.

#### Conclusions

The Commission recommends that the Council, pursuant to Article 113 of the Treaty, authorize it to take part in the negotiation of the International Convention on the Harmonization of Controls at Frontiers.

The Commission would also urge upon the Council the need for representations to the Executive Secretary of the Economic Commission for Europe to demonstrate beyond doubt that the Community has competence in respect of the matters covered by the Convention and to ensure that the Community is invited to the negotiations under terms which enable it to exercise its competence fully.

Recommendation for a Council Decision authorizing the Commission to participate in the negotiation of an international convention on the harmonization of controls at frontiers

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the recommendation by the Commission,

Whereas negotiations are to begin in October 1980 within the Economic Commission for Europe to draw up an international convention on the harmonization of controls at frontiers;

Whereas the purpose of that Convention is to facilitate the international transport of goods;

Whereas the draft of that Convention contains provisions concerning not only customs matters, but also other fields where goods are subject to control, in particular the fields of health, plant health, veterinary matters and quality and standardization;

Whereas these fields are governed by common rules in the form of secondary legislation and consequently fall within the Community's competence,

HAS DECIDED AS FOLLOWS:

Sole Article

The Commission is hereby authorized to participate, on behalf of the Community, <sup>and</sup> within the United Nations Economic Commission for Europe, in the negotiations for the conclusion of an international convention on the harmonization of controls at frontiers. The Commission shall conduct such negotiations with the assistance of a special committee composed of representatives of the Member States and in accordance with the directives annexed hereto and with such directives as may be issued to it subsequently.

Done at Brussels,  
For the Council,  
The President

Directives issued by the Council to the Commission

The Commission shall endeavour to ensure that the draft Convention:

- (a) is consistent with the provisions adopted by the Community in respect of customs matters and in the other fields covered by the Convention;
- (b) does not contain any provisions on the control of persons;
- (c) is drawn up in such a way as to allow of flexible application of the principle that controls at frontiers should, in the main, be organized and carried out mainly in conjunction with customs controls;
- (d) contains a provision to the effect that regional economic integration organizations composed of sovereign States which are members of the United Nations and which have competence to negotiate, conclude and apply international agreements on matters covered by the Convention may also become Contracting Parties to the Convention; that, in matters within their competence, such regional economic integration organizations shall, in their own name, exercise the rights and fulfil the responsibilities that the Convention confers on their Member States; and that in such cases the Member States of the organizations shall not be entitled to exercise such rights independently;
- (e) contains a provision to the effect that the Convention applies exclusively to the external frontiers of the territories covered by such regional economic integration organizations.