



Council of the
European Union

Brussels, 4 November 2019
(OR. en)

13708/19

UD 280
COEST 236

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 4 November 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2019) 576 final

Subject: Recommendation for a COUNCIL DECISION to authorise the European
Commission to open negotiations for a Customs Cooperation and Mutual
Administrative Assistance Agreement (CCMAA) with the Republic of
Belarus

Delegations will find attached document COM(2019) 576 final.

Encl.: COM(2019) 576 final



Brussels, 4.11.2019
COM(2019) 576 final

Recommendation for a

COUNCIL DECISION

to authorise the European Commission to open negotiations for a Customs Cooperation and Mutual Administrative Assistance Agreement (CCMAA) with the Republic of Belarus

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Over the past years, there has been progress in EU-Belarus relations and EU-Belarus bilateral trade in goods has been growing steadily. The European Union is Belarus' second main trade partner with almost a one-third share in the country's overall trade. At the same time, Belarus factories account for a substantial share (estimated to exceed 15%) of the illicit tobacco products seized by customs authorities in the EU Member States. Illicit tobacco trade costs the budgets of Member States and the EU an estimated €10 billion a year in revenue. The illicit tobacco trade also undermines the EU's and national public health policies, and thus contributes to the many smoking-related deaths every year. In 2013, the EU adopted a comprehensive strategy¹ to fight the illicit tobacco trade, which remains relevant today². A key element in that strategy is to enhance cooperation with major source and transit countries. Therefore the proposal responds to the needs of EU Member States and their businesses for a legal framework for Customs Cooperation and Mutual Administrative Assistance with Belarus.

Due to the specific historic context, Belarus is the only country in the EU Eastern neighborhood, and the only country of the Eurasian Economic Union, without a formal legal basis for customs cooperation and mutual administrative assistance with the EU. An international agreement is therefore required to provide a legal basis for customs cooperation in particular in the areas of supply chain security and trade facilitation, and for mutual administrative assistance to prevent, investigate and combat breaches of customs legislation. The agreement with Belarus will be an appropriate tool in fighting customs fraud.

As the EU's overall relations with Belarus are evolving, now is the right moment to plug this gap in the EU's external relations on customs matters in its neighborhood. This initiative is in line with the 2016 February Council Conclusions on Belarus, stating that the EU remains open to further development of EU-Belarus relations, and to taking further steps to enhance political relations and sectoral cooperation in the appropriate context. More recently, it follows up on political contacts in the context of the EU-Belarus Coordination Group meeting on 25 April 2019 and Commissioner Oettinger's visit to Minsk in February 2019. Strengthening our engagement with Belarus is also a key element in the Action Plan adopted by the Commission in December 2018 on fighting the illicit tobacco trade 2018-2022.³

This initiative is not within the Regulatory Fitness Programme (REFIT).

- **Consistency with existing policy provisions in the policy area**

The Commission has concluded agreements including Customs cooperation and Mutual Administrative Assistance provisions with all the countries in our Eastern Neighbourhood, as

¹ *COM(2013)324*

² *COM(2017)235 Section E.*

³ *COM (2018)846, item A.2.7.*

well as with all other Eurasian Economic Union Member countries: Russia⁴, Armenia⁵, Kazakhstan⁶ and Kyrgyzstan⁷.

- **Consistency with other Union policies**

The recommendation is consistent with other Union policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 218(3) and (4) of the Treaty on the Functioning of the European Union (TFEU) will be the procedural legal basis.

The subject matter of the agreement would be part of the Union's common commercial policy, therefore the substantive legal basis of the decisions on the signature and the conclusion of the agreement will be Article 207 TFEU.

- **Subsidiarity (for non-exclusive competence)**

The initiative falls under the exclusive competence of the EU (common commercial policy) according to Article 207 of the Treaty on the Functioning of the European Union (TFEU). The subsidiarity principle therefore does not apply.

- **Proportionality**

The Commission recommendation is in line with the principle of proportionality.

An international agreement is the appropriate and the necessary instrument to provide a legal basis to perform customs cooperation and mutual administrative assistance with a third country, and in light of our objective to engage with Belarus in Customs cooperation, as it is the only remaining country on the EU Eastern border not yet covered with any Customs related agreement.

- **Choice of the instrument**

Decision of the Council of the European Union.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

⁴ OJ L 327/1 of 28.11.1997

⁵ OJ L 239/1 of 9.9.1999

⁶ OJ L 29/1 of 4.2.2016.

⁷ OJ L 196/46 of 28.7.1999

- **Stakeholder consultations**

Not applicable

- **Collection and use of expertise**

Not applicable

- **Impact assessment**

The agreement aims to improve the application of customs legislation via cooperation and mutual administrative assistance between the customs authorities of the EU and of Belarus.

There will be a positive impact due to the alignment of the rules and opening the communication with Republic of Belarus.

An indirect positive impact is expected through improving the correct application of customs legislation, via mutual administrative assistance and customs cooperation, hence, inter alia, reducing customs fraud, especially tobacco smuggling, resulting in higher levels of customs and tax revenues in the EU.

The possible agreement text would, subject to negotiations, be similar to agreements reached with Belarus's neighbouring countries and with other countries of the Eurasian Economic Union, to which Belarus is a member and which share the same regional Customs Code.

In relation to mutual administrative assistance, a substantial part of its content is formal and procedural, so the draft text should not be substantially modified during the negotiations.

- **Regulatory fitness and simplification**

This initiative is not within the Regulatory Fitness Programme (REFIT)

- **Fundamental rights**

The recommendation is consistent with the EU Treaties and the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

The Customs Cooperation and Mutual Administrative Assistance agreement will not have a direct effect on the budget of the EU.

The agreement will require financial and administrative resources in order to set and manage a joint committee and possible missions and discussions to implement the agreement.

Recommendation for a

COUNCIL DECISION

to authorise the European Commission to open negotiations for a Customs Cooperation and Mutual Administrative Assistance Agreement (CCMAA) with the Republic of Belarus

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to open negotiations, on behalf of the European Union, with the Republic of Belarus for an agreement on Customs Cooperation and Mutual Administrative Assistance.

Article 2

The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the Annex.

Article 3

The Commission shall conduct negotiations in consultation with [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*