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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be adopted, on behalf of the European Union, within the Customs Sub-Committee established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, as regards the replacement of Protocol II to that Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation

COUNCIL DECISION (EU) 2016/...

of ...

**on the position to be adopted, on behalf of the European Union,
within the Customs Sub-Committee
established by the Association Agreement between
the European Union and the European Atomic Energy Community
and their Member States, of the one part,
and the Republic of Moldova, of the other part,
as regards the replacement of Protocol II to that Agreement,
concerning the definition of the concept of ‘originating products’
and methods of administrative cooperation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Protocol II to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part¹ (the ‘Agreement’), concerns the definition of the concept of ‘originating products’ and methods of administrative cooperation (‘Protocol II’).
- (2) Most of the provisions on trade and trade-related matters of the Agreement, including Protocol II, have been applied provisionally since 1 September 2014.
- (3) The Regional Convention on pan-Euro-Mediterranean preferential rules of origin² (the ‘Convention’) lays down provisions on the origin of goods traded under relevant agreements concluded between the Contracting Parties to that Convention.
- (4) The Union signed the Convention on 15 June 2011. The Joint Committee of the Convention decided, by Decision No 2 of 21 May 2014³, that the Republic of Moldova should be invited to accede to the Convention.

¹ OJ L 260, 30.8.2014, p. 4.

² OJ L 54, 26.2.2013, p. 4.

³ OJ L 217, 23.7.2014, p. 88.

- (5) The Union and the Republic of Moldova deposited their instruments of acceptance with the depositary of the Convention on 26 March 2012 and 31 July 2015, respectively. Consequently, pursuant to Article 10(3) of the Convention, the Convention entered into force in relation to the Union and the Republic of Moldova on 1 May 2012 and 1 September 2015, respectively.
- (6) Article 6 of the Convention provides that each Contracting Party is to take appropriate measures to ensure that the Convention is effectively applied. To that effect, the Customs Sub-Committee established by the Agreement (the ‘Customs Sub-Committee’) should adopt a decision replacing Protocol II by a new protocol which, with regard to the rules of origin, refers to the Convention.
- (7) The position of the Union within the Customs Sub-Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the European Union, within the Customs Sub-Committee established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, as regards the replacement of Protocol II to that Agreement, concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation, by a new protocol which, as regards the rules of origin, refers to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin, shall be based on the draft decision of the Customs Sub-Committee attached to this Decision.

Minor technical amendments to the draft decision of the Customs Sub-Committee may be agreed to by the representatives of the Union in the Customs Sub-Committee without further decision of the Council.

Article 2

The decision of the Customs Sub-Committee shall be published in the *Official Journal of the European Union*.

Article 3

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

Done at Brussels,

For the Council

The President

DRAFT

**DECISION No .../2016
OF THE EU-REPUBLIC OF MOLDOVA CUSTOMS SUB-COMMITTEE**

of ...

**replacing Protocol II to the Association Agreement between
the European Union and the European Atomic Energy Community
and their Member States, of the one part,
and the Republic of Moldova, of the other part,
concerning the definition of the concept of ‘originating products’
and methods of administrative cooperation**

THE EU-REPUBLIC OF MOLDOVA CUSTOMS SUB-COMMITTEE,

Having regard to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part¹, and in particular Article 38 of Protocol II to that Agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation,

¹ OJ L 260, 30.8.2014, p. 4.

Whereas:

- (1) Article 144(2) of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (the 'Agreement'), refers to Protocol II to the Agreement ('Protocol II') which lays down the rules of origin and provides for cumulation of origin between the Union and the Republic of Moldova.
- (2) Most of the provisions on trade and trade-related matters of the Agreement, including Protocol II, have been applied provisionally since 1 September 2014.
- (3) Article 38 of Protocol II provides that the Customs Sub-Committee provided for in Article 200 of the Agreement may decide to amend the provisions of that Protocol.
- (4) The Regional Convention on pan-Euro-Mediterranean preferential rules of origin¹ (the 'Convention') aims to replace the protocols on rules of origin currently in force among the countries of the pan-Euro-Mediterranean area with a single legal act.

¹ OJ L 54, 26.2.2013, p. 4.

- (5) The Union signed the Convention on 15 June 2011. The Joint Committee of the Convention decided, by Decision No 2 of 21 May 2014¹, that the Republic of Moldova should be invited to accede to the Convention.
- (6) The Union and the Republic of Moldova deposited their instruments of acceptance with the depositary of the Convention on 26 March 2012 and 31 July 2015, respectively. Consequently, pursuant to Article 10(3) of the Convention, the Convention entered into force in relation to the Union and the Republic of Moldova on 1 May 2012 and 1 September 2015, respectively.
- (7) Protocol II should therefore be replaced by a new protocol making reference to the Convention,

HAS ADOPTED THIS DECISION:

¹ OJ L 217, 23.7.2014, p. 88.

Article 1

Protocol II to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation, shall be replaced by the text set out in the Annex to this Decision.

Article 2

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

It shall apply from ...

Done at ...,

*For the Customs Sub-Committee
The Chairman*

ANNEX

Protocol II

concerning the definition of the concept of ‘originating products’
and methods of administrative cooperation

ARTICLE 1

Applicable rules of origin

1. For the purpose of implementing this Agreement, Appendix I and the relevant provisions of Appendix II to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin¹ (‘the Convention’) shall apply.
2. All references to the ‘relevant agreement’ in Appendix I and in the relevant provisions of Appendix II to the Convention shall be construed so as to mean this Agreement.

ARTICLE 2

Dispute settlement

1. Where disputes arise in relation to the verification procedures of Article 32 of Appendix I to the Convention that cannot be settled between the customs authorities requesting the verification and the customs authorities responsible for carrying out that verification, they shall be submitted to the Customs Sub-Committee. The provisions on the dispute settlement mechanism in Chapter 14 (Dispute Settlement) of Title V (Trade and Trade-related Matters) of this Agreement shall not apply.

¹ OJ L 54, 26.2.2013, p. 4.

2. In all cases the settlement of disputes between the importer and the customs authorities of the importing country shall take place under the legislation of that country.

ARTICLE 3

Amendments to the Protocol

The Customs Sub-Committee may decide to amend the provisions of this Protocol.

ARTICLE 4

Withdrawal from the Convention

1. Should either the European Union or the Republic of Moldova give notice in writing to the depositary of the Convention of their intention to withdraw from the Convention in accordance with Article 9 thereof, the European Union and the Republic of Moldova shall immediately enter into negotiations on rules of origin for the purpose of implementing this Agreement.

2. Until the entry into force of such newly negotiated rules of origin, the rules of origin contained in Appendix I and, where appropriate, the relevant provisions of Appendix II to the Convention, applicable at the moment of withdrawal, shall continue to apply to this Agreement. However, as of the moment of withdrawal, the rules of origin contained in Appendix I and, where appropriate, the relevant provisions of Appendix II to the Convention shall be construed so as to allow bilateral cumulation between the European Union and the Republic of Moldova only.

ARTICLE 5

Transitional provisions – cumulation

Notwithstanding Articles 16(5) and 21(3) of Appendix I to the Convention, where cumulation involves only EFTA States, the Faroe Islands, the European Union, Turkey, the participants in the Stabilisation and Association Process and the Republic of Moldova, the proof of origin may be a movement certificate EUR.1 or an origin declaration.
