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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 October 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 443 final/2
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of Decision 1/2023 of that Joint Committee to include transitional provisions to the amendments of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin applicable as of 1 January 2025

Delegations will find attached document COM(2024) 443 final/2.

Encl.: COM(2024) 443 final/2



EUROPEAN
COMMISSION

Brussels, 8.10.2024
COM(2024) 443 final/2

2024/0255 (NLE)

CORRIGENDUM

This document corrects COM(2024)443 final of 8.10.2024

Insertion of the interinstitutional reference.

Concerns all language versions

The text shall read as follows:

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of Decision 1/2023 of that Joint Committee to include transitional provisions to the amendments of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin applicable as of 1 January 2025

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The European Union is a signatory to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin and is represented on the Joint Committee established by that Convention. This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Committee in connection with the envisaged adoption of a decision on transitory provisions concerning the application of the Convention as of 1 January 2025.

2. CONTEXT OF THE PROPOSAL

2.1. The Regional Convention on pan-Euro-Mediterranean preferential rules of origin

The Regional Convention on pan-Euro-Mediterranean¹ preferential rules of origin (the Convention) lays down provisions on the origin of goods traded under relevant agreements concluded between its Contracting Parties.

The Convention lays down a multilateral framework of rules of origin for a network of free trade agreements and applies without prejudice to the principles laid down in those agreements. The Convention provides for the application of diagonal cumulation between the Convention's 25 Contracting Parties: the European Union, Iceland, Liechtenstein, Norway, Switzerland, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine², Syria, Tunisia, Türkiye, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, Kosovo*, the Faroe Islands, the Republic of Moldova, Georgia and Ukraine (the Contracting Parties). The Convention entered into force in relation to the Union on 1 May 2012.

The Convention was amended by Decision No 1/2023 of the Joint Committee of the Regional Convention on pan-Euro-Mediterranean Preferential Rules of Origin of 7 December 2023 on the amendment of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin. This decision will enter into force on 1 January 2025³.

2.2. The Joint Committee

The Joint Committee established by Article 3(1) of the Convention adopts amendments to the Convention, administers it and ensures its proper implementation in accordance with its Article 4. In accordance with Article 12 of the Rules of Procedure of the Joint Committee, decisions of the Joint Committee are adopted by unanimous vote of the Contracting Parties for which the Convention has entered into force, present or represented at the meeting of the Joint Committee.

The Contracting Parties for which the Convention has entered into force have voting rights. Each Contracting Party has one vote.

2.3. The envisaged act of the Joint Committee

During its 16th meeting, the Joint Committee is to adopt a decision regarding transitory provisions concerning the Convention's application as of 1 January 2025 (the envisaged act).

The purpose of the envisaged act is to put in place transitory provisions for a period of one year. The transitory provisions will ensure the continuous application of diagonal cumulation and the granting of preferential treatment under the Convention.

¹ OJ L 54, 26.2.2013, p. 4.

² This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of the Member States on this issue.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

³ OJ L, 2024/390, 19.2.2024.

The envisaged act will become binding on the Contracting Parties in accordance with Article 4(3)(a), which states: ‘The Joint Committee shall adopt by decision amendments to this Convention’. Furthermore, Article 4(3), last sentence, states: ‘Decisions referred to in this paragraph shall be put into effect by the Contracting Parties in accordance with their own legislation.’

This amendment to the Decision 1/2023 of the Joint Committee should enter into force on 1 January 2025.

3. POSITION TO BE TAKEN ON THE UNION’S BEHALF

The Convention is applicable by way of a reference to it included in the protocols on rules of origin to the relevant bilateral agreements of the Contracting Parties.

Currently, the cumulation possibilities in the pan-Euro-Mediterranean (PEM) area are based on a network of agreements between the Contracting Parties providing for the application of identical rules of origin. These include the current rules of the Convention as well as the bilateral Protocols concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation preceding the Convention (the Protocols preceding the Convention).

In parallel, a set of rules that apply on an optional basis to the Convention pending the conclusion and entry into force of the amendment of the Convention (the Transitional rules) entered into force as of 1 September 2021 on a bilateral basis.

The Convention was amended by Decision No 1/2023 of the Joint Committee of the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin of 7 December 2023 which will enter into force on 1 January 2025. The legal consequence is that the current rules of the Convention and the Transitional rules will stop being applicable as of that date.

Several Contracting Parties informed the Secretariat of the Joint Committee that they will not be in a position to update their protocols on rules of origin with a reference to the revised rules of the Convention before 1 January 2025, due to the length of their internal procedures.

This outcome could lead to some Contracting Parties applying the revised rules of the Convention while others still applying the current rules of the Convention or the Protocols preceding the Convention. This would potentially disrupt the current diagonal cumulation possibilities, impacting trade flows in the PEM area.

Where the transition towards the revised rules of the Convention is not simultaneous for all Contracting Parties, it should not lead to any less favourable situation than currently possible under the existing legal framework.

Transitory provisions concerning the application of the Regional Convention on pan-euro-Mediterranean rules of origin should be put in place for a period of one year. This will ensure the continuous application of diagonal cumulation and the granting of preferential treatment under the Convention until the process of aligning all bilateral protocols to the revised rules of the Convention is finalised.

The transitory provisions should cover the following:

- The possibility to claim preferential treatment upon submission of proofs of origin issued before 1 January 2025 according to the applicable rules of origin at the time of issuance, presented within their validity period or afterwards, as allowed.
- Administrative cooperation to verify proofs of origin issued according to the different sets of rules.
- Maintaining into application for one year the current rules of the Convention in parallel with the revised rules of the Convention.

- Ensuring the traceability of proofs of origin issued according to the two sets of rules applicable in parallel by introducing a statement in the proofs of origin.
- The application of diagonal cumulation without disruptions between the Contracting Parties during the transition from the different sets of rules of origin applicable before 1 January 2025 to the revised rules of the Convention,
- The assurance that the revised rules of the Convention will apply as of 1 January 2026 between all Contracting Parties. To this end, the Contracting Parties shall notify periodically the state of play of updating their bilateral protocols.

To ensure that trade flows continue based on the current cumulation possibilities until the process of aligning all PEM bilateral protocols with the revised rules of the Convention has been finalised, the current rules of the Convention should remain applicable between the Contracting Parties for which the revised rules of the Convention are entering into force.

The current rules of the Convention would be applicable in parallel with the revised rules, giving economic operators the possibility of choosing between the two sets of rules of origin depending on the existing supply chains.

The revised rules of the Convention together with the current rules of the Convention will create two distinctive zones of cumulation.

The revised rules of the Convention should provide for permeability between the two sets of rules of origin, by allowing the cumulation provided for in Article 7 to apply provided that the products in question meet the requirements of both sets of rules.

The Contracting Parties applying the revised rules of the Convention agreed that a proof of origin issued under the current rules of the Convention should be automatically considered as valid under the revised rules of the Convention. As the revised rules of the Convention are in general less stringent than the current rules of the Convention, goods fulfilling the current rules could also qualify as originating under the revised rules of the Convention, with the exception of some agricultural products classified under Chapters 2, 4 to 15, 16 (with the exception of processed fishery products) and Chapters 17 to 24.

Permeability should be limited to only those products for which the revised rules of the Convention are more relaxed than the current rules Convention,

Only products complying with the current rules of the Convention could be considered as originating under the revised rules of the Convention.

Thus, in essence, the proposed amendment would imply replicating the existing system in the PEM area, based on the application in parallel of the Transitional rules and the current rules of the Convention.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement’.

The concept of ‘acts having legal effects’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a

binding effect under international law, but that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’⁴.

4.1.2. Application to the present case

The Joint Committee is a body set up by an agreement, namely the Regional Convention on pan-Euro-Mediterranean preferential rules of origin.

The act which the Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 4(3) of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin.

The envisaged act does not supplement or amend the institutional framework of the Convention.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union’s behalf.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is the first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be the first subparagraph of Article 207(4) in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will amend the Convention, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

⁴ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of Decision 1/2023 of that Joint Committee to include transitional provisions to the amendments of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin applicable as of 1 January 2025

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Regional Convention on pan-Euro-Mediterranean preferential rules of origin (the Convention) was concluded by the Union by Council Decision 2013/94/EU¹ and entered into force in relation to the Union on 1 May 2012.
- (2) Pursuant to Article 4(1) and Article 4(3), point (a), of the Convention, the Joint Committee established by the Convention (Joint Committee) may adopt by decisions amendments to the Convention.
- (3) The Joint Committee, during its 16th meeting, is to adopt a decision on transitory provisions concerning the application of the Convention as of 1 January 2025.
- (4) The Convention was amended by Decision No 1/2023 of the Joint Committee² which will enter into force on 1 January 2025. The Contracting Parties to the Convention agree that transitory provisions are needed to preserve trade flows based on current cumulation possibilities, until the process of aligning all bilateral protocols with the revised rules of the Convention is finalised.
- (5) The Contracting Parties to the Convention agree that the transitory provisions are applicable for a period of one year, running from when the amendment of the Convention enters into force until 31 December 2025.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the Decision of the Joint Committee will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 16th meeting of the Joint Committee shall be based on the draft act of the Joint Committee attached to this Decision.

¹ OJ L 54, 26.2.2013.

² Decision No 1/2023 of the Joint Committee of the Regional Convention on pan-Euro-Mediterranean Preferential Rules of Origin of 7 December 2023 on the amendment of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (OJ L, 2024/390, 19.2.2024, ELI: <http://data.europa.eu/eli/dec/2024/390/oj>).

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President