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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 August 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION amending Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision')

Delegations will find attached document COM(2019) 359 final.

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2019/0162 (CNS)

Proposal for a

COUNCIL DECISION

Amending Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision')

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The objective of the proposal is to amend Annex VI of Council Decision 2013/755/EU¹ on the association of the overseas countries and territories (OCTs) with the European Union. The amendment is required for the application of the registered exporters (REX) system for origin certification.

Overseas Countries and Territories (OCTs) have been associated with the European Union (EU) since the entry into force of the Treaty of Rome. These 25 islands located in the Atlantic, Antarctic, Arctic, Caribbean, Indian Ocean and Pacific regions² are not sovereign countries, but depend on four Union Member States, that is to say Denmark, France, the United Kingdom and the Netherlands.

In general, OCTs have wide-ranging autonomy, covering areas such as economic affairs, employment market, public health, home affairs and customs. Defence and foreign affairs mainly remains within the remit of the Member States. The OCTs are not part of the Union's customs territory and are outside the internal market. Union legislation therefore does not apply. As nationals of EU Member States to which their countries and territories are constitutionally linked, OCTs' inhabitants hold EU citizenship.

Based on Article 198 of the Treaty on the Functioning of the European Union (TFEU), the general objective of the association is to promote the OCTs' economic and social development and to establish close economic relations between them and the Union as a whole.

Council Decision EU/2013/755 of 25 November 2013 which entered into force on 1 January 2014 – the Overseas Association Decision (OAD) – covers relations between the OCTs (including Greenland), the Member States to which they are linked and the European Union. It outlines the special relationship that OCTs have with the Union and the specific legal framework which applies to them, based on three main pillars, that is to say, political, trade and cooperation.

For trade in goods, products originating in the OCTs benefit from duty and quota-free import into the Union, pursuant to Articles 43 and 44 OAD.

Annex VI of the OAD defines 'originating products' and methods of administrative cooperation between the EU and the OCTs. It contains provisions aiming to implement the REX system for origin certification as of 1 January 2017.

Article 58 of Annex VI provides for the establishment by the Commission of a database of registered exporters. It reads as follows: *'The Commission shall establish an electronic database of registered exporters on the basis of the information supplied by the governmental authorities of OCTs and the customs authorities of Member States.'*

Article 63(1) of Annex VI provides for a derogation on the implementation of provisions applying to the REX system: *'The Commission may adopt decisions allowing to apply*

¹ Decision (EU) No 2013/755 of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision'), OJ L 344, p. 1, 19.12.2013.

² See Annex II TFEU.

Articles 21 to 35 and Articles 54, 55 and 56 of this Annex on exports from one or several OCTs after 1 January 2017.'

The OCTs were not ready as of 1 January 2017 to apply the REX system as provided for in Annex VI of the OAD. Therefore, in accordance with Article 63(2) of Annex VI to Decision 2013/755/EU by letters addressed to the Commission, all OCTs requested a derogation of three years. On 29 November 2016, the Commission adopted Implementing Decision (EU) 2016/2093³ postponing the date to establish the REX system for the OCTs to 1 January 2020.

This means that as of 1 January 2020, the OCTs must apply the REX system as provided under the current OAD.

On 10 March 2015, by Implementing Regulation (EU) No 2015/428⁴, the Commission amended the rules of origin dealing with the REX system of the Generalized System of Preferences (GSP) established by Regulation (EEC) No 2454/93.

On 24 November 2015, the Commission adopted Implementing Regulation (EU) 2015/2447⁵, where all the general rules for implementing the Union Customs Code, among which the provisions dealing with the REX system of the GSP, have been transferred.

As a result, the provisions in Annex VI to the OAD on the 'procedures for the registered exporter system' differ from those in the GSP rules of origin.

Annex VI of the OAD should therefore be amended in order to ensure compatibility with the provisions on the REX system laid down in Regulation (EU) 2015/2447.

In the context of the negotiations for the next multiannual financial framework, the Commission tabled on 14 June 2018 a proposal for a new Overseas Association Decision (new OAD). That proposal includes updated provisions on the REX system, which are compatible with the new legislation. However, it should enter into force only as of January 2021, after completion of the special legislative procedure in accordance with Article 203 TFEU. As a result the new OAD will only address the issue of compatibility with the REX system as of that date only.

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

The current rules and procedures of the EU-OCT association are laid down in Decision 2013/755/EU of 25 November 2013⁶ on the association of the OCTs with the European Union (OAD), which also covers Greenland. Additional provisions on the relations with Greenland are laid down in Decision 2014/137/EU of 14 March 2014⁷ on relations between the European Union on the one hand, and Greenland and the Kingdom of Denmark on the other.

³ Commission Implementing Decision (EU) 2016/2093 of 29 November 2016 on a derogation as regards the date of application of the registered exporter system on exports from the overseas countries and territories, C/2016/7606, OJ L 324, 30.11.2016, p. 18.

⁴ Commission Implementing Regulation (EU) 2015/428 of 10 March 2015 amending Regulation (EEC) No 2454/93 and Regulation (EU) No 1063/2010 as regards the rules of origin relating to the scheme of generalised tariff preferences and preferential tariff measures for certain countries or territories (OJ L70, 14.03.2015, p. 12).

⁵ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L343, 29.12.2015, p. 558).

⁶ OJ L 344, 19.12.2013, p. 1.

⁷ OJ L 76, 15.3.2014, p. 1

- **Consistency with other Union policies**

This amendment modifies the technical provisions that take into account the evolution of the legislation in this area.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The OAD is based on Part Four of the TFEU. The detailed rules and procedures of the association are laid down in Council decisions based on Article 203 of the TFEU, under which such acts are adopted through a special legislative procedure.

Articles 198-204 of the TFEU apply to Greenland, subject to the specific provisions set out in Protocol No 34 on special arrangements for Greenland annexed to the TFEU.

As annexes are an integral part of the OAD Decision, any amendment to the annexes falls under the same legal basis and applicable procedure.

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

The detailed arrangements of the provisions in Part Four of the TFEU must be made at Union level, as the purpose of the association – social and economic development and close economic ties between the OCTs and the Union as a whole – cannot be achieved via action at Member State level.

Moreover, Member States are not able to take action with regard to the OCT trade regime, as the EU alone is responsible for the common commercial policy (Part Five, Title II of the TFEU). The uniform implementation of the REX system is ensured by this amendment.

- **Proportionality**

The proposal is limited to upgrading the conditions needed to define ‘originating products’ and the methods for administrative cooperation between the OCTs and the Union. It therefore provides for the upgrading of the provisions on the REX system.

The processing of personal data is in full compliance with Union and national data protection rules.

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

Not applicable.

4. BUDGETARY IMPLICATIONS

This proposal has no budgetary implications. It strictly links to the approved allocations to implement the OAD Decision in force.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

This proposal incorporates into Annex VI of the OAD the provisions to implement the REX system that is established by Regulation (EU) 2015/2447. It replaces Annex VI in its entirety.

The main changes are:

1. In Article 1, the definition of the "REX system" has been added as a new point (s). It refers to Article 80 (1) of the Union Customs Code - Implementing Act (UCC-IA). The references to the UCC-IA are contained in the related footnote;
2. In Article 8(3), the exclusion of products from Appendix XIII is deleted just like the Appendix XIII itself, since the exclusion ceased to apply on 1 October 2015;
3. In Article 9, past references to Regulation 732/2008 have been replaced by references to Regulation 978/2012. Article 9(3) provides in a footnote the references to the Union Customs Code - Delegated Act (UCC-DA);
4. In Article 10(1) (a), the former paragraph of Article 59 regarding control of origin, containing the requirement of administrative cooperation in the framework of extended cumulation, has been incorporated. This paragraph had little relevance in Article 59;
5. Section 2 of Title IV and Section 2 of Title V, which referred to a situation prior to REX, have been deleted and both 'Sections 3' became 'Sections 2';
6. The order of the previous Articles 37 and 38 has been reversed (now numbered respectively Articles 23 and 22) and the former Article 37 on "Record of registered exporters" has been renamed "Registration";
7. In Article 23(2) (new numbering), the list of information to be registered has been aligned with the one in Article 40 on "access rights", which was updated with the recent changes to Article 82 of the UCC-IA;
8. In Article 25(3) reference is made to the new Article 27 on the "supplier's declaration";
9. Article 26 now covers both the statement on origin and the information for the purpose of (full) cumulation contained in former Article 32;
10. The new Article 27 reflects the provisions relating to the supplier's declaration of former Article 32, but limited to the supplier's declaration for non-originating products with a view to apply full cumulation provided for in Articles 2(2), 7(2) and 8(2). The former Appendix VII on the supplier's declaration for originating products has been deleted;
11. In Article 27(2), the possibility of a long-term supplier's declaration has been added, with reference to the indication of the period of validity in footnote (7) in Appendix V;
12. In Article 40 the list of information to be published has been updated with recent changes to Article 82 of the UCC-IA.
13. In Article 41 and in the notes to Appendix VI, references to Directive 95/46/EC have been replaced by references to the new Regulation (EU) 2016/679 (GDPR);
14. A new Article 44 is dedicated to the verification of suppliers' declarations and includes the elements of former Article 55;

15. In Article 45(2), reference is made to Article 68 of the UCC-IA which includes the form for the registration of exporters in the Union, and the former Appendix XI A is deleted.
16. Appendices III to VII, XI A and XIII have been deleted. Appendices VIII to XI and XII have been rearranged and renumbered according to their appearance in the text and aligned with the modifications of the text where necessary.

Proposal for a

COUNCIL DECISION

Amending Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision')

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 203 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Annex VI to Council Decision 2013/755/EU¹ 'Overseas Association Decision', defines the concept of "originating products" and methods of administrative cooperation between the Union and the overseas countries and territories ('OCTs'). It sets out provisions for the deployment of the Registered Exporters (REX) System to OCTs for the purpose of origin certification.
- (2) Article 58 of Annex VI to Decision 2013/755/EU provides for the establishment of a database of registered exporters, and Article 63 of that Annex allows for a derogation from the REX system.
- (3) Pursuant to Article 63(2) of Annex VI to Decision 2013/755/EU, all OCTs have applied for a three-year derogation from the application of the REX system. Consequently, the Commission postponed the date of application of the REX system by the OCTs to 1 January 2020 by means of Commission Implementing Decision (EU) 2016/2093².
- (4) Regulation (EU) No 952/2013 of the European Parliament and of the Council³, which lays down the Union Customs code, repealed Council Regulation (EEC) No 2913/92⁴.
- (5) The provisions in the Generalized System of Preferences ('GSP') rules of origin dealing with the REX system, established by Regulation (EEC) No 2454/93,⁵ which

¹ Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (OJ L 344, 19.12.2013, p. 1).

² Commission Implementing Decision (EU) 2016/2093 of 29 November 2016 on a derogation as regards the date of application of the registered exporter system on exports from the overseas countries and territories (OJ L 324, 30.11.2016 p. 18).

³ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁴ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992 p. 1).

laid down provisions for the implementation of Council Regulation (EEC) No 2913/92, were amended by Commission Implementing Regulation (EU) No 2015/428⁶.

- (6) Regulation (EU) 2016/481⁷ subsequently repealed Regulation (EEC) No 2454/93.
- (7) Therefore, Commission Implementing Regulation (EU) 2015/2447⁸, which lays down all general rules for the implementation of Regulation (EU) No 952/2013, incorporated the amended provisions of the REX system laid down by Regulation (EU) No 2015/428, in the Generalized System of Preferences ('GSP').
- (8) Since most of the general rules for the implementation of the Union Customs Code concern the REX system, it is necessary to make the appropriate modifications in Annex VI to Decision 2013/755/EU. That Annex should therefore be amended in order to align its provisions on the REX system to the provisions of the REX system laid down by Regulation (EU) 2015/2447,

HAS ADOPTED THIS DECISION:

Article 1

Amendment to Decision 2013/755/EU

Annex VI to Decision 2013/755/EU is replaced by the text in the Annex to this Decision.

Article 2

Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2020.

Done at Brussels,

For the Council
The President

⁵ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p.1).

⁶ Commission Implementing Regulation (EU) 2015/428 of 10 March 2015 amending Regulation (EEC) No 2454/93 and Regulation (EU) No 1063/2010 as regards the rules of origin relating to the scheme of generalised tariff preferences and preferential tariff measures for certain countries or territories (OJ L70, 14.03.2015, p. 12).

⁷ Commission Implementing Regulation (EU) 2016/481 of 1 April 2016 repealing Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 87, 2.4.2016, p. 24).

⁸ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L343, 29.12.2015, p. 558).