Council of the European Union

Brussels, 31 July 2024
(OR. en)

12616/24

Interinstitutional File: 2024/0194(NLE)

UD 149
CH 15
AELE 79

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	30 July 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 334 final
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 Agreement between European Economic Community and the Swiss Confederation, establishing the general requirements on proofs of origin issued electronically according to Article 17(4) of Appendix A to Protocol 3 to that Agreement

Delegations will find attached document COM(2024) 334 final.

Encl.: COM(2024) 334 final

EUROPEAN
COMMISSION

Brussels, 30.7.2024
COM(2024) 334 final

2024/0194 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between European Economic Community and the Swiss Confederation, establishing the general requirements on proofs of origin issued electronically according to Article 17(4) of Appendix A to Protocol 3 to that Agreement

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Committee of the EU- Switzerland Agreement in connection with the envisaged adoption of a Decision establishing the general requirements on proofs of origin issued electronically.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement between the European Economic Community and the Swiss Confederation

The Agreement between the European Economic Community and the Swiss Confederation[1] (the Agreement) aims to promote through the expansion of reciprocal trade the harmonious development of economic relations between the parties. The Agreement entered into force on 1 April 1973.

2.2. The Joint Committee

The Joint Committee established according to the provisions of article 29 of the Agreement may make recommendations and take decisions. The Joint Committee draws up its decisions and recommendations by agreement between the two Parties.

2.3. The envisaged act of the Joint Committee

In its next meeting or by exchange of letters, the Joint Committee is to adopt a Decision establishing the general requirements on proofs of origin issued electronically (the envisaged act).

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

During the first technical meeting on Transitional rules of origin held in Brussels on 5 February 2020, the majority of the Contracting Parties to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (the Convention)[2] agreed to implement the revised rules of the Convention[3] (the Transitional rules of origin) in parallel with the rules of the Convention, on a transitional bilateral basis, pending the adoption of the revised rules of the Convention.

Since 1 September 2021, a network of bilateral protocols on rules of origin among Contracting Parties to the Convention entered into force rendering the Transitional rules applicable including between the EU and Switzerland.

The objective of the Transitional rules of origin is to introduce more relaxed rules in order to facilitate the qualification of the preferential originating status for goods and create the possibility to use proofs of origin issued electronically and/or submitted electronically.

The EU and Switzerland agreed to apply the provisions of Article 17(4) of Appendix A to Protocol 3 to the Agreement, as regards proofs of origin issued electronically, therefore a framework of general requirements has to be determined.

---

1 OJ L 300, 31.12.1972, p.189

2 OJ L 54, 26.2.2013, p. 4.

3 OJ L 339, 30.12.2019, p. 1.

During the Joint Committee of the Convention meeting on 7 December 2023, the Contracting Parties adopted by unanimity the Joint Committee Recommendation on the use of electronic certificates under the framework of the current Convention. The Recommendation establishes a list of conditions under which, once fulfilled, a proof of origin in the form of a movement certificate EUR.1 can be accepted by the importing party.

These conditions are identical to the ones establishing the general requirements on proofs of origin issued electronically within this proposal.

In order to ensure uniform application of provisions concerning proofs of origin in the form of movement certificates issued electronically in the European Union, the Commission envisages to establish an electronic system for the submission of applications for movement certificates issued electronically, the issuance of those certificates as well as for the storage of information and the exchange of information between the customs authorities of the Member States and with Contracting Parties to the Convention. The electronic Proof of origin Certificates system (the EU e-PoC system) should be established in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council and its implementing provisions.

The position to be taken by the EU within the Joint Committee should be established by the Council.

The proposed framework is technical in nature and relates to the currently applicable Transitional rules of origin between the Parties and does not affect the substance of the protocol on rules of origin. Therefore, it does not require an impact assessment.

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 Agreement between the European Economic Community and the Swiss Confederation.
The act which the Joint Committee is called upon to adopt constitutes an act having legal effects.
The envisaged act does not supplement or amend the institutional framework of the Agreement.
Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

[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.

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. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

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 first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

5. BUDGETARY IMPLICATION

The general requirements on proofs of origin issued electronically have no measurable impact on the EU budget since their scope mainly concerns trade facilitation and consolidation of modern practices of customs authorities. They provide for simplification in the areas which remain under competence of the authorities without impacting the substance of the rules from which goods acquire preferential originating status. The use of proofs of origin issued electronically improve the effectiveness of customs controls and reduces the risk of fraud by introducing a secure environment of issuance and verification.

6. PUBLICATION OF THE ENVISAGED ACT

As the act of the Joint Committee will supplement Protocol 3 to the Agreement between the European Economic Community and the Swiss Confederation it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

2024/0194 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between European Economic Community and the Swiss Confederation, establishing the general requirements on proofs of origin issued electronically according to Article 17(4) of Appendix A to Protocol 3 to that Agreement

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement between the European Economic Community and the Swiss Confederation (the Agreement) was concluded by the Union by Council Regulation (EEC) No 2840/72[1] and entered into force on 1 January 1973.

(2) Pursuant to Article 29 of the Agreement, the Joint Committee, established according to the provisions of article 29 of the Agreement, may adopt decisions.

(3) The Joint Committee, during its next meeting, is to adopt a decision establishing the general requirements on proofs of origin issued electronically.

(4) 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.

(5) During the first technical meeting on Transitional rules of origin held in Brussels on 5 February 2020, the majority of the Contracting Parties to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (the Convention)[2] agreed to implement the revised rules of the Convention[3] (the Transitional rules of origin) in parallel with the rules of the Convention, on a transitional bilateral basis, pending the adoption of the revised rules of the Convention.

(6) The application of the Transitional rules of origin ensures the adaptation of the trade flows and customs practices pending the entry into force on 1 January 2025 of the revised rules of the Convention, on which the Transitional rules of origin are based.

---

1 Regulation (EEC) No 2840/72 of the Council of 19 December 1972 concluding an Agreement between the European Economic Community and the Swiss Confederation and adopting provisions for its implementation and concluding an additional Agreement concerning the validity, for the Principality of Liechtenstein, of the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972

2 OJ L 54, 26.2.2013, p. 4.

3 OJ L 339, 30.12.2019, p. 1.

(7) Since 1 September 2021, a network of bilateral protocols on rules of origin among several Contracting Parties to the Convention[4] is in force rendering the Transitional rules of origin applicable pending the entry into force of the amendment of the Convention[5].

(8) The main two objectives of the Transitional rules of origin[6] are to introduce more relaxed rules to facilitate the qualification of the preferential originating status for goods; and to create the possibility to use proofs of origin issued electronically or submitted electronically.

(9) The Union and Switzerland agreed to apply the provisions of Article 17(4) of Appendix A to Protocol 3 to the Agreement, as regards proofs of origin issued electronically. Therefore, a framework of general requirements should be determined.

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

[4] EU, Iceland, Switzerland (including Liechtenstein), Norway, Faroe Islands, Israel, Jordan, Palestine (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), Albania, Bosnia and Herzegovina, Kosovo (this designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence), North Macedonia, Serbia, Montenegro, Georgia, Republic of Moldova and Ukraine.

[5] OJ C, C/2024/1637, 20.2.2024.

[6] OJ L404, 15.11.2021, p. 1