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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	9 October 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 441 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 Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the amendment of Decision 1/2023 of that Joint Committee with respect to the use of movement certificates issued electronically in the framework 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) 441 final.

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EUROPEAN
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Brussels, 9.10.2024
COM(2024) 441 final

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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 with respect to the use of movement certificates issued electronically in the framework 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

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (the Joint Committee) in connection with the envisaged adoption of a decision on the use of movement certificates issued electronically.

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 the 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 (the revised Convention). 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 the use of movement certificates issued electronically (the envisaged act).

The purpose of the envisaged act is to establish the general conditions for the acceptance of movement certificates issued electronically 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

At the beginning of 2020, the European Commission informed the Contracting Parties to the Convention that a majority of trading partners were finding it impossible to provide movement certificates for preferential origin purposes in due form (i.e. hand-written signed, wet ink stamped or in the right paper format). This was because contacts between customs administrations and economic operators had been suspended in a number of Contracting Parties due to the COVID-19 pandemic.

Exceptional measures were adopted on a reciprocal basis to ensure full implementation of the arrangements. Customs authorities were invited to accept movement certificates for preferential purposes. These were issued electronically with a digital signature, stamp or cachet of the competent authorities, or with a copy in paper or electronic form (scanned or available online).

The Contracting Parties acknowledged that the exceptional measures adopted because of the COVID-19 pandemic were beneficial to the experience of preferential trade, and were interested in continuing the good practices introduced under the exceptional measures. In this context, they recognised the importance of introducing electronic means and working together towards a common system based on electronic proofs of origin and electronic administrative cooperation within the pan-Euro-Mediterranean (PEM) region.

The Contracting Parties consider that moving to a system that issues movement certificates electronically and provides for electronic administrative cooperation under the Convention constitutes the first steps towards full digitalisation of proofs of origin across the PEM region. This should be seen especially in the light of the forthcoming entry into force of the amendment of the Convention (the revised Convention).

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 establishing an electronic system for: (i) submission of applications for movement certificates issued electronically; (ii) issuance of those certificates; and (iii) the storage of information and the exchange of information between the Member States’ customs authorities and with the 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.

On 7 December 2023, the Joint Committee adopted Recommendation 1/2023⁴ on the use of movement certificates issued electronically under the Convention.

The Recommendation sets out a list of conditions. Once fulfilled, these constitute a proof of origin in the form of a movement certificate EUR.1 that can be accepted by the importing party.

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

⁴ OJ L 2024/243, 15.1.2024.

To provide a clear legal framework and ensure consistency in the use of electronic certificates in the context of the transition from the current Convention to the revised Convention, which will enter into force as of 1 January 2025, the Convention should be amended accordingly to establish the general requirements on proofs of origin issued electronically in accordance with Article 17(4) of Appendix I.

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’⁵.

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 Agreement.

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 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.

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.

Proposal for a

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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 Regional Convention on pan-Euro-Mediterranean preferential rules of origin (Convention) was concluded by the Union by Council Decision 2013/94¹/EU 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 decision amendments to the Convention.
- (3) The Joint Committee, during its 16th meeting, is to adopt a decision on the use of movement certificates issued electronically.
- (4) The Convention was amended by Decision No 1/2023 of the Joint Committee² which will enter into force on 1 January 2025. On 7 December 2023 the Joint Committee adopted Recommendation 1/2023³ on the use of movement certificates issued electronically under the framework of the Convention. To provide a clear legal framework and ensure consistency in the use of electronic movement certificates in the context of the transition from the current rules of the Convention to the revised rules of the Convention which will enter into force as of 1 January 2025, Decision 1/2023 should be amended so that it includes in the revised Convention the general requirements on proofs of origin issued electronically in Article 17(4) of Appendix I of the revised Convention.

¹ Council Decision 2013/94/EU of 26 March 2012 on the conclusion of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (OJ L 54, 26.2.2013, p. 3, ELI: [http://data.europa.eu/eli/dec/2013/94\(1\)/oj](http://data.europa.eu/eli/dec/2013/94(1)/oj)).

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>).

³ Recommendation 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 use of movement certificates issued electronically (OJ L 2024/243, 15.1.2024, ELI: <http://data.europa.eu/eli/reco/2024/243/oj>).

- (5) 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.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President