Council of the European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	31 October 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 505 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee set up by the EEA Agreement, as regards the amendment of Protocol 4 thereto, on rules of origin

Delegations will find attached document COM(2024) 505 final.

Encl.: COM(2024) 505 final

EUROPEAN
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Brussels, 31.10.2024
COM(2024) 505 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 set up by the EEA Agreement, as regards the amendment of Protocol 4 thereto, on rules of origin

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal is to set out the position to be taken on the EU's behalf in the Joint Committee of the EEA Agreement on the amendment of Protocol 4 to that Agreement, which lays down rules of origin.

2. CONTEXT OF THE PROPOSAL

2.1. Agreement on the European Economic Area (the EEA Agreement)

The EEA Agreement[1] aims to strengthen trade and economic relations between its contracting parties in a continuous and balanced way. Under the Agreement, which entered into force on 1 January 1994, Parties should enjoy equal conditions of competition and respect the same rules, with a view to creating a homogeneous European Economic Area (EEA).

2.2. The Joint Committee

The Joint Committee, set up in line with Article 92 of the EEA Agreement, may decide to amend Protocol 4. The Joint Committee, which is composed of the representatives of the EEA Parties, draws up its decisions and recommendations by agreement between the EU and the EFTA States speaking with one voice.

2.3. The envisaged act of the Joint Committee

At its next meeting or by exchange of letters, the Joint Committee is to adopt a decision on the amendment of Protocol 4 (the envisaged act).

The purpose of the envisaged act is to amend Protocol 4 by replacing it with a new protocol to include a dynamic reference to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin, so that it always refers to the latest version of the Convention in force.

The envisaged act will be binding on the parties, in line with Article 103, paragraph 1 of the EEA Agreement.

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

The Regional Convention on pan-Euro-Mediterranean preferential rules of origin (the Convention) lays down provisions on the origin of goods traded under relevant agreements concluded between the contracting parties. The EU, Norway and Liechtenstein signed the Convention on 15 June 2011 and Iceland signed the Convention on 30 June 2011.

The EU, Norway, Iceland and Liechtenstein deposited their instruments of acceptance with the depositary of the Convention on 26 March 2012, 9 November 2011, 12 March 2012 and 28 November 2011, respectively. As a consequence, under its Article 10(3), the Convention entered into force for the EU and Iceland on 1 May 2012 and for Norway and Liechtenstein on 1 January 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.

Article 6 of the Convention stipulates that each contracting party must take appropriate measures to ensure that the Convention is effectively applied. To that effect, the Association Council established by the Agreement should adopt a decision introducing the rules of the Convention under Protocol 4.

[1] OJ No L 1, 3.1.1994.

This is done by introducing in the amended Protocol a reference to the Convention that will render it applicable.

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

The proposed amendments are technical in nature and do not affect the substance of the protocol on rules of origin currently in effect. Therefore, they do 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 because 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*'[2].

4.1.2. Application to the present case

The Joint Committee is a body set up by an agreement, namely the EEA Agreement.

The act that the Joint Committee is called on to adopt has legal effects. It will be binding under international law in accordance with Article 103, paragraph 1 of the EEA Agreement.

The envisaged act does not supplement or amend the institutional framework of the EEA 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 for which a position is taken on the EU'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.

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

4.3. Conclusion

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

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[2] 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 EEA Agreement, it would be appropriate to publish it in the Official Journal of the European Union after it has been adopted.

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(Text with EEA relevance)

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 on the European Economic Area ('EEA Agreement') was concluded by the Union by Decision 94/1/ECSC, EC of the Council and the Commission[1] and entered into force on 1 January 1994. Protocol 4 thereto, on rules of origin, defines the concept of 'originating' products and lays down method of administrative cooperation.

(2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee established by Article 92 of the EEA Agreement ('Joint Committee') may decide to amend Protocol 4 to that Agreement.

(3) The Joint Committee, during its next meeting or by exchange of letters is to adopt a Decision on an amendment of Protocol 4 to the EEA Agreement.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee, as the Decision will be binding on the Union.

(5) The Regional Convention on pan-Euro-Mediterranean preferential rules of origin ('the Convention') was concluded by the Union by Council Decision 2013/94/EU[2] and entered into force in relation to the Union on 1 May 2012. It lays down provisions on the origin of goods traded under relevant bilateral free trade agreements concluded between the Contracting Parties to the Convention, which apply without prejudice to the principles laid down in those bilateral agreements.

(6) 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

[1] Decision 94/1/ECSC, EC of the Council and the Commission of 13 December 1993 on the conclusion of the Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation (OJ L 1, 3.1.1994, p. 1, ELI: http://data.europa.eu/eli/dec/1994/1(1)/oj).

[2] 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).

7 December 2023[3]. The current applicable rules of origin in Protocol 4 should be replaced by the amendment to the Convention.

(7) The amendment to the Convention enters into force on 1 January 2025 in relation to all Contracting Parties, including between the parties to the EEA Agreement. To ensure effective and immediate application of the amendment to the Convention between the parties to the EEA Agreement, a reference to the Convention should be introduced in Protocol 4, so as to always refer to the latest version of the Convention in force. In the absence of such reference, the effective application of the amendment to the Convention would not be ensured thus creating a situation in which the common EEA origin would be determined based on different rules of origin than the rules of origin of the amendment to the Convention.

(8) Additional to the reference to the Convention, EEA specific provisions should be maintained in Protocol 4 and the Joint declarations should remain intact and included thereto.

(9) 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 joint Committee should adopt a decision introducing in Protocol 4 to the EEA Agreement a reference to the Convention so as to always refer to the latest version of the Convention in force,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Joint Committee established by the Agreement on the European Economic Area 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

[3] 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, 19.02.2024, ELI: http://data.europa.eu/eli/dec/2024/390/oj).