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2023/0351 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin as regards the adoption of a recommendation on the use of movement certificates issued electronically

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 Regional Convention on pan-Euro Mediterranean preferential rules of origin ('PEM Joint Committee') in connection with the envisaged adoption of a PEM Joint Committee Recommendation as regards 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-Mediterranean preferential rules of origin ('PEM Convention') lays down provisions on the origin of goods traded under relevant Agreements concluded between the Contracting Parties.

The system of pan-Euro-Mediterranean cumulation of origin allows 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, Palestine¹, Syria, Tunisia, Türkiye, Albania, Bosnia and Herzegovina, North Macedonia, Montenegro, Serbia, Kosovo*, the Faroe Islands, the Republic of Moldova, Georgia and Ukraine. It 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 entered into force in relation to the Union on 1 May 2012.

The European Union is a party to the Convention².

2.2. The PEM Joint Committee

The PEM Joint Committee established by Article 3(1) of the Convention adopts amendments to the Convention, administers it and insures its proper implementation. In accordance with Article 12 of the Rules of Procedure of the PEM 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 PEM 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 PEM Joint Committee

On 29 November 2023, during its 15th meeting, the PEM Joint Committee is to adopt a recommendation regarding the use of movement certificates issued electronically ('the envisaged act').

The purpose of the envisaged act is to recommend the acceptance of movement certificates issued electronically within the framework of the PEM Convention on rules of origin.

¹ 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.

² OJ L 54, 26.2.2013, p. 4.

Under the COVID-19 context, the Commission services issued the Information note n°1³ dated 31 March 2020 inviting all PEM partners to accept electronic copies of proofs of origin. The present recommendation of the PEM Joint Committee aims at maintaining the flexibilities introduced by the Information note n°1. It is expected that the Contracting Parties to the PEM Convention will agree to use electronic certificates under the framework of the PEM Convention.

The envisaged act will become applicable in the parties in accordance with Article 4(1) of the PEM Convention, which provides: ‘It shall be the responsibility of the Joint Committee to administer this Convention and ensure its proper implementation. For this purpose, it shall be regularly informed by the Contracting Parties about the experiences they have in the application of this Convention. The Joint Committee shall make recommendations [...]’.

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

Beginning of the year 2020 the Contracting Parties to the PEM Convention were informed by the European Commission services about the impossibility faced by a majority of trading partners 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), as in a number of Contracting Parties contacts between customs administrations and economic operators had been suspended due to the COVID-19 pandemic.

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

The Contracting Parties acknowledge the benefit of the experience of preferential trade under the exceptional measures adopted because of the COVID-19 pandemic. The Contracting Parties were interested to continue the good practices introduced under the exceptional measures during the COVID-19 pandemic, recognising 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 PEM region.

Since 1 September 2021, a network of bilateral protocols on rules of origin among Contracting Parties to the PEM Convention has already entered into force rendering the Transitional rules applicable. These rules enable for the use of movement certificates to be issued electronically. Pending the adoption of the revised PEM Convention among all Contracting Parties, the Transitional rules are applicable in parallel with the PEM 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

³ https://taxation-customs.ec.europa.eu/system/files/2020-03/200331-information_note_certificates_en_and_fr.pdf

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 PEM 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 PEM Joint Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will become applicable in the parties in accordance with Article 4(1) and 4(2)(b) of the PEM Convention.

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 Article 207(3) and first subparagraph of Article 207(4) TFEU.

4.3. **Conclusion**

The legal basis of the proposed decision should be Article 207(3) and first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU.

5. **PUBLICATION OF THE ENVISAGED ACT**

As the act of the PEM Joint Committee will be applicable by all the Contracting Parties including the EU and its Member States, 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.

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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(3) and the first subparagraph of Article 207(4), 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 2013/93/EU and entered into force in relation to the Union on 1 May 2012.
- (2) Pursuant to Article 4(1) and 4(2)(b) of the PEM Convention, the Joint Committee shall make recommendations to ensure its proper application.
- (3) Beginning of the year 2020 the Contracting Parties to the PEM Convention were informed by the European Commission services about the impossibility faced by a majority of trading partners 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), as in a number of Contracting Parties contacts between customs administrations and economic operators had been suspended due to the COVID-19 pandemic.
- (4) Exceptional measures were adopted on a reciprocal basis to ensure the full implementation of the arrangements. Customs authorities were invited to accept movement certificates for preferential purposes, issued electronically with a digital signature, stamp or cachet of the competent authorities, or a copy in paper or electronic form (scanned or available on-line).
- (5) The Contracting Parties acknowledge the benefit of the experience of preferential trade under the exceptional measures adopted because of the COVID-19 pandemic. The Contracting Parties were interested to continue the good practices introduced under the exceptional measures during the COVID-19 pandemic, recognising 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 PEM region.
- (6) Since 1 September 2021, a network of bilateral protocols on rules of origin among Contracting Parties to the PEM Convention has already entered into force rendering the Transitional rules applicable. These rules enable the use of movement certificates issued electronically. Pending the adoption of the revised PEM Convention among all

Contracting Parties, the Transitional rules are applicable in parallel with the PEM Convention.

- (7) To ensure consistency among the two sets of rules of origin applicable in parallel and pending the adoption of the revised PEM Convention which will replace both sets of rules of origin, it is appropriate to recommend the acceptance of movement certificates issued electronically under the framework of the PEM Convention,
- (8) The Joint Committee, during its meeting on 29 November 2023, is expected to adopt a Recommendation on the use of movement certificates issued electronically.
- (9) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee as the Recommendation will become applicable in the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union within the Joint Committee established by the Regional Convention on pan-Euro-Mediterranean preferential rules of origin shall be based on the draft Recommendation 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*