



EUROPEAN  
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Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the EU-Central America Association Council regarding modifications to Appendix 2 and Appendix 2A to Annex II to the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns a Council Decision establishing the position to be taken on the Union's behalf in the EU-Central America Association Council in connection with the envisaged adoption of a decision of the Association Council set up by the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other ('the Agreement').

This decision will update to the Harmonised System of 2022 the list of working or processing required to be carried out on non-originating materials in order for the product manufactured to obtain originating status ('product specific rules') and the addendum to this list, contained respectively in Appendix 2 and Appendix 2A to Annex II to the Agreement, concerning the definition of the concept of 'originating products' and methods of administrative cooperation ("Annex II").

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The EU-Central America Association Agreement**

The Agreement aims to increase bilateral trade between the EU and Central America and through this to strengthen the process of regional integration between the region's countries. The Agreement has been provisionally applied since 1 August 2013 with Honduras, Nicaragua and Panama, since 1 October 2013 with Costa Rica and El Salvador, and since 1 December 2013 with Guatemala.

#### **2.2. The Association Council**

The Association Council shall oversee the fulfilment of the objectives of the Agreement and supervise its implementation. It shall examine any major issue arising within the framework of the Agreement, as well as any other bilateral, multilateral or international question of common interest, and also examine proposals and recommendations from the Parties for the improvement of the relations established under the Agreement. As provided for in Article 6 of the Agreement, the Association Council shall adopt decisions and recommendations by mutual agreement between the Parties. By application of the Article 123(2)(e), the Sub-Committee on Customs, Trade Facilitation and Rules of Origin, which concluded preparatory work, recommends approval by the Association Council. In line with Article 345(2)(a)(iv) of the Agreement and Article 36 of Annex II to the Agreement, the Association Council can modify the appendixes 2 and 2A.

#### **2.3. The envisaged act of the Association Council**

The Association Council is to adopt one act:

##### **Decision amending Appendix 2 and Appendix 2A to Annex II**

On January 1 2022, amendments were made to the Nomenclature governed by the Harmonized Commodity Description and Coding System ("HS") Convention<sup>1</sup>.

The Parties to the Agreement have agreed that in order to reflect the HS 2022 adjustments, it is necessary to:

- update the 'product specific 'rules of origin contained in Appendix 2

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<sup>1</sup> World Customs Organization "International Convention on the Harmonized Commodity Description and Coding System", 1983.

- adjust Note 4 of Appendix 2A regarding tariff codes that apply to the products of Chapters 61 and 62,

The purpose of the envisaged act is to amend Appendix 2 and Appendix 2A to Annex II to update them to the 2022 version of the Harmonised Commodity Description and Coding System (HS) as regards the ‘product specific’ rules of origin, on the one hand, and the tariff codes of the products of Chapters 61 and 62 within the annual quotas, on the other hand.

Therefore, Appendix 2 and Note 4(1) (c) and (d) of Appendix 2A to Annex II to the Agreement should be amended. These amendments do not introduce substantial changes to the negotiated rules of origin.

The envisaged act will become binding on the parties in accordance with Article 345(2)(a)(iv) of the Agreement, which provides that the Association Council may modify Appendix 2 and Appendix 2A to Annex II to the Agreement

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

This proposed action covers two aspects of Annex II.

#### **Update of the product specific rules of origin for the HS 2022**

The list of working or processing required to be carried out on non-originating materials in order for the product manufactured to obtain originating status is set out in Appendix 2 to Annex II. These product-specific rules of origin were updated by Decision No 1/2020 of the EU-Central America Association Council of 14 December 2020, to reflect the Harmonised System (HS) 2012 and 2017. They are now outdated because of the HS 2022.

The EU-Central America Sub-Committee on Customs, Trade Facilitation and Rules of Origin has agreed on updating the product specific rules of origin for the HS 2022.

#### **Update of the tariff codes of the products of Chapters 61 and 62 within the annual quotas for the HS 2022**

In Appendix 2A to Annex II, only Note 4(1) (c) and (d) should be replaced to reflect the changes introduced by the HS 2022 to the product specific rules of origin concerning the products of Chapters 61 and 62. The Parties to the Agreement have agreed that in order to reflect the HS 2022 adjustments, it is necessary to adjust the tariff codes of the products of Chapters 61 and 62 within the annual quotas set out in Note 4 of Appendix 2A.

#### **A single Council Decision on the position to be taken on behalf of the European Union**

The proposed Council Decision on the position to be taken on behalf of the European Union within the EU-Central America Association Council concerns the amendments of Appendix 2 and Appendix 2A to Annex II to the Agreement.

Updating the product specific rules of origin, in line with the updates every five years in the Harmonised System, is best practice of the European Union.

### **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*'<sup>2</sup>.

#### *4.1.2. Application to the present case*

The Association Council is a body set up by an agreement, namely the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other.

The act, in this case a Decision, which the Association Council is called upon to adopt, in accordance with Article 345(2)(a)(iv) of the Association Agreement, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 6 of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other.

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 proposal relates to the implementation of a preferential trade agreement concluded as part of the common commercial policy, which is an area in which the Union has exclusive competence.

The main objective and content of the envisaged act relate to the common commercial policy of the Union.

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) TFEU, in conjunction with Article 218(9) TFEU.

## **5. PUBLICATION OF THE ENVISAGED ACT**

As the act of the Association Council will amend Appendix 2 and Appendix 2A to the Annex II to the Agreement and serve the implementation of Annex II to the Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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<sup>2</sup> 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 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 Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other ('the Agreement') was concluded by the Union by Council Decision (2012/734/EU)<sup>3</sup>. Pursuant to article 353(4) of the Agreement, Part IV has been applied provisionally since 1 August 2013 between the Union, Nicaragua, Honduras and Panama, since 1 October 2013 between the Union and El Salvador and Costa Rica, and since 1 December 2013 between the Union and Guatemala.
- (2) Pursuant to Article 345(2)(a)(iv) of the Agreement and to Article 36 of Annex II to the Agreement, which concerns the definition of the concept of 'originating products' and methods of administrative cooperation, the Association Council established by Article 4 of the Agreement is able to decide to modify the provisions of Appendices to Annex II.
- (3) The Association Council is to adopt a Decision amending Appendix 2 (List of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status) and Appendix 2A (Addendum to the list of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status) to Annex II, which is based on the Harmonised System (HS) 2017, to align the product specific rules of origin with the updated Harmonized System as applicable from 2022. Such alignment includes the changes introduced by the HS 2022 to the products specific rules of origin of Appendix 2 and to Note 4(1) (c) and (d) concerning the products of Chapters 61 and 62 of Appendix 2A. For reasons of clarity, taking in account the number of amendments that need to be made in Appendix 2, that Appendix should be replaced in its entirety. In Appendix 2A to Annex II, only Note 4 should be replaced.

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<sup>3</sup> Council Decision (2012/734/EU) of 25 June 2012 on the signing on behalf of the European Union, of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other, and the provisional application of Part IV thereof concerning trade matters (OJ L 346, 15.12.2012, p.1)

- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Association Council, as the Decision will have legal effect in the Union,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the Association Council shall be based on the draft decision attached as Annex 1 to this Decision.

*Article 2*

Once adopted, the Decision of the Association Council referred to in Article 1 shall be published in the *Official Journal of the European Union*.

*Article 3*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*  
*The President*