



EUROPEAN
COMMISSION

Brussels, 13.6.2025
COM(2025) 307 final

2025/0161 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, as regards the amendment of Protocol 4 to that Agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation

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 Association Council of the EU-Morocco Euro-Mediterranean Agreement in connection with the envisaged adoption of a Decision amending Protocol 4 of that Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part

The Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part¹ (the Agreement) aims to establish the conditions for the gradual liberalisation of trade in goods, services and capital. The Agreement entered into force on 1 March 2000.

2.2. The Association Council

The Association Council established according to the provisions of Article 78 of the Agreement, may decide to amend the provisions of Protocol 4 concerning the definition of the concept of 'originating products' and methods of administrative cooperation (Article 39 of Protocol 4). The Association Council draws up its decisions and recommendations by agreement between the two Parties.

2.3. The envisaged act of the Association Council

At its next meeting or by exchange of letters, the Association Council is to adopt a Decision regarding the amendment of the provisions of Protocol 4 concerning the definition of the concept of 'originating products' and methods of administrative cooperation ('the envisaged act').

The envisaged act will become binding on the parties in accordance with Article 80, second paragraph of the Agreement.

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

General context

The Regional Convention on pan-Euro-Mediterranean preferential rules of origin (the Convention)² lays down provisions on the origin of goods traded under relevant Agreements concluded between the Contracting Parties. The EU and Morocco signed the Convention on 15 June 2011 and on 18 April 2012 respectively.

The EU and Morocco deposited their instrument of acceptance with the depositary of the Convention on 26 March 2012 and 6 May 2019 respectively. As a consequence, in application of its Article 10(3), the Convention entered into force in relation to the EU and Morocco on 1 May 2012 and on 1 July 2019 respectively.

Article 6 of the Convention provides that each Contracting Party shall take appropriate measures to ensure that the Convention is effectively applied. To that effect, the Association

¹ OJ L 70, 18.3.2000, p. 1.

² OJ L 54, 26.2.2013, p. 3.

Council established by the Agreement between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, should adopt a Decision introducing the rules of the Convention under Protocol 4 concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation. This is done by introducing in the amended Protocol a reference to the Convention that will render it automatically applicable in bilateral relations between the two Parties.

At the same time, the process of amending the Convention resulted in a new set of modernised and more flexible rules of origin. 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 and by Decisions No 1/2024 and No 2/2024 of 12 December 2024.

The Union and the Kingdom of Morocco have agreed to apply an alternative set of rules of origin based on those of the amended Convention³, which may be used bilaterally until 31 December 2027 as alternative rules of origin to those laid down in the Convention.

Following a request from Morocco concerning exports from the Union to Morocco, the EU agrees that limited quantities of vegetable oils and tobacco products may benefit from preferential treatment under specific conditions for five years from the date of application of the decision of the Association Council.

General application of alternative rules of origin

These alternative rules of origin are intended for provisional application, on an optional and bilateral basis, by the EU and Morocco until 31 December 2027. They are intended to apply alternatively to the rules of the Convention, as the latter are laid down without prejudice to the principles laid down in the relevant agreements and other related bilateral agreements among Contracting Parties. Accordingly, these rules will not be mandatory but of optional application by economic operators that wish to use them instead of the rules of the Convention. They are not intended to modify the Convention, which will remain in application among the Contracting Parties, and will not alter the rights and obligations of the Contracting Parties under the Convention.

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

The proposed amendments insofar as they relate to the current Convention are technical in nature and do not in themselves alter the impact of the rules of origin contained in the protocol currently in effect. Therefore, they do not require a new impact assessment.

3.1. Details on the alternative rules of origin

The proposed amendments relating to the introduction of the alternative set of rules of origin provide for additional flexibilities and elements of modernisation, which have already been agreed by the Union in other bilateral agreements (EU-Canada Comprehensive Economic and Trade Agreement, EU-Vietnam Free Trade Agreement, EU-Japan Economic Partnership Agreement, EU-Southern African Development Community Economic Partnership Agreement) or preferential schemes (Generalised System of Preferences). The main changes are as follows:

- (a) Wholly obtained products – ‘vessels’ conditions:

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, 19.2.2024).

The so-called vessel conditions contained in the alternative set of rules are simpler and provide for more flexibility. Compared to the current text (Art. 5) certain conditions have been deleted (i.e. specific crew requirements); others have been amended in order to provide for more relaxation (ownership).

(b) Sufficient working or processing – Average basis

The proposed alternative set of rules (Art. 4) offers the exporter the flexibility to ask the customs authorities for an authorisation to calculate the ex-works price and the value of non-originating materials on an average basis in order to take account of fluctuations in costs and currency rates. This should provide exporters with more predictability.

(c) Tolerance

The current tolerance (Art. 6) is set at 10% in value of the ex-works price of the product.

The proposed text (Art. 5) provides for agricultural products a tolerance of 15% of the net weight of the product and for industrial products a tolerance of 15% in value of the ex-works price of the product.

The tolerance in weight introduces a more objective criterion and a 15% threshold should provide a sufficient level of flexibility. It ensures also that the international price fluctuation of the commodities does not have an impact on the origin of the agricultural products.

(d) Cumulation

The proposed text (Art. 7) maintains diagonal cumulation for all products under the condition that the same set of alternative rules of origin is accepted by the partners involved in the cumulation. In addition, it provides for a generalised full cumulation for all products except textiles and clothing listed in Chapters 50-63 of the Harmonised System (HS).

Moreover, for products of HS Chapters 50-63, it provides for bilateral full cumulation. Finally, the Union and Morocco will have the option to agree to extend the generalised full cumulation also to products of HS Chapters 50-63.

(e) Accounting segregation

Under the current rules (Art. 20 of the Convention), customs authorities may authorise accounting segregation where ‘considerable cost or material difficulties arise in keeping separate stocks’. The amended rule (Art. 12) stipulates that customs authorities may authorise accounting segregation ‘if originating and non-originating fungible materials are used’.

An exporter will no longer have to justify when requesting an authorisation for accounting segregation that keeping separate stocks has a considerable cost or gives rise to material difficulties; it will be sufficient to indicate that fungible materials are used.

In the case of sugar, being a material or a final product, originating and non-originating stocks will no longer have to be kept physically separated.

(f) Principle of territoriality

The current rules (Art. 12) allow for certain working or processing to be done outside the territory under certain conditions, with the exception of products of HS Chapters 50 to 63, such as textiles. The proposed rules (Art. 12) no longer contain the exclusion for textiles.

(g) Non-alteration

The proposed non-alteration rule (Art. 14) provides for more flexibility for the movement of originating products between Contracting Parties. It should avoid situations whereby products, for which there is no doubt about their originating status, are excluded from the

benefit of the preferential rate at importation because the formal requirements of the direct transport provision are not met.

(h) Prohibition of drawback of, or exemption from, customs duties

Under the current rules (Art. 15) the general principle of the prohibition of drawback applies to materials used in the manufacture of any product. Under the proposed rules (Art. 16) the prohibition is eliminated for all products, with the exception of materials used in the manufacture of products falling within the scope of HS Chapters 50 to 63. Nevertheless, the text also provides for some exceptions to the prohibition of duty drawback to these products.

(i) Proof of origin

The text introduces a single type of proof of origin (EUR.1 or origin declaration), instead of the double approach EUR.1 and EUR.MED, which substantially simplifies the system. This should improve compliance by economic operators by avoiding mistakes due to complex rules as well as facilitate the management by the customs authorities. Moreover, it should not affect the capacity of verification of proofs of origin, which remains the same.

The amended rules (Art. 17) also include the option to agree on the application of a system of registered exporters (REX). These exporters registered in a common database will be responsible for making out themselves statements on origin without going through the approved exporter procedure. The statement on origin will have the same legal value as the origin declaration or the movement certificate EUR.1.

Further, the amended rules foresee the option to agree on the use of proof of origin that is issued and/or submitted electronically.

In order to be able to distinguish products originating under the alternative set of rules from products originating under the Convention, origin certificates or invoice declarations based on the alternative set of rules will have to include a statement pointing to the rules applied.

(j) Validity of a proof of origin

It is proposed to prolong the period of validity of a proof of origin from 4 to 10 months. It should again provide for more flexibility for the movement of originating products between the Parties.

3.2. List rules

3.2.1. Agricultural products

(a) Value and weight

The limit of non-originating materials was expressed only in value. The new thresholds are expressed in weight in order to avoid price fluctuation and currency fluctuation (e.g. ex Chapters 19, 20, 2105, 2106) together with a deletion of certain limits for sugar (e.g. Chapter 8 or HS 2202).

The alternative set of rules raised the threshold of weight (from 20% to 40%) and the possibility for some headings to use an alternative choice between value or weight. The HS Chapters and headings concerned by the change are notably: ex 1302, 1704 (alternative rule weight or value), 18 (1806: alternative rule weight or value), 1901.

(b) Adaptation to sourcing patterns

Other agricultural products (i.e. vegetable oils, nuts and tobacco) contain more flexible rules adapted to the economic reality notably for HS Chapters 14, 15, 20 (including heading 2008), 23 and 24. The alternative set of rules strike the balance between regional and global sourcing

like for Chapters 9 and 12. Rules have also been simplified (reduction of exceptions) in Chapters 4, 5, 6, 8, 11, ex 13.

3.2.2. *Industrial products (except textiles)*

The proposed compromise contains considerable changes compared to the current rules:

- regarding a number of products the current Chapter rule contains a double cumulative condition. This is brought to a single condition (HS Chapters 74, 75, 76, 78 and 79);
- a large number of specific rules that are derogating from the Chapter rule have been deleted (HS Chapters 28, 35, 37, 38 and 83). This more horizontal approach implies a simpler situation for operators and customs;
- the inclusion in the current Chapter rule of an alternative rule thereby offering to the exporter more choice in meeting the origin criterion (Chapters 27, 40, 42, 44, 70 and 83, 84 and 85).

All these changes result in updated and modernised list rules which in general make it easier to meet the criterion for obtaining the originating status of a product. In addition, the above-mentioned possibility of using an average basis over a period of time to calculate the ex-works price and the value of non-originating will provide for further simplification for exporters.

3.2.3. *Textiles*

In relation to textiles and garments, new options have been introduced regarding outward processing and tolerances. New origin conferring processes have also been introduced for these products, especially for fabric which would become more easily available. Finally, full bilateral cumulation will apply also to these products. Such cumulation will allow processing carried out on textile materials (i.e. weaving, spinning etc.) to be taken into account in the production process in the cumulation zone.

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 having 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 Association Council is a body set up by an agreement, namely the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part.

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.

The act which the Association Council is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 80, second paragraph of the Agreement.

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. PUBLICATION OF THE ENVISAGED ACT

As the act of the Association Council will amend the Agreement, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

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on the position to be taken on behalf of the European Union within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, as regards the amendment of Protocol 4 to that Agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation

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 Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (the Agreement) was concluded by the Union by Council and Commission Decision 2000/204/EC, ECSC¹. Protocol 4 concerns the definition of the concept of ‘originating products’ and methods of administrative cooperation.
- (2) Pursuant to Article 39 of Protocol 4 to the Agreement, the Association Council established by Article 78 of the Agreement (the Association Council) may decide to amend its provisions. Pursuant to Article 80(2) of the Agreement, the decisions taken by the Association Council are to be binding on the Parties, which shall take the measures necessary to implement them.
- (3) The Association Council, during its next meeting or by exchange of letters is to adopt a Decision on a proposed amendment of Protocol 4 to the Agreement.
- (4) It is appropriate to establish the position to be taken on the Union’s behalf in the Association Council as the decision of the Association Council 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 2013/93/EU² 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 agreements concluded between the

¹ Council Decision of 28 February 2000 concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Kingdom of Morocco concerning certain amendments to Annexes 2, 3, 4 and 6 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ L 70, 18.3.2000, p. 1).

² Council Decision 2013/93/EU of 14 April 2011 on the signing, on behalf of the European Union, of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin (OJ L 54, 26.2.2013, p. 4).

Contracting Parties, which apply without prejudice to the principles laid down in those 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 7 December 2023³ and by Decisions No 1/2024⁴ and No 2/2024⁵ of 12 December 2024. Article 6 of the Convention provides that each Contracting Party is to take appropriate measures to ensure that the Convention is effectively applied.
- (7) The Union and the Kingdom of Morocco have agreed to apply an alternative set of rules of origin based on those of the amended Convention, which may be used bilaterally as alternative rules of origin to those laid down in the Convention until 31 December 2027.
- (8) Following a request from Morocco concerning exports from the Union to Morocco, limited quantities of vegetable oils and tobacco products may benefit from preferential treatment under specific conditions for five years from the date of application of the decision of the Association Council.
- (9) Protocol 4 to the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation should therefore be amended to introduce a dynamic reference to the Convention, ensuring that the latest version of the Convention in force applies systematically, and to include an alternative set of rules of origin and a quota system for certain vegetable oils and tobacco products.
- (10) The position of the Union within the Association Council should therefore be based on the draft decision.

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 of the Association Council 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, 19.2.2024)
ELI: <http://data.europa.eu/eli/dec/2024/390/oj>

⁴ Decision No 1/2024 of the Joint Committee of the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin of 12 December 2024 (OJ L, 2025/16, 9.1.2025).

⁵ Decision No 2/2024 of the Joint Committee of the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin of 12 December 2024 (OJ L, 2025/17, 9.1.2025).