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2018/0246 (NLE)

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken, on behalf of the European Union, in the Association Committee established by the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, as regards an amendment to Protocol 3 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 Committee established by the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, in connection with the envisaged adoption of Decision of the Association Committee amending the provisions of Protocol 3 to the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, the Hashemite Kingdom of Jordan, of the other part, concerning the definition of the concept of 'originating products' and the list of working or processing required to be carried out on non-originating materials in order for certain categories of products, manufactured in the territory of the Hashemite Kingdom of Jordan, and connected with generating employment for Syrian refugees and Jordanians, to obtain originating status.

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

#### **2.1. The EU-Jordan Association Agreement**

The Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part ('the EU-Jordan Association Agreement', 'the Agreement') aims to foster the establishment of bilateral free trade with Jordan – the first step towards creating a wider regional Euro-Mediterranean free trade area. The EU-Jordan Association Agreement laid the foundation for reciprocal tariff liberalisation of trade in industry and agriculture. The Association Agreement establishes a free trade area under which Jordan enjoys very extensive preferential access to the EU, with only a very limited number of products not entitled to enter the EU market on a duty and quota free basis. Jordanian exports to the EU have however not responded to the opportunity this preferential access represents and remain at a persistent low level. The value of EU imports from Jordan has risen from EUR 314 million in 2002 to EUR 357 million in 2017 – an increase of EUR 43.5 million or 14%. Within the lifespan of the agreement however the value of imports has fluctuated. In 2015 imports reached an all-time high of EUR 386 million, but have since declined. . The Agreement entered into force on 1st May 2002.

#### **2.2. The EU-Jordan Association Committee**

The EU-Jordan Association Committee is a body established by the EU-Jordan Association Agreement responsible for the implementation of the Agreement. It also has the power to take decisions for the management of the Agreement.

#### **2.3. The envisaged act of the EU-Jordan Association Committee**

The EU-Jordan Association Committee is to adopt a Decision regarding modification the terms of the Decision 1/2016 of the EU-Jordan Association Committee of 19 July 2016, amending the provisions of Protocol 3 to the Euro-Mediterranean Agreement establishing an Association 'between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, concerning the definition of the concept of originating products' and the list of working or processing required to be carried out on non-originating materials in order for certain categories of products, manufactured in the territory of the Hashemite Kingdom of Jordan, and connected with generating employment for Syrian refugees and Jordanians, to obtain originating status ('the envisaged

act'). Decision 1/2016 provided for a targeted and time-limited simplification of the rules of origin that Jordanian exporters need to satisfy in order to benefit from the generous preferential access already provided under the EU-Jordan Association Agreement.

The purpose of the envisaged act is to provide for further modification of the requirements to benefit from the scheme applying since the entry into force of the Decision 1/2016.

The envisaged act will become binding on the parties in accordance with Article 94 para. 2 of the Agreement, which provides: 'It shall draw up its decisions by agreement between the two Parties. These decisions shall be binding on the Parties which shall take the measures necessary to implement the decisions taken'.

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

The Syrian Crisis and the resulting influx and protracted presence of refugees has had a substantial negative impact on Jordan economy representing an important source of fragility and disruption of Jordan's traditional trade patterns. This has affected job creation, inward investment and tourism.

To boost economic activity in Jordan, the EU-Jordan Association Committee agreed on 19 July 2016 a targeted and time-limited simplification of the rules of origin that Jordanian exporters need to satisfy in order to benefit from the generous preferential access already provided under the EU-Jordan Association Agreement<sup>1</sup>.

The simplified rules of origin regime will apply for 10 years and covers products in 52 chapters of the Harmonised System. These represent a wide range of manufactured products and include both items that Jordan currently exports in small volumes to the EU and others where currently there is no trade. The alternative rules of origin made available under this scheme are those applied by the EU to imports from Least-Developed Countries (LDCs) under the EU's Everything But Arms (EBA) initiative.

For exporters to be able to use these alternative rules of origin, production must take place in one of 18 selected industrial areas and development zones in Jordan and use a minimum percentage of Syrian refugee labour in the production facilities (15% at the outset, increasing to 25% from year three, i.e. after 19 July 2018). Jordan proposed the 18 zones based on criteria such as their ability to attract investments, the presence of well-established industries producing goods included in the initiative, poverty levels and the high density of unemployed Syrians and Jordanians, as well as logistic factors such as roads, airports and ports.

On Rules of Origin scheme there is interest on both sides to further incentivise economic operators to use the scheme. Until today eleven companies registered in the scheme and four of them exported their products into the EU for a total value of €2.3million.

In its first report on the Implementation of the Rules of Origin scheme Jordan made a number of requests for further modification of criteria required by the scheme.

After an analysis of the report and requests put forward by Jordan, the Commission considers that certain requests should be addressed in the short term, by mid-2018. They need however an amendment to the original Decision 1/2016.

The proposed amendments consist of two elements:

1. Increase of percentage of Syrian labour (from 15% to 25%) would take place in the beginning of year four and would start running individually for each registered production facility from the date of its first exportation (from the moment of the

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<sup>1</sup> Official Journal of the European Union, L 233/6, 30.8.2016

registration of the first export declaration) in the scheme instead of the date of entry into force of the Decision 1/2016;

2. Dropping the zone criteria in order to allow reaching the overall objective of the scheme of enabling recruiting as many refugees as possible.

#### **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 EU-Jordan Association Committee is a body set up by an agreement, namely the EU-Jordan Association Agreement.

The act which the EU-Jordan Association 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 94 paragraph 2 of the EU-Jordan Association 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. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

###### *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) of the Treaty on the Functioning of the European Union (TFEU).

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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.

### **4.3. Conclusion**

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

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

As the act of the EU-Jordan Association Committee will amend Protocol 3 of the EU-Jordan Association Agreement concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation, as amended by decision n°1/2006 of the EU-Jordan Association Council of 15 June 2006, it is appropriate to publish it in the Official Journal of the European Union after its adoption.

Proposal for a

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**on the position to be taken, on behalf of the European Union, in the Association Committee established by the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, as regards an amendment to Protocol 3 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 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 Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part<sup>3</sup> ("the Agreement") entered into force on 1 May 2002. Pursuant to Article 89 of the Agreement, an Association Council is established to examine any major issues arising within the framework of this Agreement and any other bilateral and international issues of mutual interest.
- (2) Pursuant to Article 92 of the Agreement, an Association Committee is established which shall be responsible for the implementation of the Agreement and to which the Association Council may delegate, in full or in part, any of its powers.
- (3) Pursuant to Article 94(1) of the Agreement, the Association Committee shall have the power to take decisions for the management of the Agreement as well as in the areas where the Association Council has delegated its powers to it.
- (4) Pursuant to Article 2 of the Council and Commission decision of 26 March 2002 on the Conclusion of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part<sup>4</sup>, the position to be taken by the EU within the Association Committee shall be laid down by the Council on a proposal by the Commission.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the EU-Jordan Association Committee, as the Decision of the Association Committee amending the provisions of Protocol 3 to the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, the Hashemite Kingdom of Jordan, of the other part, concerning the definition of the concept of 'originating products' and the list

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<sup>3</sup> OJ L [...], [...], p. [...].

<sup>4</sup> OJ L [...], [...], p. [...].

of working or processing required to be carried out on non-originating materials in order for certain categories of products, manufactured in the territory of the Hashemite Kingdom of Jordan, and connected with generating employment for Syrian refugees and Jordanians, to obtain originating status will be binding on the Union.

- (6) Pursuant to Article 39 of Protocol 3 of the Agreement, as amended by Decision n° 1/2006 of the EU Jordan Association Council of 15 June 2006<sup>5</sup>, the Association Committee may decide to amend the provisions of this Protocol.
- (7) Pursuant to the Protocol 3 of the Agreement, as amended by Decision 1/2016 of the EU-Jordan Association Committee of 19 July 2016, amending the provisions of Protocol 3 to the Euro-Mediterranean Agreement establishing an Association ‘between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, concerning the definition of the concept of originating products’ and the list of working or processing required to be carried out on non-originating materials in order for certain categories of products, manufactured in the territory of the Hashemite Kingdom of Jordan, and connected with generating employment for Syrian refugees and Jordanians, to obtain originating status, the Hashemite Kingdom of Jordan submitted proposals for further relaxation of the scheme introduced by the Decision 1/2016.
- (8) As a result of the examination of Jordan's request, the Council, on behalf of the EU, considers it justified to agree on additional flexibilities of the rules of origin scheme, notably as concerns abandoning the zone requirement and granting an additional year before the required increase of the Syrian workforce from 15% to 25%. Furthermore, the Council considers it justified to agree on a more convenient moment to start the four-year period that marks the increase of the Syrian workforce from 15% to 25%.
- (9) Annex 1 of the draft Joint Decision of the Association Committee attached to this Decision should apply until 31 December 2026 and a mid-term review in 2020 should be undertaken allowing the parties to make adjustments through a decision of the Association Committee.
- (10) The achievement by the Hashemite Kingdom of Jordan of its objective of creating around 200,000 job opportunities for Syrian refugees should be considered as a significant milestone also in respect of the implementation of the draft Joint Decision of the Association Committee attached to this Decision. Accordingly, when this objective is achieved, the EU and Jordan should undertake a specific review, also taking into account the modernisation of the Pan-Euromed Convention on Rules of Origin, with the goal of extending the coverage of the Joint Decision to include all production in Jordan of products covered by the Joint Decision without the need to satisfy the specific conditions set out in Article 1(1) of Annex I of the draft Joint Decision.
- (11) The application of Annex 1 of the draft Joint Decision of the Association Committee attached to this Decision should be accompanied by appropriate monitoring and reporting obligations and may be suspended if the conditions for its application are no longer fulfilled or if the conditions for safeguard measures are met,

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<sup>5</sup> OJ L [...], [...], p. [...].

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the in the EU-Jordan Association Committee established by virtue of Article 92 of the Agreement, as regards an amendment to Protocol 3 to that Agreement concerning the definition of the concept of 'originating products' and methods of administrative cooperation, shall be based on the draft Decision of that Association Committee, attached to this Decision.

*Article 2*

After its adoption, the Decision of the Association Committee 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*