

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 21.12.2010  
COM(2010) 778 final

2010/0378 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken by the European Union within the Stabilisation and Association Council created by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, on the amendments to Protocol 4 to that Agreement concerning the definition of the concept of "originating products" and methods of administrative cooperation**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

Articles 3 and 4 of Protocol 4 to the EC-Croatia Stabilisation and Association Agreement (SAA) currently provide for bilateral cumulation of origin between the Union and Croatia. No products are excluded from this cumulation.

Articles 3 and 4 of the Protocols on rules of origin to the Stabilisation and Association agreements between the EU and other Western Balkan countries (namely Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia) provide for diagonal cumulation of origin among the EU, those Western Balkan countries and Turkey<sup>1</sup>. Annex V to the abovementioned protocols excludes certain high-content sugar products from cumulation.

At the time of negotiations Croatia did not accept Annex V, thus precluding its participation into the diagonal cumulation zone.

In August 2010 Croatia requested the European Commission to be included into the zone of diagonal cumulation of origin among the EU, the Western Balkan countries and Turkey.

To this end, Protocol 4 to the EC-Croatia SAA needs to be amended.

According to Article 39 of Protocol 4, the provisions of that Protocol shall be amended by a decision of the Stabilisation and Association Council.

The decision provides for the necessary technical amendments to Protocol 4. It includes, on the one hand, amendments to articles 3, 4, 7, 13, 14, 15, 17, 22, 28 and 31 of Protocol 4 and, on the other hand, introduces Annex V to Protocol 4.

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

In August 2010 Croatia requested the European Commission to be included into the zone of diagonal cumulation of origin among the EU, the Western Balkan countries and Turkey.

EU Member States were informed about the inclusion of Croatia into this zone of diagonal cumulation of origin in the framework of the Customs Code Committee Origin section and they reacted favourably.

There was no need for external expertise.

There is no need for an impact assessment insofar as the proposed technical amendments align Protocol 4 with the other existing protocols on rules of origin

---

<sup>1</sup> As regards materials originating in Turkey, diagonal cumulation of origin is limited to the materials covered by the EC-Turkey Customs Union.

annexed to the Stabilisation and Association Agreements between the European Communities and the Western Balkan countries.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

In view of the nature of the changes to be made to several articles of Protocol 4 and for legal certainty the entire paragraphs of those articles shall be replaced. Annex V shall be added to Protocol 4. For the sake of coherence of Protocol 4 and in line with the wording of the corresponding provisions of protocols on rules of origin annexed to the Stabilisation and Association Agreements between the European Communities and other Western Balkan countries, the proposed amendments refer to the European Community.

The legal basis for the amendment of Protocol 4 is laid down in Article 207(4) first subparagraph, in conjunction with Article 218(9) of the Treaty on the Functioning of the European Union.

The amended provisions of Protocol 4 will enter into force on of the first day of the first month following the date of adoption of the decision by the EU-Croatia Stabilisation and Association Council.

The proposal falls under the exclusive competence of the Union. The subsidiarity principle therefore does not apply.

Proposed instrument: Council decision.

### **4. BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

### **5. OPTIONAL ELEMENTS**

A review, revision or sunset clause is not foreseen.

Proposal for a

## COUNCIL DECISION

**on the position to be taken by the European Union within the Stabilisation and Association Council created by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, on the amendments to 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) Protocol 4 to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part<sup>2</sup>, hereinafter "the SAA", as last amended by Annex X to the Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union<sup>3</sup> concerns the definition of the concept of "originating products" and methods of administrative cooperation.
- (2) Articles 3 and 4 of Protocol 4 to the SAA provide for bilateral cumulation of origin in the Community or in Croatia.
- (3) Croatia requested to cumulate origin when incorporating materials originating in the Union, in Croatia or in any country or territory participating in the European Union's Stabilisation and Association process<sup>4</sup> or incorporating the materials originating in Turkey to which the Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995<sup>5</sup> applies.

---

<sup>2</sup> OJ L 26, 28.1.2005, p. 3.

<sup>3</sup> OJ L 286, 29.10.2008, p. 46.

<sup>4</sup> As defined in the Conclusions of the General Affairs Council in April 1997 and Commission Communication of May 1999 on the establishment of the Stabilisation and Association process with Western Balkan countries.

<sup>5</sup> Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 applies to products other than agricultural products as defined in the Agreement establishing an Association between the European Economic Community and Turkey and other than coal and steel products as defined in the

- (4) In order to allow the Union and Croatia to benefit from the extended cumulation zone, the provisions of Protocol 4 should be amended accordingly.
- (5) In accordance with Article 39 of Protocol 4, the Stabilisation and Association Council established by the SAA should decide to amend the provisions of that Protocol.
- (6) The European Union should therefore take position in the Stabilisation and Association Council as set out in the attached draft Decision,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken by the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, on the amendments to Protocol 4 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 the Stabilisation and Association Council annexed to this Decision.

*Article 2*

The decision of the Stabilisation and Association Council shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council  
The President*

## ANNEX

Proposal for a

**DECISION No [...]**

**OF THE EU-CROATIA STABILISATION AND ASSOCIATION COUNCIL**

**of [...]**

**amending Protocol 4 to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part**

THE STABILISATION AND ASSOCIATION COUNCIL,

Having regard to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, and in particular Article 39 of Protocol 4 thereto,

Whereas:

- (1) Articles 3 and 4 of Protocol 4 provide for bilateral cumulation of origin in the Community or in Croatia.
- (2) Croatia requested to cumulate origin when incorporating materials originating in the Union, in Croatia or in any country or territory participating in the European Union's Stabilisation and Association process<sup>6</sup> or incorporating the materials originating in Turkey to which the Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995<sup>7</sup> applies.
- (3) In order to allow the Union and Croatia to benefit from the extended cumulation zone, the provisions of Protocol 4 should be amended accordingly,

HAS DECIDED AS FOLLOWS:

### Article 1

Protocol 4 is amended as follows:

- (1) The following is added to the Table of Contents:

"Annex V: Products excluded from the cumulation provided for in Article 3 and Article 4"

- (2) Article 3 is replaced by the following:

---

<sup>6</sup> As defined in the Conclusions of the General Affairs Council in April 1997 and Commission Communication of May 1999 on the establishment of the Stabilisation and Association process with Western Balkan countries.

<sup>7</sup> Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 applies to products other than agricultural products as defined in the Agreement establishing an Association between the European Economic Community and Turkey and other than coal and steel products as defined in the Agreement between the European Coal and Steel Community and the Republic of Turkey on trade in products covered by the treaty establishing the European Coal and Steel Community.

"Article 3  
**Cumulation in the Community**

1. Without prejudice to the provisions of Article 2(1), products shall be considered as originating in the Community if such products are obtained there, incorporating materials originating in Croatia, in the Community or in any country or territory participating in the European Union's Stabilisation and Association process<sup>8</sup>, or incorporating the materials originating in Turkey to which the Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995<sup>9</sup> applies, provided that the working or processing carried out in the Community goes beyond the operations referred to in Article 7. It shall not be necessary that such materials have undergone sufficient working or processing.

2. Where the working or processing carried out in the Community does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in the Community only where the value added there is greater than the value of the materials used originating in any one of the other countries or territories referred to in paragraph 1. If this is not so, the product obtained shall be considered as originating in the country which accounts for the highest value of originating materials used in the manufacture in the Community.

3. Products, originating in one of the countries or territories referred to in paragraph 1, which do not undergo any working or processing in the Community, retain their origin if exported into one of these countries or territories.

4. The cumulation provided for in this Article may be applied only provided that:

- (a) a preferential trade agreement in accordance with Article XXIV of the General Agreement on Tariffs and Trade (GATT) is applicable between the countries or territories involved in the acquisition of the originating status and the country of destination;
- (b) materials and products have acquired originating status by the application of rules of origin identical to those given in this Protocol;

and

- (c) notices indicating the fulfilment of the necessary requirements to apply cumulation have been published in the Official Journal of the European Union (C series) and in Croatia according to its own procedures.

The cumulation provided for in this Article shall apply from the date indicated in the notice published in the Official Journal of the European Union (C series).

The Community shall provide Croatia, through the European Commission, with details of the Agreements and their corresponding rules of origin, which are applied with the other countries or territories referred to in paragraph 1.

---

<sup>8</sup> As defined in the Conclusions of the General Affairs Council in April 1997 and Commission Communication of May 1999 on the establishment of the Stabilisation and Association process with Western Balkan countries.

<sup>9</sup> Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 applies to products other than agricultural products as defined in the Agreement establishing an Association between the European Economic Community and Turkey and other than coal and steel products as defined in the Agreement between the European Coal and Steel Community and the Republic of Turkey on trade in products covered by the treaty establishing the European Coal and Steel Community.

The products in Annex V shall be excluded from the cumulation provided for in this Article."

- (3) Article 4 is replaced by the following:

"Article 4  
**Cumulation in Croatia**

1. Without prejudice to the provisions of Article 2(2), products shall be considered as originating in Croatia if such products are obtained there, incorporating materials originating in the Community, Croatia or in any country or territory participating in the European Union's Stabilisation and Association Process<sup>10</sup>, or incorporating the materials originating in Turkey to which the Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995<sup>11</sup> applies, provided that the working or processing carried out in Croatia goes beyond the operations referred to in Article 7. It shall not be necessary that such materials have undergone sufficient working or processing.

2. Where the working or processing carried out in Croatia does not go beyond the operations referred to in Article 7, the product obtained shall be considered as originating in Croatia only where the value added there is greater than the value of the materials used originating in any one of the other countries or territories referred to in paragraph 1. If this is not so, the product obtained shall be considered as originating in the country which accounts for the highest value of originating materials used in the manufacture in Croatia.

3. Products, originating in one of the countries or territories referred to in paragraph 1, which do not undergo any working or processing in Croatia, retain their origin if exported into one of these countries or territories.

4. The cumulation provided for in this Article may be applied only provided that:

- (a) a preferential trade agreement in accordance with Article XXIV of the General Agreement on Tariffs and Trade (GATT) is applicable between the countries or territories involved in the acquisition of the originating status and the country of destination;
- (b) materials and products have acquired originating status by the application of rules of origin identical to those given in this Protocol;

and

- (c) notices indicating the fulfilment of the necessary requirements to apply cumulation have been published in the Official Journal of the European Union (C series) and in Croatia according to its own procedures.

The cumulation provided for in this Article shall apply from the date indicated in the notice published in the Official Journal of the European Union (C series).

---

<sup>10</sup> As defined in the Conclusions of the General Affairs Council in April 1997 and Commission Communication of May 1999 on the establishment of the Stabilisation and Association process with Western Balkan countries.

<sup>11</sup> Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 applies to products other than agricultural products as defined in the Agreement establishing an Association between the European Economic Community and Turkey and other than coal and steel products as defined in the Agreement between the European Coal and Steel Community and the Republic of Turkey on trade in products covered by the treaty establishing the European Coal and Steel Community.

Croatia shall provide the Community, through the European Commission, with details of the Agreements, including their dates of entry into force, and their corresponding rules of origin, which are applied with the other countries or territories referred to in paragraph 1.

The products in Annex V shall be excluded from the cumulation provided for in this Article."

- (4) Article 7(1)(m) is replaced by the following:

"(m) simple mixing of products, whether or not of different kinds; mixing of sugar with any other material;"

- (5) Article 13(1) is replaced by the following:

"1. The preferential treatment provided for under the Agreement applies only to products, satisfying the requirements of this Protocol, which are transported directly between the Community and Croatia or through the territories of the other countries or territories referred to in Articles 3 and 4. However, products constituting one single consignment may be transported through other territories with, should the occasion arise, trans-shipment or temporary warehousing in such territories, provided that they remain under the surveillance of the customs authorities in the country of transit or warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition.

Originating products may be transported by pipeline across territory other than that of the Community or Croatia."

- (6) Article 14(1) is replaced by the following:

"1. Originating products, sent for exhibition in a country or territory other than those referred to in Articles 3 and 4 and sold after the exhibition for importation in the Community or in Croatia shall benefit on importation from the provisions of the Agreement provided it is shown to the satisfaction of the customs authorities that:

- (a) an exporter has consigned these products from the Community or from Croatia to the country in which the exhibition is held and has exhibited them there;
- (b) the products have been sold or otherwise disposed of by that exporter to a person in the Community or in Croatia;
- (c) the products have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition;

and

- (d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition."

- (7) Article 15(1) is replaced by the following:

"1. Non-originating materials used in the manufacture of products originating in the Community, in Croatia or in one of the other countries or territories referred to in Articles 3 and 4 for which a proof of origin is issued or made out in accordance with the provisions of Title V shall not be subject in the Community or in Croatia to drawback of, or exemption from, customs duties of whatever kind."

(8) Article 17(4) is replaced by the following:

"4. A movement certificate EUR.1 shall be issued by the customs authorities of a Member State of the Community or of Croatia if the products concerned can be considered as products originating in the Community, in Croatia or in one of the other countries or territories referred to in Articles 3 and 4 and fulfil the other requirements of this Protocol."

(9) Article 22(2) is replaced by the following:

"2. An invoice declaration may be made out if the products concerned can be considered as products originating in the Community, in Croatia or in one of the other countries or territories referred to in Articles 3 and 4 and fulfil the other requirements of this Protocol."

(10) Article 28 is replaced by the following:

"Article 28  
**Supporting documents**

The documents referred to in Articles 17(3) and 22(3) used for the purpose of proving that products covered by a movement certificate EUR.1 or an invoice declaration can be considered as products originating in the Community, in Croatia or in one of the other countries or territories referred to in Articles 3 and 4 and fulfil the other requirements of this Protocol may consist inter alia of the following:

- (a) direct evidence of the processes carried out by the exporter or supplier to obtain the goods concerned, contained for example in his accounts or internal book-keeping;
- (b) documents proving the originating status of materials used, issued or made out in the Community or in Croatia where these documents are used in accordance with domestic law;
- (c) documents proving the working or processing of materials in the Community or in Croatia, issued or made out in the Community or in Croatia, where these documents are used in accordance with domestic law;
- (d) movement certificates EUR.1 or invoice declarations proving the originating status of materials used, issued or made out in the Community or in Croatia in accordance with this Protocol, or in one of the other countries or territories referred to in Articles 3 and 4, in accordance with rules of origin which are identical to the rules in this Protocol;
- (e) appropriate evidence concerning working or processing undergone outside the Community or Croatia by application of Article 12, proving that the requirements of that Article have been satisfied."

(11) Article 31(1) is replaced by the following:

"1. For the application of the provisions of Article 22(1)(b) and Article 27(3) in cases where products are invoiced in a currency other than euro, amounts in the national currencies of the Member States of the Community, of Croatia and of the other countries or territories referred to in Articles 3 and 4 equivalent to the amounts expressed in euro shall be fixed annually by each of the countries concerned."

(12) The Annex to this Decision is annexed to Protocol 4.

Article 2

This Decision shall enter into force on of the first day of the first month following the date of its adoption.

Done at

*For the Stabilisation and Association Council  
The President*

**Annex V**

**Products excluded from the cumulation provided for in Article 3 and Article 4**

<i>CN-Code</i>	<i>Description</i>
1704 90 99	Other sugar confectionery, not containing cocoa.
1806 10 30 1806 10 90	Chocolate and other food preparations containing cocoa - cacao powder, containing added sugar or sweetening matter: - - containing 65 % or more but less than 80 % by weight of sucrose (including invert sugar expressed as sucrose) or isoglucose expressed as sucrose - - containing 80 % or more by weight of sucrose (including invert sugar expressed as sucrose) or isoglucose expressed as sucrose
1806 20 95	- Other food preparations containing cocoa in block, slabs or bars weighting more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packaging of a content exceeding 2 kg -- Other --- Other
1901 90 99	Malt extract, food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included, food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included - Other -- Other (than malt extract) --- Other
2101 12 98	Other preparations with a basis of coffee.
2101 20 98	Other preparations with a basis of tea or mate.
2106 90 59	Food preparations not elsewhere specified or included - Other -- Other
2106 90 98	Food preparations not elsewhere specified or included: - Other (than protein concentrates and textured protein substances) -- Other --- Other
3302 10 29	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: -Of a kind used in the food or drink industries --Of the type used in the drink industries: ---Preparations containing all flavouring agents characterising a beverage: ----Of an actual alcoholic strength by volume exceeding 0,5 % ----Other: -----Containing no milkfats, sucrose, isoglucose, glucose, or starch or containing, by weight, less than 1,5 % milkfat, 5 % sucrose or isoglucose, 5 % glucose or starch -----Other