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European Union

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**Interinstitutional File:  
2022/0243(NLE)**

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**POLCOM 95  
AGRI 374  
COASI 125  
PI 100**

**PROPOSAL**

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 18 August 2022

To: General Secretariat of the Council

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No. Cion doc.: COM(2022) 402 final

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Subject: Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Geographical Indication Joint Committee established by the Agreement on the protection of Geographical Indications between the European Union and the People's Republic of China

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Delegations will find attached document COM(2022) 402 final.

Encl.: COM(2022) 402 final



Brussels, 18.8.2022  
COM(2022) 402 final

2022/0243 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Geographical Indication Joint Committee established by the Agreement on the protection of Geographical Indications between the European Union and the People's Republic of China**

## 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 on Geographical Indications established by the Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications in connection with the envisaged adoption of the rules of procedure of the Joint Committee on Geographical Indications.

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

#### **2.1. The Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications**

The Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications ('the Agreement') aims to obtain the highest possible level of protection for the geographical indications coming within the scope of the Agreement and to provide instruments to counter deceptive practices and the wrongful uses of geographical indications. The Agreement entered into force on 1 March 2021.

#### **2.2. The Joint Committee on Geographical Indications**

The Joint Committee on Geographical Indications is established by Article 10 of the Agreement. It is to monitor the implementation of the protection of geographical indications originating in the EU and the People's Republic of China and intensify the cooperation and dialogue on geographical indications.

The Joint Committee on Geographical Indications is composed of representatives of the European Union and the People's Republic of China. It shall meet at least once a year or at any time agreed by the Parties, alternately in the European Union and in the People's Republic of China, at a time and place and in a manner (which may include by videoconference) mutually determined by the Parties, but no later than 90 days after the request. The Joint Committee on Geographical Indications shall adopt its decisions by consensus and determine its own rules of procedure.

The Joint Committee on Geographical Indications is responsible for amending Annex I as regards the references to the law applicable in the Parties, amending the other Annexes to the Agreement, exchanging information on legislative and policy developments as regards geographical indications and on any other matter of mutual interest in the area of geographical indications, and exchanging information on geographical indications for the purpose of considering their protection in accordance with this Agreement.

#### **2.3. The envisaged act of the Joint Committee on Geographical Indications**

The Joint Committee on Geographical Indications is to adopt a decision on its own rules of procedure.

The purpose of the envisaged act is to adopt, in accordance with Article 10.2 of the Agreement, the rules of procedure governing the functioning of the Joint Committee on Geographical Indications.

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

The position to be adopted on behalf of the Union should enable the adoption of the rules of procedure of the Joint Committee on Geographical Indications.

### **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>1</sup>.

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

The Joint Committee on Geographical Indications is a body set up by an agreement, namely the Agreement between the European Union and the government of the People’s Republic of China on cooperation on, and protection of, geographical indications.

The act set out in the Annex to this Decision constitutes an act having legal effects because Article 10 of the Agreement empowers the Joint Committee on Geographical Indications to adopt decisions that are binding on the parties.

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 Article 207 TFEU.

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<sup>1</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 Article 207 TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Geographical Indication Joint Committee established by the Agreement on the protection of Geographical Indications between the European Union and the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications ('the Agreement') was concluded by the Union by Council Decision (EU) 2020/1832<sup>1</sup> and entered into force on 1 March 2021.
- (2) Pursuant to Article 10 of the Agreement, the Joint Committee on Geographical Indications is to determine its own rules of procedures.
- (3) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee on Geographical Indications, as regards its rules of procedure, as those rules will be binding on the Union.
- (4) To ensure the effective implementation of the Agreement, the rules of procedure of the Joint Committee on Geographical Indications should be adopted.
- (5) The Union's position within the Joint Committee on Geographical Indications should be based on the draft rules of procedure attached to this Decision,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf within the Joint Committee on Geographical Indications as regards the adoption of its rules of procedure shall be based on the draft act of the Joint Committee on Geographical Indications attached to this Decision.

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<sup>1</sup> OJ L 408I, 4.12.2020 p. 1.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*