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PROPOSAL

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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 14 December 2018 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2018) 837 final |
| Subject: | Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Working Group on Wine set up by the Economic Partnership Agreement between the European Union and Japan as regards the forms to be used for certificates for the import of wine products originating in Japan into the European Union and the modalities concerning the self-certification |

Delegations will find attached document COM(2018) 837 final.

Encl.: COM(2018) 837 final



EUROPEAN
COMMISSION

Brussels, 14.12.2018
COM(2018) 837 final

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Working Group on Wine set up by the Economic Partnership Agreement between the European Union and Japan as regards the forms to be used for certificates for the import of wine products originating in Japan into the European Union and the modalities concerning the self-certification

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 Working Group on Wine in connection with the envisaged adoption of the decision on the forms to be used as certificate for the import of wine products originating in Japan into the European Union and the modalities concerning the implementation of self-certification. This proposal is made with a view to ensuring that the Working Group on Wine can adopt the aforesaid decision at the entry into force of the Economic Partnership Agreement between the European Union and Japan (1 February 2019).

2. CONTEXT OF THE PROPOSAL

2.1. The Economic Partnership Agreement

The Economic Partnership Agreement between the European Union and Japan ('the Agreement') aims to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties. The Agreement shall enter into force on [date of entry into force].

2.2. The Working Group on Wine

Pursuant to Article 22.4 of the Agreement, a Working Group on Wine is established. The Working Group on Wine is responsible for the effective implementation and operation of Section C and Annex 2-E.

2.3. The envisaged act of the Working Group on Wine

Pursuant to Article 2.35(3) of the Agreement, the Working Group on Wine, shall hold its first meeting on the date of entry into force of the Agreement. On [date of entry into force], during its first meeting, the Working Group is to adopt a decision on the forms to be used as certificate for the import of wine products originating in Japan into the European Union and the modalities concerning the implementation of self-certification ('the envisaged act').

The purpose of the envisaged act is to effectively implement Section C and Annex 2-E of the Agreement, and in particular Article 2.28(1) of the Agreement.

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

The Economic Partnership Agreement between the European Union and Japan, subject to the Commission proposal for a Council Decision COM(2018)192 final, contains a comprehensive section on the mutual facilitation of wine exports, so-called "wine package". It includes in particular the complete tariff elimination, at entry into force of the Agreement, of the European wines and sparkling wines exported to Japan, the protection in the Japanese territory of around 130 names of EU wine geographical indications, the approval of several EU oenological practices including priority additives for use in wine and the adoption of simplified certification of Japan wines imported into the EU by a decision of the Working group on Wine.

The attached envisaged act of the Working Group allows for the implementation of this comprehensive section by establishing the forms to be used as certificate for the import of wine products originating in Japan into the EU and the modalities concerning the implementation of self-certification.

The forms and the modalities concerning self-certification are consistent with the European Union policies on facilitating trade and cooperating on prevention of fraud with third countries that concluded agreements with the Union.

Therefore their adoption should be endorsed.

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’*¹.

4.1.2. Application to the present case

The Working Group on Wine is a body set up by the Agreement.

The act which the Working Group on Wine is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 1.3 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. 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 liberalisation and facilitation of trade in wine products.

Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207 TFEU, in conjunction with Article 218(9) TFEU.

¹ 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.

5. PUBLICATION OF THE ENVISAGED ACT

As the requirements laid down in the act of the Working Group on Wine will have to be put into operation by customs authorities and importers to the EU, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Working Group on Wine set up by the Economic Partnership Agreement between the European Union and Japan as regards the forms to be used for certificates for the import of wine products originating in Japan into the European Union and the modalities concerning the self-certification

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Economic Partnership Agreement between the European Union and Japan ('the Agreement') was concluded by the Union by Council Decision [...] ¹. It shall enter into force on [1 February 2019].
- (2) Pursuant to Article 2.28(2) of the Agreement, the Working Group on Wine shall adopt, by decision, the modalities for the implementation of paragraph 1 of that Article providing for the certification for the importation and sale in the Union of wine products originating in Japan, and in particular the forms to be used and the information to be provided on the certificate.
- (3) Point (a) of Article 2.35(2) of the Agreement provides that the Working Group on Wine shall have among its functions adopting the modalities concerning the self-certification.
- (4) Pursuant to Article 2.35(3) of the Agreement, the Working Group on Wine shall hold its first meeting on the date of entry into force of the Agreement.
- (5) The Working Group on Wine, during its first meeting on [1 February 2019 / date of entry into force of the Agreement] is to adopt the decision on the forms to be used for certificates for the import of wine products originating in Japan into the Union and the modalities concerning the self-certification to allow the effective implementation of the Agreement and thus simplify import of wine products originating in Japan. The envisaged forms and modalities concerning the self-certification are consistent with the Union policies on facilitating trade and cooperating on prevention of fraud with third countries that concluded agreements with the Union.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the Working Group on Wine, as the decision of that Working Group will be binding on the Union,

¹ OJ L [...], [...], p. [...].

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the first meeting of the Working Group on Wine shall be based on the draft Decision of the Working Group on Wine attached to this Decision.

Article 2

After its adoption, the Decision of the Working Group on Wine 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*