Council of the European Union

Brussels, 29 March 2021
(OR. en)

7452/21

Interinstitutional File:
2021/0072(NLE)

AGRI 161
AGRILEG 63

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	26 March 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 145 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Joint Committee on Organic Products established by the Agreement between the European Union and the Republic of Chile on trade in organic products as regards the adoption of its rules of procedure

Delegations will find attached document COM(2021) 145 final.

Encl.: COM(2021) 145 final

EUROPEAN
COMMISSION

Brussels, 26.3.2021
COM(2021) 145 final

2021/0072 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Joint Committee on Organic Products established by the Agreement between the European Union and the Republic of Chile on trade in organic products as regards the adoption of its rules of procedure

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 Organic Products ('the Joint Committee') set up by the Agreement between the European Union, of the one part, and the Republic of Chile, of the other part, in connection with the envisaged adoption of its Rules of Procedure ("Rules of Procedure").

2. CONTEXT OF THE PROPOSAL

2.1 The EU-Republic of Chile Agreement on trade in organic products

The Agreement between the European Union and the Republic of Chile on trade in organic products sets up the Joint Committee.

This act establishes the rules of procedure of this committee. Having fair and clear rules, will lead to successful discussions within the EU-Chile Joint Committee on Organic Products.

- **Consistency with existing policy provisions in the policy area**

It is the first time that a Joint Committee has been established between trade partners in organic products; however, it is a common practice in other international trade agreements. The EU-Chile agreement is the first international agreement signed on trade in organic products.

- **Consistency with other Union policies**

3. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

4. • LEGAL BASIS

In accordance with Council Decision (EU) 2017/436[1], the Agreement was signed on 27 April 2017, and in accordance with Council Decision (EU) 2017/2307[2] on the conclusion of the Agreement, the agreement has been approved and entered into force on 1 January 2018[3].

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

[1] OJ L 67, 14.3.2017, p. 33.
[2] OJ L 331, 14.12.2017, p. 1.
[3] OJL 331, 14.12.2017, p. 4.

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 Joint Committee is a body set up by an agreement, namely agreement between the European Union and the Republic of Chile on trade in organic products.

The act which the Joint 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 8 of the Agreement between the European Union and the Republic of Chile on trade in organic products.

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 envisaged act pursues objectives and has components in the area of the common commercial policy. These elements of the envisaged act are inseparably linked without one being incidental to the other.

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Article 207 of the TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

Not applicable.

[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

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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 Agreement between the European Union and the Republic of Chile on trade in organic products ('the Agreement') was concluded by the Union by Council Decision (EU) 2017/2307[1] and it entered into force on 1 January 2018.

(2) Article 8 of the Agreement establishes a Joint Committee on Organic Products ('the Joint Committee') to manage the Agreement and take decisions for its implementation and its good functioning.

(3) Pursuant to Article 8.5 of the Agreement, the Joint Committee is to adopt its own rules of procedure.

(4) In order to ensure the proper implementation of the Agreement, the Joint Committee's rules of procedure should be adopted.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the Joint Committee as regards its rules of procedure, as those rules will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the Joint Committee on Organic Products established by the Agreement between the European Union and the Republic of Chile on trade in organic products as regards the adoption of its rules of procedure shall be based on the draft Decision of that Joint Committee according to the Annex to this Decision.

[1] Council Decision (EU) 2017/2307 of 9 October 2017 on the conclusion of the Agreement between the European Union and the Republic of Chile on trade in organic products (OJ L 331, 14.12.2017, p. 1).

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President