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2020/0089 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the conclusion of the Agreement between the European Union and the government of the People's Republic of China on cooperation on, and protection of, geographical indications**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 10 September 2010 the Council authorised the opening of negotiations<sup>1</sup> on an agreement with China 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.

On the basis of these directives, the Commission has negotiated with the People's Republic of China an ambitious and comprehensive agreement on cooperation on, and protection of, geographical indications.

Following the conclusion of these negotiations in November 2019, the Council has adopted the Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the government of the People's Republic of China on cooperation on, and protection of, geographical indications.

Following the signature of the agreement, the Commission is putting forward the following proposal for Council decision:

Proposal for a Council Decision on the conclusion of 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 attached proposal for a Council Decision constitutes the legal instrument for the conclusion of the Agreement between the European Union and the government of the People's Republic of China on cooperation on, and protection of, geographical indications.

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

The conclusion of the Agreement fits into the overall EU strategy of promoting the EU geographical indication policy. The initiative aims to provide a high level of protection, at least at article 23 TRIPS+ level, to a list of EU geographical indications in the People's Republic of China and Chinese geographical indications in the EU. The initiative will give producers of products bearing geographical indications a competitive advantage

- **Consistency with other Union policies**

The conclusion of a bilateral agreement on geographical indications with the People's Republic of China is in line with the EU's external actions and in particular with the Union objectives regarding the EU strategy of promoting the policy of geographical indications.

### 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The EU-China agreement on Geographical Indications is to be concluded by the Union pursuant to a decision of the Council based on Article 207(3) and the first subparagraph of Article 207(4), as well as Article 218(6) TFEU, following the European Parliament's consent.

In addition, Article 218(7) TFEU has been added as a legal basis as it is appropriate for the Council to authorise the Commission to approve the position of the Union on certain

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<sup>1</sup> Document 13325/10 : <https://data.consilium.europa.eu/doc/document/ST-13325-2010-INIT/en/pdf>

modifications to the EU-China agreement on geographical indications given that it provides for expedited and/or simplified procedures to approve such modifications.

- **Subsidiarity (for non-exclusive competence)**

The Agreement between the European Union and the government of the People's Republic of China as presented to Council does not cover any matters that fall outside of the EU's exclusive competence.

- **Proportionality**

This proposal is in line with the vision of the Europe 2020 strategy and contributes to the EUs trade and development objectives.

- **Choice of the instrument**

This proposal is in accordance with Article 218 TFEU, which envisages the adoption by the Council of decisions on international agreements. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

### **4. BUDGETARY IMPLICATIONS**

The proposal does not affect the protection of fundamental rights in the Union.

### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Agreement between the European Union and the government of the People's Republic of China on cooperation on, and protection of, geographical indications includes institutional provisions that lay down a joint Committee with the purpose of monitoring the

implementation of the Agreement and of intensifying the co-operation and dialogue on geographical indications.

**The Joint Committee shall also see to the proper functioning of this Agreement and may consider any matter related to its implementation and operation.**

**Explanatory documents (for directives)**

Not applicable.

• **Detailed explanation of the specific provisions of the proposal**

The EU-China agreement on geographical indications establishes the conditions for a high level of protection on the Chinese market for the proposed geographical indications.

In line with the objectives set by the negotiating directives, the Commission secured:

A TRIPs-plus level of protection to EU geographical indications following the entry into force of the Agreement which provides protection against translation, transcription or transliteration, and against the use of the said geographical indications accompanied by expressions such as "kind", "type", "style", "imitation" or the like in respect of a non-originating product .

The protection of 175 additional geographical indications within four years of the entry into force and a mechanism to add more geographical indications thereafter;

The geographical indications will co-exist with the legitimate earlier trademarks of which the vast majority belong to the legitimate owners of Europe.

Proposal for a

## **COUNCIL DECISION**

### **on the conclusion of 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 COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(3) and the first subparagraph of Article 207(4), in conjunction with point (a)(v) of Article 218(6) and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision (EU) 2020/...<sup>2</sup>, 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 signed on DD MMM YYY, subject to its conclusion at a later date.
- (2) The proposed agreement seeks to obtain the highest possible level of protection for geographical indications and to provide instruments to counter deceptive practices and wrongful uses of geographical indications.
- (3) Article 10 of the Agreement establishes a Joint Committee responsible for amending the Annexes to the Agreement.
- (4) It is appropriate for the Council to authorise the Commission, in accordance with Article 218(7) of the Treaty, to approve on the Union's behalf the position to be adopted in the Joint Committee on proposed modifications to Annexes I and III to VI of the Agreement.
- (5) The Agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

#### *Article 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 is hereby approved on behalf of the Union.

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<sup>2</sup> Council Decision (EU) 2020/... of ... on the signing, on behalf of the European Union, of the Agreement between the European Union and the government of the People's Republic of China on cooperation, on, and protection of, geographical indications (OJ L ...).

The text of the Agreement is attached to this Decision.

#### *Article 2*

1. For the purposes of Article 3 of the Agreement, the position of the Union on proposed modifications to Annexes III and IV as well as on the relevant corresponding deletions from Annexes V and VI to the Agreement shall be approved by the Commission, on the Union's behalf. Where interested parties cannot reach an agreement following objections relating to a geographical indication, the Commission shall adopt a position in accordance with the procedure laid down in Article 57(2) of Regulation (EU) No 1151/2012 of the European Parliament and the Council.<sup>3</sup>
2. For the purposes of amending the references to the law applicable in the Parties, the position of the Union on proposed modifications to Annex I to the Agreement shall be approved by the Commission, on the Union's behalf.

#### *Article 3*

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the notification provided for in Article 14(1) of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

#### *Article 4*

This Decision shall enter into force on the day of its adoption.<sup>4</sup>

Done at Brussels,

*For the Council*

*The President*

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<sup>3</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

<sup>4</sup> The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.