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Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, with regard to proposals of quality standards for fruit and vegetables to be adopted in the United Nations Economic Commission for Europe - Working Party on Agricultural Quality Standards (UNECE-WP.7)

EXPLANATORY MEMORANDUM

The standard-setting activities of the United Nations Economic Commission for Europe (UNECE) are carried out by the Working Party on Agricultural Quality Standards (WP.7) according the Geneva Understanding on Agricultural Quality Standards[1].

The WP.7 operates in accordance with its terms of reference[2] and working procedures[3] for the adoption of the UNECE agriculture quality standards. The proposals of UNECE quality standards on fruit and vegetables are prepared by the Specialised Section on Standardisation of Fresh Fruit and Vegetables and by Specialised Section on Standardisation of Dry and Dried Produce, respectively. The proposals are then adopted by consensus by UNECE WP.7 or sent back for discussion in the Specialised Sections. This exercise takes place annually.

All members of the United Nations or of its specialised agencies may participate to the UNECE work on agricultural quality standards; Member States of the European Union participate regularly to this work. The European Union participates as an observer, in the UNECE WP.7 and its Specialised Sections on Standardisation of Fresh Fruit and Vegetables and of Dry and Dried Produce.

At the Union level, according to Articles 75(1) and 76(1) of Regulation (EU) No 1308/2013[4] products of the fruit and vegetables sector which are intended to be sold fresh to the consumer may only be marketed if they conform with the applicable marketing standards, if they are sound, fair and of marketable quality and if the country of origin is indicated.

Pursuant to Article 75(2) of Regulation (EU) No 1308/2013 the Commission is empowered to set out marketing standards in the fruit and vegetables sector by a delegated act. Specific marketing standards are laid down for certain fruit and vegetable products by Commission Implementing Regulation (EU) No 543/2011[5]. These specific marketing standards are based on the UNECE quality standards for these products.

Article 3(1) of the Commission Implementing Regulation (EU) No 543/2011 provides that products not covered by a specific EU marketing standard are considered as conforming to the general marketing standard when they are in conformity with any applicable standards adopted by the UNECE. Recital 6 of Commission Implementing Regulation (EU) No 543/2011 provides that specific marketing standards which are laid down for certain products, should be those as set out in the UNECE standards.

The UNECE standards define minimum quality levels that provide a common language to facilitate fair trade, prevent technical barriers to trade and increase transparency in the markets. They promote sustainable marketing of quality agricultural produce, keep low

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1 http://www.unece.org/fileadmin/DAM/trade/agr/AboutUs/GenevaUnderstanding_E.pdf

2 Terms of Reference of the UNECE Working Party on Agricultural Quality Standards of http://www.unece.org/fileadmin/DAM/trade/agr/AboutUs/ToR_eng.doc

3 Working Procedures of the UNECE Working Party on Agricultural Quality Standards, adoped by the Working Party in 2010 and amended in 2012, http://www.unece.org/fileadmin/DAM/trade/agr/AboutUs/WorkingProcedures_2012_e.doc

4 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671)

5 Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ L 157, 15.6.2011, p. 1)

quality agricultural products out of the market and protect consumer interests. As such, they contribute to the international harmonisation of the fruit and vegetables standard and they will set a framework which will ensure fair competition in the trading of fruit and vegetables.The UNECE standards are developed to comply with the aims of the World Trade Organization (WTO) Agreement on Technical Barriers to Trade[6].

Before their adoption by UNECE WP.7., the proposals are extensively discussed between scientific and technical experts of the fruit and vegetables sector in the Specialised Sections on Standardisation, in which experts from Member States take part.

Their adoption in UNECE WP.7. should therefore be supported subject to conditions ensuring their compliance with Union law and in particular with Regulation (EU) No 1308/2013 and their alignment with Union interests and objectives in the area of agriculture policy. Moreover, if the Commission has concerns which were not discussed in the Specialised Sections on Standardisation or if new scientific or technical information becomes available, it should be ensured that those concerns are duly discussed before a decision on the proposal is taken in UNECE WP.7. Also, where a sufficient number of Member States oppose the proposal, the Member States participating to the UNECE-WP.7 shall postpone the decision and ensure that the proposal be sent back for discussion in the Specialised Sections on Standardisation or dedicated working groups where such concerns should be resolved first.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The UNECE standards define minimum quality levels that provide a common language to facilitate fair trade, prevent technical barriers to trade and increase transparency in the markets. They promote sustainable marketing of quality agricultural produce, keep low quality agricultural products out of the market and protect consumer interests. As such, they contribute to the international harmonisation of the fruit and vegetables standard and they will set a framework which will ensure fair competition in the trading of fruit and vegetables. The UNECE standards are developed to comply with the aims of the World Trade Organization (WTO) Agreement on Technical Barriers to Trade.

As explained above, UNECE quality standards on fruit and vegetables affect Union law. Union position should therefore be established, in line with Article 218(9) of the Treaty on the Functioning of the European Union. This proposal aims at establishing such Union position, subject to defined conditions and procedures.

The review and adoption of the UNECE quality standards is an ongoing process that ensures that the standards in place are up-to-date and in line with current scientific and technical information. It is therefore necessary to put in place a process through which the Union position will be established for this purpose for an indefinite period of time. The coordination meetings should take place annually before the adoption/review of the quality standards by the UNECE.

• Consistency with existing policy provisions in the policy area

This proposal is consistent with the Union legal framework on marketing standards for fruit and vegetables laid down in Articles 75 and 76 of Regulation (EU) No 1308/2013 and in Commission Implementing Regulation (EU) No 543/2011. It ensures that the Union position

[6] Agreement on Technical Barriers to Trade, https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm

for the adoption of the UNECE quality standards referred to in the above provisions is duly established.

- **Consistency with other Union policies**

Union position is established in the same way for several international organisations that set standards affecting the Union law, in particular as regards the standards adopted within the International Organisation of Vine and Wine.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Articles 43 and 218(9) of the TFEU.

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

Not applicable.

- **Proportionality**

Not applicable.

- **Choice of the instrument**

No other instrument is available for this initiative.

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**

Fundamental rights are not affected by the proposal.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications.

5. OTHER ELEMENTS

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

European Commission will participate in the co-ordination meeting of the competent Council Working Party which will be held as needed, each year ahead of the meeting of UNECE-WP.7.

- **Explanatory documents (for directives)**

Not applicable.

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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 Article 43 in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The United Nations Economic Commission for Europe - Working Party on Agricultural Quality Standards (UNECE-WP.7) examines and adopts proposals establishing new UNECE quality standards or amends existing UNECE quality standards for fruit and vegetables. The proposals are prepared by Specialised Sections on Standardisation of the UNECE. UNECE-WP.7 adopts the proposals by consensus of the participating members.

(2) The UNECE quality standards for fruit and vegetables contribute to the international harmonisation of the fruit and vegetables standards and set a framework which ensures fair competition in the trading of fruit and vegetables.

(3) The Union participates as observer in the UNECE-WP.7 and in the Specialised Section on Standardisation. The Member States are members of the UNECE and are participating in the UNECE-WP.7 and in the Specialised Sections on Standardisation. The Member States, as participants to the UNECE-WP.7, are entitled to participate in the decision making on the adoption of the UNECE-WP.7 agriculture quality standards.

(4) Pursuant to Articles 75(1) and 76(1) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council[7] products of the fruit and vegetables sector which are intended to be sold fresh to the consumer may only be marketed if they conform with the applicable marketing standards, if they are sound, fair and of marketable quality and if the country of origin is indicated.

(5) Pursuant to Article 75(2) of Regulation (EU) No 1308/2013 the Commission is empowered to lay down marketing standards in the fruit and vegetables sector by a delegated act. Specific marketing standards are laid down for certain fruit and

[7] Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

vegetable products by Commission Implementing Regulation (EU) No 543/2011[8]. These specific marketing standards are based on the UNECE quality standards for these products.

(6) Pursuant to Article 3(1) of Implementing Regulation (EU) No 543/2011 fruit and vegetables which are not covered by a specific marketing standard shall conform to the general marketing standard set out in Part A of Annex I to that Implementing Regulation. Products in conformity with any applicable marketing standards adopted by the UNECE are considered as conforming to that general marketing standard.

(7) Since UNECE agricultural quality standards for fruit and vegetables affect Union law, it is necessary to establish the position to be adopted on behalf of the Union in the UNECE-WP.7 as regards these quality standards.

(8) The proposals for quality standards prepared by the Specialised Section on Standardisation of Fresh Fruit and Vegetables and by the Specialised Section on Standardisation of Dry and Dried Produce are extensively discussed between scientific and technical experts of the fruit and vegetables sector. These proposals should therefore be supported on behalf of the Union by the Member States, provided that they are in the interest of the Union and do not contravene EU law and in particular Regulation (EU) No 1308/2013 and for as long as a procedure established for that purpose has been followed.

(9) Where the Commission has a concern which has not been discussed in the Specialised Sections on Standardisation or where new scientific or technical information emerges before or during the UNECE-WP.7 meeting the adoption of the proposal should be postponed and the proposal should be returned for further discussion to the Specialised Sections on Standardisation, until such concerns or new information have been duly discussed.

(10) Where a number of Member States sufficient to constitute a blocking minority pursuant to second paragraph of Article 238(3)(a) of the Treaty opposes the proposal the Member States participating in the UNECE-WP.7 meeting should postpone the decision and continue discussions in the specialised sessions or working groups.

(11) In order to allow for the necessary flexibility during the discussions ahead and in the meeting of the UNECE-WP.7, Member States, having informed the Commission, should be authorised to accept changes to the proposals, provided that such changes do not alter the substance of the proposals,

HAS ADOPTED THIS DECISION:

Article 1

Where the UNECE-WP.7 is called up to establish new UNECE quality standards for fruit and vegetables or to amend existing UNECE quality standards for fruit and vegetables, the Member States participating in the UNECE-WP.7, acting jointly on behalf of the European Union, shall be empowered to consent to the proposals prepared by the Specialised Section on Standardisation of Fresh Fruit and Vegetables and by the Specialised Section on Standardisation of Dry and Dried Produce for new UNECE quality standards for fruit and

[8] Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ L 157, 15.6.2011, p. 1).

vegetables or amends to the existing UNECE quality standards for fruit and vegetables subject to the procedure set out in Article 2 and under the following conditions:

(a) the new quality standards for fruit and vegetables or the changes to the existing quality standards for fruit and vegetables are in the interests of the Union and serve the objectives pursued by the Union within the framework of its agriculture policy; and

(b) the new quality standards for fruit and vegetables or the changes to the existing quality standards for fruit and vegetables are not contrary to EU law and in particular not contrary to Regulation (EU) No 1308/2013, without prejudice to the Commission's right to adapt the Union's rules by delegated act, in particular as regards the marketing standards for fruit and vegetables, referred to in Article 75 of that Regulation.

Article 2

1. In order to define the EU position and how Member States shall implement it in matters referred to in Article 1 a meeting of the competent Council Working Party shall be convened sufficiently ahead of the UNECE-WP.7 meeting.

2. By derogation from Article 1, where the Commission communicates a particular concern related to a proposal of the Specialised Section on Standardisation of Fresh Fruit and Vegetables or of the Specialised Section on Standardisation of Dry and Dried Produce in the meeting of the competent Council Working Party referred to in paragraph 1 and where that concern has not been discussed in one of the Specialised Sections on Standardisation, the participating Member States shall request that the decision over that proposal in the UNECE-WP.7 be postponed until that concern has been duly discussed in the Specialised Section on Standardisation.

3. By derogation from Article 1, where a proposal by the Specialised Section on Standardisation of Fresh Fruit and Vegetables or by the Specialised Section on Standardisation of Dry and Dried Produce is likely to be affected by new scientific or technical information that emerged after the meeting referred to in paragraph 1 but still before or during the meeting of UNECE-WP.7, the Member States participating to the UNECE-WP.7 shall request that the decision over that proposal in the UNECE-WP.7 be postponed until that proposal has been discussed in the Specialised Sections on Standardisation on the basis of that new scientific or technical information.

4. By derogation from Article 1, if a number of Member States equivalent to a blocking minority established by the second paragraph of Article 238(3)(a) of the Treaty oppose in the meeting of the competent Council Working Party referred to in paragraph 1 a proposal for new UNECE quality standards for fruit and vegetables or an amendment to existing UNECE quality standards for fruit and vegetables, the Member States participating to the UNECE-WP.7 shall postpone the decision and continue discussions in the Specialised Section on Standardisation of Fresh Fruit and Vegetables or in the Specialised Section on Standardisation of Dry and Dried Produce or in a working group established for that purpose.

Article 3

The Member States participating in the UNECE-WP.7, acting jointly on behalf of the European Union, and having informed the Commission, may agree to minor changes to the proposals of quality standards for fruit and vegetables in the UNECE-WP.7 that do not alter the substance of these proposals.

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President