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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Cooperation Committee established by the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino with regard to applicable provisions on organic production and labelling of organic products, and arrangements for imports of organic products

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the Union's behalf in the EU-San Marino Cooperation Committee in connection with the envisaged adoption of a Decision on the applicable provisions, under the EU-San Marino Cooperation and Customs Union Agreement, on organic production, the labelling of organic products and arrangements for imports of organic products.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino

The Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino ('the Agreement') aims to establish a customs union between the parties and to promote comprehensive cooperation between them in order to contribute to the social and economic development of San Marino and strengthen their relations. The Agreement entered into force on 1 April 2002.

2.2. EU-San Marino Cooperation Committee

The EU-San Marino Cooperation Committee is tasked with administering the Agreement and ensuring that it is properly implemented. It is composed of representatives of the Commission (assisted by delegates of the Member States) and San Marino. Decisions are taken by common accord. The chair is held by a Commission representative from 1 January to 30 June each year and by a representative of San Marino for the second half of the year.

2.3. Envisaged act of the EU-San Marino Cooperation Committee

In its next session, the EU-San Marino Cooperation Committee is to adopt a Decision regarding applicable provisions on organic production, the labelling of organic products and arrangements for imports of organic products ('the envisaged act').

In line with its Rules of Procedures, the Cooperation Committee intends to make use of the possibility of a written procedure under Article 6 of Annex I to the 'Omnibus Decision' (Decision No 1/2010 of the EU-San Marino Cooperation Committee of 29 March 2010¹).

The purpose of the envisaged act is to establish between parties of the Agreement the applicable EU rules on organic production, labelling of organic products and arrangements for imports of organic products.

The clarification will allow San Marino to apply the EU acquis correctly and to resume trade in organic products with the EU. It will also enable the EU to add San Marino to the electronic Trade Control and Expert System ('TRACES'). Since October 2017, pursuant to Regulation (EC) No 2016/1842, it has been possible to issue and endorse an electronic certificate of inspection (as required for the release of imported products for free circulation in the Union) only via TRACES. Previously, the certificate was issued only on paper.

The envisaged act will also enable the San Marino authorities to take decisions in the area covered by the act and make communications where the relevant provisions refer to decisions or communications by EU Member States.

¹ OJ L 156, 23.6.2010, p. 13.

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

The EU-San Marino Agreement requires San Marino to apply the parts of the EU acquis covered by the Agreement, as applicable in the EU and where necessary for the proper functioning of the Agreement. It provides that the applicable provisions, including the quality rules shall be determined in greater detail by the Cooperation Committee. To ensure legal certainty and to support the proper functioning of the customs union established by the Agreement, there is now a need to clarify the applicable acquis on organic production, the labelling of organic products and arrangements for imports of organic products. The present draft EU-San Marino Cooperation Committee decision provides for this clarification.

The relevant parts of the acquis (as amended and corrected) include:

- Council Regulation (EC) No 834/2007 on organic production and labelling of organic products² ;
- Commission Regulation (EC) No 889/2008³ laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 ; and
- Commission Regulation (EC) No 1235/2008⁴ laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards arrangements for imports of organic products from third countries.

The clarification, through a Cooperation Committee decision, will allow San Marino to apply the EU acquis correctly, to resume trade in organic products with the EU and enable the EU to adding San Marino to 'TRACES', the EU's electronic Trade Control and Expert System (cf section 2.3).

The EU-San Marino Agreement aims to promote comprehensive cooperation between the parties, strengthen relations between them and contribute to the social and economic development of San Marino. Clarification of the rules to be applied to organic products will allow San Marino to trade in these products and thus enhance the EU's special relationship with it, as envisaged in Article 8 of the Treaty on European Union and Declaration No 3 on that provision.

The proposal complies with the subsidiarity principle as the objective is to clarify the applicability in a non-EU country of rules in the organic agriculture sector decided at EU level. This cannot be achieved by Member States.

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*

² Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).

³ Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ L 250, 18.9.2008, p. 1).

⁴ Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries (OJ L 334, 12.12.2008, p. 25).

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.’

‘Acts having legal effects’ include acts that have legal effects by virtue of the rules of international law governing the body in question and instruments that do not have a binding effect under international law, but are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’⁵.

4.1.2. Application to the present case

The EU-San Marino Cooperation Committee is a body set up by an agreement, namely the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino.

The act that the Cooperation Committee is called upon to adopt constitutes an act having legal effects.

The envisaged act has legal effects as follows.

The EU-San Marino Agreement requires San Marino to apply the parts of the EU acquis covered by the Agreement, as applicable in the EU and where necessary for the proper functioning of the Agreement.

The Agreement provides that the applicable provisions, including those on quality rules, are to be determined in greater detail by the Cooperation Committee. In order to ensure legal certainty and to support the proper functioning of the customs union established by the Agreement, there is now a need to clarify the applicable acquis on organic production, the labelling of organic products and arrangements for imports of organic products. The draft Cooperation Committee Decision provides for this clarification.

The clarification will allow San Marino to apply the EU acquis correctly and resume trade in organic products with the EU. It will also enable the EU to add San Marino to the electronic Trade Control and Expert System (‘TRACES’).

Since October 2017, pursuant to Regulation (EC) No 2016/1842, it has been possible to issue and endorse an electronic certificate of inspection (as required for the release of imported products for free circulation in the Union) only via TRACES. Previously, the certificate was issued only on paper.

The envisaged act will enable the San Marino authorities to take decisions in the area covered by the act and make communications where the relevant provisions refer to decisions or communications by EU Member States.

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 that act pursues two aims or has two components and if one of those aims or

⁵ 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.

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 agriculture.

The Regulations that are the subject of the envisaged act (Council Regulation (EC) No 834/2007 and Commission Regulations (EC) Nos 889/2008 and 1235/2008) are based on Article 43 TFEU (former Article 37 TEC).

Therefore, the substantive legal basis of the proposed Decision is Article 43 TFEU.

4.3. Conclusion

The legal basis of the proposed Decision should be Article 43 TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the EU-San Marino Cooperation Committee Decision will have the legal effects indicated in point 4.1.2, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

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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 Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino⁶ ('the Agreement') was concluded by the Union by Council Decision 2002/245/EC⁷ and entered into force on 1 April 2002.
- (2) Pursuant to Article 7(2) of the Agreement, the Cooperation Committee is to determine in greater detail the provisions of quality regulations.
- (3) The Cooperation Committee is to adopt a decision on the applicable provisions, under the Agreement, of Union legislation on organic production and labelling of organic products, and arrangements for imports of organic products.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Cooperation Committee, as the determination in greater detail of the applicable provisions of Union legislation will enhance legal certainty among the parties to the Agreement and will support the proper functioning of the customs union between the Union and San Marino.
- (5) Consequently, there is a need to clarify the applicable Union legislation on organic production and labelling of organic products, which includes Council Regulation (EC) No 834/2007⁸ and Commission Regulations (EC) No 889/2008⁹ and (EC) No

⁶ OJ L 84, 28.3.2002, p. 43.

⁷ Council Decision 2002/245/EC of 28 February 2002 on the conclusion of an agreement on co-operation and customs union between the European Economic Community and the Republic of San Marino and of the Protocol thereto following the enlargement which took effect on 1 January 1995 (OJ L 84, 28.3.2002, p. 41).

⁸ Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.7.2007, p. 1).

⁹ Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ L 250, 18.9.2008, p. 1).

1235/2008¹⁰. In addition, it is appropriate to lay down the necessary arrangements for imports of organic products, as well as a procedure to be followed in the event that new Union legislation on organic production and labelling of organic products is adopted that affects the references to the applicable provisions and the arrangements agreed,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Cooperation Committee set up by the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino shall be based on the draft act of the Cooperation Committee attached to this Decision.

Minor changes to the draft act may be agreed to by the representatives of the Union in the Cooperation Committee without further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*

¹⁰ Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries (OJ L 334, 12.12.2008, p. 25).