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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Joint Committee established under the Agreement between the European Union and Japan for an Economic Partnership regarding the amendment of Appendices 2-C-1 and 2-C-2 to Annex 2-C on Motor Vehicles and Parts

Delegations will find attached document COM(2020) 678 final.

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Brussels, 28.10.2020
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2020/0309 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Committee established under the Agreement between the European Union and Japan for an Economic Partnership regarding the amendment of Appendices 2-C-1 and 2-C-2 to Annex 2-C on Motor Vehicles and Parts

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 set up by the Agreement between the European Union and Japan for an Economic Partnership in connection with the envisaged adoption of a Decision of the Joint Committee concerning the amendment of Appendices 2-C-1 and 2-C-2 to Annex 2-C on Motor Vehicles and Parts.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement between the European Union and Japan for an economic Partnership

The Agreement between the European Union and Japan for an Economic Partnership ('the Agreement') aims to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties. The Agreement entered into force on 1 February 2019.

2.2. The Joint Committee

Article 22.1 (1) of the Agreement establishes the Joint Committee comprising representatives of both Parties. Article 22.1 (4) provides that in order to ensure that the Agreement operates properly and effectively, "the Joint Committee shall:

- (a) adopt at its first meeting its rules of procedure; and
- (b) adopt at its first meeting the Rules of Procedure of a Panel and the Code of Conduct for Arbitrators as referred to in Article 21.30, as well as the Mediation Procedure as referred to in paragraph 2 of Article 21.6."

According to Article 22.2 (3), all decisions and recommendations of the Joint Committee shall be taken by consensus.

2.3. The envisaged act of Joint Committee

In order to take into consideration the regulatory development that took place in Japan and in the EU as regards the implementation of UNECE regulations, it is proposed that the Joint Committee adopts a decision amending Appendices 2-C-1 and 2-C-2 of Annex 2-C of the Agreement. The modifications consist into including UNECE Regulations 53, 85, 145 and 146 in Appendix 2-C-1, and remove UNECE Regulations 53 and 85 from Appendix 2-C-2.

The envisaged act will become binding on the parties in accordance with Article 22.2(1) of the Agreement, which provides: 'The Joint Committee may take decisions where provided for in this Agreement. The decisions taken shall be binding on the Parties. Each Party shall take the measures necessary to implement the decisions taken.'

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

This proposal for a Council Decision establishes the position to be taken on the Union's behalf in the Joint Committee set up by the Agreement regarding the amendment of Appendices 2-C-1 and 2-C-2 to Annex 2-C of the Agreement.

Based on the assessment of the first Working Group on Motor Vehicles and Parts, the Parties agreed on recommending to the Joint Committee to adopt a decision amending the appendices

above mentioned in order to reflect the progress achieved in the United Nations Economic Commission for Europe (UNECE) regulatory discussions since the signing of the Agreement.

The inclusion of those additional UN regulations in the relevant Appendices would increase the legal certainty for economic operators as regards the regulatory framework of the preferential trade relations between the Parties.

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 Joint Committee is a body set up by an agreement, namely the Agreement between the European Union and Japan for an Economic Partnership.

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 22.2 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 common commercial policy.

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

4.3. Conclusion

The legal basis of the proposed decision is 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 act of the Joint Committee will amend Appendices 2-C-1 and 2-C-2 to Annex 2-C of the Agreement, 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 in the Joint Committee established under the Agreement between the European Union and Japan for an Economic Partnership regarding the amendment of Appendices 2-C-1 and 2-C-2 to Annex 2-C on Motor Vehicles and Parts

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 Japan for an Economic Partnership ('the Agreement') entered into force on 1 February 2019².
- (2) Annex 2-C on Motor Vehicles and Parts to the Agreement provides in Appendix 2-C-1 a list of UN Regulations applied by both Parties and in Appendix 2-C-2 a list of UN Regulations applied by one of the Parties and not yet considered by the other Party.
- (3) Since the signing of the Agreement, and as a result of the progress in regulatory discussions in the United Nations Economic Commission for Europe (UNECE), the Parties apply additional UN Regulations that were not originally listed in Appendices 2-C-1 and 2-C-2. The inclusion of those additional UN regulations in the relevant Appendices would increase the legal certainty for economic operators as regards the regulatory framework of the preferential trade relations between the Parties,
- (4) Pursuant to Article 23.2(3) and 23.2 (4)(b) of the Agreement, in accordance with the respective domestic legal procedures of the Parties, the Joint Committee may adopt decisions to amend Appendices 2-C-1 and 2-C-2 to Annex 2-C of the Agreement.
- (5) It is legally required to establish the position to be taken on the Union's behalf in the Joint Committee, as the envisaged decision of the Joint Committee will be binding on the Union.
- (6) The Decision of the Joint Committee will amend the Agreement; therefore it is appropriate for that Decision to be published in the *Official Journal of the European Union* after its adoption by the Joint Committee,

HAS ADOPTED THIS DECISION:

Article 1

The position for the amendment of Appendices 2-C-1 and 2-C-2 to Annex 2-C to the Agreement to be taken on the Union's behalf in the Joint Committee is set out in the Annex.

² OJ L 330, 27.12.2018, p. 1-2.

Article 2

This Decision is addressed to the Commission.

Article 3

The Decision of the Joint Committee shall be published in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*