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Proposal for a

COUNCIL DECISION

**on the conclusion of the Economic Partnership Agreement between the European Union
and Japan**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

Japan is the world's third largest economy outside of the EU in terms of GDP, yet only EU's seventh largest trading partner. It has a population of over 127 million inhabitants with a very high purchasing power. It is a key market for European Union exporters, services providers and investors.

On 29 November 2012, the Council authorised the Commission to enter into negotiations for a Free Trade Agreement (FTA) with Japan. The Free Trade Agreement with Japan was renamed the "Economic Partnership Agreement" (the EPA) at the time of the conclusion of an agreement in principle on 6 July 2017.

On the basis of the negotiating directives adopted by the Council in 2012 the Commission has negotiated with Japan an ambitious and comprehensive Economic Partnership Agreement with a view to creating new opportunities and legal certainty for trade and investment between both partners. The texts of the EPA after the finalisation of the negotiations were published in December 2017.

The EPA does not include investment protection standards and investment protection dispute resolution because the still ongoing negotiations on those subject matters could not have been completed at the time of the conclusion of the EPA negotiations. The firm commitment on both sides is to complete the investment protection negotiations as soon as possible, in light of their shared commitment to a stable and secure investment environment in the Union and Japan. Investment protection, when agreed, will therefore form a separate bilateral investment agreement.

The Commission is putting forward the following proposals for Council decisions:

- Proposal for a Council decision on the signing on behalf of the European Union of the Economic Partnership Agreement between the European Union and Japan; and
- Proposal for a Council decision on the conclusion of the Economic Partnership Agreement between the European Union and Japan.

In parallel to these proposals, the Commission will put forward a proposal for a horizontal safeguard regulation that will cover the EPA among other trade agreements.

The attached proposal for a Council Decision constitutes the legal instrument authorising the conclusion of the EPA between the European Union and Japan.

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

The negotiation of the EPA was accompanied by the negotiation in parallel by the European External Action Service of the Strategic Partnership Agreement (the SPA) between the European Union and its Member States, on the one side, and Japan on the other. The negotiations for the SPA are now entering the final stage. The SPA, in combination with the EPA, are part of one negotiating context. Once in force, the SPA will provide the legal framework to further develop the already longstanding and strong partnership between the EU, its Member States and Japan in a broad range of areas, including political dialogue, energy, transport, human rights, education, science and technology, justice, asylum and

migration. Moreover the SPA provides for the possibility of suspending its application in case of a violation of essential elements of the SPA, i.e. the human rights clause and the non-proliferation clause. In addition, the parties to the SPA note that in such case a party may take other appropriate measures outside the framework of the SPA in accordance with international law.

- **Consistency with other European Union policies**

The EPA is fully consistent with European Union policies and will not require the EU to amend its rules, regulations or standards in any regulated area, e.g. technical rules and product standards, sanitary or phytosanitary rules, regulations on food and safety, health and safety standards, rules on GMO's, environmental protection or consumer protection, with the exception of a derogation regarding the bottle size regulated in the Spirit Drinks Regulation¹ to facilitate Japanese exports of traditional Shoshu, a spirit which Japan exports in traditional bottles of four go (合) or one sho (升)².

Furthermore, like all other free trade agreements the Commission has negotiated, the EU-Japan EPA fully safeguards public services and ensures that governments' right to regulate in the public interest is fully preserved by the Agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

In July 2015, the Commission seized the Court of Justice of the EU for an opinion under Article 218(11) TFEU on whether the Union had the necessary competence to sign and conclude alone the Free Trade Agreement that had been negotiated with Singapore, or whether the participation of the EU Member States would be necessary, in respect of certain matters covered by that Agreement.

In its Opinion 2/15 of 16 May 2017, the Court confirmed the EU's exclusive competence with regard to all matters covered by the agreement that had been negotiated with Singapore, except for non-direct investment and investor-to-state dispute settlement where the Member States are defendants that the Court considered to be of shared competence of the European Union and the Member States. The Court drew the EU exclusive competence from the scope of the Common Commercial Policy under Article 207(1) TFEU and from Article 3(2) TFEU (based on the affectation of existing common rules contained in secondary legislation).

In accordance with Opinion 2/15, all the matters covered by the EPA must also be held to fall within the competence of the European Union and, more particularly, within the scope of Articles 91, 100(2) and 207 TFEU.

The EPA is to be signed by the European Union pursuant to a decision of the Council based on Article 218(5) TFEU and concluded by the European Union pursuant to a decision of the Council based on 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 appropriate for the Council to authorise the Commission to approve the position of the Union on certain

¹ Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89.

² 1 sho (升) is equal to 1800ml and 1 go (合) is equal to 180ml.

modifications of the EPA given that the EPA provides for expedited or simplified procedures to approve such modifications. Therefore, the Commission should be authorised to adopt a decision to temporarily suspend, in accordance with paragraph 3 of Article 2.29 of the Agreement, the acceptance of self-certification of wine products, and the decision to terminate such temporary suspension in accordance with paragraph 4 of the same article. The Commission should also be authorised to approve the position of the Union on the modifications or rectifications of commitments under Part 2 of Annex 10 to the Agreement, as provided for in Article 10.14 (Modifications and rectifications to coverage), as well as on modifications of Annex 14-A (Laws and regulations of the Parties related to geographical indications) and Annex 14-B (List of geographical indications).

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

The EPA, as presented to the Council, does not cover any matters that fall outside the scope of the EU's exclusive competence.

- **Proportionality**

The proposal to conclude the EPA is in line with the vision of the Europe 2020 strategy and contributes to the EU's trade and development objectives. It does not exceed what is necessary to achieve those objectives.

- **Choice of the instrument**

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

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

Prior to the conclusion of the negotiations with Japan, a Trade Sustainability Impact Assessment (TSIA) of the EPA was conducted by an external contractor to study the potential economic, social and environmental impact of a closer economic partnership between the EU and Japan.

In the framework of the TSIA, the contractor consulted internal and external experts, organised public consultations and held bilateral meetings and interviews with civil society. Consultations in the framework of the TSIA provided a platform for the involvement of key stakeholders and the civil society in a dialogue on trade policy.

Both, the TSIA report and the consultations held in the context of its preparation, provided the Commission with inputs of great value.

Also, prior and during negotiations, the EU Member States were regularly informed and consulted orally and in writing on the different aspects of the negotiations via the Council's Trade Policy Committee. The European Parliament was also regularly informed and consulted via its Committee on International Trade (INTA), and notably its EU-Japan FTA Monitoring Group. The texts resulting from the negotiations were sent throughout the process to both institutions.

- **Collection and use of expertise**

A Trade Sustainability Impact Assessment of the EPA was carried out by the London School of Economics Enterprise.

- **Impact assessment**

The TSIA, conducted by an external contractor and finalised in April 2016, concluded that the EPA would deliver important positive impacts (in terms of GDP, income, trade and employment) for both the EU and Japan.

The long-term GDP increase for the EU is estimated to be +0.76% in the most appropriate scenario assuming full tariff liberalisation and symmetrical reduction of Non-Tariff Measures. It can be expected that bilateral exports increase by +34%, while total global exports increase is +4% for the EU.

- **Regulatory fitness and simplification**

The EPA is not subject to REFIT procedures. It nevertheless contains a number of provisions that will simplify trade and investment procedures, reduce export and investment related costs and will therefore enable more small firms to do business in both markets. Among the expected benefits are increased transparency, less burdensome technical rules, compliance requirements, customs procedures and rules of origin, enhanced protection of intellectual property rights and geographical indications, better access to procurement tender procedures, as well as a special chapter to enable SMEs to maximize the benefits from the EPA.

- **Fundamental rights**

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

4. BUDGETARY IMPLICATIONS

The EPA will have a financial impact on the EU budget on the side of the **revenues**. The EPA will lead to an estimated loss of duties of €970 million at the entry into force of the Agreement. After the EPA is fully implemented (after 15 years from its entry into force) the yearly loss of duties is estimated to reach €2.084 billion. This estimation is based on a projection of the evolution of trade for the next 15 years without any agreement.

The EPA is not expected to have a financial impact on the EU budget on the side of the **expenditures**.

5. OTHER ELEMENTS

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

The EPA includes institutional provisions that lay down an implementing bodies' structure to continuously monitor the implementation, operation and impact of the Agreement.

The institutional chapter of the EPA establishes a Joint Committee that has as its main task to supervise and facilitate the implementation and application of the Agreement. The Joint Committee is comprised of representatives of the EU and of Japan who will meet once a year or in urgent cases at the request of either side. The Joint Committee will be co-chaired by a representative of Japan at ministerial level and the relevant Member of the European Commission, or their respective delegates.

The Joint Committee will be in charge of supervising the work of all specialised committees and working groups established under the agreement (Committee on Trade in Goods; Committee on Trade in Services, Investment Liberalisation and Electronic Commerce;

Committee on Government procurement; Committee on Trade and Sustainable Development; Committee on Sanitary and Phytosanitary Measures; Committee on Rules of Origin and Custom-Related Matters; Committee on Intellectual Property; Committee on Regulatory Cooperation; Committee on Technical Barriers to Trade and Committee on Cooperation in the Field of Agriculture).

As emphasised in the “Trade for All” Communication, the Commission is dedicating increasing resources to the effective implementation and enforcement of trade and investment agreements. In 2017, the Commission published the first annual FTA Implementation Report. The main purpose of the report is to convey an objective picture on the implementation of the EU FTAs, highlighting the progress made and the shortcomings that need to be addressed. The objective is for the report to serve as the basis for an open debate and engagement with Member States, the European Parliament and the civil society at large on the functioning of the FTAs and their implementation. As an annual exercise, the publication of the report will allow regular monitoring of FTA developments, reporting also how identified priority issues have been addressed. The report will cover the EPA as of its entry into force.

- **Explanatory documents (for directives)**

Not applicable.

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

The EPA establishes the conditions for EU economic operators to take full advantage of the opportunities generated by the third largest national market in the world.

As announced by President Juncker and Prime Minister Abe at the time of the finalisation of the negotiations: *"The EU-Japan EPA is one of the largest and most comprehensive economic agreements that either the EU or Japan have concluded so far. This EPA will create a huge economic zone with 600 million people and approximately 30 percent of the world GDP, and it will open up tremendous trade and investment opportunities and will contribute to strengthening our economies and societies. It will also strengthen economic cooperation between Japan and the EU and reinforce our competitiveness as mature yet innovative economies."*

In negotiating this Agreement, the Commission ensured to provide the best possible conditions for EU operators on Japan's market.

This objective has been fully met: the Agreement goes beyond existing WTO commitments in many areas, such as services, procurement, non-tariff barriers and the protection of intellectual property rights, including geographical indications (GIs). In all of these areas Japan agreed to new commitments which go significantly beyond what Japan has been so far willing to accept.

The agreement satisfies the criteria of Article XXIV GATT (to eliminate duties and other restrictive regulations of commerce with respect to substantially all trade in goods between the parties), as well as of Article V GATS, which provides for a similar test with respect to services.

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

- (1) Japan will liberalise 91% of its imports from the EU at entry into force of the Agreement. At the end of the staging period 99% of its imports from the EU will be liberalised, while the remaining imports (1%) will be partly liberalised through quotas and tariff reductions (in agriculture). In terms of tariff lines, Japan fully liberalises 86% of its tariff lines at entry into force, going up to 97% after 15 years. Major positive achievements for the EU include full liberalisation at entry into force

for wines and sparkling wines, full liberalisation of other major agri-food exports (hard matured cheeses, pasta, chocolate, confectionery) over a transitional period; very significant concession achieving almost liberalisation for pigmeat over time; substantial improvement of market access conditions for EU exports of beef and all the other cheeses; as well as liberalisation of all European industrial exports, including old-standing priorities such as footwear and leather products.

- (2) New tendering opportunities for EU bidders, with Japan notably giving us new access to the sub-central level 48 "core cities" with above 300.000 inhabitants, around 15% of Japan's population and agreeing to eliminate the "Operational Safety Clause" for EU companies active in the railways market one year after the entry into force of the Agreement.
- (3) The removal of technical and regulatory trade barriers to trade in goods such as duplicative testing, in particular by promoting the use of technical and regulatory standards used in the EU in the sectors of motor vehicles, electronics, pharmaceuticals and medical devices as well as green technologies. There will also be a specific Motor Vehicles Annex with a safeguard clause, allowing the EU to reintroduce tariffs in case Japan stops applying UNECE Regulations or reinstalls removed NTMs (or develops new ones).
- (4) On services, the EPA includes a chapter on Trade in Services, Investment Liberalisation and Electronic Commerce and the related schedules of commitments, which go significantly beyond both parties' WTO commitments. The chapter includes cross-cutting rules on domestic regulation and mutual recognition, and sector-specific rules designed to ensure a level playing field for EU businesses. As in all its trade agreements, the EU protects public services. On electronic commerce, the chapter contains the most ambitious provisions the EU has ever included in a trade agreement, covering all trade done by electronic means. It reflects the interests that both European and Japanese companies and consumers have in digital trade, while fully safeguarding legitimate policy objectives.
- (5) For the first time in EU agreements, the EPA will contain provisions on corporate governance to be included in a specific chapter. These provisions are inspired from the OECD Code on corporate governance and reflect the EU's and Japan's best practices and rules in this area.
- (6) A high level protection of intellectual property rights, including with regard to the enforcement of these rights and including detailed provisions on copyright, providing for improved copyright protection.
- (7) High level of protection for EU GIs, with TRIPS Article 23 protection, for more than 200 foodstuffs and wines and spirits EU GIs to be protected under the EPA.
- (8) A comprehensive chapter on trade and sustainable development, which aims at ensuring that trade supports environmental protection and social development and promotes the sustainable management of forests and fisheries. The chapter also sets out how civil society will be involved in its implementation and monitoring. It also includes a commitment to implement the Paris Agreement on Climate Change as well as a dedicated review mechanism.
- (9) A comprehensive and novel chapter dedicated to SMEs to ensure that they fully benefit from the opportunities offered by the EPA.
- (10) A comprehensive section on the mutual facilitation of wine exports with the approval of several oenological practices including priority additives of each side.

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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 91, Article 100(2), and Article 207, in conjunction with Article 218(6)(a)(v) 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 No [XX], the Economic Partnership Agreement between the European Union and Japan, hereinafter referred to as “the Agreement”, was signed on [XX XXX 2018].
- (2) The Agreement should be approved on behalf of the European Union.
- (3) In order to ensure an efficient operation of the wine export facilitation system provided for in the Agreement, it is appropriate for the Council to authorise the Commission to temporarily suspend on behalf of the Union, in accordance with Article 2.29(3) of the Agreement (Review, consultations and temporary suspension of self-certification), the acceptance of self-certification of wine products provided for in Article 2.28. The Commission should be also authorised by the Council to terminate on behalf of the Union the temporary suspension of the acceptance of the self-certification as provided for in Article 2.29(4) of the Agreement.
- (4) Pursuant to Article 218(7) of the TFEU, it is appropriate for the Council to authorise the Commission to approve on the Union's behalf certain modifications to the Agreement. The Commission should therefore be authorised to approve modifications pursuant to Article 10.14 of the Agreement (Modifications and rectifications to coverage) as regards Part 2 of Annex 10 to the Agreement as well as modifications of Annex 14-A and Annex 14-B to the Agreement.
- (5) In accordance with Article 23.5 of the Agreement, nothing in the Agreement shall be construed as conferring rights or imposing obligations on persons, without prejudice to the rights and obligations of persons under other public international law. The Agreement therefore cannot be directly invoked before the courts of the Union or of the Member States,

HAS ADOPTED THIS DECISION:

Article 1

The Economic Partnership Agreement between the European Union and Japan is hereby approved.

Article 2

1. The decision of the Union to temporarily suspend, in accordance with paragraph 3 of Article 2.29 of the Agreement, the acceptance of self-certification of wine products provided for in Article 2.28 shall be taken by the Commission.
2. The decision of the Union to terminate, in accordance with paragraph 4 of Article 2.29 of the Agreement, the temporary suspension of the acceptance of self-certification of wine products provided for in Article 2.28 shall be taken by the Commission.

Article 3

For the purposes of Article 10.14 of the Agreement (Modifications and rectifications to coverage), the position of the Union on the modifications or rectifications to commitments under Part 2 of Annex 10 to the Agreement shall be taken by the Commission.

Article 4

Modifications of Annex 14-A and Annex 14-B of the Agreement through decisions of the Joint Committee, following recommendations of the Committee on Intellectual Property, shall be approved by the Commission on behalf of the Union. Where interested parties cannot reach an agreement following objections relating to a geographical indication, the Commission shall adopt a position on the basis of the procedure laid down in Article 57(2) of Regulation (EU) No 1151/2012 of the European Parliament and the Council.

Article 5

The President of the Council shall designate the person or persons empowered to proceed, on behalf of the Union, to send the notification provided for in Article 23.3 of the Agreement, in order to express the consent of the Union to be bound by the Agreement.³

Article 6

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*

³ 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.