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LIMITED

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Council of Members
of the International Olive Council (IOC) in connection with trade standards**

{SWD(2019) 192 final}

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 Council of Members of the International Olive Council ("IOC") in connection with the envisaged adoption of several decisions in relation to trade standards applying to olive oils and olive pomace oils.

2. CONTEXT OF THE PROPOSAL

2.1. The International Agreement on Olive Oil and Table Olives

The International Agreement on Olive Oil and Table Olives ('the Agreement') aims (i) to seek to achieve uniformity in national and international legislation relating to the physico-chemical and organoleptic characteristics of olive oils, olive pomace oils and table olives in order to prevent any obstacle to trade (ii) to conduct activities in the area of physico-chemical and organoleptic testing in order to add to the knowledge of the composition and quality characteristics of olive products, with a view to consolidating international standards, and (iii) to strengthen the role of the International Olive Council as a forum of excellence for the international scientific community in the area of olives and olive oil.

The renewed version of the Agreement entered into force on 1 January 2017.

The European Union is a party to the Agreement¹.

2.2. The Council of Members

The Council of Members is the highest authority and decision-making organ of the IOC and shall exercise all such powers and functions as are necessary to achieve the objectives of this Agreement. As a party to the Agreement, the European Union is a member of the IOC and is represented in the Council of Members. The decisions of the Council of Members shall be taken by consensus. If consensus cannot be reached, decisions related to trade standards would be adopted unless they are rejected by at least one quarter of the members or by a member or members with at least a total of 100 participation shares.

There are currently 16 members in the IOC and the European Union has 703 participation shares for a total of 1005.

2.3. The envisaged decisions of the Council of Members

On 18 March 2019, the Executive Secretariat of the IOC transmitted to its members the text of decisions that will be on the agenda of the next Council of Members meeting scheduled during the 109th session in June 2019 for adoption. Those decisions will require amendments to Commission Regulation (EEC) No 2568/91².

The purpose of the envisaged acts is to modify the trade standards applying to olive oils and olive pomace oils. The Commission Staff Working Document accompanying this proposal includes the text of the decisions and the corresponding trade standards transmitted by the Executive Secretariat.

¹ Council Decision (EU) 2016/1892 of 10 October 2016 on the signing, on behalf of the European Union, and provisional application of the International Agreement on Olive Oil and Table Olives, 2015 (OJ L 293, 28.10.2016, p. 2).

² Commission Regulation (EEC) No 2568/91 of 11 July 1991 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis (OJ L 248, 5.9.1991, p. 1).

Pursuant to Article 20(3) of the Agreement, the quality and purity criteria standards adopted by the Council of Member are applicable to the international trade of the members. Furthermore, pursuant to Article 75(5)(e) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council³, the marketing standards shall take into account the standard recommendations adopted by international bodies. Therefore, the decisions provided for in the Annex will affect EU law since they will imply amendments to Commission Regulation (EEC) No 2568/91.

In case the adoption of decisions during the 109th session of the IOC is postponed as a result of some Members not being in a position to give their approval, the position detailed in the present Decision will be taken on behalf of the Union also within the framework of a possible procedure for adoption by the Council of Members by exchange of correspondence, pursuant to Article 10(6) of the Agreement, before its next regular session in November 2019.

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

The decisions to be adopted by the Council of Members will modify the trade standards applying to olive oils and olive pomace oils in respect of:

- The revision of method COI/T.20/Doc. n. 19/Rev. 5 ("Spectrophotometric investigation in the ultraviolet") by removing an absolute value and revising precision values;
- The revision of method COI/T.20/Doc. n. 42-2/Rev. 3 ("Precision values of the methods of analysis adopted by the International Olive Council") by revising the precision values related to the methods COI/T.20/Doc. n.19 and COI/T.20/Doc. n. 26;
- The revision of method COI/T.20/Doc. No 26/Rev.4 ("Determination of the sterol composition and content and alcoholic compounds by capillary gas chromatography") by revising the title, precision and figure margins and chromatograms.

The above mentioned decisions have been extensively discussed between scientific and technical experts of the Commission and Member States on olive oil. They contribute to the international harmonisation of the olive oil standards and they will set a framework which will ensure fair competition in the trading of olive oil sector. They should therefore be supported.

The above mentioned decisions fit the Union policy as regards standards for the marketing of agricultural products as provided for in Title II of part II of Regulation (EU) No 1308/2013 of the European Parliament and of the Council.

As in the past, it can be expected that the agenda of the meeting of the Council of Members of the IOC will still evolve and that further decisions affecting the *acquis* will be added to the agenda. In order to ensure efficiency of the work of the Council of Members of the IOC while respecting the rules of the Treaties, the Commission will in due time supplement and/or amend the present proposal to enable the Council to adopt the position to be taken also for those decisions.

³ 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)

Taking into account the decision-making process within the Council of Members of the IOC, the Union position is needed for the adoption of the decisions provided for in the Annex.

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*’.⁴

4.1.2. Application to the present case

The Council of Members is a body set up by an agreement, namely the International Agreement on Olive Oil and Table Olives.

The acts which the Council of Members is called upon to adopt constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 20(3) of the Agreement and are capable of decisively influencing the content of EU legislation, namely: delegated and implementing acts based on Regulation (EU) No 1308/2013, as regards olive oil marketing standards. This is because, pursuant to Article 75(5)(e) of Regulation (EU) No 1308/2013, the marketing standards shall take into account the standard recommendations adopted by international bodies.

The envisaged acts do 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 acts relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207(4) TFEU.

⁴ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(4) TFEU, in conjunction with Article 218(9) TFEU.

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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 207(4) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The International Agreement on Olive Oil and Table Olives, 2015 (‘the Agreement’) was signed on behalf of the Union in accordance with Council Decision (EU) 2016/1892⁵ on 18 November 2016 at the United Nations Headquarters in New York, subject to its conclusion at a later date. The Agreement entered into force provisionally on 1 January 2017 in accordance with Article 31(2) thereof.
- (2) Pursuant to Article 7(1) of the Agreement, the Council of Members may adopt decisions that modify the trade standards applying to olive oils and olive pomace oils.
- (3) The Council of Members, during the 109th session of the IOC from 17 June to 21 June 2019, is to adopt decisions modifying trade standards applying to olive oils and olive pomace oils.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Council of Members, as the decisions to be adopted will be binding upon the Union for the international trade with the other members of the IOC and capable of decisively influencing the content of Union law, namely on marketing standards concerning olive oil adopted by the Commission pursuant to Article 75 of 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 products⁶.
- (5) The decisions to be adopted by the Council of Members concern the revision of a title, precision and figure margins, chromatograms, precision values and references to other documents. They have been extensively discussed between scientific and technical experts of the Commission and Member States on olive oil. They contribute to the international harmonisation of the olive oil standards and will set a framework which will ensure fair competition in the trading of products of the olive oil sector. They should therefore be supported. Those decisions will imply amendments to Commission Regulation (EEC) No 2568/91⁷.

⁵ Council Decision (EU) 2016/1892 of 10 October 2016 on the signing, on behalf of the European Union, and provisional application of the International Agreement on Olive Oil and Table Olives, 2015 (OJ L 293, 28.10.2016, p. 2).

⁶ OJ L 347, 20.12.2013, p. 671.

⁷ Commission Regulation (EEC) No 2568/91 of 11 July 1991 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis (OJ L 248, 5.9.1991, p. 1).

- (6) In case the adoption of decisions during the 109th session of the IOC is postponed, as a result of some Members not being in a position to give their approval, the position detailed in the present Decision should be taken on behalf of the Union also within the framework of a possible procedure for adoption by the Council of Members by exchange of correspondence, pursuant to Article 10(6) of the Agreement. The procedure for adoption by exchange of correspondence should be initiated before the next regular session of the Council of Members in November 2019.
- (7) In order to preserve the interest of the Union, the representatives of the Union should be allowed to request to postpone the adoption of decisions modifying trade standards in the IOC Council of Members meeting, if new scientific or technical information presented before or during the meeting of the Council of Members of the IOC calls into question the relevance of the position to be taken on the Union's behalf,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf, in the session of the Council of Members of the IOC from 17 June to 21 June 2019 or within the framework of a procedure for adoption of decisions by the Council of Members by an exchange of correspondence to be initiated before its next regular session in November 2019 is set out in the Annex.

Article 2

Where the position referred to in Article 1 is likely to be affected by new scientific or technical information presented before or during the meeting of the Council of Members of the IOC, the Union shall request that the adoption of decisions modifying trade standards in the IOC Council of Members meeting be postponed until the position of the Union is established on the basis of that new information.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*