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2022/0241 (NLE)

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), concerning the elimination of the category ordinary virgin olive oil from Annex B of the International Agreement on Olive Oil and Table Olives, 2015

{SWD(2022) 217 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 elimination of the category Ordinary Virgin Olive Oil from Annex B of the International Agreement on Olive Oil and Table Olives.

2. CONTEXT OF THE PROPOSAL

2.1. The International Agreement on Olive Oil and Table Olives, 2015

The International Agreement on Olive Oil and Table Olives, 2015 ('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 of the International Olive Council ("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. Pursuant to Article 19(2) of the IOC Agreement, the Council of Members can take decisions amending the Annexes of the IOC Agreement. In conformity with article 10(3) of the IOC Agreement, the decisions of the Council of Members concerning any amendments of the Agreement shall be taken by consensus.

2.3. The envisaged act of the Council of Members

On 29 April 2022, the Executive Secretariat of the IOC transmitted to its Members the text of a decision regarding chemistry and standardisation to be adopted by the Council of Members. The purpose of the envisaged act is to eliminate the category Ordinary Virgin Olive Oil from Annex B of the IOC Agreement, starting with 1 January 2026. Pursuant to Article 20(1) of the Agreement, the designations in Annexes B and C of the IOC Agreement are applicable to the international trade of the Members. The envisaged act will thereby amend Annex B to the IOC Agreement.

The Commission Staff Working Document accompanying this proposal includes the text of the decision.

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) and Council Decision (EU) 2019/848 of 17 May 2019 on the conclusion on behalf of the European Union of the International Agreement on Olive Oil and Table Olives, 2015 (OJ L 139, 27.05.2019, p. 1).

During the 115th session of the IOC (June 2022), the EU asked for postponing the adoption of the decision, as it was not in a position to give its approval (time needed to adopt the position to be taken on the Union's behalf). Therefore, the position detailed in the present Decision will be taken on behalf of the Union either at the 116th session of the IOC in November 2022, or 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 2022.

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

The decision to be adopted by the Council of Members will modify Annex B of the IOC Agreement by eliminating the category Ordinary Virgin Olive Oil, with a date of entering into force on 1 January 2026. An additional decision by the Council of Members will be needed at that time, to remove this category and the related parameters from the IOC Trade Standard for Olive Oil and Olive-Pomace Oil.

No such olive oil category exists in Regulation (EU) No 1308/2013 of the European Parliament and of the Council². Therefore, the above-mentioned decision fits 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.

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 decision 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'*³.

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 act which the Council of Members are called upon to adopt constitute acts having legal effects. The envisaged act will be binding under international law in accordance with Article 20(1) of the Agreement.

² 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).

³ 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.

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 of the TFEU.

4.3. Conclusion

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

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the Council of Members will amend the IOC Agreement, 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 207, 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) 2016/1892¹ on 18 November 2016, 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 and was concluded by the Union by Council Decision (EU) 2019/848 of 17 May 2019².
- (2) Pursuant to Article 7(1) of the Agreement, the Council of Members of the International Olive Council ('the Council of Members') is to adopt decisions that modify the Agreement.
- (3) During its 116th IOC session to be held between 28 November and 2 December 2022, or within the framework of a procedure by exchange of correspondence, the Council of Members is to adopt a decision eliminating the category "ordinary virgin olive oil" from Annex B of the IOC Agreement.
- (4) The decision will become binding under international law in accordance with Article 20(1) of the IOC Agreement. It is therefore appropriate to establish the position to be taken on the Union's behalf in the Council of Members, as the decision to be adopted will have legal effects on the Union.
- (5) As the "ordinary virgin olive oil" category does not exist in Regulation (EU) No 1308/2013 of the European Parliament and of the Council³, the decision should be supported.

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 Council Decision (EU) 2019/848 of 17 May 2019 on the conclusion on behalf of the European Union of the International Agreement on Olive Oil and Table Olives, 2015 (OJ L 139, 27.05.2019, p. 1).

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).

- (6) The position set out in the Annex to this Decision should be taken on behalf of the Union at the 116th IOC session or within the framework of a 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 2022,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf, within the Council of Members during its 116th session to be held between 28 November and 2 December 2022 or within the framework of a procedure for adoption by the Council of Members by an exchange of correspondence to be initiated before its next regular session in November 2022 is set out in the Annex.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*