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**PROBA 3
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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	27 February 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 73 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the International Grains Council with respect to the accession of the Republic of Serbia to the Grains Trade Convention, 1995

Delegations will find attached document COM(2020) 73 final.

Encl.: COM(2020) 73 final



Brussels, 27.2.2020
COM(2020) 73 final

2020/0032 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the International Grains
Council with respect to the accession of the Republic of Serbia to the Grains Trade
Convention, 1995**

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 International Grains Council in connection with the accession of the Republic of Serbia to the **Grains Trade Convention, 1995**.

2. CONTEXT OF THE PROPOSAL

2.1. The Grains Trade Convention, 1995

The Grains Trade Convention, 1995 ('the Convention') aims to further international co-operation in all aspects of trade in grains, to promote the expansion of international trade in grains and to secure the freest possible flow of this trade. In addition, the Convention intends to contribute to the fullest extent possible to the stability of international grain markets in the interests of all members, to enhance world food security and to provide a forum for exchange of information and discussion of members' concerns regarding trade in grains.

The Convention entered into force on 1 July 1995.

The Union is a party to the Convention¹.

2.2. The International Grains Council

The International Grains Council ('IGC') is an intergovernmental organisation that seeks to meet the objectives laid down by Article 1 of the Convention. In particular, the IGC aims at:

- (a) furthering international cooperation in all aspects of trade in grains;
- (b) promoting expansion, openness and fairness of the international trade in the grains sector;
- (c) contributing to stability of international grain market, enhancing world food security and contributing to the development of countries whose economies depend on commercial sales of grain;

These objectives are sought by improving market transparency through information-sharing, analysis and consultation on market and policy developments.

Currently, the IGC has 28 members, including many of the world's largest cereals producers as well as importers. Besides the Union and among others, its members are Argentina, Australia, Canada, Egypt, India, Japan, Russia, Ukraine and the USA. However, China and Brazil are not members.

The 28 members of the IGC have a total number of 2,000 votes.

For budgetary procedures (see Article 11 of the Convention), i.e. for fixing the annual financial contributions of members, the Union has 372 votes in 2019/20².

For decision-making, i.e. where votes are held (see Article 12 of the Convention), 1,000 votes are distributed for the 10 exporting members (including the Union with 245 votes) and 1,000 votes for the 18 importing members. It needs to be emphasized that in principle, the IGC operates on the basis of consensus and it is very rare that voting is actually held.

¹ OJ L 21, 27.1.1996, p. 47.

² The International Grains Council operates on a fiscal year basis, which runs from 1 July to 30 June.

At the meetings of the International Grains Council the Union is represented by the Commission. Member States can attend the IGC meetings, in particular the Council Sessions.

2.3. The envisaged act of the International Grains Council

On 23 January 2020, the Republic of Serbia³ has formally applied for accession to the Convention. On 27 January 2020 the IGC Secretariat has informed its members about the application of the Republic of Serbia.

According to Article 27(2) of the Convention, accession is open to the Governments of all States upon such conditions, as the Council considers appropriate. In accordance with Rule 33(d) of the Rules of Procedure under the Grain Trade Convention ('Rules of Procedure') the Administrative Committee considers and recommends to the Council applications for accession under Article 27(2).

The votes of the acceding country for the purposes of Article 11 of the Convention (i.e. annual financial contribution of members), are determined by the proportion of the acceding countries' total trade in grains to the total trade in grains of all IGC member countries, in accordance with Rule 33(b) of the Rules of Procedure.

Under Article 12(1) of the Convention, the Council has to establish the members that will be exporting members and the members that will be importing members for the purposes of the Convention, taking into account of the grain trading patterns of those members and of their own views. The Council will also determine their voting rights, in accordance with paragraphs 2 and 3 of the same provision.

As the following meeting of the IGC would only take place on 8 June 2020, the IGC Secretariat has proposed that the Council's approval for the Republic of Serbia's accession should be made by postal ballot to allow for an earlier accession. If no objections are received from current IGC members by 31 March 2020, the accession of the Republic of Serbia would come into effect on 1 April 2020.

Although there are no specific rules laid down in the Convention on the postal ballot procedure (or written procedure), Article 14 of the Convention concerning the 'decisions of the Council', does not request that such decisions are taken at a Council Session.

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

The **Grains Trade Convention, 1995** was concluded by the Union by Council Decision 96/88/EC⁴ until 30 June 1998 and, since then, it has been regularly extended. On each occasion, the Convention is extended for a maximum period of two years in accordance with Article 33 of the Convention. It was last extended by decision of the International Grains Council in June 2019 and remains in force until 30 June 2021⁵.

The Union has always been an active member of the IGC and supported the expansion of the organisation.

The Republic of Serbia is a major producer of agricultural products, in particular of maize which is one of the main crops covered by the IGC.

The Republic of Serbia submitted its application for EU membership on 19 December 2009 and on 1 March 2012, the European Council granted Serbia candidate country status.

³ By the letter of the Minister of Agriculture, Forestry and Water Management of the Republic of Serbia

⁴ OJ L 21, 27.1.1996, p. 47.

⁵ Council Decision (EU) 2019/813 of 17 May 2019 (OJ L 133, 21.5.2019, p. 19).

The purpose of this proposal is to seek the Council's authorisation to the Commission to approve the accession of the Republic of Serbia to the Convention.

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'*⁶.

4.1.2. Application to the present case

The envisaged act of the IGC has the effect of expanding the membership of the IGC. The envisaged act has legal effects notably because it will affect the decisional balance within the IGC, whose decisions require the majority of exporting and importing members, and are binding for its members, as expressed in Article 14 of the Convention.

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 trade in agricultural products.

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

4.3. Conclusion

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

⁶ 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.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Grains Council with respect to the accession of the Republic of Serbia to the Grains Trade Convention, 1995

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, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Grains Trade Convention, 1995 ('the Convention'), was concluded by the Union by Council Decision 96/88/EC¹ and entered into force on 1 July 1995. The Convention was concluded for a period of three years and, since then, regularly extended for further periods of two years. The Convention was last extended by Decision of the International Grains Council at its 49th Session in June 2019² and remains in force until 30 June 2021.
- (2) Pursuant to Article 27(2) of the Convention, it shall be open for accession by the Governments of all States upon such conditions as the International Grains Council considers appropriate.
- (3) On 23 January 2020 the Republic of Serbia has formally applied for accession to the Convention.
- (4) On 1 March 2012, the European Council granted Serbia candidate country status.
- (5) The Republic of Serbia is a major producer of cereals, in particular for maize.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in the International Grains Council as the accession of Serbia is in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Commission on behalf of the Union in the International Grains Council shall be to approve the accession of the Republic of Serbia to the Grains Trade Convention, 1995.

¹ Council Decision 96/88/EC of 19 December 1995 concerning the approval by the European Community of the Grains Trade Convention and the Food Aid Convention, constituting the International Grains Agreement 1995 (OJ L 21, 27.1.1996, p. 47).

² Council Decision (EU) 2019/813 of 17 May 2019 on the position to be taken on behalf of the European Union in the International Grains Council with respect to the extension of the Grains Trade Convention, 1995 (OJ L 133, 21.5.2019, p. 19).

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*