Council of the European Union

Brussels, 16 May 2024
(OR. en)

10030/24

Interinstitutional File: 2024/0104(NLE)

PROBA 20
AGRI 417
WTO 71

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 May 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 194 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the Council of Members of the International Olive Council (IOC), as regards two methods of analyses and the IOC Trade Standard for olive oil and olive pomace oil

Delegations will find attached document COM(2024) 194 final.

Encl.: COM(2024) 194 final

EUROPEAN
COMMISSION

Brussels, 8.5.2024
COM(2024) 194 final

2024/0104 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the Council of Members of the International Olive Council (IOC), as regards two methods of analyses and the IOC Trade Standard for olive oil and olive pomace oil

{SWD(2024) 122 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 two decisions in relation to the Trade Standard for olive oil and olive pomace oil.

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 Agreement[1].

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 the Trade Standard 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 19 members in the IOC and the European Union has 659 participation shares for a total of 1000.

2.3. The envisaged act of the Council of Members

In October 2023, the Executive Secretariat of the IOC transmitted to its Members the text of two decisions regarding chemistry and standardisation to be adopted by the Council of Members. The purpose of those decisions is to update the methods for organoleptic assessment for virgin olive oils and correct the method for the determination of the content of waxes and ethyl esters of fatty acids by capillary column gas chromatography. In addition, the revision of the method for organoleptic assessment for virgin olive oils will be reflected in the Trade Standard for olive oil and olive pomace oil, and this standard will have to be modified in this regard.

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[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); ELI: http://data.europa.eu/eli/dec/2016/1892/oj

The decisions presented amend two methods included in Commission Implementing Regulation (EU) 2022/2105 of 29 July 2022 laying down rules on conformity checks of marketing standards for olive oil and methods of analysis of the characteristics of olive oil[2] and will also require changes to Commission Delegated Regulation (EU) 2022/2104 of 29 July 2022 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards marketing standards for olive oil, and repealing Commission Regulation (EEC) No 2568/91 and Commission Implementing Regulation (EU) No 29/2012[3].

The Commission Staff Working Document accompanying this proposal includes the text of the decisions, the revised Trade Standard and methods, transmitted by the Executive Secretariat.

Pursuant to Article 20(3) of the Agreement, the quality and purity criteria included in the above mentioned Trade Standard adopted by the Council of Members 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 Council[4], the marketing standards shall take into account the standard recommendations adopted by international bodies. Therefore, the decision provided for in the Annex will affect EU law since it modifies two methods included in Commission Implementing Regulation (EU) 2022/2105.

In case the adoption of the decision during the 119th 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 2024.

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

The decisions to be adopted by the Council of Members will:

– modify the Trade Standard COI/T.15/NC No. 3 applying to olive oils and olive pomace oils by changing the number of the revisions of the method for organoleptic assessment for virgin olive oils and the method for the determination of the content of waxes and ethyl esters of fatty acids.

– revise the method COI/T.20/Doc. No. 15/Rev. 10 (*Sensory analysis of olive oil – Method for the organoleptic assessment of virgin olive oils*) on reports from tasting panels.

– correct the method COI/T.20/Doc. No. 28/Rev. 3 (*Determination of the content of waxes and ethyl esters of fatty acids by capillary column gas chromatography*) regarding the expression of results.

The above-mentioned decisions have been discussed between scientific and technical olive oil experts of the Commission and Member States. 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.

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2 OJ L 284, 4.11.2022, p. 23–48; ELI: http://data.europa.eu/eli/reg_impl/2022/2105/2022-11-04

3 OJ L 284, 4.11.2022, p. 1–22; ELI: http://data.europa.eu/eli/reg_del/2022/2104/oj

4 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); ELI: http://data.europa.eu/eli/reg/2013/1308/2023-01-01

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.

The agenda of the meeting of the Council of Members of the IOC for its June 2024 session will still evolve and it is possible 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.

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*'[5].

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 are 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 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

[5] 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.

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(4) TFEU.

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), first subparagraph, 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) 2016/1892[1] 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 way of Council Decision (EU) 2019/848[2].

(2) Pursuant to Article 7(1) of the Agreement, the Council of Members of the International Olive Council ('the Council of Members') may take decisions and adopt recommendations for the application of the provisions of that Agreement.

(3) During its 119th session, to be held between 18 and 25 June 2024, the Council of Members is to adopt a decision amending the Trade Standard applying to olive oils and olive pomace oils and two decisions to update methods for the organoleptic assessment of virgin olive oils and to correct the method to determine the content of waxes and ethyl esters of fatty acids by capillary column gas chromatography.

(4) The decisions to be adopted during the 119th session of the Council of Members have been extensively discussed between scientific and technical experts on olive oil of the Commission and of the Member States. Those decisions will contribute to the international harmonisation of olive oil standards and will establish a framework which will ensure fair competition in the trading of products of the olive oil sector. The decisions should therefore be supported.

(5) It is appropriate to establish the position to be taken on behalf of the Union within the Council of Members, as the amending decisions to be adopted will have legal effects

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[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, ELI: http://data.europa.eu/eli/dec/2016/1892/oj).

[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, ELI: http://data.europa.eu/eli/dec/2019/848/oj).

on the Union as regards international trade with the other members of the International Olive Council (IOC) and will be 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[3].

(6) In case the adoption of the amending decisions during the 119th session of the Council of Members is postponed, as a result of some Members not being in a position to give their approval, the position set out in the Annex to this Decision should be taken on behalf of the Union 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 provided that such procedure is initiated before the next regular session of the Council of Members in November 2024.

(7) Technical adaptations to other methods or documents of the IOC may however be agreed to by the representatives of the Union in the Council of Members of the IOC without further decision of the Council if those technical adaptations result from amendments related to the revision of the Trade Standard, of the method for the organoleptic assessment for virgin olive oils, and of the method to determine the content of waxes and ethyl esters of fatty acids by capillary column gas chromatography.

(8) In order to preserve the interest of the Union, the representatives of the Union in the Council of Members should however be allowed to request to postpone the adoption of the decisions amending Trade Standard or methods to a later session of the Council of Members, if the position to be taken on behalf of the Union is likely to be affected by new scientific or technical information presented before or during the 119th session,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf, in the 119th session of the Council of Members, to be held between 18 and 25 June 2024, or within the framework of a procedure for adoption of decisions by the Council of Members by an exchange of correspondence initiated before its next regular session in November 2024, is set out in the Annex.

Article 2

Technical adaptations to other methods or documents of the IOC may be agreed to by the representatives of the Union in the Council of Members of the IOC without further decision of the Council if those technical adaptations result from amendments related to the revision of the Trade Standard applying to olive oils and olive pomace oils as well as the methods as referred to in the Annex.

[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, ELI: http://data.europa.eu/eli/reg/2013/1308/2023-01-01).

Article 3

Where the position referred to in Article 1 is likely to be affected by new scientific or technical information presented before or during the 119th session of the Council of Members, the representatives of the Union shall request that the adoption of the decisions modifying the Trade Standard applying to olive oils and olive pomace oils and of the method for organoleptic assessment of virgin olive oils and the method to determine the content of waxes and ethyl esters of fatty acids by capillary column gas chromatography be postponed until the position of the Union is established on the basis of that new information.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President