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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	11 July 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 398 final
Subject:	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) with respect to the accession of Bosnia and Herzegovina to the International Agreement on Olive Oil and Table Olives, 2015

Delegations will find attached document COM(2023) 398 final.

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COM(2023) 398 final

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Proposal for a

COUNCIL DECISION

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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 accession of the Government of Bosnia and Herzegovina to the International Agreement on Olive Oil and Table Olives ('the Agreement').

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 Agreement[1].

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. The decisions of the Council of Members concerning the accession of a new member shall be taken by consensus. Pursuant to Article 10(4)(b) of the Agreement, if consensus cannot be reached within a time limit laid down by the Chair of the Council of Members, the members shall take a vote. The decision shall be considered to be adopted when at least the majority of the members representing at least 86 per cent of the participation shares of the members are in favour thereof.

There are currently 18 members in the IOC and the European Union has 650 participation shares out of a total of 1000.

2.3. The envisaged act of the Council of Members

Following the formal application of Bosnia and Herzegovina dated 22 February 2023 to accede to the Agreement, it is expected that the Council of Members will adopt, during a future session of the Council of Members, or within the framework of a procedure for adoption of decisions by the Council of Members by exchange of correspondence, a decision concerning the accession of Bosnia and Herzegovina.

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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).

The purpose of the envisaged act is to establish the conditions for the accession of Bosnia and Herzegovina pursuant to Article 29 of the Agreement.

The envisaged act will become binding on the parties by changing the decisional balance within the Council of Members when decisions are not adopted by consensus in accordance with Article 10(4) of the Agreement.

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

Even though the olive oil and table olives sector remains modest in Bosnia and Herzegovina, there is potential for its development in a region with a long tradition of production and consumption of olive oil and table olives[2]. The farming sector value added (% of GDP) in Bosnia and Herzegovina was reported at 5.2% of GDP in 2021[3], with a strong commitment from the country to increase the share of olive production.

Considering that Bosnia and Herzegovina is developing its olive sectors as regards consumption and intends to develop its production, the accession of Bosnia and Herzegovina will under certain conditions reinforce the IOC, in particular as regards the achievement of uniformity in national and international legislation relating to the characteristics of olive products in order to prevent any obstacle to trade. This accession fits the objectives of 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.[4]

A decision to be adopted by the Council of Members will establish the conditions for the accession of the Bosnia and Herzegovina in respect of the participation shares in the IOC and the time limit for the deposit of the instrument of accession.

The participation shares of the Members which are used to fix the financial contributions and voting rights are calculated according to a formula specified in Article 11 of the Agreement. The Union will make sure that this formula is used when defining the participation shares of Bosnia and Herzegovina.

The Union will support any time limit for the deposit of the instrument of accession that would allow Bosnia and Herzegovina to accede to the Agreement soon. If the deposit of the instrument is delayed, the Union may support, in subsequent decisions to be adopted by the Council of Members, the extension of the period for the deposit of the instrument.

Taking into account the decision-making process within the Council of Members of the IOC, the Union position is needed for establishing the conditions for the accession of Bosnia and Herzegovina.

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2 According to the figures from the International Olive Council, annual table olives production in the Bosnia and Herzegovina reached around 1 000 tonnes in the marketing year 2019/20, increasing significantly compared to previous marketing years (around 500 tonnes).

3 According to the World Bank collection of development indicators.

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).

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 act which the Council of Members is called upon to adopt constitutes an act having legal effects. The envisaged act has legal effects notably because it will affect the decisional balance within the Council of Members when decisions are not adopted by consensus in accordance with Article 10(4) of the Agreement[6].

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.

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[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.

[6] Acts of the Council of Members that concern olive oil marketing standards could be adopted without consensus, are 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.

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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) 2016/1892 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 2019[1].

(2) Pursuant to Article 29 of the Agreement, the Council of Members of the International Olive Council ('the Council of Members') is to establish the conditions for the accession of a Government to the Agreement.

(3) The Government of Bosnia and Herzegovina has formally applied to accede to the Agreement. The Council of Members should therefore be invited, during a future session thereof, or within the framework of a procedure for adoption of decisions by the Council of Members by exchange of correspondence, to establish the conditions for the accession of Bosnia and Herzegovina, in respect of the participation shares in the IOC and the time limit for the deposit of the instrument of accession.

(4) Given that Bosnia and Herzegovina is developing its olive sectors as regards consumption and intends to develop its production, its accession could under certain conditions reinforce the IOC, in particular as regards the achievement of uniformity in national and international legislation relating to the characteristics of olive products in order to prevent any obstacle to trade.

(5) 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 have legal effects on the Union by impacting the decisional balance within the Council of Members when decisions are not adopted by consensus in accordance with Article 10(4) of the Agreement,

[1] 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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Council of Members of the International Olive Council during a future session thereof, or within the framework of a procedure for adoption of decisions by the Council of Members by exchange of correspondence, as regards the conditions for the accession of the Government of Bosnia and Herzegovina to the Agreement, is set out in the Annex.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President