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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 amending the definition of ‘grain’ or ‘grains’ under 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 envisaged addition of pulses to the definition of “grain” or “grains” under 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 European 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:

- furthering international cooperation in all aspects of trade in grains;
- promoting expansion, openness and fairness of the international trade in the grains sector;
- 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.

The International Grains Council has 30 members, including many of the world’s largest cereals producers as well as importers. Besides the European Union and among others, its members are Argentina, Australia, Canada, Egypt, India, Japan, Russia, Ukraine, the United Kingdom and the USA. However, China and Brazil are not members.

The 30 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 371 votes in 2020/21².

For decision-making, i.e. where votes are held (see Article 12 of the Convention), 1,000 votes are distributed for the 11 exporting members (including the Union with 244 votes) and 1,000 votes for the 19 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 European Union is represented by the European Commission. Member States can attend the IGC meetings, in particular the Council Sessions.

2.3. The envisaged act of the International Grains Council

On 14 May 2021 the International Grains Council has proposed to include pulses in the definition of “grain” or “grains” under Article 2(1), point (e), of the Convention (‘the envisaged act’). It is proposed, that the decision of the IGC be made by postal ballot (i.e. written procedure) with a deadline of 31 October 2021. In case no written objection is sent by any member of the IGC, pulses would be added to the definition of “grain” or “grains” under Article 2(1), point (e), of the Convention with effect from 1 November 2021.

According to the proposal, *“lentils, dry peas, chickpeas, dry beans, other pulses and their products shall be included in the definition of “grain” or “grains” under Article 2(1)(e) of the Grains Trade Convention, 1995”*.

The purpose of the envisaged act is to enable the International Grains Council to extend its regular work as referred to in Article 3 of the Convention to pulses. In particular, the regular reports, exchange of information and special studies referred to in Article 3 of the Convention should include pulses and their products as from 1 November 2021. Member Governments should cooperate with the IGC Secretariat by providing relevant information on these pulses and their products.

Although the Convention does not lay down specific rules 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 European Union by Council Decision 96/88/EC³ 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 on 7 June 2021 and remains in force until 30 June 2023.

When the Convention was concluded, the definition of “grain” or “grains” under Article 2(1), point (e), included the following products: “barley, maize, millet, oats, rye, sorghum, triticale and wheat, and their products”.

Then, in 2008, members of the International Grains Council decided to include rice and its products as well in the definition of “grain” or “grains” with effect from 1 July 2009. Furthermore, the definition of “grain” or “grains” was further extended with effect from 1 July 2013 to include various oilseeds as well, namely copra, cottonseed, palm kernel, groundnuts, rapeseed/canola, soya beans and sunflower seed and their products.

The European Union has always been an active member of the IGC and supported the extension of the work of the IGC to analysing the market and trade developments of the pulses as well. So far, this was done on an *ad hoc* basis, subject to the approval of the annual work programme of the IGC.

³ OJ L 21, 27.1.1996, p. 47.

The purpose of this proposal is to seek the Council's authorisation to the Commission to vote, on the European Union's behalf, in favour of adding pulses to the definition of "grain" or "grains" under Article 2(1), point (e), of the Convention with effect from 1 November 2021. The formal decision in the International Grains Council about the proposal will be made by written procedure (postal ballot), with a deadline fixed for 31 October 2021.

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 envisaged act of the International Grains Council has the effect of amending the Convention by extending the definition of "grain" or "grains" under Article 2(1), point (e), of the Convention which is an international agreement binding the Union. The envisaged act has therefore legal effects.

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 European 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(3), first subparagraph TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(3), first subparagraph TFEU, in conjunction with Article 218(9) TFEU.

⁴ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 63 and 64.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the International Grains Council will amend the Convention by adding pulses to the definition of “grain” or “grains” under Article 2(1), point (e), of the Convention, it is appropriate to publish the Council Decision 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(3), first subparagraph 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 means of Council Decision 96/88/EC¹ and entered into force on 1 July 1995. The Convention was concluded for a period of three years.
- (2) Article 2(1), point (e), of the Convention defines the meaning of “grain” or “grains” for the purposes of the Convention. Members of the International Grains Council may decide to amend that definition in accordance with Article 32 of the Convention.
- (3) On 14 May 2021 the Secretariat of the International Grains Council proposed to add pulses to the definition of “grain” or “grains” under Article 2(1), point (e), of the Convention with effect from 1 November 2021. According to the proposal, *“lentils, dry peas, chickpeas, dry beans, other pulses and their products shall be included in the definition of “grain” or “grains” under Article 2(1)(e) of the Grains Trade Convention, 1995”*².
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the International Grains Council with respect to the amendment of the definition of “grain” or “grains” under Article 2(1), point (e), of the Convention, as extending the product coverage of the International Grains Council through the addition of pulses to the definition of “grain” or “grains” is in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union’s behalf in the International Grains Council shall be to vote in favour of amending Article 2(1), point (e), of the Grains Trade Convention by adding pulses to the definition of “grain” or “grains”, in accordance with the proposal submitted by the Secretariat of the International Grains Council on 14 May 2021.

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 International Grains Council, GC53/3 of 14 May 2021, Annex 1.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*