EUROPEAN COMMISSION

Brussels, 12.4.2010
COM(2010)139 final

2010/0077 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union within the Food Aid Committee as regards the extension of the Food Aid Convention, 1999

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Food Aid Convention, 1999 (FAC) was concluded by the Community by Council Decision 2000/421/EC. It remains in force until 30 June 2010, following a further extension by decision of the Food Aid Committee at its 100th session on 5 June 2009.

The Food Aid Convention, 1999 and the Grains Trade Convention (GTC), 1995 are two parts of the International Grains Agreement, 1995. The Grains Trade Convention of 1995 was extended until 30 June 2011, thus allowing formally the Food Aid Convention to be also extended until 30 June 2011.

The FAC, originally introduced in the 1960s, was created as an instrument for a coordinated and acceptable disposal of agricultural surpluses from developed countries to developing countries in need. Today, there appears to be broad agreement amongst the FAC members that the Convention in its current form no longer corresponds to the requirements and practices of today's food assistance. However formal renegotiations of the FAC have been deferred, initially with a view to taking into account the outcome of the negotiations of the ongoing World Trade Organisation (WTO) Doha Development Agenda (DDA). Due to the significant time which has elapsed since the last time the FAC was renegotiated as well as the unpredictable timeframe for the conclusion of these negotiations, FAC members at the 100th session of the Food Aid Committee on 5 June 2009 agreed that there was no need to await the completion of the WTO discussions before beginning intensive work on the possible elements of a new FAC. The understanding is that a future Convention would need to be WTO compatible.

As the current FAC expires in June 2010, the question of a renewal will be formally addressed in the forthcoming meeting of the Food Aid Committee on 4 June 2010. At the 101st session of the Food Aid Committee on 9 December 2009 in London, some FAC members (AUS, CAN, CH, Japan, USA) expressed their *'position in principle'* as favouring an extension of the FAC for another year, i.e. until 30 June 2011. The EU however communicated the line agreed by the 'Council Working Group on Humanitarian Aid and Food Aid' (COHAFA) in its meeting on 25 November 2009*: "The EU will work towards taking a decision in June as to the future of the FAC and preparations may start now without any prejudice to the formal position that will be communicated in June 2010."* thus linking the possible extension of the current FAC to the progress accomplished in view of the (re)negotiation of a new convention.

There was an informal meeting of the Food Aid Committee in London on 15 and 16 February 2010 to further discuss the future of the FAC. In the informal meeting it was agreed to set up a Working Group on the future of the FAC and a consensus was reached on draft terms of reference to continue discussions on the major components of the FAC. The working group will commence work on 15 March 2010 and finalise its report by 14 May 2010. This report will be discussed at the informal meeting of FAC members on 2-3 June 2010 and considered at the 102nd session of the Food Aid Committee on 4 June 2010. The Food Aid Committee has been requested to formally agree to this under written procedure by 8 March 2010. There are two possible scenarios in respect of which the EU has to prepare a common position in view of the 102nd session of the Food Aid Committee in London on 4 June 2010 either:

(1) the informal discussions of FAC members on the future of the Food Aid Convention have achieved a significant progress (i.e. there is a reasonable expectation that negotiation/renegotiation talks on a future Convention will start in the course of 2010), prior to the 102nd session of the Food Aid Committee in London on 4 June 2010: in that case an extension of the FAC for one more year will be most appropriate. The Commission will then initiate a recommendation for a Council negotiating authorization and directives, in accordance with the procedure laid down in Article 218 TFEU; or

(2) the informal discussions on the future of the Food Aid Convention have not progressed significantly, prior to the formal meeting of the Food Aid Committee in London in June 2010. In that case an extension of the FAC for one more year will not be appropriate, and the Commission on behalf of the EU and its Member States should formally oppose the emergence of a consensus in the Food Aid Committee, pursuant to Rule 13 of the FAC rules of procedures, favoring an extension of the FAC.

Progress, or the lack of it, will be assessed by the EU Member States and the European Commission. Should the FAC not be extended it would no longer exist and in consequence there would be no minimum commitments to be fulfilled. This would not affect DG ECHO in its allocation of funding resources for humanitarian food assistance. However, it is likely there will be material negative consequences in terms of negative perceptions by recipient countries who may consider that predictability of food aid deliveries will deteriorate and by other Members of the FAC who favour the historic approach, i.e. a mechanism that facilitates the disposal of food products.

Under the FAC the yearly commitments for the European Union and its Member States to deliver a minimum annual amount of food aid are expressed both in wheat equivalents and in value terms, and the current EU and Member States commitments are 1,320,000 tonnes of wheat equivalent plus €130 million (this includes transport and other operational costs). Regarding the wheat equivalent commitment of 1,320,000 tonnes, 990,000 tonnes is the share handled by the European Commission as part of an internal EU agreement.

- Existing provisions in the area of the proposal

Council Decision 2000/421/EC

Council Decision 2006/906/EC

Council Decision 2007/317/EC

Council Decision 2009/393/EC

- Consistency with the other policies and objectives of the Union

This decision is consistent with the Grains Trade Convention 1995 that remains in force until 30 June 2011. On 8 June 2009, members of the International Grains Council agreed that the Grains Trade Convention, 1995 should, in principle, be extended by two years from 1 July 2009.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

At the Council Working Group on Humanitarian Aid and Food Aid (COHAFA) of 25 November 2009, Member States took the following position regarding the prolongation of the Food Aid Convention, 1999 for a period of one year, i.e. until 30 June 2011: *"The EU will work towards taking a decision in June as to the future of the FAC and preparations may start now without any prejudice to the formal position that will be communicated in June 2010."*

Collection and use of expertise

There was no need for external expertise.

- **Impact Assessment**

Not applicable.

3. LEGAL ELEMENTS OF THE PROPOSAL

- Legal basis

Article 218.9 of the Treaty on the Functioning of the European Union.

- Subsidiarity

The proposal falls under mixed competence.

- Proportionality

The proposal complies with the proportionality principle.

- Choice of instrument

Proposed instruments: Council Decision.

Other means would not be adequate for the following reason: pursuant to article 218.9 TFEU, it is the only way to adopt the European Union's position to be expressed within the food aid committee.

4. BUDGETARY IMPLICATION

The Food Aid Convention may only be extended when the Grains Trade Convention 1995 exists for the same period. The contribution to the administrative budget of the International Grains Agreement also covers the Food Aid Convention 1999, i.e. there is no additional budgetary implication for an extension of the FAC. The contribution is budgeted under item 05 06 01 of the EU budget (International agricultural agreements). The estimated cost of this contribution was set out in a financial statement attached to the Council Decision 2009/393/EC to extend the Grains Trade Convention of 1995. The cost will be updated and taken into consideration at the moment of the extension of the Grains Trade Convention 1995.

The extension of Food Aid Convention, 1999 would mean that yearly commitments to provide food aid by the European Union under Article III(e) of the Convention will be extended for one more year. The European Commission has taken responsibility for a share of the commitments undertaken by the EU and its Member States within the Food Aid Convention. A single FAC notification is consolidated together with Member States and does not indicate separate operations. The FAC (article V1) provides for carryover and carry-forward from one year to another, where the commitments have been exceeded, but this has never been invoked.

It is important however to note that for two consecutive reporting years: i.e. 2007/2008 and 2008/2009, the European Commission has not been in a position to meet its tonnage commitments.

CONCLUSIONS

In view of the above, the Commission proposes that the Council establishes the following position on behalf of the European Union and its Member States, and authorises the Commission accordingly to either:

(1) vote on behalf of the European Union and its Member States, in accordance with Article XXV(b) of the Food Aid Convention 1999, in favour of the further extension of this Convention, for a period of one year, i.e. until 30 June 2011, if the following condition is met: the informal discussions of the FAC members on the future of the Food Aid Convention have achieved a significant progress (i.e. there is a reasonable expectation that negotiation/renegotiation talks on a future Convention will start in the course of 2010), prior to the 102nd session of the Food Aid Committee in London on 4 June 2010.

(2) formally oppose on behalf of the European Union and its Member States the emergence of a consensus in the Food Aid Committee, pursuant to Rule 13 of the FAC rules of procedures, favouring an extension of the Food Aid Convention, if the above condition in point (a) is not met.

2010/0077 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be adopted on behalf of the European Union within the Food Aid Committee as regards the extension of the Food Aid Convention, 1999

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to article 218 (9) of the Treaty on the Functioning of the European Union,

Having regard to the proposal from the Commission,

Whereas:

(1) The Food Aid Convention 1999 (hereinafter: the "Convention") was concluded by the Community by Council Decision 2000/421/EC[1] and extended by decisions of the Food Aid Committee in June 2003, June 2005, June 2007, June 2008, June 2009 so as to remain in force until 30 June 2010.

(2) The Grains Trade Convention 1995 remains in force until 30 June 2011.

(3) The current FAC expires in June 2010 and the question of a renewal will be formally addressed in the 102nd session of the Food Aid Committee on 4 June 2010.

(4) In its 101st session on 9 December 2009 in London some FAC members (AUS, CAN, CH, Japan, USA) expressed their willingness to extend the FAC for another year till 30 June 2011. The European Union took the position that: "The EU will work towards taking a decision in June as to the future of the FAC and preparations may start now *without any prejudice to the formal position that will be communicated in June 2010."*

(5) There are two possible scenarios for which the EU has to prepare a common position in view of the 102nd session of the Food Aid Committee in London on 4 June 2010 either:

(a) the informal discussions of FAC members on the future of the Food Aid Convention have achieved a significant progress (i.e. there is a reasonable expectation that negotiation/renegotiation talks on a future Convention will start in the course of 2010), prior to the 102nd session of the Food Aid Committee in London on 4 June 2010, prior to the 102nd session of the Food Aid Committee in London on 4 June 2010; in that case an extension of the FAC for one more year would be most appropriate. The Commission would then initiate the procedure laid down in Article 218 TFEU recommending to

[1] OJ L 163, 4.7.2000, p. 37.

the Council to authorize the negotiation and to adopt the appropriate negotiating directives; or

(b) the informal discussions of the FAC members on the future of the Food Aid Convention have not progressed, prior to the formal meeting of the Food Aid Committee in London in June 2010. In that case an extension of the FAC for one more year would not be appropriate, and the Commission on behalf of the EU and its Member States should formally oppose the emergence of a consensus in the Food Aid Committee favoring an extension of the FAC.

(6) The Commission, which represents the European Union in the Food Aid Committee, should therefore be authorised by a Council Decision to either favour an extension of the FAC for one year, i.e. until 30 June 2011 if the condition is met, or oppose a consensus in the Food Aid Committee favouring such extension.

HAS DECIDED AS FOLLOWS:

Article 1

The position of the European Union within the Food Aid Committee shall be to favour the extension of the Food Aid Convention 1999 for a period of one year, i.e. until 30 June 2011 subject to the informal discussions of the FAC members on the future of the Food Aid Convention have achieved a significant progress (i.e. there is a reasonable expectation that negotiation/renegotiation talks on a future Convention will start in the course of 2010), prior to the 102nd session of the Food Aid Committee in London on 4 June 2010.

If this condition is not met, the position of the European Union shall be to formally oppose the emergence of a consensus in the Food Aid Committee, pursuant to Rule 13 of the FAC rules of procedures, favouring an extension of the Food Aid Convention.

Article 2

The Commission is hereby authorised to express this position within the Food Aid Committee.

Done at Brussels,

For the Council
The President