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2022/0255 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Organisation for Vine and Wine (OIV)

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 General Assembly of the OIV on 4 November 2022 in connection with the envisaged adoption of OIV resolutions that may produce legal effects on Union law.

2. CONTEXT OF THE PROPOSAL

2.1. Particular status of the EU within OIV

Currently 48 States are members of the OIV, among which 20 are Member States of the Union. The EU is not a member of the OIV. However, since 20 October 2017, the OIV has granted to the Union the particular status provided for in Article 4 of the Rules of Procedure of the OIV, enabling it to intervene in the works of the Commissions, Sub-Commissions and groups of experts and attend the meetings of the General Assembly and the Executive Committee.

2.2. The OIV

The International Organisation of Vine and Wine (OIV) is an intergovernmental scientific and technical organisation active in the sector of vine, wine, wine-based drinks, table grapes, raisins and other vine products. The objectives of the OIV are (i) to inform of measures whereby the concerns of producers, consumers and other players in the vine and wine products sector may be taken into consideration, (ii) to assist other international organisations involved in standardisation activities and (iii) to contribute to international harmonisation of existing practices and standards.

2.3. The envisaged act of the OIV

The next General Assembly of OIV will be held on 4 November 2022. In that context and on the basis of discussions held within the group of experts meetings that took place in May 2022, it can be expected that the following resolutions, producing legal effect on Union law, will be on the agenda of the General Assembly for adoption:

– Draft Resolutions OENO-TECHNO 14-567B2, 14-567B4 and 14-567C1 establishing the distinction between additives and processing aids for certain oenological compounds, draft Resolutions OENO-TECHNO 20-684A, 21-689 and 21-708 updating certain existing oenological practices, draft Resolution OENO-TECHNO 20-684B establishing a new oenological practice and draft Resolution OENO-TECHNO 21-707 withdrawing an existing oenological practice.

– Draft Resolutions OENO-SPECIF 20-675A, 20-675B, 20-675C, 20-675D and 20-681 establishing new identification specifications for certain substances used in wine production, and draft Resolutions OENO-SPECIF 17-624 and 20-674 modifying the corresponding identification specifications for certain substances used in wine production.

– Draft Resolution CST-SCMA 20-668 providing the opinion of the OIV on the total dry extract of wine used to detect fraud in wine, draft Resolutions OENO-SCMA 19-665 and 20-667 establishing new methods of analysis, draft Resolution OENO-SCMA 20-683 updating the method of analysis which quantifies total nitrogen in musts and wines and draft Resolution SECSAN-SECUAL 21-709 updating the criteria for the quantification of allergens.

As in the past, it can be expected that the agenda of the meeting of the General Assembly of the OIV will still evolve and that further resolutions producing legal effects on Union law will be added to the agenda. In order to ensure efficiency of the work of the General Assembly while respecting the rules of the Treaties, the Commission will in due time supplement or amend the present proposal to enable the Council to adopt the position to be taken also for these resolutions.

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

The draft resolutions that will be submitted to the vote of the next General Assembly of OIV have been extensively discussed between scientific and technical experts of the wine sector. They contribute to the international harmonisation of the wine standards and they will set a framework which will ensure fair competition in the trading of wine sector products. They should therefore be supported.

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*.'

Article 218(9) TFEU applies regardless of whether the Union is a member of the body or a party to the agreement[1].

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*'[2].

4.1.2. Application to the present case

The International Organisation of Vine and Wine (OIV) is an intergovernmental scientific and technical organisation active in the sector of vine, wine, wine-based drinks, table grapes, raisins and other vine products. Currently 48 States are members of the OIV, among which 20 are Member States of the Union. The EU is not a member of the OIV. However, since 20 October 2017, the OIV has granted to the Union the particular status provided for in Article 4 of the Rules of Procedure of the OIV, enabling it to intervene in the works of the Commissions, Sub-Commissions and groups of experts and attend the meetings of the General Assembly and the Executive Committee.

Pursuant to Regulation (EU) No 1308/2013 of the European Parliament and of the Council and Commission Delegated Regulation (EU) 2019/934, certain resolutions adopted and published by the OIV have legal effect on EU law. The Union position with regard to those resolutions in relation to matters within its competence should therefore be adopted by the Council and expressed at the OIV meetings by the Member States which are members of the OIV, acting jointly in the interest of the Union.

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1 Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraph 64.

2 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.

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 of the envisaged draft resolutions relates to the harmonisation of wine standards and thus to the implementation of a common agriculture policy. Therefore, the substantive legal basis of the proposed decision comprises Article 43 of the TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 43, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

Not applicable.

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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 43, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The International Organisation of Vine and Wine (OIV) will examine and possibly adopt resolutions which will have legal effects for the purposes of Article 218(9) TFEU in its next General Assembly on 4 November 2022.

(2) The Union is not a member of the OIV. However, on 20 October 2017, the OIV granted to the Union the particular status provided for in Article 4 of the Rules of Procedure of the OIV.

(3) 20 Member States are members of the OIV. Those Member States have the possibility to propose amendments to the draft OIV resolutions and will be asked to adopt those resolutions in the next OIV General Assembly on 4 November 2022.

(4) The Union position with regard to those resolutions in relation to matters within its competence should therefore be adopted by the Council and expressed at the OIV meetings by the Member States which are members of the OIV, acting jointly in the interest of the Union.

(5) Pursuant to Regulation (EU) No 1308/2013 of the European Parliament and of the Council[3] and Commission Delegated Regulation (EU) 2019/934[4], certain resolutions adopted and published by the OIV will have legal effects.

(6) Article 80(3)(a) of Regulation (EU) No 1308/2013 provides that the Commission is to take into account the oenological practices and methods of analysis recommended and published by the OIV when authorising oenological practices.

(7) Article 80(5) of Regulation (EU) No 1308/2013 provides that the Commission, when laying down methods of analysis for determining the composition of the products of the wine sector, is to base those methods on any relevant methods recommended and

[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).

[4] Commission Delegated Regulation (EU) 2019/934 of 12 March 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards wine-growing areas where the alcoholic strength may be increased, authorised oenological practices and restrictions applicable to the production and conservation of grapevine products, the minimum percentage of alcohol for by-products and their disposal, and publication of OIV files (OJ L 149, 7.6.2019, p. 1).

published by the OIV unless they would be ineffective or inappropriate in view of the objective pursued by the Union.

(8) Article 90(2) of Regulation (EU) No 1308/2013 provides that products of the wine sector imported into the Union are to be produced in accordance with oenological practices authorised by the Union pursuant to that Regulation or, prior to that authorisation, produced in accordance with oenological practices recommended and published by the OIV.

(9) Article 9(1) of Delegated Regulation (EU) 2019/934 provides that, where they are not laid down by the Commission, the purity and identification specifications of substances used in oenological practices are to be those referred to in column 4 of Table 2 of Part A of Annex I to that Regulation, which refer to OIV recommendations.

(10) Draft Resolutions OENO-TECHNO 14-567B2, 14-567B4 and 14-567C1 establish the distinction between additives and processing aids for certain oenological compounds. Draft Resolutions OENO-TECHNO 20-684A, 21-689 and 21-708 update certain existing oenological practices. Draft Resolution OENO-TECHNO 20-684B establishes a new oenological practice. Draft Resolution OENO-TECHNO 21-707 withdraws an existing oenological practice. In accordance with Article 80(3)(a) and Article 90(2) of Regulation (EU) No 1308/2013, these Resolutions will have legal effects.

(11) Draft Resolutions OENO-SPECIF 17-624 and 20-674 update the identification specifications for certain substances used in wine production. Draft Resolutions OENO-SPECIF 20-675A, 20-675B, 20-675C, 20-675D and 20-681 establish new identification specifications for certain substances used in wine production. In accordance with Article 80(3)(a) and Article 90(2) of Regulation (EU) No 1308/2013, and with Article 9(1) of Delegated Regulation (EU) 2019/934, these Resolutions will have legal effects.

(12) Draft Resolution CST-SCMA 20-668 provides the opinion of the OIV on the total dry extract of wine used to detect fraud in wine. Draft Resolutions OENO-SCMA 19-665 and 20-667 establish new methods of analysis. Draft Resolution OENO-SCMA 20-683 updates the method of analysis which quantifies total nitrogen in musts and wines and draft Resolution SECSAN-SECUAL 21-709 updates the criteria for the quantification of allergens. In accordance with Article 80(3)(a) and Article 80(5) of Regulation (EU) No 1308/2013, these Resolutions will have legal effects.

(13) Those draft OIV resolutions have been extensively discussed between scientific and technical experts of the wine sector. They contribute to the international harmonisation of the wine standards and will set a framework which will ensure fair competition in the trading of products of the wine sector. They should therefore be supported.

(14) In order to allow for the necessary flexibility during the negotiations ahead of the OIV General Assembly on 4 November 2022, Member States which are members of the OIV should be authorised to agree to changes to those draft OIV resolutions provided that such changes do not alter the substance thereof,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the OIV General Assembly scheduled for 4 November 2022 is set out in the Annex.

Article 2

The position referred to in Article 1 shall be expressed by the Member States of the Union which are Members of the OIV, acting jointly.

Article 3

1. Where the position referred to in Article 1 is likely to be affected by new scientific or technical information presented before or during the OIV meetings, Member States which are Members of the OIV shall request that the voting in the OIV General Assembly be postponed until the position of the Union is established on the basis of the new information.

2. Following coordination and without further decision of the Council establishing the position of the Union, the Member States which are Members of the OIV, acting jointly on the Union's behalf, may agree to technical changes to the draft resolutions referred to in the Annex which do not alter the substance thereof.

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President