



Brussels, 14.9.2018
COM(2018) 626 final

2018/0327 (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 23 November 2018 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 46 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 in Uruguay on 23 November 2018. In that context and on the basis of discussions held within the group of experts meeting that took place in April 2018 in Paris, 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 14-567B and 14-567C classifying as additives or processing aids the substances used for the production of wine. In accordance with Article 80(3)(a) and Article 90(2) of Regulation (EU) No 1308/2013, these Resolutions will have legal effect on Union law.
- Draft Resolutions OENO-SPECIF 15-573, 15-579, 16-603 and 16-604 establishing the purity and identification specifications of substances used in oenological practices. These oenological practices have been published and recommended by the OIV on condition that the specifications of the substances used are adopted (OIV International Code of Oenological practices, § 2.1.20 and § 3.4.14). In accordance with Article 80(3)(a) and Article 90(2) of Regulation (EU) No 1308/2013, and with Article 9 of Regulation (EC) No 606/2009, these Resolutions will have legal effect on Union law.
- Draft Resolutions OENO-SCMA 15-591A, 15-591B, 16-595, 16-597, 16-598, 16-599, 16-600, 16-606 and 17-623 establishing methods of analysis. In accordance with Article 80(3)(a) and Article 80(5) of Regulation (EU) No 1308/2013, these Resolutions will have legal effect on Union law.

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 agreement¹.

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. 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. Currently 46 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.

At EU level, pursuant to 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

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.

agricultural products³ (CMO Regulation), certain resolutions adopted and published by the OIV affect EU law.

The CMO Regulation provides for references to the OIV in the following provisions:

- oenological practices adopted and published by the OIV that the Commission must take into account when it authorises such practices (Article 80(3)(a) of CMO Regulation);
- the same oenological practices where used, prior to their authorisation according to Article 80(3) of CMO Regulation, for the production of wines in third countries (Article 90(2) of CMO Regulation);
- certain purity and identification specifications of substances used in oenological practices so that the rules adopted and published by the OIV become ipso facto binding on this matter within the EU (Article 9 of Commission Regulation (EC) No 606/2009 of 10 July 2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008⁴ as regards the categories of grapevine products, oenological practices and the applicable restrictions);
- certain methods of analysis for determining the composition of the products of the wine sector adopted and published by the OIV upon which the Commission must base itself unless they would be ineffective or inappropriate in view of the objective pursued by the Union (Article 80(5) of CMO Regulation).

Similarly, pursuant to the Commission Regulation (EC) No 2870/2000 of 19 December 2000 laying down Community reference methods for the analysis of spirits drinks⁵, certain resolutions adopted and published by the OIV affect EU law. Article 3 of Regulation (EC) No 2870/2000 provides for reference to OIV resolutions where Community analytical reference methods are not laid down for the detection and quantification of substances contained in a particular spirit drink.

Finally, Article 4 of Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products⁶ also provides for references to the OIV. Pursuant to this provision, in order to establish authorised production processes the Commission must take into account the production processes recommended and published by the OIV and must adopt methods of analysis based on any relevant methods recommended and published by the OIV, unless they would be ineffective or inappropriate in view of the objective pursued.

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.

³ OJ L 347, 20.12.2013, p. 671

⁴ OJ L 193, 24.7.2009, p. 1

⁵ OJ L 333, 29.12.2000, p. 20

⁶ OJ L 84, 20.3.2014, p. 14–34

4.2.2. Application to the present case

The envisaged act pursues objectives and has components in the area of agriculture. These elements of the envisaged act are inseparably linked without one being incidental to the other.

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

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 affect Union law in its next General Assembly of 23 November 2018. The Union is not a member of the OIV. However the OIV has granted to the Union, on 20 October 2017, the particular status provided for in Article 4 of the Rules of Procedure of the OIV.
- (2) 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 some of the draft OIV resolutions in the next OIV General Assembly on 23 November 2018.
- (3) 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.
- (4) Pursuant to Regulation (EU) No 1308/2013 of the European Parliament and of the Council⁷ and Commission Regulation (EC) No 606/2009⁸, certain resolutions adopted and published by the OIV affect Union law.
- (5) 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 it authorises oenological practices.
- (6) 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 published by the OIV unless they would be ineffective or inappropriate in view of the objective pursued by the Union.

⁷ 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).

⁸ Commission Regulation (EC) No 606/2009 of 10 July 2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions (OJ L 193, 24.7.2009, p. 1).

- (7) 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.
- (8) Article 9 of Regulation (EC) No 606/2009 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 laid down and published by the OIV.
- (9) Draft Resolutions OENO-TECHNO 14-567B1, 14-567B2 and 14-567C classify as additives or processing aids the substances used for the production of wine. In accordance with Article 80(3)(a) and Article 90(2) of Regulation (EU) No 1308/2013, these Resolutions will have legal effect on Union law.
- (10) Draft Resolutions OENO-SPECIF 15-573, 15-579, 16-603 and 16-604 establish the purity and identification specifications of substances used in oenological practices. These oenological practices have been published and recommended by the OIV on condition that the specifications of the substances used are adopted (OIV International Code of Oenological practices, § 2.1.20 and § 3.4.14). In accordance with Article 80(3)(a) and Article 90(2) of Regulation (EU) No 1308/2013, and with Article 9 of Regulation (EC) No 606/2009, these Resolutions will have legal effect on Union law.
- (11) Draft Resolutions OENO-SCMA 15-591A, 15-591B, 16-595, 16-597, 16-598, 16-599, 16-600, 16-606 and 17-623 establish methods of analysis. In accordance with Article 80(3)(a) and Article 80(5) of Regulation (EU) No 1308/2013, these Resolutions will have legal effect on Union law.
- (12) These draft 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.
- (13) In order to allow for the necessary flexibility during the negotiations ahead of the meeting of the General Assembly of the OIV, Member States which are members of the OIV should be authorised to agree to changes to these Resolutions provided that such changes do not alter the substance thereof,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, at the General Assembly of the OIV on 23 November 2018 is set out in the Annex and shall be expressed by the Member States which are Members of the OIV, acting jointly in the interest of the Union.

Article 2

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 meetings of the OIV, 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 elements.
2. Following coordination, in particular on the spot, and without further decision of the Council establishing the position of the Union, the Member States which are

Members of the OIV, acting jointly in the interest of the Union, may agree to changes to the draft resolutions referred to in the Annex which do not alter the substance thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*