



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

on the accession of the European Community to the Codex Alimentarius Commission

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 26 November 1991, the European Community became a Member, alongside the Member States, of the Food and Agriculture Organisation (FAO). At this time there had been an explicit agreed reference to the possibility of the Membership of the European Community in the Codex Alimentarius Commission, which is a joint FAO/WHO Food Standards Programme. The object of the Codex Alimentarius is to protect the health of the consumers and to ensure fair practices in the food trade.

Since 1994, with the entry into force of the WTO Agreements, in particular the Agreement on the application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement), Codex Alimentarius standards, guidelines and recommendations have acquired increased legal relevance by virtue of the reference made to the Codex Alimentarius in the WTO Agreements and the presumption of conformity that is conferred to relevant national measures when they are based on such standards, guidelines or recommendations adopted by the Codex Alimentarius Commission.

Article 2 of the Statutes of the Codex Alimentarius Commission entitles the European Community, as a Member of FAO, to become also a full Member of the Codex Alimentarius Commission.

The accession of the European Community as a full member to the Codex Alimentarius should help reinforce coherence between the standards, guidelines or recommendations and other provisions adopted by the Codex Alimentarius Commission and other relevant international obligations of the European Community.

The Council had authorised the Commission, by decision of 21 December 1993, to negotiate the conditions and the modalities of the accession of the European Community as a full member to the Codex Alimentarius Commission on the basis of the competence of the European Community, its situation in the FAO and taking into account the object and particular features of the Codex Alimentarius Commission.

The outcome of the negotiations conducted by the European Commission is considered to be satisfactory taking into account the interests of the European Community and its Member States and the specific features of the Codex Alimentarius Commission. It is necessary to provide for practical modalities concerning the participation of the European Community and its Member States in the work of the Codex Alimentarius in a way that is likely to ensure the highest possible benefit for the European Community and its Member States from the Community's accession to the Codex Alimentarius.

In view of the above considerations it is now appropriate that the European Community accedes to the Codex Alimentarius Commission.

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 37, 95, 133 and 152 (4) in conjunction with the first sub-paragraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) The object of the Codex Alimentarius Commission is *inter alia* to develop and harmonise world-wide health standards and issue guidelines and recommendations on agricultural and fishery products, foodstuffs, food additives and contaminants, feedstuffs, veterinary drugs, pesticides, including labelling, methods of analysis and sampling, codes of ethics and good agricultural practice and guidelines of hygiene practice, in view of protecting consumers' health and ensuring fair practices in international trade. These objectives are in line with the objectives of the European Community as regards measures taken to protect human, animal or plant life or health or the environment and related international trade measures, and harmonisation of national legislation, in particular as regards foodstuffs, food additives and contaminants, including labelling and methods of analysis and sampling, in view of ensuring free circulation in the internal market and imports from third countries.
- (2) Since 1994, with the entry into force of the WTO Agreements, in particular the Agreement on the application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement), Codex Alimentarius standards, guidelines and recommendations have acquired increased legal relevance by virtue of the reference made to the Codex Alimentarius in the WTO Agreements and the presumption of conformity that is conferred to relevant national measures when they are based on such standards, guidelines or recommendations adopted by the Codex Alimentarius Commission.

¹ OJ C , , p. .

² OJ C , , p. .

- (3) The European Community should be able to exercise its competence and play its role during the preparation, negotiation and adoption of standards, guidelines or recommendations by the Codex Alimentarius Commission and its subsidiary bodies. Accession of the European Community as a full member of Codex Alimentarius, alongside its Member States, is essential in order to ensure that the primary health and other interests of the European Community and its Member States are taken into consideration during the preparation, negotiation and adoption of such standards, guidelines or recommendations and other provisions by the Codex Alimentarius Commission.
- (4) The accession of the European Community as a full member to the Codex Alimentarius should help reinforce coherence between the standards, guidelines or recommendations and other provisions adopted by the Codex Alimentarius Commission and other relevant international obligations of the European Community.
- (5) On 26 November 1991, the European Community became a Member, alongside the Member States, of the Food and Agriculture Organisation (FAO).
- (6) Article 2 of the Statutes of the Codex Alimentarius Commission entitles the European Community, as a Member of FAO, to become also a full Member of the Codex Alimentarius Commission.
- (7) The Council had authorised the Commission, by decision of 21 December 1993, to negotiate the conditions and the modalities of the accession of the European Community as a full member to the Codex Alimentarius Commission on the basis of the competence of the European Community, its situation in the FAO and taking into account the object and particular features of the Codex Alimentarius Commission.
- (8) The rights and obligations of Member Organisations of the FAO can be applied *mutatis mutandis* to the membership of the European Community to the Codex Alimentarius Commission, and the appropriate decisions regarding the required adaptations of the relevant provisions of the rules of procedure of the Codex Alimentarius Commission and its subsidiary bodies have already been undertaken.
- (9) The outcome of the negotiations conducted by the European Commission is considered to be satisfactory taking into account the interests of the European Community and its Member States and the specific features of the Codex Alimentarius Commission.
- (10) It is necessary to provide for practical modalities concerning the participation of the European Community and its Member States in the work of the Codex Alimentarius Commission and its subsidiary bodies in a way that is likely to ensure the highest possible benefit for the European Community and its Member States from the Community's accession to the Codex Alimentarius.
- (11) In view of the above considerations it is now appropriate that the European Community accedes to the Codex Alimentarius Commission.

HAS DECIDED AS FOLLOWS:

Article 1

1. The European Community shall submit a request for accession to the Codex Alimentarius Commission, accompanied by a formal instrument according to which it accepts the obligations of the statutes of Codex Alimentarius Commission as in force at the time of accession (Annex I hereto) and a single declaration on exercise of competence (Annex II hereto).
2. The President of the Council shall be responsible for completing the necessary procedures to this end.

Article 2

The Arrangement between the Council and the Commission regarding preparation for Codex Alimentarius meetings and statements and exercise of voting rights, attached as Annex III hereto, will apply between the Commission, the Council and the Member States.

Done at Brussels,

*For the Council
The President*

ANNEX I

Instrument of accession to the Codex Alimentarius Commission

Sir,

I have the honour to inform you that the European Community, as a Member of FAO, has decided to request the accession to the Codex Alimentarius Commission. I, therefore, request you to accept this instrument, by which the European Community accepts the modified Rules of Procedure of the Codex Alimentarius Commission, in accordance to Rule II thereof, and the single declaration by the European Community on the exercise of competence.

The European Community formally and without reservation accepts the obligations arising from its membership of the Codex Alimentarius Commission, as set out in the Statutes of the Codex Alimentarius Commission, and solemnly undertakes to fulfil the obligations in force at the time of its admission in all loyalty and conscience.

I have the honour to be, Sir, yours faithfully,

President-in-Office of the Council of the European Union

*Mr. Diouf
Director General
United Nations Food and Agriculture Organization
Via delle Terme di Caracalla
I-00100 Rome
Italy*

ANNEX II

Single declaration by the European Community on the exercise of competence according to Rule VI of the Rules of Procedure of the Codex Alimentarius Commission

This declaration specifies the exercise of competence between the European Community and its Member States in matters covered by the instruments establishing the Codex Alimentarius Commission. It does not affect the speaking arrangement regarding the Community and its Member States.

This declaration applies to all meetings of the Codex Alimentarius Commission and any of its subsidiary bodies, unless the European Community decides or another Codex Alimentarius member requests in respect of any particular agenda item before the meeting to make a specific statement.

Should the scope of the division of competence described below between the European Community and its Member States change, this declaration will be updated accordingly.

1. EUROPEAN COMMUNITY'S COMPETENCE

As a general rule, the European Community has exclusive competence for agenda items dealing with harmonisation of standards on certain agricultural products, foodstuffs, food additives, contaminants, veterinary drug, pesticides, fish and fishery products, including labelling, methods of analysis and sampling, as well as codes and guidelines of hygiene practice, in as far as the Community legislation has harmonised either completely or to a large extent the relevant fields in these areas, as well as issues of international trade to the extent that they are related to the objectives of the Codex Alimentarius Commission, notably to protecting the health of the consumers and ensuring fair practices in the food trade.

2. MEMBER STATES' COMPETENCE

As a general rule, the Member States of the European Community have competence for agenda items dealing with organisational matters (e.g. legal or budgetary issues) and procedural issues (e.g. election of chairpersons, adoption of the agenda, adoption of reports).

3. MEMBER STATE AND COMMUNITY COMPETENCE

The European Community and its Member States both have a priori competence in the following areas, to the extent the measures envisaged in those areas falls within the scope of action of the Codex Alimentarius and where the Community has the power to harmonize but such areas have been harmonized in part only.

- (a) Agricultural policy in general, including the harmonisation of standards for animal or plant life and health (Articles 32 to 38 of EC Treaty);
- (b) Approximation of provisions laid down by laws, regulation or administrative action by the Member States in the areas of human, animal or plant life or health (Articles 94 and 95 of EC Treaty);

- (c) Public health policy measures (Article 152 of EC Treaty) and consumer protection measures (Article 153 of EC Treaty);
- (d) Policy on research and technological development (Articles 163 to 173 of EC Treaty);
- (e) Environmental policy (Articles 174 to 176 of EC Treaty);
- (f) Development policy (Articles 177 to 181 of EC Treaty);
- (g) Other policies of the European Community that may concern even partially the specific activities of the Codex Alimentarius Commission.

ANNEX III

ARRANGEMENT BETWEEN THE COUNCIL AND THE COMMISSION REGARDING PREPARATION FOR CODEX ALIMENTARIUS MEETINGS AND STATEMENTS AND EXERCISE OF VOTING RIGHTS

1. Scope of application of the co-ordination procedure

These co-ordination procedures will apply to any meeting of the Codex Alimentarius Commission or any of its subsidiary bodies, including working groups and to replies to Circular Letters.

2. Codex Alimentarius Circular Letters

- 2.1. With the aim of respecting the deadline for replying to the Codex Circular Letters, the Commission shall send, at regular intervals not exceeding two months, to the Member States a table listing, separately, all outstanding, announced and anticipated Circular Letters, identifying those Circular Letters for which it intends to prepare a draft common reply on behalf of the Community and the timeframe in which this will be done and giving as far as possible its opinion on the competence status for each of them.
- 2.2. When the Commission indicates that a common reply is to be prepared, the Member States will refrain from answering directly the identified Codex Circular Letters but can point out to the Commission the specific issues or points that pose them a problem and the orientation they suggest to adopt in the reply.
- 2.3. The Commission will prepare a draft common reply taking into account the indication of the Member States and will communicate the draft rapidly to the Member States for further comments through the national Codex Points of Contact or any specific point designated by Member States. The Commission, on the basis of the received comments, will prepare a revision of the common reply, indicating the received comments and explaining where applicable why some of them were not taken into consideration.
- 2.4. A Member State may also indicate to the Commission that a particular Circular Letter needs a common reply. In such a case the Commission will prepare a draft reply with the technical assistance of this Member State.
- 2.5. When the Commission considers that it is not necessary to prepare a common reply, the Member States are entitled to answer directly the Codex Circular Letters for which no common reply is foreseen. However, in this case, the Member States that intend to send comments directly will circulate a draft among the other Member States and the Commission before sending it to Codex in order to verify that there is no opposition from the Commission or any other Member State.

- 2.6. The Commission and the Member States will make a serious effort to reach a common position as soon as possible. If the draft common reply is acceptable by the Member States, it will be sent to the secretariat of the Codex Alimentarius. But if there is still a substantial amount of divergence of opinion, the Commission will send the draft to the Council Secretariat for the purpose of organising a co-ordinating meeting to resolve the remaining differences, and the relevant procedure set out in section 3. below will apply.

3. Co-ordination procedure in the Council

- 3.1. To prepare for any Codex Alimentarius meeting, co-ordination meetings will be held:

- in Brussels, within the competent Council Working Party (usually Codex Alimentarius Working Party), as early as possible and as many times as necessary ahead of the Codex Alimentarius meeting, and in addition,
- on the spot, particularly at the beginning and, if necessary, during and at the end of the Codex Alimentarius meeting, with further co-ordination meetings being called whenever necessary throughout the series of meetings.

- 3.2. The co-ordination meetings will agree on statements to be made on behalf of only the Community or on behalf of the Community and its Member States. Statements to be made on behalf of the Member States only do not form part of the Community co-ordination as such, but may of course also be subject to co-ordination at these meetings if so agreed by the Member States.

The Community or common positions are usually agreed upon in the form of a negotiating position, a statement or an outline of a statement. When reference is made in this arrangement to a “statement”, it should be considered to refer also to other forms in which the Community or common position is agreed.

- 3.3. The Commission will on receipt send any Codex Alimentarius meeting agenda to the Council Secretariat for circulation to Member States together with an indication of the agenda items on which it is intended that a statement be made and whether this statement will be made on behalf of the Community or the Community and its Member States.

In the case of agenda items that may necessitate taking a decision by consensus or by a vote in a Codex Alimentarius meeting, the Commission will give an indication on whether it is the Community or its Member States who should vote.

- 3.4. The Commission will send draft statements and position papers to the Council Secretariat for circulation to Member States as soon as possible but at least one week before the co-ordination meeting. For the preparation of draft statements or position papers, the Commission will rely on the technical expertise of the Member States. The Council Secretariat will ensure that the draft statements are transmitted promptly through the national Codex Points of Contact or any specific point designated by Member States.

- 3.5. The co-ordination meetings will decide on the exercise of responsibilities with respect to statements and voting in relation to each item of the Codex Alimentarius meeting agenda, on which a statement may be made or a vote is expected.
- 3.6. The Commission will inform Member States in advance of co-ordination meetings, through the Council Secretariat, of:
 - (a) its proposals regarding the exercise of responsibilities on a particular topic;
 - (b) its proposals in regards to statements on a particular topic.
- 3.7. If the Commission and the Member States in co-ordination meetings within the competent Council Working Party or on the spot cannot agree a common position, including for reasons of disagreement on the repartition of competence, with regard to questions referred to in 3.6. (a) and (b) above, the matter will be referred to the Permanent Representatives Committee which shall decide on the basis of the majority laid down in the relevant Community law dealing with the subject-matter under consideration.
- 3.8. Decisions referred to in 3.7. above are without prejudice to the respective competence of the Community and its Member States in the areas under consideration.
- 3.9. Should it prove impossible on the part of the Commission to prepare statements in time for the co-ordination meeting (due to the non-availability of the Codex Alimentarius documentation), the Commission will outline to the Members States, at least one week before the Codex Alimentarius meeting, the main elements of a Community or common position and the statement to be made accordingly. When necessary in exceptional circumstances, an on the spot co-ordination meeting will examine again these elements and the statement with the representatives of the Commission and of the Member States present in the meeting.
- 3.10. When during Codex Alimentarius meetings the need arises for a statement to be made, in order to respond to the evolution or the dynamics of the negotiations, by the Community representative on behalf of the Community or on behalf of the Community and its Member States, a draft statement will be co-ordinated on the spot and the relevant part of paragraph 3.9 above will apply.
- 3.11. During Codex discussions, in order to react to proposals not covered by the agreed Community position, Member States and the Commission after due co-ordination where possible shall be able to propose an initial response and explore alternative options without giving formal commitment. The Commission and Member States shall pay full regard to the established Community position and its underlying rationale, and will co-ordinate *sur place* as soon as possible to confirm or change the provisional positions.
- 4. Statements and voting in the Codex Alimentarius meetings**
- 4.1. Where an agenda item deals with matters of exclusive Community competence, the Commission shall speak and vote for the Community. After due co-ordination, the Member States may also speak in order to support and/or develop the Community position.

- 4.2. Where an agenda item deals with matters of exclusive national competence, Member States shall speak and vote.
- 4.3. Where an agenda item deals with matters containing elements both of national and of Community competence, the Presidency and the Commission shall express the common position. After due co-ordination, Member States may speak to support and/or develop the common position. The Member States or the Commission, as appropriate, will vote on behalf of the Community and its Member States in accordance with the common position. The decision on who will be voting is made in the light of where the preponderance of the competence lies (e.g. mainly Member State or mainly Community competence).
- 4.4. Where an agenda item deals with matters containing elements both of national and of Community competence and the Commission and the Member States have not been able to agree a common position as referred to in point 3.7, Member States may speak and vote on matters falling clearly within their competence. In accordance with the Codex Alimentarius rules of procedure, the Commission may speak and vote on matters falling clearly within Community competence and for which a Community position has been adopted.
- 4.5. On matters for which there is no agreement between the Commission and the Member States on repartition of competence, or where it has not been possible to obtain the majority needed for a Community position, a maximum effort will be made to clarify the situation or achieve a Community position. Pending this, and after due co-ordination, the Member States and/or the Commission, as appropriate, would be entitled to speak on condition that the position expressed will be coherent with Community policies and previous Community positions, and in conformity with Community law.
- 4.6. During the first two years from the Community's accession to the Codex Alimentarius Commission, the results of the co-ordination meetings in the competent Council Working Party on the exercise of responsibilities with respect to statements and voting in relation to each item of the Codex Alimentarius meeting agenda will be communicated to the Codex Alimentarius Secretariat. After the initial period of two years, the single, general Declaration made will be considered applicable, unless there is a specific request for clarification from another Codex Alimentarius member or it is decided otherwise in the competent Council Working Party.
- 4.7. Within the framework of 4.1 or 4.3 above, where a Member State has particular important concerns in respect of a dependent territory, and this concern cannot be accommodated in a common or Community position, that Member State shall retain the right to vote and speak in respect of its dependent territory, bearing in mind the interests of the Community.

5. Drafting and working groups

- 5.1. The Member States and the Commission are entitled to voluntarily participate and speak in the drafting and working groups of the Codex Alimentarius that are technical informal meetings attended only by some members of the Codex Alimentarius and where no formal decisions are taken. The representatives of the Member States and the Commission will make a serious effort to reach an agreed position and to defend this during the discussions in drafting and working groups.

- 5.2. The Commission and the Member State representatives participating in Codex drafting and working groups, without prejudice to the question of the competence, notify the other Member States promptly of draft reports drawn up by the group's rapporteur and co-ordinate with Member States regarding the position to be taken. In the absence of specific co-ordination on the draft reports, the Commission or Member State representatives on the drafting and working groups will use as orientation the co-ordinated statements and the co-ordination meeting discussions, as indicated in section 4. above.

6. Review of the arrangement

At the request of a Member State or the Commission, the arrangement will be reviewed, taking account of experience gained from its operation.

STATEMENTS MADE IN THE COUNCIL MINUTES

1. Statement by the Council and the Commission

"This arrangement reflects the special circumstances of Community participation in the Codex Alimentarius Commission and any of its subsidiary bodies. They have no implications regarding other international organisations, including those of the United Nations system."

2. Statement by the Commission

"The Commission recalls that Article 10 of the EC Treaty will continue to apply, particularly in the context of the arrangement between the Council and the Commission regarding preparation for Codex Alimentarius meetings, statements and voting."

3. Statement by the Commission

"The Commission declares, regarding point 2.6. of the Arrangement, that the maximum effort will be made to reach an agreement and to reply in time to Circular Letters so as to avoid the situation where the essential interests of the Member States are not presented and effectively defended as early as possible in Codex Alimentarius."