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EUROPEAN COMMISSION

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2011/0068 (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 2011, following an extension by decision of the Food Aid Committee at its 102nd session on 4 June 2010.

The, FAC 1999 and the Grains Trade Convention (GTC), 1995 are linked in so far as the FAC may only be extended when the Grains Trade Convention 1995 exists for the same period. The FAC 1999, 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.

As the current FAC expires in June 2011, the question of an extension will be formally addressed in the meeting of the Food Aid Committee in June 2011. At its 103rd session on 14 December 2010 members of the Food Aid Committee agreed to revisit the issue of the extension of the FAC 1999 closer to the date of its expiry (i.e. 30 June 2011). At the informal meeting on the same day, some FAC members (Australia, Canada, Switzerland, Japan and United States) signalled that they would, in principle, be favourable to an extension of the FAC, 1999 for another year, i.e. until 30 June 2012. The EU, however, communicated the line agreed by the 'Council Working Group on Humanitarian Aid and Food Aid' (COHAFA): "*The EU will work towards taking a decision in June 2011 as to the future of the FAC and formal renegotiation should start now without any prejudice to the formal position that will be communicated in June 2011*".

At its 103rd session on 14 December 2010, the members of the Food Aid Committee collectively agreed to start the formal renegotiation of the FAC. The process started with immediate effect, with a "draft zero" of the new Convention to be the subject of the first renegotiation round, scheduled to take place in London from 28 February to 2 March 2011. A series of intensive negotiation sessions are organised over the coming months, guided by the objective of agreeing on a new convention focussed on the provision of appropriate and effective food assistance to vulnerable populations, based on identified needs. The Council adopted negotiation directives, authorizing the Commission to renegotiate the FAC on behalf of the EU and its Member States, on 17 November 2010 (doc. 14907/10).

In the informal meeting of the Food Aid Committee on 14 December 2010, the EU reiterated its ambitious timeline. Negotiations should ideally be finalized by June 2011, with FAC members having reached agreement on a new Convention text prior to the formal session of the Food Aid Committee.

Furthermore, informal talks of Food Aid Committee members on the future of the FAC, which were conducted between December 2009 and December 2010, have resulted in consensus on the main issues that are subject of a formal renegotiation. It would therefore be appropriate for the EU to ensure that negotiation talks are conducted effectively resulting into an agreed text of a new Convention by June 2011.

There are two possible scenarios in respect of which the EU has to prepare a common position in view of the session of the Food Aid Committee in June 2011:

- (1) either the renegotiation of the FAC is in a final stage (i.e. negotiation talks are completed or reasonably close to completion) prior to the session of the Food Aid Committee in June 2011. In that case an extension of the FAC for one more year will

be most appropriate to avoid a vacuum between the existing FAC and the entry into force of a new Convention; or,

- (2) the renegotiation of the FAC is not in a final stage prior to the session of the Food Aid Committee in June 2011. In that case an extension of the current 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 favour of its prolongation in the Food Aid Committee.

Whether the renegotiation of the FAC has reached a final stage or not, will be assessed by the European Commission and EU Member States in the Council Working Group on Humanitarian Aid and Food Aid (COHAFA) prior to the session of the Food Aid Committee in June 2011. Should the FAC not be extended it would cease to exist and in consequence there would be no minimum commitments to be fulfilled. However it is likely that recipient countries, who may consider that predictability of food aid deliveries will deteriorate, and other Members of the FAC, who favour the historic approach, i.e. a mechanism that facilitates the disposal of food products, will entertain negative perceptions in this scenario.

Under the FAC the yearly commitments made by the EU 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 commitments are 1,320,000 tonnes of wheat equivalents plus €130 million (including transport and other operational costs). From 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

Council Decision 2010/316/EU

- Consistency with the other policies and objectives of the Union

Pursuant to Article XXV(b) of the FAC a further extension is conditional upon the remaining in force, for the same period, of the Grains Trade Convention 1995. The Grains Trade Convention 1995 remains in force until 30 June 2011, and the Commission proposes (COM/2011/4) that the EU establishes a position in favour of a further extension of this Convention.

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

At the Council Working Group on Humanitarian Aid and Food Aid (COHAFA) meeting of 9 December 2010, Member States took the following position regarding the extension of the FAC, 1999: *"The EU will work towards taking a decision in June 2011 as to the future of the*

FAC and formal renegotiation should start now without any prejudice to the formal position that will be communicated in June 2011"

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 instrument: 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 FAC 1999 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 FAC 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 Commission proposal for a Council decision establishing the position to be adopted, on behalf of the Union, within the International Grains Council with respect to the extension of the Grains Trade Convention 1995, that was adopted by the Commission on 18 January 2011 (COM/2011/4).

The extension of the FAC 1999 would mean that yearly commitments to provide food aid by the European Union under Article III(e) of the FAC 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 FAC. A single FAC notification is consolidated together with Member States and does not indicate separate operations. The FAC (article VI)

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 three consecutive reporting years: i.e. 2007/08, 2008/09 and 2009/10, the European Union has not been in a position to meet its tonnage commitments.

CONCLUSIONS

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

- (a) 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 2012, provided that the renegotiation of the Food Aid Convention is in a final stage (i.e. negotiation talks are completed or reasonably close to completion) prior to the session of the Food Aid Committee in June 2011 and provided the Grains Trade Convention 1995 remain in force during the same period; or
- (b) oppose the emergence of a consensus in the Food Aid Committee, pursuant to Rule 13 of the Rules of Procedures of the Food Aid Committee, favouring an extension of the Food Aid Convention if the renegotiation is not in a final stage prior to the session of the Food Aid Committee in June 2011.

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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 was concluded by the European Community by Council Decision 2000/421/EC¹, and extended by various decisions of the Food Aid Committee.
- (2) The current Food Aid Convention expires on 30 June 2011 and the question of a renewal will be addressed in the session of the Food Aid Committee in June 2011.
- (3) Pursuant to Article XXV(b) of the Food Aid Convention, its extension is conditioned by the Grains Trade Convention 1995 remaining in force for the same period. The Grains Trade Convention remains in force until 30 June 2011 and the Commission proposes a Council decision for establishing the position to be adopted, on behalf of the Union, within the International Grains Council concerning its extension.² Its extension should be decided on by the International Grains Council on 6 June 2011.
- (4) At its 103rd session on 14 December 2010 members of the Food Aid Committee agreed that the issue of the extension of the Food Aid Convention will be revisited closer to the date of its expiry (i.e. 30 June 2011) and the European Union took the position that: "*The European Union will work towards taking a decision in June 2011 as to the future of the Food Aid Convention and formal renegotiation should start now without any prejudice to the formal position that will be communicated in June 2011*".
- (5) At its 103rd session on 14 December 2010, the members of the Food Aid Committee agreed to begin the formal process of renegotiating the Food Aid Convention, 1999, with a series of negotiation sessions.

¹ OJ L 163, 4.7.2000, p. 37.

² COM(2011)4 final.

- (6) The aim of the European Union is for members of the Food Aid Committee to finalise the renegotiation of the Food Aid Convention and reach agreement on a new Convention text prior to the session of the Food Aid Committee in June 2011.
- (7) There are two possible scenarios for which the European Union has to prepare a common position in view of the session of the Food Aid Committee in London in June 2011:
 - (a) either the renegotiation of the Food Aid Convention by the members of the Food Aid Committee is in a final stage prior to the session of the Food Aid Committee in June 2011: in that case an extension of the Food Aid Convention for one more year will be most appropriate to avoid a vacuum between the existing Food Aid Convention and the entry into force of a new Convention; or,
 - (b) the renegotiation of the Food Aid Convention is not in a final stage prior to the session of the Food Aid Committee in June 2011. In that case an extension of the Food Aid Convention for one more year will not be appropriate, and the European Commission on behalf of the European Union and its Member States should formally oppose the emergence of a consensus in favour of an extension of the Food Aid Convention in the Food Aid Committee, pursuant to Rule 13 of the FAC rules of procedures.
- (8) Whether the renegotiation of the FAC has reached a final stage or not, should be assessed by the European Union in the Council Working Group on Humanitarian Aid and Food Aid (COHAFA) prior to the session of the Food Aid Committee in June 2011.
- (9) The European 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 Food Aid Convention for one year, i.e. until 30 June 2012 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 either

- (a) to vote in favour of the further extension of this Convention, for a period of one year, i.e. until 30 June 2012, provided that the renegotiation of the Food Aid Convention is in a final stage prior to the session of the Food Aid Committee in June 2011, and provided the Grains Trade Convention 1995 remains in force during the same period; or
- (b) to oppose the emergence of a consensus in the Food Aid Committee, pursuant to Rule 13 of the Rules of Procedures of the Food Aid Committee, favouring an extension of the Food Aid Convention, if the renegotiation of the Food Aid Convention is not in a final stage prior to the session of the Food Aid Committee in June 2011.

Article 2

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

Done at Brussels,

*For the Council
The President*