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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 29 September 2008

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Recommendation from the Commission to the Council to authorise the
Commission to open and conduct negotiations with the International
Organisation of Vine and Wine (OIV) on the terms and conditions for the
European Community's accession

Delegations will find attached Commission document COM(2008) 577 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.9.2008
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RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

to authorise the Commission to open and conduct negotiations with the International Organisation of Vine and Wine (OIV) on the terms and conditions for the European Community's accession

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A. EXPLANATORY MEMORANDUM

1. INTRODUCTION

The International Organisation of Vine and Wine (OIV) is an intergovernmental scientific and technical organisation active in the sector of vines, wine, wine-based drinks, table grapes, raisins and other vine products. It was set up by international Agreement of 3 April 2001, signed in Paris, as the successor to the *International Wine Office*, established in 1924 by the International Arrangement of 29 November 1924, which subsequently became the *International Office of Vine and Wine* by decision of 4 September 1958.

As at 3 April 2006, the OIV had 43 Members, plus, as temporary observers, the former Member States of the Office. Six Member States of the European Union are not Members of the OIV: the United Kingdom, Poland, Denmark, Lithuania, Latvia and Estonia.

The objectives and activities of the OIV are stated in Article 2.1 and 2.2 of the Agreement establishing it. Under these provisions, the OIV has the following objectives in its areas of competence:

1. to inform its members of measures whereby the concerns of producers, consumers and other players in the vine and wine products sector may be taken into consideration;
2. to assist other international organisations, both intergovernmental and non-governmental, especially those which carry out standardisation activities;
3. to contribute to international harmonisation of existing practices and standards and, as necessary, to the preparation of new international standards in order to improve the conditions for producing and marketing vine and wine products, and to help ensure that the interests of consumers are taken into account.

The OIV activities provided for in the Agreement establishing it are then directed and framed by a "triennial strategic plan" which serves as a reference framework for the organisation's activities. The triennial strategic plan is subsequently fleshed out in an "annual programme".

A detailed presentation of the structure and procedural rules of the OIV is available on the organisation's website at www.oiv.org.

To ensure consistency in the Community's position in its external relations and permit more appropriate coordination of internal measures adopted within the framework of its competences, accession of the European Community to the OIV can be considered legitimate and necessary.

Community accession to the OIV does not require an amendment to its founding act (Paris Agreement of 3 April 2001 establishing the International Organisation of Vine and Wine). However, pending a decision on accession and in order to improve

Community participation in the OIV, the Community and its Member States will endeavour to improve their coordination within the organisation and enable the Community to play a greater role than it can with guest status.

Furthermore, Council Regulation (EC) No 479/2008 on the common organisation of the market in wine¹ stipulates that, in the matter of authorising new oenological practices, the Commission is to "*base itself on the oenological practices recommended and published by the International Organisation of Vine and Wine (OIV)*" and, on the subject of methods of analysis, "*The methods of analysis for determining the composition of the products covered by this Regulation and the rules whereby it may be established whether these products have undergone processes contrary to the authorised oenological practices shall be those recommended and published by the OIV.*".

Under Regulation (EC) No 479/2008 compliance with the standards recommended by the OIV for oenological practices also becomes a sufficient condition for marketing wines from third countries on the Community market.

This underlines the need for a stronger relationship between the Community and the OIV.

The Commission therefore recommends that the Council:

- authorise the Commission, under Article 300 of the Treaty, to open and conduct negotiations with the OIV on the terms and conditions for European Community accession to the OIV;
- appoint the competent committee to assist the Commission in that task;
- adopt the proposed negotiating directives. The Commission also recommends that the Council invite the Member States to demonstrate their support for those objectives.

2. COMMUNITY COMPETENCES IN MATTERS DEALT WITH BY THE OIV

The OIV is an intergovernmental organisation that plays a major role in setting standards, which involves drafting resolutions, recommendations and proposals on various aspects of the production of and trade in wine-sector products, e.g. oenological practices, product descriptions and definitions, labelling, marketing conditions, analysis and assessment methods, the protection of geographical indications and the protection of varieties.

Its resolutions are generally incorporated, with no change to their legal scope, into more detailed standards, usually in the form of codes, periodically updated on the basis of the resolutions adopted by the organisation. To date the OIV has published several codes serving as references for all its Members, e.g. the International Oenological Codex, the Compendium of International Methods of Analysis of Wine and Must, the Compendium of international methods of analysis of spirited beverages, international standards for wine and spirit competitions, and the international standard for labelling wines and spirit drinks.

Since the common organisation of the market in wine was established, the Community has maintained and expanded its competences in the wine sector, the Community being given exclusive competence in the areas covered by the CMO,

¹ OJ L 148, 6.6.2008, p. 1.

which are now detailed essentially in Regulation (EC) No 479/2008 and its implementing regulations.

The Community secondary legislation on matters covered by the OIV includes the following:

- Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ L 179, 14.7.1999);
- Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine (OJ L 148, 6.6.2008);
- Commission Regulation (EC) No 423/2008 of 8 May 2008 on laying down certain detailed rules for implementing Council Regulation (EC) No 1493/1999 and establishing a Community code of oenological practices and processes (Codified version, OJ L 127, 15.5.2008);
- Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products (OJ L 118, 4.5.2002);
- Commission Regulation (EC) No 1607/2000 of 24 July 2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine, in particular the Title relating to quality wine produced in specified regions (OJ L 185, 25.7.2000);
- Commission Regulation (EEC) No 2676/90 of 17 September 1990 determining Community methods for the analysis of wines (OJ L 272, 3.10.1990);
- Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails (OJ L 149, 14.6.1991);
- Commission Regulation (EC) No 122/94 of 25 January 1994 laying down certain detailed rules for the application of Council Regulation (EEC) No 1601/91 on the definition, description and presentation of aromatised wines, aromatised wine-based drinks, and aromatised wine-product cocktails (OJ L 21, 26.1.1994);
- Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008);
- Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ L 109, 6.5.2000);
- Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007), as amended, inter alia, by Regulation (EC) No 361/2008 of 14 April 2008 (OJ L 121, 7.5.2008), which lays down rules applicable in particular to fruit and vegetables;
- Commission Regulation (EC) No 2789/1999 of 22 December 1999 laying down the marketing standard for table grapes (OJ L 336, 29.12.1999);

- Council Directive 2001/112/EC of 20 December 2001 relating to fruit juices and certain similar products intended for human consumption (OJ L 10, 12.1.2002).

The OIV's activities in which the Members have exclusive competence are very limited in number and of minor importance in the context of the OIV's general objectives.

The situation within the Community contrasts with that in the OIV, where at present only full OIV Members have the right to participate actively in decision-making.

For this reason, the Community does not have adequate status to exercise its competences directly in this organisation, as national positions are always considered individually, irrespective of whether the OIV Member concerned is a Community Member State or not.

Community legislation also already refers directly to OIV resolutions on methods of analysis, recognising as part of the common organisation of the market in wine the Compendium of International Methods of Analysis of Wine and Must, and it is seeking progressively, as far as possible, to achieve consistency with other OIV standards such as the International Code of Oenological Practices and the International Oenological Codex.

Community accession to the OIV is also part of the process of the reform of the wine market organisation, the Council having decided to reinforce the existing link between the acts adopted by the OIV and Community legislation, by in particular basing itself on OIV recommendations for setting Community standards for oenological practices and laying down that the methods of analysis authorised are those recommended and published by the OIV.

3. COMMUNITY ACCESSION

3.1 Status of the European Community and EC participation in the work of the OIV

The European Community currently has no official status in the OIV, although Article 8 of the Agreement of 3 April 2001 establishing the International Organisation of Vine and Wine expressly provides for the possibility for intergovernmental organisations to become full members of the organisation.

At present, the Commission is regularly invited as a representative of the European Community to attend the proceedings of the General Assembly, groups of experts, Sub-Commissions and Commissions, but it is not allowed to participate in the proceedings of the Executive Committee (invited ad hoc) and makes no voluntary financial contribution to the OIV.

In the light of the above, the current status, permitting only passive participation by Commission representatives in the OIV's proceedings, is far from satisfactory or adequate.

3.2 Need for Community accession

Given that the OIV's areas of competence are now largely covered by Community legislation, the Community's role within the OIV needs to be reinforced and formalised to enable it to ensure consistency in the Community position at international level and guarantee adequate representation of Community interests.

Accession as a full member appears to be the most appropriate solution. The other options open to the Community under the OIV's rules, in particular special observer status or guest status, are not satisfactory.

Neither guest status nor special observer status permits actual participation in OIV proceedings, but merely allows those with such status to intervene in or attend certain OIV bodies without the possibility of presenting proposals or amendments. Neither status entitles the Community to speak on matters falling within its exclusive competence, or to advocate decisions taken at Community level.

In addition, under the Agreement establishing the OIV, a financial contribution is payable by intergovernmental organisations holding a particular status. The Community cannot accept this statutory requirement since it does not in return receive any voting rights.

For the above reasons also, the option available to international organisations to conclude a cooperation and collaboration protocol with the OIV would also appear largely insufficient.

3.3 Accession application

a) Stages of accession

The Agreement of 3 April 2001 expressly provides for the possibility for “intergovernmental organisations” to become members of the OIV.

The accession process would consist of the following stages:

- the Council authorises the Commission to negotiate the terms and conditions for OIV membership;
- the Commission opens and conducts negotiations with the OIV on an accession protocol;
- the Commission adopts a proposal for a Council Decision on Community accession to the OIV and presents it to the Council;
- a Council Decision authorises the European Community to accede to the OIV; the instruments of accession are submitted to the French Ministry for Foreign Affairs (Article 15 of Chapter IX of the Agreement establishing the OIV);
- the Community's membership of the OIV takes effect under the terms of the relevant provision of the Agreement establishing the OIV.

b) Rules of procedure

Under Article 2 of the general provisions of the OIV's Rules of Procedure, a protocol must be established between the OIV and the European Community in order to establish the specific membership conditions and the procedures for implementing voting rights.

The protocol requires the agreement of the General Assembly, following a proposal by the Executive Committee. Nevertheless, the protocol must result from negotiations in which the European Community takes part on an equal footing with the OIV, not from a unilateral act by OIV bodies.

In any event, joint action by the Member States within the Executive Committee will be needed when the proposal on the accession protocol is being drawn up. The cooperation of the Member States is all the more important with regard to certain key

aspects of the accession negotiations, such as the terms on which the Community would participate in the bodies of the organisation, its participation in elective functions, the establishment of the amount of the financial contribution and in general all the practical aspects that will have to be considered in the OIV and in the accession protocol in order to allow the European Community to exercise its powers fully without facing legal or administrative restrictions. Such powers might be exercised without new voting rights having to be created.

3.4 Coordination and division of competences between the European Community and its Member States

Once membership takes effect, the Commission and Member States will participate jointly as Members in the work of the OIV; they will have to establish internal coordination procedures ensuring an effective representation of Community interests within the OIV, based on the example of its participation in other international organisations.

It is necessary in particular to establish specific procedures concerning:

- preparation for OIV meetings and in particular procedures for coordinating common positions and Community positions both in Brussels and at the meetings themselves, and arrangements for providing common replies to questionnaires sent by the organisation;
- the allocation of voting rights and the right of intervention, depending on the type of competence (exclusive, national, shared).

The rules for coordination will have to be sufficiently detailed so as to ensure that they can be easily applied, but at the same time they will have to be sufficiently flexible to allow for the necessary adaptations.

Coordination will take practical form with the conclusion of an arrangement between the Commission and the Council, annexed to the final Council Decision authorising the Community's accession to the OIV.

Alongside the drawing up of effective rules for coordination and strictly related to them, upon joining the OIV, the European Community will have to draw up a general statement of competence; this statement can then be annexed to the accession decision taken by the Council on the Commission proposal and incorporated into the accession protocol concluded between the Community and the OIV. Thereafter, when the Community is participating in the activities of the OIV, a specific competence statement, based on the general statement of competence, will normally have to be drafted before any meeting.

4. TRANSITIONAL MEASURES

On a transitional basis and in order to improve relations with the OIV with a view to its accession, the European Community must have a more appropriate status than at present.

The Community needs to reinforce its institutional relations with the OIV by improving on its guest status so that it can, under Article 5 of the OIV's Rules of Procedure, intervene in all the OIV's bodies (apart from the Scientific and Technical Committee) by applying to the Director General (who will then have to seek the approval of the Executive Committee) for recurring guest status. Formally such

status would not change the Community's position within the OIV, which would remain that of a guest, and would not therefore require Council authorisation.

In addition, the Community and its Member States should work together to improve their internal coordination and systematically work out a common position on matters of Community competence. To that end the Member States and the Commission will have to consult on improving Community participation in the work of the OIV and ways of making it more effective.

5. CONCLUSIONS

The Community has to become a member of the OIV because no other status could be considered politically and legally in line with Community competences in the OIV's areas of activity.

Given the time the accession process and the negotiation involved will take, a transitional solution also needs to be found for improving and reinforcing internal procedures for coordinating positions in the OIV and the Community's institutional role in the organisation.

In the light of the foregoing, **the Commission recommends that the Council** authorise it under Article 300 of the Treaty to open and conduct negotiations with the OIV on the terms and conditions of European Community accession to the OIV, appoint the committee to assist the Commission in this task and adopt the negotiating directives set out in the Annex.

The negotiating directives in the Annex have been drawn up with a view to enabling the Community to become a member of the OIV. The status obtained must enable the Community, in the areas in which it has competence and on an equal footing with the OIV's Members:

1. to express its views during negotiations, or at any meeting of the OIV bodies;
2. in those areas in which decisions are voted on, to have a weighted voting right equivalent to that of its Member States represented in the OIV bodies concerned and bound by the Community legislation forming the basis for its competence in external relations;
3. to express consent on its own behalf to the rights and obligations stemming from the instruments concluded in the OIV.

In accordance with Article 300 of the EC Treaty, the Commission will have to conduct the negotiations in consultation with a special committee appointed by the Council. The Member States which are currently members of the OIV will have to give their full support to Community accession to the organisation.

Once the negotiations have been completed and in the light of the outcome, the Commission will present a proposal for a Council Decision on accession of the European Community to the OIV.

B. RECOMMENDATION

In the light of the above, the Commission recommends that:

- the Council authorise the Commission to negotiate the terms and conditions of European Community accession to the OIV;

- so that the Commission can, in accordance with the Treaty, conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task;
- the Council adopt the negotiating directives set out in the Annex to this recommendation.

ANNEX

Negotiating Directives

1. The Community must obtain the status of full member, putting it on an equal footing with the OIV's Members.
2. The status obtained must enable the Community to participate in negotiations and meetings on an equal footing with the OIV's Members.
3. The Community will not pay a financial contribution to the OIV budget. Should this position prove untenable or jeopardise the chances of the current OIV membership consenting to its accession, the Community could agree, as a fallback solution, to allocate a sum to cover certain expenses incurred in its accession. Such a sum cannot be fixed unilaterally by the OIV but must be agreed with the Community.
4. As a full member the Community must be allowed to accede to all OIV instruments negotiated in the future in its areas of competence.