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European Union

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PROBA 30
WTO 178

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 June 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 286 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the International Sugar Council with respect to the extension of the International Sugar Agreement, 1992

Delegations will find attached document COM(2019) 286 final.

Encl.: COM(2019) 286 final



EUROPEAN
COMMISSION

Brussels, 24.6.2019
COM(2019) 286 final

2019/0139 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the International Sugar
Council with respect to the extension of the International Sugar Agreement, 1992**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf in the International Sugar Council in connection with the envisaged adoption of a decision extending of the International Sugar Agreement, 1992 until 31 December 2021.

2. CONTEXT OF THE PROPOSAL

2.1. The International Sugar Agreement, 1992

The International Sugar Agreement, 1992 ('the Agreement') aims to ensure enhanced international cooperation in connection with world sugar matters and related issues, provide a forum for intergovernmental consultations on sugar and on ways to improve the world sugar economy, to facilitate trade by collecting and providing information on the world sugar market and other sweeteners and to encourage increased demand for sugar, particularly for non-traditional uses.

The Agreement entered into force on 1 January 1993.

The Union is a party to the Agreement.¹

2.2. The International Sugar Council

The International Sugar Council is the responsible body for the performance of all functions necessary to carry out the provisions of the Agreement. It adopts rules and regulations including rules of procedure for the Council and its committees and the financial and staff regulations of the International Sugar Organisation ('ISO'). The Council keeps the necessary records and publishes an annual report and other information if deemed appropriate.

Members to the Agreement hold 2000 votes in total. Each Member to the Agreement holds a specified number of votes, which is annually adjusted following predefined criteria in the Agreement. All decisions of the Council shall be taken in principle by consensus unless stipulated otherwise in the Agreement. In the absence of consensus, decisions shall be made by simple majority vote unless the Agreement provides for a special vote.

2.3. The envisaged act of the International Sugar Council

The Agreement was concluded by Council Decision 92/580/EEC and entered into force on 1 January 1993. It was concluded for a period of three years until 31 December 1995 and since then, regularly extended for further periods of two years, as foreseen by its Article 45. The Agreement was last extended in December 2017 and remains in force until 31 December 2019.

On 19 July 2019, during its fifty-fifth session, the International Sugar Council is to adopt a decision regarding the extension of the International Sugar Agreement 1992 by another 2 years ('the envisaged act').

The purpose of the envisaged act is to enable the ISO to continue with its work.

The envisaged act shall become binding on the parties in accordance with Article 45 (2) of the Agreement, which provides: 'The Council may, by special vote, extend this Agreement beyond 31 December 1995 for successive periods, not exceeding two years on each occasion. Any Member which does not accept any such extension of this Agreement shall so inform the

¹ Council Decision (92/580/EEC) of 13/11/1992; OJ L 379 of 23/12/1992, p.15.

Council in writing and shall cease to be a Party to this Agreement from the beginning of the period of extension’.

The extension of the Agreement will cover the period of 1 January 2020 - 31 December 2021.

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

The International Sugar Agreement, 1992 was concluded by the Community by Decision 92/580/EEC and entered into force on 1 January 1993 for a period of three years until 31 December 1995. Since then it has been regularly extended for further periods of two years. The Agreement was extended last time by decision of the International Sugar Council at its 52nd session on 1 December 2017 and remains in force until 31 December 2019.

The Union has always been an active member of the ISO and a further extension of the Agreement by up to two years is in the interest of the Union. The Union is a major sugar producer as well as a leading sugar-trading partner for many ISO Members.

The 52 Members of the ISO have a total number of 2,000 votes. The EU counts as one Member. Each vote has a weight of £653 for the 2019 administrative budget. For budgetary procedures (see Article 25 of the ISA 1992), i.e. for fixing the annual financial contributions of Members, the number of votes allocated to the Union is 552 and therefore the contribution due for 2019 amounts to £360,456. These numbers are adjusted on a yearly basis.

A formal decision about the extension of the Agreement up to 31 December 2021 is scheduled for the 55th session of the International Sugar Council to be held on 19 July 2019 in Cairns, Australia.

Since 2015 the Union has been seeking to open a discussion among the ISO membership on starting a process of modernisation of the Agreement, under which votes are still allocated based on the world sugar situation as it was in 1992, with the result that the distribution of votes no longer reflects the realities of the global sugar market. Consequently, the financial contribution of the Union no longer reflects its relative position in the global sugar market. On 23 November 2017, the Council adopted “Council Decision authorising the opening of negotiations to amend the International Sugar Agreement 1992”² (‘the Decision’) with a view to remedying this situation. In the context of these negotiations, the Commission has put forward proposals for an amendment of the Agreement, which are under discussion with other ISO Members. The vote on the extension of the Agreement will take place in the same session as the vote on the amendment of the Agreement. The vote on the amendment of the Agreement is on the agenda before the vote on the extension of the Agreement.

The purpose of this proposal is to seek the Council’s authorisation for the Commission to vote, on the Union’s behalf, in favour of the extension of the Agreement up to 31 December 2021 in the International Sugar Council. However, this position should be subject to the favourable decision of the ISO Council on the proposal to amend the Agreement. Should that not be case, then the Union should prevent a decision from being taken by consensus on the extension, abstain from a subsequent vote on that matter and consult again with the Council. If there are not enough Members present to reach the majority required for a special vote, the Union’s abstention would mean that the extension would not be agreed on that occasion and the matter would most likely be postponed to the next session in November 2019. If majority is reached, the extension would be voted and the Union would be bound by the decision. Abstention should nevertheless be preferred over a negative vote, as it would send a strong political message while allowing the extension of the Agreement; the EU would still have the

² Council Decision of 23 November 2017 authorising the opening of negotiations to amend the International Sugar Agreement 1992, not published (Council document 14282/17).

possibility to withdraw from the Agreement. In order to leave the agreement the Union would need then to inform in writing the ISO of its intention to leave the agreement, as provided in Article 45(2) of the Agreement. To do this a new Council Decision would be required.

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.*’

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*’³.

4.1.2. Application to the present case

The envisaged act of the International Sugar Council has the effect of extending the validity of the Agreement, which is an international agreement binding the Union. The envisaged act has therefore legal effects.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

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 and content of the envisaged act relate to common commercial policy (trade in agricultural products).

Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207 TFEU, in conjunction with Article 218(9) TFEU.

³ 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.

5. PUBLICATION OF THE ENVISAGED ACT

As the act of the International Sugar Council will amend the Agreement, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Sugar Council with respect to the extension of the International Sugar Agreement, 1992

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The International Sugar Agreement, 1992 ('the Agreement') was concluded by Council Decision 92/580/EEC⁴ and entered into force on 1 January 1993. The Agreement was concluded for a period of three years until 31 December 1995 and since then, regularly extended for further periods of two years. The Agreement was last extended by decision of the International Sugar Council in December 2017⁵ and remains in force until 31 December 2019.
- (2) Pursuant to Article 45(2) of the Agreement, the International Sugar Council may extend the Agreement for successive periods, not exceeding two years on each occasion.
- (3) The International Sugar Council, during its 55th session to be held on 19 July 2019 is set to decide on the extension of the Agreement up to 31 December 2021.
- (4) Before the decision on the extension of the Agreement, the International Sugar Council, during its 55th session will also vote on a proposal submitted by the Union to amend the Agreement. That proposal is the result of negotiations conducted by the Commission in line with an authorisation by the Council to open negotiations, on behalf of the Union, to amend the Agreement, set out in the Council Decision of 23 November 2017 authorising the opening of negotiations to amend the International Sugar Agreement 1992⁶.
- (5) A possible rejection of the proposal to amend the Agreement would go against the Union's objectives of modernising the Agreement and thus put the benefits of the extension of the Agreement into question.
- (6) It is appropriate to establish the position to be taken on the Union's behalf in relation to the extension of the Agreement. The extension of the Agreement, should the amendment to the Agreement also be agreed, is in the interest of the Union,

⁴ Council Decision 92/580/EEC of 13 November 1992 on the signing and conclusion of the International Sugar Agreement 1992 (OJ L 379, 23.12.1992, p. 15).

⁵ Information concerning the extension of the International Sugar Agreement (1992) (OJ L 12, 17.1.2018, p. 1).

⁶ Council Decision of 23 November 2017 authorising the opening of negotiations to amend the International Sugar Agreement 1992, not published (Council document 14282/17).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Commission on behalf of the Union shall be to vote in favour of the extension of the International Sugar Agreement, 1992 for a further period of up to two years, up to 31 December 2021.

However, the Commission shall prevent a decision from being taken by consensus concerning the extension of the International Sugar Agreement, 1992 and shall abstain from a subsequent vote on that matter in case the International Sugar Council will not first vote in favour of the proposal to amend the Agreement.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*

FINANCIAL STATEMENT				FinancSt/10/PS/pl/ agri.ddg3.g.4(2019)12 78657
				6.221.2019.1
				DATE: 08.05.2019
1. BUDGET HEADING: Chapter 05 06 INTERNATIONAL ASPECTS OF ‘AGRICULTURE AND RURAL DEVELOPMENT’ POLICY AREA 05 06 01 International agricultural agreements				APPROPRIATIONS: B2019 6 300 000 EUR
2. TITLE: Proposal for a Council Decision on the position to be taken on behalf of the European Union in the International Sugar Council with respect to the extension of the International Sugar Agreement, 1992.				
3. LEGAL BASIS: Article 207 in conjunction with Article 218 (9) of the Treaty on the Functioning of the European Union				
4. AIMS: Extension of the existing International Sugar Agreement by two more years (1.1.2020 to 31.12.2021).				
5. FINANCIAL IMPLICATIONS		12 MONTH PERIOD	CURRENT FINANCIAL YEAR	FOLLOWING FINANCIAL YEAR
		(EUR million)	2019 (EUR million)	2020 (EUR million)
5.0 EXPENDITURE				0.52
- CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS)				
- NATIONAL AUTHORITIES				
- OTHER				
5.1 REVENUE				
- OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES)				
- NATIONAL				
		2021 (EUR million)		
5.0.1 ESTIMATED EXPENDITURE		0.48		
5.1.1 ESTIMATED REVENUE				
5.2 METHOD OF CALCULATION: Based on assumptions on an estimated number of votes of the EU (varies each year), on an estimated amount to be paid per vote in GBP.				
6.0 CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?				YES
6.1 CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?				-
6.2 WILL A SUPPLEMENTARY BUDGET BE NECESSARY?				-
6.3 WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?				YES
OBSERVATIONS:				
The amount to be effectively paid can vary depending on the final number of votes the EU gets attributed to, the amount to be paid per vote in GBP and on the exchange rate EUR/ GBP.				