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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations to amend the International Cocoa Agreement 2010

Delegations will find attached document COM(2021) 119 final.

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Brussels, 16.3.2021
COM(2021) 119 final

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations to amend the International Cocoa Agreement
2010**

EXPLANATORY MEMORANDUM

The present recommendation concerns a decision authorising the Commission to engage on behalf of the Union in the negotiations to partially review the International Cocoa Agreement (“ICA”)¹ that the International Cocoa Council (“ICC”) decided to launch, under the guidance of the United Nations Conference on Trade and Development (UNCTAD).

1. CONTEXT OF THE PROPOSAL

Review of the International Cocoa Agreement 2010

The European Union is a party to the ICA².

The ICA aims to ensure enhanced international cooperation in connection with world cocoa matters and related issues, provide a forum for intergovernmental consultations on cocoa and on ways to improve the world cocoa economy, to facilitate trade by collecting and providing information on the world cocoa market and to encourage increased demand for cocoa.

The ICA provisionally entered into force on 1 October 2012 for a period of ten years until 30 September 2022.

According to Article 7 of the ICA, the ICC is the responsible body for the performance of all functions necessary to carry out the provisions of the ICA. Article 12 of the ICA stipulates that all decisions of the ICC shall be taken in principle by consensus unless stipulated otherwise in the ICA. In the absence of consensus, decisions shall be made by a special vote.

According to Article 10 of the ICA, Members to the International Cocoa Organization (ICCO) hold 2000 votes in total. Each Member to the ICCO holds a specified number of votes, which is annually adjusted following predefined criteria in the ICA. The Agreement and especially the distribution of votes among Members also determine a Member's contribution. Currently, the Union is the largest contributor to the ICCO budget by far.

The ICC opened negotiations in order to be able to decide on a possible extension of the validity of the ICA before the current deadline. These negotiations will be the right opportunity to review partially the ICA focusing on its modernisation and simplification.

The Commission guidelines to recommended changes are set out in the Annex.

Bringing reform to the ICA to further align it with the practices the Union fosters in other international commodity boards, as well as with developments in the global cocoa market since 2010, is clearly in the interest of the Union. This has been regularly outlined during the last ICC sessions in 2019-2020 where EU Member States also participated.

The overall purpose of the ICA as outlined in Article 1 of the Agreement is not intended to change.

Two main changes are to be proposed in the revised ICA:

¹ United Nations, *Treaty Series*, [vol. 2871](#), p.3

² Council Decision of 17 May 2011 on the signing, on behalf of the European Union, and provisional application of the International Cocoa Agreement 2010; OJ L259 of 04/10/2011, p.7.

- To make sure that Members make all necessary efforts to accomplish a sustainable cocoa economy, taking into account the sustainable development principles contained, inter alia, in the United Nations 2030 Agenda for Sustainable Development adopted in New York in 2015.
- To agree that the revised ICA shall remain in force until terminated by Council.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

Article 218(3) of the Treaty on the Functioning of the European Union (TFEU) provides for authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team. Article 218(4) TFEU provides for the Council to address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

Application to the present case

The envisaged negotiating directives should give the negotiator on behalf of the Union the means to achieve the overall objectives as set out under the point 1. They are outlined in the Annex.

The procedural legal basis for the proposed decision, therefore, is Article 218(3) and 218(4) TFEU.

Conclusion

The legal basis of the proposed decision should be Article 218(3) and (4) TFEU.

Subsidiarity (for non-exclusive competence)

The Union is a party to the ICA and is represented by the Commission in the ICC. Member States are not a separate party to the ICA. The Union's negotiation of the partial review of the ICA pertains to the exclusive competence of the Union.

Proportionality

Reviewing the ICA in order to achieve an improved treaty leading to the modernisation of the Agreement is in the interest of the Union. Currently, the EU's participation in the ICCO is beneficial both to the Union and to other ICCO Member states. Modernising the Agreement is expected to attract more interest in the ICCO, potentially attracting new Members as well as increasing the relevance of its work.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Stakeholder consultations

The Union is a Party to the ICA and its Membership is generally supported since 2010 by the cocoa sector in the EU as well as by most EU Member States. It is not deemed necessary to engage in stakeholder consultations regarding a process which merely aims to continue the Union's membership to the ICCO albeit under a set of rules that are in line with those of other international commodity bodies of which the EU is a member.

Impact assessment

A full-fledged impact assessment is not necessary, since the measure is not likely to have significant economic, environmental or social impacts. The successful amendment of the ICA would result in a reformed governance considered as a key starting point for the modernisation of the ICA and should also result in a more active participation in the ICCO by its Members.

4. BUDGETARY IMPLICATIONS

The opening of negotiations is not deemed to have a budgetary impact.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations to amend the International Cocoa Agreement 2010

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Union is a Party to the International Cocoa Agreement 2010 (“ICA”)³ and a member of the International Cocoa Organisation (“ICCO”)⁴.
- (2) Pursuant to Article 7 of the ICA, the International Cocoa Council (“ICC”) performs or arranges for the performance of all such functions as are necessary to carry out the provisions of the ICA. Pursuant to Article 12 of the ICA, all decisions of the ICC are taken in principle by consensus. In the absence of consensus, decisions are made by a special vote.
- (3) Pursuant to Article 10 of the ICA, members of the ICCO hold 2000 votes in total in the ICC. Each member holds a specified number of votes which is adjusted annually in accordance with the criteria set out in Article 10 of the ICA.
- (4) It is in the Union's interests to participate in an international agreement on cocoa, considering the importance of that sector for a number of Member States and for the economy of the European cocoa sector.
- (5) A technical working group composed of ICCO Member States from both producing and exporting countries engaged in substantial work in order to present concrete proposals for the amendment of the ICA. All Members were invited to submit any suggestions to initiate this technical analysis. The EU did its part of this technical work. The ICC needs to open negotiations for a partial review of the ICA well before the deadline of the validity of the ICA, under the guidance of the United Nations Conference on Trade and Development (UNCTAD). Any areas of the ICA to be reviewed need to be the subject of formal negotiations. These negotiations are to be concluded no later than 30 September 2022, the end of the validity of the current ICA.
- (6) Any amendments agreed in these negotiations should be adopted in accordance with the procedure set out in Article 63 of the ICA. Pursuant to that Article, the ICC may, by consensus or if not by special vote, recommend an amendment of the ICA to the Contracting Parties of the ICA. The amendment becomes effective in accordance with Article 63(1) ICA, which requires the notification of acceptance from a certain percentage of Parties. As a member of the ICCO and Contracting Party to ICA, in

³ Council Decision of 17 May 2011 on the signing, on behalf of the European Union, and provisional application of the International Cocoa Agreement 2010; OJ L259 of 04/10/2011, p.7.

⁴ Established by the 1972 Cocoa Agreement: United Nations, Treaty Series , vol. 882, p. 67.

accordance with Article 4 of the ICA, the Union should be able to participate in negotiations with a view to amending the institutional framework of the ICA.

- (7) It is therefore appropriate that the Commission be authorised to engage in negotiations for the partial review.

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, to amend the International Cocoa Agreement 2010.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the Working Party on Commodities.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*