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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 September 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 537 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 amending the International Sugar Agreement, 1992

Delegations will find attached document COM(2021) 537 final.

Encl.: COM(2021) 537 final



EUROPEAN
COMMISSION

Brussels, 8.9.2021
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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 amending the International Sugar Agreement, 1992**

{SWD(2021) 235 final}

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 ('ISC') in connection with the envisaged special vote to be conducted in accordance with Article 44 (1) of the International Sugar Agreement ('ISA') to recommend to the Members of the International Sugar Organisation ('ISO') to amend the ISA in accordance with the outcome of the negotiations for its partial review initiated in July 2019.

2. CONTEXT OF THE PROPOSAL

2.1. The International Sugar Agreement, 1992

The ISA, 1992 aims to ensure enhanced international cooperation in connection with world sugar matters and related issues, to 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 ISA entered into force on 1 January 1993.

The Union is a party to the ISA¹. The ISA 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, has been regularly extended for further periods of two years, as foreseen by its Article 45. The ISA was last extended in July 2019² and remains in force until 31 December 2021. The Commission has prepared a proposal for a Council Decision to further extend the ISA until December 2023. The adoption procedure concerning this proposal is on-going.

It is in the Union's interests to participate in an international agreement on sugar, considering the importance of that sector for a number of Member States and for the economy of the Union's sugar sector.

2.2. The International Sugar Council

The ISC is the responsible body for the performance of all functions necessary to carry out the provisions of the ISA. It adopts rules and regulations including rules of procedure for the ISC and its committees and the financial and staff regulations of the ISO. The ISC keeps the necessary records and publishes an annual report and other information if deemed appropriate.

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

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

² Council Decision 2019/1251 of 15 July 2019 on the position to be taken on behalf of the European Union in the International Sugar Council as regards the extension of the International Sugar ISA, 1992 (OJ L195, 23.7.2019, p.18).

2.3. The envisaged act of the International Sugar Council

In 2017, the Commission received the authorisation from the Council³, to enter into negotiations with the other parties to the ISA, within the ISC, with a view to modernising the ISA, in particular as regards the discrepancies between the number of votes and financial contributions of Members of the ISO on the one hand, and their relative position in the global sugar market on the other. That authorisation was extended in 2019 and remains valid until 31 December 2021⁴.

In its 55th session, on 19 July 2019, the ISC decided to open negotiations under UNCTAD guidance. These negotiations concerned a partial review of the ISA, focusing on the following three areas: the administrative budget and contributions of Members under Article 25; the broadening of the objectives, studies, evaluations and the research activities to allow for the inclusion of other sugar related products (in particular, bioethanol) in the scope of Articles 1, 32, 33 and 34; and the rules for the appointment of the Executive Director under Article 23.

(a) The administrative budget and contributions of Members under Article 25

Based on the negotiation authorisation from the Council, the Commission presented concrete proposals for the amendment of Article 25, which governs the adoption of the administrative budget and contributions of Members. This proposal was triggered by the fact that under current rules on financial contributions to the ISO, the Union's share of the financial contribution has remained practically the same since 1992, although the global sugar market, and in particular the Union's relative position in it, has substantially changed since then. As a result, the Union has assumed a disproportionately large share of the budgetary costs⁵ and responsibility in the ISO in recent years. To address the situation the Commission initiated negotiations on a revised calculation method and a more effective updating adjustment mechanism. The proposed formula equally weighs the relevant indicators: production, consumption, exports, imports and ability to pay factor, and takes into account structural changes over time with annual adjustment mechanism based on five-year moving averages. In order to align the current distribution of votes with today's realities of the world sugar market, a transition mechanism is included, which limits the annual change in the number of votes to 15% in the first five years and 20% for the remaining part of the transition period. The transition period cannot exceed ten years. The Commission, on behalf of the Union and in line with the negotiation authorisation granted, supported the amendment to Article 25 of the ISA resulting from the negotiations.

(b) The broadening of the objectives, studies, evaluations and the research activities to allow for the inclusion of other sugar related products in the scope of Articles 1, 32, 33 and 34

During the negotiations for the partial review of the ISA, other Members of the ISA proposed amendments concerning Articles 1 (objectives), 32 (information and studies), 33 (market evaluations, consumption and statistics) and 34 (research and development). The changes proposed through these amendments involve:

³ Council decision 2017/2242 of 30 November 2017 authorising the opening of negotiations to amend the International Sugar ISA 1992 (OJ L 322, 7.12.2017, p. 29).

⁴ Council decision 2019/2136 of 5 December 2019 authorising the opening of negotiations to amend the international Sugar ISA (OJ L 324, 13.12.2019, p.3).

⁵ The number of votes determined according to Article 25 together with the amount per vote are used to calculate the financial contribution of each Member to the ISO annual budget.

- (1) inclusion of bioethanol the in overall objectives of the ISA (Article 1, Chapter I).
- (2) a broader view on “information and studies” (Article 32, Chapter IX), “market evaluations, consumption and statistics” (Article 33, Chapter IX), “research and development” (Article 34, Chapter X), essentially to allow for the inclusion of other sugar related products (in particular, bioethanol) in such activities.

The Commission, on behalf of the EU and in line with the negotiation authorisation granted, supported these amendments, as the overall purpose of the ISA as outlined in Article 1 of the ISA will not change with the inclusion of bioethanol.

The amendments under points a) and b) above were discussed at length and a consensus on their final formulation was reached by the ISC during its 57th session held in November 2020.

- (c) The rules for the appointment of the Executive Director under Article 23

In December 2020, Brazil proposed an amendment to Article 23 of the ISA concerning the rules for the appointment of the Executive Director. The main change brought by this amendment is the limitation of the number of mandates that an Executive Director could serve to two. Currently, both chapter IV of the ISA and Chapter IX of its related Administrative rules are silent on all these aspects. Although submitted after the agreed deadline of 31 January 2020, the EU supported the inclusion of this amendment under the current partial review of the ISA as it aims to improve the International Sugar Organisation’s activities and contributes to the overall objective of the modernisation of the ISO. An agreement on the final formulation of this amendment as well its inclusion in the current partial review of the ISA was reached by the ISC during its 58th session in June 2021.

All of the above amendments agreed upon during the negotiations for the partial review of the ISA should be adopted in accordance with the procedure set out in Article 44 of the ISA in order to become effective: *“The Council may, by special vote, recommend to the Members an amendment of this Agreement. The Council may fix a time after which each Member shall notify the depositary of its acceptance of the amendment. The amendment shall become effective 100 days after the depositary has received notifications of acceptance from Members holding at least two thirds of the total votes of all Members under Article 11 as determined under Article 25, or on such later date as the Council may have determined by special vote. The Council may fix a time within which each Member shall notify the depositary of its acceptance of the amendment and, if the amendment has not become effective by such time, it shall be considered withdrawn. The Council shall provide the depositary with the information necessary to determine whether the notifications of acceptance received are sufficient to make the amendment effective.”*

Pursuant to the above Article, during its next session planned for 26 November 2021, the ISC will:

- Recommend to Members to amend the ISA, either by consensus or, if consensus not reached, by special vote.
- Approve the timetable for the implementation of the amendment either by consensus or, if consensus not reached, by special vote. The ISO secretariat has proposed a timetable for the implementation of the amendment procedure

under Article 44 and the subsequent entry into force of the amendments to the Articles of the ISA resulting from the negotiations for the partial review of the ISA. This proposed timetable was presented to the ISC during its 58th session on 18 June 2021. During the session, no Member has raised any objections in relation to the proposed implementation timetable.

The **main milestones** of the proposed implementation timetable mentioned above are:

- Members will notify the depositary the notification of acceptance of the amendments by **30 June 2023**. This deadline is proposed in view of allowing sufficient time for Member to carry out all the necessary constitutional procedure for the approval of the amendment of the ISA.
- If the depositary has received notification of acceptance from Members holding at least two thirds of the total votes, the **amendments become effective on 31 October 2023**. This is approximately 123 days after the date set for the receipt of notification of acceptance (i.e. 30 June 2023). Member that did not send notification of acceptance by this date shall cease to be party to the ISA.
- If the above situation occurs, Members will approve the revised distribution of votes, according to the new calculation formula in the amended Article 25 of the ISA, and the financial contribution for 2024⁵ in its second session of the ISC for 2023, to be held in the **last week of November or the first week of December 2023**.
- **The amended ISA will enter into force on 1 January 2024**. This date coincides with the expiration of the latest ISA extension covering the period 1 January 2022 to 31 December 2023 (to be approved by ISC its session on 26 November 2021⁶).
- If the depositary has received notifications of acceptance from Members holding less than two thirds of the total votes by 31 October 2023, the amendment does not become effective and the ISA, 1992 remains unchanged.

The above timetable is in line with the provisions of Article 44 of the ISA.

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

The purpose of this decision is to seek Council's authorisation to the Commission to vote, on behalf of the Union, during the 59 session of the ISC to be held on 26 November 2021, in favour of recommending to the Members of the ISO to amend the ISA in accordance with the outcome of the negotiations for its partial review. The draft amended ISA includes changes in relation to Articles 1, 25, 23, 32, 33 and 34 resulting from the negotiation for the partial review of the ISA (for details, see sub-points a, b and c under point 2.3 above).

Reforming the ISO to further align it with the practices the Union fosters in other international commodity bodies, as well as with developments in the global sugar market since 1992, is clearly in the interest of the Union. This reform would lead to transparency concerning the Members' responsibilities in voting as well as their financial contributions. The establishment of clear rules regarding the appointment of the Executive Director and the limitation of the number of mandates that he or she may serve is in line with the Union's aim of modernising

⁶ The Commission has drafted a proposal for a Council Decision to further extend the ISA until December 2023. The adoption procedure concerning this proposal is on-going.

the ISA, while the formal inclusion of ethanol in the objectives and work programme of the ISO aligns its content with what is already existing practice.

In addition, the purpose of this decision is to seek the Council's authorisation for the Commission to vote, on behalf of the Union, during the 59th session of the ISC to be held on 26 November 2021, in favour of an implementation timetable that ensures that the different milestones linked to the amendment to the ISA are clearly laid out and that the entry into force of the amendment is not later than 1 January 2024.

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'*⁷.

4.1.2. Application to the present case

The envisaged act of the International Sugar Council will amend the ISA, 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 ISA.

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.

⁷ 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 ISA, 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 amending 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 Union is a Party to the International Sugar Agreement, 1992 ('ISA'), which was concluded by the Union by Council Decision 92/580/EEC¹ and a Member of the International Sugar Organisation ('ISO').
- (2) Pursuant to Article 8 of the ISA, the International Sugar Council performs or arranges for the performance of all such functions as are necessary to carry out the provisions of the ISA. Pursuant to Article 13 of the ISA, all decisions of the International Sugar Council are taken in principle by consensus. In the absence of consensus, decisions are made by a simple majority vote, unless the ISA provides for a special vote.
- (3) Pursuant to Article 25 of the ISA, Members of the ISO hold 2 000 votes in total. Each Member of the ISO holds a specified number of votes, which is adjusted annually in accordance with the criteria set out in that Article.
- (4) However, the distribution of votes among Members of the ISO that also determines the Members' financial contribution to the ISO, no longer reflects the realities of the global sugar market.
- (5) Under the ISA rules on financial contributions to the ISO, the Union's share has remained the same since 1992, although the global sugar market, and notably the Union's relative position in it, has substantially changed since then. As a result, the Union has assumed a disproportionately large share of the budgetary costs and responsibility in the ISO in recent years.
- (6) By Council Decision (EU) 2017/2242², the Commission received an authorisation from the Council, to enter into negotiations with the other parties to the ISA within the International Sugar Council with a view to modernising the ISA, in particular as regards the discrepancies between the number of votes and financial contributions of Members of the ISO on the one hand and their relative position in the global sugar

¹ 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).

² Council Decision (EU) 2017/2242 of 30 November 2017 authorising the opening of negotiations to amend the International Sugar Agreement 1992 (OJ L 322, 7.12.2017, p. 29).

market on the other. That authorisation was extended until 31 December 2021 by Council Decision (EU) 2019/2136³.

- (7) Based on the authorisation received, the Commission engaged in negotiations with member countries of the ISO and presented concrete proposals for the amendment of Article 25 of the ISA, which governs the adoption of the administrative budget and contributions of Members. In its 55th session on 19 July 2019, the International Sugar Council decided to open negotiations for a partial review of the ISA before its next meeting in November 2019, under the guidance of the United Nations Conference on Trade and Development (UNCTAD).
- (8) Following requests of several ISO Members, the International Sugar Council decided that, in addition to the review of Article 25 of the ISA, proposed by the Union, other areas of the ISA are to be the subject of formal negotiations, in particular, the objectives under Article 1 of the ISA and the work priorities of the ISO under Articles 32, 33 and 34 of the ISA as well as the rules for the appointment of the Executive Director under Article 23 of the ISA. The final formulation of the amendments concerning those Articles was agreed by the International Sugar Council during its 57th session in November 2020 and 58th session in June 2021.
- (9) Any amendments agreed in these negotiations are to be adopted in accordance with the procedure set out in Article 44 of the ISA. Pursuant to that Article, the International Sugar Council may, by special vote, recommend an amendment of the ISA to Members of the ISO. As a Member of the International Sugar Council, in accordance with Article 7 of the ISA, the Union is able to participate in this special vote aiming to launch the procedure for amending the institutional framework of the ISA.
- (10) According to the timetable for the implementation of the partial review of the ISA, the special vote pursuant to Article 44 of the ISA, to recommend Members to amend the ISA, will be held during the 59th session of the International Sugar Council planned for November 2021.
- (11) It is therefore appropriate to establish the position to be taken on the Union's behalf in the 59th session of the International Sugar Council as amending the ISA to reflect the outcome of the negotiations for its partial review is in the interest of the Union.
- (12) In addition, it is appropriate to establish the position to be taken on the Union's behalf in the 59th session of the International Sugar Council on the timetable for the implementation of the above amendment to ISA as having the amendment implemented at the latest on 1 January 2024 is in the interest of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in respect of the special vote to be carried out during the 59th session of the International Sugar Council on 26 November 2021 pursuant to Article 44 of the International Sugar Agreement, 1992, is set out in the Annex to this Decision.

³ Council Decision (EU) 2019/2136 of 5 December 2019 authorising the opening of negotiations to amend the International Sugar Agreement 1992 (OJ L 324, 13.12.2019, p. 3).

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*

FINANCIAL STATEMENT		FinancSt/10/ PSH/hn/xxxxxx		
		6.22.2021.1		
		DATE: 12.07.2021		
1.	BUDGET HEADING: 14 20 03 06 International organisations and agreements		APPROPRIATIONS: B2021 6 300 000 EUR	
2.	TITLE: Proposal for a Council on the position to be taken on behalf of the European Union in the International Sugar Council with respect to amending 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: To establish the position to be taken on the Union's behalf in the International Sugar Council ('ISC') in connection with the special vote to be conducted in accordance with Article 44 (1) of the International Sugar Agreement ('ISA') to recommend to the Members of the International Sugar Organisation ('ISO') to amend the ISA in accordance with the outcome of the negotiations for its partial review initiated in July 2019. The review concerns mainly a revised calculation method and a more effective updating adjustment mechanism in order to normalise the EU's share of the budgetary costs and responsibility within ISO.			
5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR 2021 (EUR million)	FOLLOWING FINANCIAL YEAR 2022 (EUR million)
5.0	EXPENDITURE - CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER			
5.1	REVENUE - OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES) - NATIONAL			
		2023 (EUR million)		
5.0.1	ESTIMATED EXPENDITURE			
5.1.1	ESTIMATED REVENUE			
5.2	METHOD OF CALCULATION:			
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 proposal may have financial consequences as of 2024 but these cannot be quantified at present. The Union's share of the financial contribution will vary depending on the final number of votes attributed to the EU after the amendment agreement. Most likely the EU share will decrease.				