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COMMISSION

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Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations to amend the International Sugar Agreement, 1992

EXPLANATORY MEMORANDUM

The present proposal concerns the decision establishing the position to be adopted on behalf of the Union in the International Sugar Council and Administrative Committee of the International Sugar Organization (hereafter "ISO"), as well as in any possible other ad hoc bodies that the ISO may set up to discuss possible amendments to the International Sugar Agreement 1992 in connection with the envisaged discussion on the revision of the International Sugar Agreement 1992 (hereafter "the ISA").

1. CONTEXT OF THE PROPOSAL

- **Reform of the International Sugar Agreement 1992**

The European Union is a party to the ISA[1].

The ISA 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 ISA 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 ISA is going to be extended by decision of the International Sugar Council in November 2017 and will remain in force until 31 December 2019.[2]

According to Article 8 of the ISA the International Sugar Council is the responsible body for the performance of all functions necessary to carry out the provisions of the ISA. Article 13 of the ISA stipulates that all decisions of the International Sugar Council shall be taken in principle by consensus unless stipulated otherwise in the ISA. And that in the absence of consensus, decisions shall be made by simple majority vote unless the ISA provides for a special vote.

According to Article 25 of the ISA Members to the ISO hold 2000 votes in total. Each Member to the ISO holds a specified number of votes which is annually adjusted following predefined criteria in the ISA.

The Agreement, and especially the distribution of votes among Members which also determines a Member's contribution, no longer reflects the realities of the global sugar market. Currently, the Union is the largest contributor to the ISO budget by far. Since 2015, the ISO has been discussing at working group level possibilities to review the mechanism of distributing votes. It is necessary that the EU has a position on reviewing the ISA in case the ISO engages actively in such discussions and negotiations.

Bringing reform to the ISO to further align it with the practices the Union fosters in other international commodity boards, as well as with developments in the global sugar market since 1992, is clearly in the interest of the Union. At the very least, this reform should lead to transparency concerning the Members' responsibilities in voting as well as their financial contributions. The allocation of votes in the ISO should be measurable according to indicators such as trade, consumption, production and ability to pay. The latter indicator is used in the United Nations to allow for the recognition of the development aspect of sugar. Taking into

[1] Council Decision (92/580/EEC) of 13/11/1992; OJ L 379 of 23/12/1992, p.15.
[2] Council Decision xxxx (*here we will refer to the Commission proposal for the Council decision*)

account this indicator, results in allotting a greater part of the financial responsibilities to those members that have a greater ability to contribute to the ISO budget.

The Commission can promote the above-mentioned practices with the other ISO members; since the ISO is a consensus-based organisation the EU cannot reform it by itself. Therefore, the general ISO Membership needs to give a clear signal that reform is both possible and desirable. During meetings of the ISO and in bilateral meetings with other ISO Members, the Commission should be in a position to take the initiative to open negotiations on the amendment of the ISA and to engage with other members in case they should take the lead on reform proposals.

- **Consistency with existing practice in International Commodity Boards**

In international commodity boards such as the International Grains Council (IGC), and the International Olive Council (IOC), the Union has negotiated voting rights allocations and clear annual update mechanisms which reflect the Union's relative importance in the grains as well as the olive and olive oil markets. In the IGC the indicators are trade, consumption, and production. This is in contrast to the ISO practice, where the Agreement, since 1992, has not allowed for adjustments reflecting the changing positions of Members in the international sugar economy. Any efforts towards amending the ISA should seek to bring ISO practices in line with those existing in the other international commodity boards. Furthermore, the allocation of voting rights cannot be calculated in advance by members, but results instead from an intransparent calculation. While this has been accepted practice for 25 years, it can no longer be continued given the changes in the world sugar economy.

This comes at a moment where the Union is reforming its sugar policy and the abolition of sugar production quotas will give Union exporters greater access to world sugar markets, as well as remove constraints on sugar production in the Union.

- **Consistency with other Union policies**

Sugar is a sensitive product under the Common Commercial Policy of the Union and the Common Agricultural Policy. In international trade negotiations for the Union, sugar plays a key role and both production and trade are carefully monitored by the Commission. Sugar is also an important commodity to many developing countries and the development aspect of sugar is of paramount importance in the Common Commercial Policy. The ISO provides for a neutral platform for discussing sugar related issues among a broad membership. At the same time, monitoring of developments in the world sugar market serves the interests of the market management possibilities under the Common Agricultural Policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. 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.

2.2. Application to the present case

The International Sugar Council is a body set up by an agreement, namely the ISA. Under Article 44 of the ISA, the International Sugar Council may, by special vote, recommend to

ISO Members an amendment to the Agreement. In case there is no qualified majority to constitute a special vote, a proposal to amend the ISA cannot be made. The ISA provides for no other means to initiate an amendment. As a consequence, the only alternative for Members of the ISO who do not agree with maintaining the status quo is to not agree to an extension of the ISA for another period of two years, which is akin to leaving the ISO.

The envisaged act in respect of which a position is adopted on behalf of the Union may lead to amending the institutional framework of the Agreement.

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

2.4. 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 ISA and is represented by the Commission in the ISO Council. Member States are not a separate party to the ISA. The EU's negotiation of any possible amendment to the ISA pertains to the exclusive competence of the Union.

- **Proportionality**

Amending the ISA in order to achieve a voting structure that represents the relative importance of ISO Members in the global sugar economy is in the interest of the Union and is to be preferred to cancelling the Union's membership to the ISO. Currently, the EU's participation in the ISO is beneficial both to the Union and to other ISO Member states. However, since changes in the EU's relative importance have not been translated into less votes and as a consequence reduced financial contributions, this participation comes at too high a price. Other ISO Members, who have increased their presence on global sugar markets, have not seen their contribution rise to the same degree.

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

- **Stakeholder consultations**

The Union is a Member to the ISO and its Membership is generally supported since 1992 by the sugar sector in the EU as well as by most of the 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 ISO albeit under a set of rules that are in line with those of other international commodity bodies of which the EU is a member. Ultimately, the reduced relative weight of the EU in the world sugar market should also lead to a modest reduction in contributions to the ISO. Under the existing rules, the EU will have to pay more than its fair share when other ISO Members do not pay or do not pay on time.

- **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 ISA would, mutatis mutandis, result in a lower financial contribution of the EU to the ISO. At the same time, a more transparent and equitable allocation of votes may even help attract new members to the ISO, which would result in further cost reductions.

Although a fair and equitable contribution of the EU to the ISO budget is certainly at the heart of the need to amend the Agreement, there are more than budgetary reasons calling for reform. The need for ISO Members to carry their weight in terms of their contributions to the ISO administrative budget is a key starting point for the modernisation of the ISO and should also result in a more active participation in the ISO by its Members.

4. BUDGETARY IMPLICATIONS

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

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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 Sugar Agreement 1992[3] (hereafter "ISA") and a member of the International Sugar Organisation (hereafter "ISO").

(2) The Union has since 1995 approved the extension of the ISA for two year periods. The Commision has proposed to the Council to authorise the Commission to take a position in favour of the extension of the ISA for a further period of up to two years, ending on 31 December 2019.

(3) According to Article 8 of the ISA the International Sugar Council is the responsible body for the performance of all functions necessary to carry out the provisions of the ISA. Article 13 of the ISA stipulates that all decisions of the International Sugar Council shall be taken in principle by consensus unless stipulated otherwise in the ISA. And that in the absence of consensus, decisions shall be made by simple majority vote unless the ISA provides for a special vote.

(4) According to Article 25 of the ISA Members to the ISO hold 2000 votes in total. Each Member to the ISO holds a specified number of votes which is annually adjusted following predefined criteria in the ISA.

(5) It is in the Union's interest 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 European sugar sector.

(6) However, the institutional framework of the ISA and especially the distribution of votes among Members that also determines the Members' financial contribution to the ISO, no longer reflect the realities of the global sugar market.

(7) Under the ISA rules on financial contributions to the ISO, since 1992 the Union's share has remained the same although the world sugar market, and notably the Union's relative position in it, has substantially changed since then. As a result, the Union has been assuming a disproportionately large share of the budgetary costs and responsibility that goes along with the costs in the ISO in recent years.

(8) The ISA rules on financial contribution can be amended in accordance with the procedure provided in Article 44 of the ISA. On the basis of that Article the

[3] Council Decision of 13 November 1992 on the signing and conclusion of the International Sugar Agreement 1992 (OJ L 379, 23.12.1992, p. 15).

International Sugar Council may, by special vote, recommend to ISO members an amendment to the ISA. The Union being a member of the International Sugar Council in accordance with Article 7 of the ISA, should be able to initiate and participate in negotiations with a view to amend the institutional framework of the ISA.

(9) It is therefore appropriate that the Commission be authorised to start negotiations within the International Sugar Council for the amendment of the ISA, that negotiating guidelines be established and that a special committee be appointed that will be consulted by the Commission when conducting the negotiations,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, amendments to the International Sugar Agreement, 1992.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with [name of the special committee to be inserted by the Council].

Article 4

This Decision shall be valid until 31 December 2019.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President