EUROPEAN
COMMISSION

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2022/0305 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Sugar Council concerning the accession of the Kingdom of Saudi Arabia to the International Sugar Agreement, 1992

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the 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 concerning the accession of the Kingdom of Saudi Arabia to the International Sugar Agreement, 1992

2. CONTEXT OF THE PROPOSAL

2.1. The International Sugar Agreement, 1992

The International Sugar Agreement, 1992[1] ('the Agreement') aims to enhance 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 the 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 1st January 1993.

The European Union is a party to the Agreement[2].

2.2. The International Sugar Organisation

The International Sugar Organization ('ISO') which administers the Agreement is a London-based intergovernmental organisation that seeks to meet the objectives laid down by Article 1 of the Agreement.

Currently, the ISO has 87 members, including many of the world's largest sugar producers as well as importers. Besides the Union, its members are, among others, Brazil, India, Thailand, and Australia. The last country joining the ISO was the United Kingdom, who became member on 1 January 2021. The 87 members of the ISO have a total number of 2,000 votes.

Pursuant to Article 8 of the Agreement, the International Sugar Council performs or arranges for the performance of all functions as are necessary to carry out the provisions of the Agreement.

At the sessions of the International Sugar Council the Union is represented by the Commission by virtue of Article 17 TEU. Member States can also attend the sessions of the International Sugar Council.

2.3. The envisaged act of the International Sugar Council

Following the formal application of the Kingdom of Saudi Arabia to accede to the Agreement on 15 December 2021, it is expected that the International Sugar Council will adopt during a future session thereof, or within the framework of a procedure for adoption of decisions by the International Sugar Council by exchange of correspondence, a decision concerning the accession of the Kingdom of Saudi Arabia.

The purpose of the envisaged act is to establish the Union's position on the conditions for the accession of the Kingdom of Saudi Arabia to the Agreement pursuant to Article 41 of the Agreement.

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1 International Sugar Agreement 1992 (OJ L 379, 23.12.1992, p. 16).

2 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).

According to Article 41 of the Agreement, accession is open to the Governments of all States upon such conditions, as the International Sugar Council considers appropriate. Under Article 25(4) of the Agreement, in the event of the accession of a Member after the entry into force of this Agreement, when the acceding Member is not listed in the annex of the Agreement, the International Sugar Council shall decide the number of votes to be allocated to that Member. Following the acceptance by the acceding Member of the number of votes allocated by the International Sugar Council, the votes of existing Members shall be re-calculated so that the total of votes remains at 2000. The votes to be allocated to the Kingdom of Saudi Arabia, based on the current distribution of votes, would amount to 31. Once the Kingdom of Saudi Arabia will become a member of the Agreement, the votes allocated to the European Union in accordance with Article 25 of the ISA will be reduced. Consequently, the financial contribution of the European Union would be reduced accordingly for the future financial years in which Kingdom of Saudi Arabia is a member of the Agreement.

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

The Union has always been an active member of the ISO and supported the expansion of the organisation.

Even though the Kingdom of Saudi Arabia is not a sugar producer, it is a quite important actor at world level due to its important sugar imports over the years and an important trade partner of the EU in the area of agricultural and food products, including sugar.

The purpose of this proposal is to establish the Union's position on the accession of the Kingdom of Saudi Arabia to the Agreement to be taken in a future session of the International Sugar Council. The Union will support the accession of the Kingdom of Saudi Arabia and ensure that the number of votes to be allocated to the Kingdom of Saudi Arabia are calculated according to Article 25(4) of the Agreement.

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 International Sugar Council is a body set up by an agreement, namely the International Sugar Agreement, 1992.

The envisaged act of the International Sugar Council has the effect of expanding the membership of the International Sugar Agreement, 1992. The envisaged act of the International Sugar Council has legal effects because it will establish the conditions of such

[3] Judgement of the Courts of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

accession, notably because it will affect the decisional balance within the International Sugar Council, whose decisions are taken and recommendations are made, in principle, by consensus. ln the absence of consensus, decisions and recommendations are made by simple majority vote, unless this Agreement provides for a special vote, and are binding for its Members, as expressed in Article 13 of the Agreement. The respective financial contributions of the Members will also be affected by the expanding of the membership of the International Sugar Agreement, 1992. The Union position will therefore need to be established.

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 the common commercial policy.

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

4.3. Conclusion

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

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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 of Article 207(4), first subparagraph, 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 the Union by means of Council Decision 92/580/EEC[1] and entered into force on 1 January 1993.

(2) Article 41 of the Agreement states that the Agreement is open for accession by Governments of all States in accordance with the conditions established by the International sugar Council.

(3) The Government of the Kingdom of Saudi Arabia has formally applied to accede to the Agreement on 16 February 2021. The International Sugar Council should therefore be invited, during a future session thereof, or within the framework of a procedure for adoption of decisions by the International Sugar Council by exchange of correspondence, to establish the conditions for the accession of the Kingdom of Saudi Arabia.

(4) Given that the Kingdom of Saudi Arabia is an important actor in the sugar sector at world level, and an important trade partner of the Union in the area of agricultural and food products, including sugar, approving the accession of the Kingdom of Saudi Arabia to the Agreement subject to conditions set out in Article 25 of the Agreement is in the interest of the Union.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the International Sugar Council.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the International Sugar Council during a future session thereof, or within the framework of a procedure for adoption of decisions by the International Sugar Council by exchange of correspondence, shall be to approve the accession of the Kingdom of Saudi Arabia to the International Sugar Agreement, 1992, (the

[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).

Agreement) and to ensure that the number of votes to be allocated to the Kingdom of Saudi Arabia are calculated according to Article 25(4) of the Agreement.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President