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2024/0092 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Sugar Council's Accessions Committee concerning the conditions of accession for Kuwait to become a member of the International Sugar Agreement, 1992

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the International Sugar Council's Accessions Committee regarding the envisaged adoption of a decision concerning the conditions of accession for Kuwait to the International Sugar Agreement, 1992.

1.1. The International Sugar Agreement, 1992

The International Sugar Agreement, 1992¹ ('the Agreement') aims to enhance international cooperation in connection with world sugar matters and related issues. It provides a forum for intergovernmental consultations on sugar and on ways to improve the world sugar economy. It facilitates 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.

Currently, the Agreement has 87 members, including the world's largest sugar producers as well as importers. The European Union is a party to the Agreement². Among the Union and others, its members are, Brazil, India, Thailand, and Australia.

1.2. The International Sugar Organization and its Accessions Committee

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.

Pursuant to Article 8 of the Agreement, the International Sugar Council ('ISC') performs or arranges for the performance of all functions necessary to carry out the provisions of the Agreement.

During the sessions of the International Sugar Council or its subgroups, the Union is represented by the Commission by virtue of Article 17 TEU.

At its first meeting in 1993, the ISC established an Accessions Committee as a subgroup of the ISC, tasked with considering the applications for accession of States not listed in the Annex. The Committee consists of Australia, Brazil, Cuba, EU, Japan, and Mauritius. The ISC decided that the decision on the conditions of accession could be dealt with by postal ballot. In its meeting on 10 November 2022, the Committee agreed that the postal ballot procedure will be replaced by a consultation by email.

1.3. The envisaged act of the International Sugar Council's Accessions Committee

Following Kuwait's formal expression of interest to accede to the Agreement on 6 February 2024, the Accessions Committee is asked to take a decision concerning the accession conditions of Kuwait.

Article 41 of the Agreement lays down that accession is open to the Governments of all States upon conditions established by the ISC. These conditions are the number of votes, the payment of an annual contribution, and the reporting obligations to the ISO. The number of

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).

votes is established in the Annex to the Agreement. However, when a Member accedes after the entry into force and is not listed in the Annex of the Agreement, the ISC shall decide the number of votes to be allocated to that Member, in accordance with Article 25(4) of the Agreement. The ISO Secretariat proposed to allocate six votes to Kuwait, based on the current calculation method.

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

The Union is an active member of the International Sugar Agreement and supports the extension of its membership.

Approving the establishment of the accession conditions of Kuwait under the conditions established by the ISC is in the interest of the Union in view of Kuwait's position as a significant regional importer of sugar and an established export destination of sugar produced in the Union.

After the acceptance of the accession conditions by the acceding Member, the votes of existing Members shall be re-calculated so that the total of votes remains 2000, in accordance Article 25(4) of the Agreement. Once Kuwait becomes a member of the Agreement, the votes allocated to the European Union will be reduced. Consequently, the financial contribution of the European Union would be reduced accordingly for the future financial years in which Kuwait is a member of the Agreement.

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

3. LEGAL BASIS

3.1 Procedural legal basis

3.1.1. 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.

3.1.2. 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 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

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.

consensus. In 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.

3.2. Substantive legal basis

3.2.1. 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.

3.2.2. 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.

3.3. 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/EEC¹ 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 ('ISC'). At its first meeting in 1993, the ISC established an Accessions Committee subgroup, which was tasked to consider the applications for accession of States not listed in the Annex to the Agreement. The Union is a member of the Accessions Committee.
- (3) The Government of Kuwait has formally expressed its interest to accede to the Agreement. Kuwait is not listed in the Annex to the Agreement, which means that accession conditions need to be established. Therefore, the Accessions Committee is invited to take a decision, by exchange of correspondence, to establish the conditions for the accession of Kuwait. These conditions are the number of votes, the payment of an annual contribution, and the reporting obligations to the ISC.
- (4) Approving the accession conditions of Kuwait under the approach established by the ISC is in the interest of the Union in view of Kuwait's position as a significant regional importer of sugar and as an established export destination of sugar produced in the Union.
- (5) When a State accedes after the entry into force and is not listed in the Annex of the Agreement, the ISC shall decide the number of votes to be allocated to that Member, in accordance with Article 25(4) of the Agreement. Kuwait's accession will therefore affect the decisional balance within the ISC.
- (6) It is therefore appropriate to establish the positions to be taken on the Union's behalf in the International Sugar Council's Accessions Committee,

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).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the International Sugar Council's Accessions Committee taking place by exchange of correspondence, shall be to approve the conditions of accession for the State of Kuwait to the International Sugar Agreement, 1992, ensuring that the number of votes to be allocated to the State of Kuwait are calculated in accordance to Article 25(4) of this Agreement.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*