Council of the European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 September 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 583 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the International Coffee Organization Council

Delegations will find attached document COM(2020) 583 final.

Encl.: COM(2020) 583 final

EUROPEAN
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Brussels, 25.9.2020
COM(2020) 583 final

2020/0269 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Coffee Organization Council

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 Coffee Organization (ICO) Council in connection with the envisaged adoption of the extension of the International Coffee Agreement (ICA) 2007.

2. CONTEXT OF THE PROPOSAL

2.1. The International Coffee Agreement 2007

The International Coffee Agreement 2007 (ICA or 'the Agreement') aims to ensure enhanced international cooperation in connection with world coffee matters and related issues, provide a forum for intergovernmental consultations on coffee and on ways to improve the world coffee economy, to facilitate trade by collecting and providing information on the world coffee market and to encourage increased demand for coffee globally. Last but not least, a core objective of the agreement is to encourage members to develop a sustainable coffee sector in economic, social and environmental terms. The Agreement was signed in 2007 and entered into force on 2 February 2011 for a period of ten years (until 1 February 2021). According to Article 48, the Agreement can be extended for a maximum of eight years.

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

2.2. The International Coffee Organization Council

As per Article 9 of the ICA, the International Coffee Organization Council is the responsible body for the performance of all functions necessary to carry out the provisions of the ICA as the highest authority of the ICA. The Council consists of all the Members of the Organization (Article 8 ICA). Pursuant to Article 48(3) ICA, the ICO Council may decide to extend the Agreement beyond its expiry date for one or more successive periods not to exceed eight years in total. Article 14 of the ICA stipulates that all decisions of the ICO shall be taken in principle by consensus. In the absence of consensus, decisions shall be made by distributed majority vote.

According to Article 12 of the ICA, Members to the ICO hold 2000 votes in total. Each Member to the ICO holds a specified number of votes, which is annually adjusted by the Council following predefined criteria in the ICA. The distribution of votes also determines a Member's contribution (Article 20(2) ICA). Currently, the Union is the largest contributor to the ICO.

2.3. The envisaged act of the International Coffee Organization Council

In 2019, the ICO established a Working Group on the revision of the ICA.

On 04-05 June 2020, during its 126th session, the ICO Council recommended to extend the ICA beyond its current expiration date. This would allow for a more substantial revision in the future.

On 07-11 September 2020, during its 127th session, the ICO Council is to adopt a decision regarding the extension of the ICA 2007 ('the envisaged act').

The purpose of the envisaged act is to approve the extension of the ICA 2007.

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[1] 2008/579/EC: Council Decision of 16 June 2008 on the signing and conclusion on behalf of the European Community of the International Coffee Agreement 2007 (OJ L186 of 15/07/2008, p.12).

The envisaged act will become binding on the parties in accordance with Article 14(3) of the Agreement, which provides: 'Members are committed to accept as binding all decisions of the Council under the provisions of this Agreement.

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

The purpose of this proposal is to seek the Council's authorisation to the Commission to vote, on behalf of the Union, in favour of the extension of the International Coffee Agreement within the International Coffee Council.

Extending the ICA for a maximum of eight years will give the appropriate time to ICO Members to determine whether the ICA needs to undergo a substantial revision in the future that would focus on the modernisation and simplification of the Agreement.

Currently, the EU's participation in the ICO is beneficial both to the Union and to other ICO Member states and the ICA can be extended as it is. Extending the agreement beyond 2021 and working on modernising the Agreement will lead to a reengagement of Members and a discussion on the relevance of the ICO to meet current challenges. The possible revision of the ICA after 2021 would potentially increase its value added and the relevance of its work and possibly attract more interest in the ICO. An extension of the Convention is therefore in the interest of the Union.

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*'[2].

4.1.2. Application to the present case

The ICO Council is a body set up by an agreement, namely the International Coffee Agreement 2007.

The act which the ICO Council is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 14(3) of the ICA.

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.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

[2] 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.

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 TFEU.

4.3. Conclusion

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The International Coffee Agreement ('ICA') was concluded by the Union by Council Decision of 16 June 2008 and entered into force on 2 February 2011.

(2) Pursuant to Article 48(1) of the ICA, the ICA shall remain in force for a period of ten years after it enters into force provisionally or definitively unless extended or terminated pursuant to the provisions of the ICA.

(3) Pursuant to Article 9 of the ICA, the International Coffee Organization Council ('ICO Council') is the responsible body for the performance of all functions necessary to carry out the provisions of the ICA, as the highest authority of the ICA. Pursuant to Article 48(3) ICA, the ICO Council may decide to extend the Agreement beyond its expiry date for one or more successive periods not to exceed eight years in total. Article 14 of the ICA stipulates that the ICO shall endeavour to take all decisions by consensus.

(4) During its 127th session, to be held on 07-11 September 2020, and during any subsequent sessions, the ICO Council is to decide on the extension of the ICA 2007.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the ICO Council, as the ICO Council's decisions on the extension of the Agreement will be binding on the Union.

(6) It is in the Union's interests to have the possibility to participate in the ICA until the provisional or definitive entry into force of a new Agreement, considering the importance of the coffee sector for a number of Member States and for the economy of the European Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 127th and any subsequent sessions of the International Coffee Council shall be the following

To vote in favour of the extension of the International Coffee Agreement 2007 beyond its expiry date for periods of one year at a time not to exceed eight years in total or until the provisional or definitive entry into force of a new agreement, whichever comes first.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President