Council of the European Union

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2020/0303 (NLE)

PROBA 35
AGRI 385
WTO 292
PREP-BXT 27

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	30 October 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 671 final
Subject:	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 United Kingdom to the International Sugar Agreement, 1992

Delegations will find attached document COM(2020) 671 final.

Encl.: COM(2020) 671 final

EUROPEAN
COMMISSION

Brussels, 30.10.2020
COM(2020) 671 final

2020/0303 (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 United Kingdom 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 ('ISC') in connection with the accession of the United Kingdom 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 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 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 Union is a party to the Agreement[2].

2.2. The International Sugar Organization

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.

These objectives are sought by improving market transparency through the collection and publication of statistical information and studies on world production, prices, exports and imports, consumption and stocks of sugar.

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, Australia, the Russian Federation and Cuba. The last country joining the ISO was Sri Lanka, who became member on 6 August 2013. The 87 members of the ISO have a total number of 2,000 votes.

For budgetary procedures (see Article 25 of the Agreement), i.e. for fixing the annual financial contributions of members, the Union has 538 votes in 2020[3]. The number of votes are determined according to Article 25 and adjusted annually on the basis of the change in Members' share in the total of all Members' composite tonnage bases from that for the same membership for the previous year. The composite tonnage is calculated as 35% of that Member's exports to the free market plus 15% of that Member's total exports under special

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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).

3 The International Sugar Organization operates on a financial year basis, which runs from 1 January to 31 December.

arrangements plus 35% of that Member's free market imports plus 15% of that Member's total imports under special arrangements. The data used to calculate the composite tonnage basis of each Member is, for each category above, the average of that category for the highest three of the four last years published in the most recent edition of the organisation's Sugar Year Book.

For decision making, the voting rights are distributed under Article 11 of the International Sugar Agreement, which takes into account the redistribution of the votes of the Members that have their voting right suspended due to the non-payment of their contribution to the administrative budget. According to the latest distribution of votes under Article 11, the European Union has 697 votes.

At the meetings of the ISO the Union is represented by the Commission by virtue of Article 17 TEU. Member States can attend the ISO meetings, in particular the Council Sessions.

2.3. The envisaged act of the International Sugar Council (ISC)

On 2nd October 2020, the United Kingdom[4] has formally applied for accession to the Agreement. On 9 October 2020 the Secretariat of the ISO has informed its Members about the application of the United Kingdom. The United Kingdom applies for membership in the ISO as from 1 January 2021, i.e. after the expiration of the transition period following the withdrawal of the United Kingdom from the European Union.

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

According to Article 41 of the Agreement, accession is open to the Governments of all States upon such conditions, as the ISC 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 ISC 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 ISC, the votes of existing Members shall be re- calculated so that the total of votes remains at 2000. The votes allocated to the United Kingdom, based on the current distribution of votes, would amount to 55 votes and be deducted from the votes allocated to the European Union in accordance with Article 25 of the ISA. Consequently, the financial contribution of the European Union would be reduced accordingly for financial year 2021.

There was no formal discussion about the application of the United Kingdom in the ISO Administrative Committee or in the ISC meetings before the notification dated 9 October 2020[5] published by the Secretariat of the ISO secretariat concerning the letter, dated 2nd October 2020 of the Government of the United Kingdom of Great Britain and Northern Ireland. During the 57th session of the ISC on 27 November 2020, the ISC will establish the conditions for accession of the United Kingdom of Great Britain and Northern Ireland in line with Article 41 of the Agreement.

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4 By the letter of the Parliamentary Undersecretary of State for Department for Food, Environment and Rural Affairs.

5 Memo (20)68.

The Withdrawal Agreement

In accordance with Article 129(2) of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[6] ('the Withdrawal Agreement'), during the transition period the Union will continue representing the United Kingdom in the work of any bodies set up by international agreements concluded by the Union. The United Kingdom should refrain during the transition period from any action or initiative that is likely to be prejudicial to the Union's interests. However, as laid down by Article 129(4) of the Withdrawal Agreement, the United Kingdom may negotiate, sign and ratify international agreements entered into in its own capacity in the areas of exclusive competence of the Union, provided those agreements do not enter into force or apply during the transition period.

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

The **International Sugar Agreement, 1992** was concluded by the Union by Council Decision 92/580/EEC[7] until 31 December 1995. On each occasion, the Agreement is extended for a maximum period of two years in accordance with Article 45(2) of the Agreement. On 19 July 2019 the ISC took the decision to extend the ISA for two years, until 31 December 2021[8].

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

The United Kingdom is an important producer of agricultural products, including sugar which is the main crop covered by the ISO. While being a Member of the Union the United Kingdom had significant trade of sugar and sugar containing products with Member States.

During the transition period following the withdrawal of the United Kingdom from the Union, the United Kingdom continues to be bound by the Union's international agreements and the Union continues to represent the United Kingdom at the ISO.

In accordance with Article 26(1) of the Agreement, the annual financial contributions of Members become due on the first day of the financial year while contributions of Members in respect of the year in which they join the ISO become due on the date on which they become Members. The Union therefore pays its annual contributions to the ISO at the beginning of January for the entire financial year concerned, which starts in January and ends in December. The Union's contribution for 2020 was paid from the 2020 Union budget, to which the United Kingdom also contributes. Consequently, in respect of the entire 2020 financial year, the Union's contribution to the ISO also covers the United Kingdom. With the United Kingdom's accession on 1st January 2021, the Union's contribution to the ISO in respect of 2021 financial year will no longer cover the United Kingdom.

The purpose of this proposal is to establish the Union's position in the ISO on the accession of the United Kingdom to the Agreement as of 1 January 2021. Given that the accession

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6 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

7 OJ L 379, 23.12.1992, p. 15.

8 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 the extension of the International Sugar Agreement, 1992 - COM(2019) 286 final - approved by the Council in its General Affairs meeting on 25 September 2017.

procedure pursuant to the Agreement provisions is subject to a decision by the ISC, the Union's position will be established on the basis of Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).

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.

4.1.2. Application to the present case

The envisaged act of the ISC has the effect of expanding the membership of the International Sugar Agreement, 1992. The envisaged act of the ISC has legal effects because it will establish the conditions of such accession, notably because it will affect the decisional balance within the ISC, 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[9], 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.

[9] Article 2(4) of the Agreement defines special vote as a vote requiring at least two thirds of the votes cast by Members present and voting, on condition that these votes are cast by at least two thirds of the number of Members present and voting.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to trade in agricultural products.

Therefore, the substantive legal basis of the proposed decision is first subparagraph of Article 207(4) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(4), first subparagraph 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 the first subparagraph of Article 207(4), 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. The Agreement was initially concluded for a period of three years.

(2) Pursuant to Article 45(2) of the Agreement, the International Sugar Council may extend the Agreement for successive periods not exceeding two years on each occasion. Since its conclusion, the Agreement has regularly been extended for further periods of two years. The Agreement was last extended by Decision of the International Sugar Council on 10 July 2019[2] and remains in force until 31 December 2021.

(3) Pursuant to Article 41 of the Agreement, it is open for accession by the Governments of all States in accordance with the conditions established by the International Sugar Council.

(4) On 2 October 2020, the United Kingdom formally applied for accession to the Agreement as from 1 January 2021.

(5) During the 57th session of the International Sugar Council scheduled for 27 November 2020, the International Sugar Council is set to establish the conditions for accession of the United Kingdom of Great Britain and Northern Ireland in line with Article 41 of the Agreement.

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[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] 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 the extension of the International Sugar Agreement, 1992 - COM(2019) 286 final - approved by the Council in its General Affairs meeting on 25 September 2019.

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

(7) The United Kingdom is a major producer of sugar. Approving the accession of the United Kingdom to the Agreement subject to conditions set out in this Decision is in the interest of the Union.

(8) The votes allocated to the United Kingdom from the date of its accession to the Agreement should be deducted from the votes allocated to the Union in accordance with Article 25 of that Agreement. Consequently, the financial contribution of the European Union should be reduced accordingly from financial year 2021.

(9) The United Kingdom's accession to the Agreement should only take effect after the end of the transition period referred to in Article 126 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community and the Agreement should not be provisionally applied in respect of the United Kingdom before the end of that period,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf during the 57th session of the International Sugar Council on 27 November 2020 shall be to approve the accession of the United Kingdom to the International Sugar Agreement, 1992, (the Agreement) subject to conditions established in paragraphs 2, 3 and 4.

2. The accession shall not take effect and the Agreement shall not be provisionally applied in respect of the United Kingdom before the end of the transition period referred to in Article 126 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

3. From the date of its accession to the Agreement, the United Kingdom will be allocated a number of votes determined in accordance with Article 25 of the Agreement and established during the the 57th session of the International Sugar Council on 27 November 2020, which will be deducted from the votes allocated to the European Union.

4. The financial contribution of the Union will be reduced in accordance with Article 25 of the Agreement.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

FINANCIAL STATEMENT

Fin Stat/20/PSHMK/pl/62 220293413793

agri.ddg3.g.4(2020) 6175239

6.22.2020

DATE: 13/10/2020

1.	BUDGET HEADING: Chapter 15 20 PILOT PROJECTS, PREPARATORY ACTIONS, PREROGATIVES AND OTHER ACTIONS 15 20 03 06 International organisations and agreements	APPROPRIATIONS: B2021:EUR 15 605 027
2.	TITLE: 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 United Kingdom to the International Sugar Agreement, 1992	
3.	LEGAL BASIS: The legal basis for this proposal is Article 207(4), in conjunction with Article 218(9), of the Treaty on the Functioning of the European Union.	
4.	AIMS: To approve the accession of the United Kingdom to the International Sugar Agreement, 1992.	

5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR)	CURRENT FINANCIAL YEAR 2020 (EUR)	FOLLOWING FINANCIAL YEAR 2021 (EUR)
5.0	EXPENDITURE - CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER			- 42 937-
5.1	REVENUE - OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES) - NATIONAL			
5.0.1 5.1.1	ESTIMATED EXPENDITURE ESTIMATED REVENUE			

5.2	METHOD OF CALCULATION: 55 votes less for EU, 686 GBP/ vote	
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?	N.A.
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?	N.A.
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?	NO
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?	NO

The decision will have a positive impact for the EU budget from budget 2021. The EU contribution is expected to be EUR 42 937 less, as the UK will pay its own membership fee. The amount can vary depending on the amount to be paid per vote in GBP and on the EUR/GBP exchange rate. For this estimate the ECB's GBP/EUR exchange of 12/10/2020 was used (GBP 1 = EUR 1.1380).