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COVER NOTE

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Delegations will find attached document COM(2021) 175 final.

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2021/0094 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Cocoa 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 Cocoa Organization's (hereafter: 'ICCO') [1] International Cocoa Council (hereafter: 'ICCO Council') in connection with the envisaged adoption of the extension of the International Cocoa Agreement (ICA, 2010). [2]

2. CONTEXT OF THE PROPOSAL

2.1. The International Cocoa Agreement (ICA, 2010)

The International Cocoa Agreement (ICA, 2010) (hereafter 'the ICA' or 'the Agreement') aims to ensure enhanced international cooperation in connection with world cocoa matters and related issues, provide a forum for intergovernmental consultations on cocoa and on ways to improve the world cocoa economy, to facilitate trade by collecting and providing information on the world cocoa market and to encourage increased demand for cocoa.

The ICA entered into force on 1 October 2012 for a period of ten years until 30 September 2022 (Article 62(1) ICA).

The European Union is a party to the ICA[3].

2.2. The International Cocoa Council

As per Article 6(1) of the ICA, the International Cocoa Council shall consist of all the members of the Organization. As per Article 7 of the ICA, the Council shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the express provisions of the ICA.

As a general rule, the ICCO Council holds one regular session in each half of the cocoa year but has the possibility to meet in special session (Article 9 (1)(2) ICA). Article 12 of the ICA stipulates that all decisions of the ICCO Council are in principle by consensus. In the absence of consensus, decisions are made by a special vote according to the procedure as laid down in Article 12(1) ICA. Article 10 and 11 ICA provide for a specific distribution of votes and voting procedure between the Organization's exporting and importing members.

2.3. The envisaged act of the International Cocoa Council

In September 2020, during its 102nd session, the ICCO Council recommended to extend the ICA beyond its current expiration date. This would allow for a substantial revision to be adopted in the future. The ICCO Council is to decide on the extension of the agreement, as per Article 62(4) ICA, which stipulates that the Council may extend the Agreement in whole or in part for two periods not exceeding two cocoa years each.

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1 Established by the 1972 Cocoa Agreement: United Nations, Treaty Series , vol. 882, p. 67.

2 United Nations, Treaty Series, vol. 2871.

3 Council Decision of 26 March 2012 on the conclusion of the International Cocoa Agreement 2010, OJ 12.04.2012, L102, p. 1; Council Decision of 17 May 2011 on the signing, on behalf of the European Union, and provisional application of the International Cocoa Agreement 2010; OJ L259 of 04.10.2011, p.7.

On 22-23 April 2021, during its 103rd session, the ICCO Council is to adopt a decision regarding the extension of the ICA 2010 ('the envisaged act'). This decision may be postponed to the next sessions of the Council.

The purpose of the envisaged act is to approve the extension of the ICA 2010 in the ICCO Council. The extension of the ICA 2010 will give the appropriate time to ICCO Members to conduct the negotiations on the revision of the ICA.

The envisaged act will become binding on the parties in accordance with Article 12(3) ICA, which stipulates that Members are committed to accept as binding all decisions of the Council under the provisions of the 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 ICA within the ICCO Council.

Extending the ICA for a maximum of four years will give the appropriate time to ICCO Members to undergo a substantial revision that would focus on the modernisation and simplification of the Agreement.

The negotiations to partially review the ICA will be opened at the 103rd session of the ICCO Council in April 2021. The need to extend will be assessed against progress in the negotiations, to allow sufficient time to partially review the ICA.

Currently, the EU's participation in the ICCO is beneficial both to the Union and to other ICCO Member states and the ICA can be extended as it is. Extending the agreement beyond 2022 and working in parallel in a separate procedure on modernising the Agreement will lead to a reengagement of Members and a discussion on the relevance of the ICCO to meet current challenges. The possible revision of the ICA after 2022 would potentially increase its value added and the relevance of its work and possibly attract more interest in the ICCO. An extension of the Agreement 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*'[4].

4.1.2. Application to the present case

The ICCO Council is a body set up by an agreement, namely the International Cocoa Agreement 2010.

[4] 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.

The act which the ICCO 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 12(3) and Article 62(4) of the ICA 2010.

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 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(4) first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The International Cocoa Agreement 2010 ('the Agreement') was concluded by the Union by Council Decision 2012/189/EU[5] and entered into force on 1 October 2012.

(2) Pursuant to Article 62(1) of the Agreement, the Agreement remains in force until 30 September 2022, unless extended.

(3) Pursuant to Article 7(1) of the Agreement, the International Cocoa Council of the International Cocoa Organization ('the ICCO Council') is to exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the express provisions of the Agreement. Pursuant to Article 62(4) of the Agreement, the ICCO Council may adopt a decision on the extension of the Agreement beyond its current expiry date 'for two periods not exceeding two cocoa years each', that is, until 30 September 2024 for the first period and until 30 September 2026 for the second period.

(4) The ICCO Council, during its 103rd session on 22 and 23 April 2021, is to adopt a decision on the extension of the Agreement. This decision may be postponed to a later date.

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

(6) It is in the Union's interests to continue to participate within the ICA, considering the importance of the cocoa sector for a number of Member States and for the economy of the Union.

(7) Extending the Agreement for a maximum of four years should give the ICCO Council members the appropriate time to undergo a substantial revision in the future that would focus on the modernisation and simplification of the Agreement".

[5] Council Decision 2012/189/EU of 26 March 2012 on the conclusion of the International Cocoa Agreement 2010 (OJ L102, 12.4.2012, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 103rd session of the International Cocoa Council of the International Cocoa Organization, or in subsequent sessions, shall be to vote in favour of the extension of the International Cocoa Agreement 2010 for two periods not exceeding two cocoa years each, that is until 30 September 2024 for the first period and until 30 September 2026 for the second period.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President