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2022/0246 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the International Grains Council with respect to amending the Rules of Procedure under the Grains Trade Convention, 1995 as regards external auditor's contract period

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 Grains Council in connection with the envisaged amendment of the Rules of Procedure under the Grains Trade Convention, 1995 ('the Convention') as regards the contract terms of the external auditor.

2. CONTEXT OF THE PROPOSAL

2.1. The Grains Trade Convention, 1995

The Convention aims to further international co-operation in all aspects of trade in grains, to promote the expansion of international trade in grains and to secure the freest possible flow of this trade. In addition, the Convention intends to contribute to the fullest extent possible to the stability of international grain markets in the interests of all members, to enhance world food security and to provide a forum for exchange of information and discussion of members' concerns regarding trade in grains.

The Convention entered into force on 1 July 1995. The Union is a party to the Convention. The Convention was concluded by the European Union by Council Decision 96/88/EC.¹

The Convention was concluded for a period of three years, until 30 June 1998 and, since then, has been regularly extended by the International Grains Council ('IGC'). On each occasion, the Convention is extended for a maximum period of two years in accordance with Article 33 of the Convention. It was last extended by decision of the IGC on 7 June 2021 and remains in force until 30 June 2023.

2.2. The International Grains Council

The IGC is an intergovernmental organisation that seeks to meet the objectives laid down by Article 1 of the Convention. In particular, the IGC aims at:

- furthering international cooperation in all aspects of trade in grains;
- promoting expansion, openness and fairness of the international trade in the grains sector;
- contributing to stability of international grain market, enhancing world food security and contributing to the development of countries whose economies depend on commercial sales of grain.

These objectives are sought by improving market transparency through information-sharing, analysis and consultation on market and policy developments.

The IGC has 30 members, including many of the world's largest cereals producers as well as importers. Besides the Union, its members are, among others, Argentina, Australia, Canada, Egypt, India, Japan, Russia, Ukraine, the United Kingdom and the USA. However, China and Brazil are not members.

The 30 members of the IGC have a total number of 2,000 votes.

For budgetary procedures (see Article 11 of the Convention), i.e. for fixing the annual financial contributions of members, the Union has 369 votes in 2021/22².

¹ OJ L 21, 27.1.1996, p. 47.

For decision-making, i.e. where votes are held (see Article 12 of the Convention), 1,000 votes are allocated to the 11 exporting members (including the Union with 245 votes) and 1,000 votes to the 19 importing members. It needs to be emphasized that in principle, the IGC operates on the basis of consensus and it is very rare that voting is actually held.

At the meetings of the IGC, the Union is represented by the European Commission. Member States can attend the IGC meetings, in particular the IGC Council Sessions.

2.3. The envisaged act of the International Grains Council

On 14 April 2022, the IGC Secretariat circulated a formal proposal³ to amend Rule 31(a) of the Rules of Procedure under the Convention.

In line with earlier discussions within the IGC, the IGC Secretariat proposed to extend the possible contracting term of the external auditor. The Administrative Committee currently designates an independent auditor for a period of three years, which may be renewed only once for two more years.

According to the proposal, the designation could be for five years, renewable only once for maximum three more years.

The objective of the proposed extension of the possible contractual period for the external auditor is to negotiate a better price with the potential candidates.

At its meeting of 10 May 2022, the Administrative Committee considered the proposal and agreed to recommend it to the IGC for its consideration⁴. At that meeting the Union requested that the decision of the IGC be made by postal ballot (i.e. written procedure) with a deadline of 30 November 2022. This would allow the Union to complete its internal procedures.

Although the Convention does not lay down specific rules on the postal ballot procedure (or written procedure), Article 14 of the Convention concerning the decisions of the IGC, does not require that such decisions are taken at an IGC Council Session.

On 6 June 2022, at the 56th IGC Council Session, members agreed to the Union's request and decided to follow the written procedure for deciding on the proposed amendment with the deadline set for 30 November 2022.⁵

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

The Union is the 2nd largest contributor to the IGC budget, following the USA.

In order to improve the financial sustainability of the IGC and to avoid an unnecessary increase of member contributions, it is in the Union's interest to support the proposed amendment to the Rules of Procedure.

The purpose of this proposal is to seek the Council's authorisation for the Commission to vote, on the Union's behalf, in favour of the proposed amendment to the Rules of Procedure.

² The International Grains Council operates on a fiscal year basis, which runs from 1 July to 30 June.

³ IGC document AC (21/22)2/6 of 14 04 2022.

⁴ IGC document GC 56/6 of 16 05 2022.

⁵ IGC document GEN (21/22) 6 of 9 06 2022.

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*’⁶.

4.1.2. Application to the present case

The envisaged act of the IGC has the effect of amending the Rules of Procedure by amending the existing Rule with respect to the contract period of the external auditor. The Rules of Procedure provide for detailed rules for the management of the Convention, which is an international agreement binding the Union. The envisaged act has therefore legal effects.

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

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 European 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 trade in agricultural products.

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

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(4) TFEU, in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

The proposed acts of the International Grains Council will amend the Rules of Procedure under the Convention and it is therefore appropriate to publish the Council Decision in the *Official Journal of the European Union* after its adoption.

⁶ Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 63 and 64.

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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), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Grains Trade Convention, 1995 ('the Convention') was concluded by the Union by means of Council Decision 96/88/EC⁷ and entered into force on 1 July 1995. The Convention was initially concluded for a period of three years and has since been regularly extended.
- (2) The Rules of Procedure under the Convention were approved by the International Grains Council on 6 July 1995.
- (3) Rule 31, point (a), of the Rules of Procedure under the Convention lays down that an independent external auditor shall be designated for three years, which may be renewed only once, for a maximum of two years.
- (4) On 14 April 2022, the Secretariat of the International Grains Council proposed to amend Rule 31, point (a), with a view to increase the period of designation of the independent external auditor from three to five years, which may be renewed once, for a maximum of three years. The objective of the amendment is to offer a longer contract period for the potential auditors, who would in return offer more competitive prices for their services⁸.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the International Grains Council with respect to the amendment of the Rules of Procedure under the Convention concerning the contract period of the external auditor. The proposed amendment aims at improving the financial sustainability of the International Grains Council and is therefore in the interest of the Union,

⁷ Council Decision 96/88/EC of 19 December 1995 concerning the approval by the European Community of the Grains Trade Convention and the Food Aid Convention, constituting the International Grains Agreement 1995 (OJ L 21, 27.1.1996, p. 47).

⁸ International Grains Council, AC(21/22)Misc.1 of 14 April 2022.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the International Grains Council shall be to vote in favour of amending Rule 31, point (a), of the Rules of Procedure under the Grains Trade Convention, 1995, in accordance with the proposal submitted by the Secretariat of the International Grains Council on 14 April 2022, with the objective to increase the contract period of the external auditor.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*