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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	27 July 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 399 final
Subject:	Proposal for a COUNCIL DECISION on the position to be adopted, on behalf of the European Union, in the Joint CARIFORUM-EU Council of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, as regards the establishment of a list of Arbitrators

Delegations will find attached document COM(2017) 399 final.

Encl.: COM(2017) 399 final



EUROPEAN
COMMISSION

Brussels, 27.7.2017
COM(2017) 399 final

2017/0177 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be adopted, on behalf of the European Union, in the Joint
CARIFORUM-EU Council of the Economic Partnership Agreement between the
CARIFORUM States, of the one part, and the European Community and its Member
States, of the other part, as regards the establishment of a list of Arbitrators**

EXPLANATORY MEMORANDUM

1. SUBJECT-MATTER OF THE PROPOSAL

The present proposal concerns the decision establishing the position to be adopted on behalf of the Union in the Joint CARIFORUM-EU Council of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, in connection with the envisaged adoption of a Decision concerning the establishment for a list of Arbitrators.

2. CONTEXT OF THE PROPOSAL

2.1. The Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part

The Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part ('the Agreement') aims to contribute to the reduction and eventual eradication of poverty through the establishment of a trade partnership consistent with the objective of sustainable development, the Millennium Development Goals and the Cotonou Agreement.

The Agreement was signed on 15 October 2008, and is provisionally applied as of 29 December 2008.

2.2. The Joint CARIFORUM-EU Council

The Joint CARIFORUM-EU Council shall generally be responsible for the operation and implementation of this Agreement and shall monitor the fulfilment of its objectives. It meets at ministerial level at regular intervals not exceeding a period of two years. In order to attain the objectives of this Agreement, it shall have the power to take decisions in respect of all matters covered by the Agreement. These decisions taken shall be binding on the Parties and the Signatory CARIFORUM States, which shall take all the measures necessary to implement them in accordance with each Party's and Signatory CARIFORUM State's internal rules.

2.3. The envisaged act of the Joint CARIFORUM-EU Council

On 17 November 2017, during its fourth meeting, the Joint CARIFORUM-EU Council is to adopt a Decision regarding the establishment of the list of arbitrators foreseen in article 221 (1) of the Agreement ('the envisaged act').

The purpose of the envisaged act is to establish a list of fifteen individuals with specialised knowledge of or experience in law and international trade, and who are willing to serve as arbitrators, as foreseen in Article 221(1) of the Agreement. This step is necessary to implement the dispute settlement provisions of the agreement.

The envisaged act shall become binding on the parties in accordance with Article 221 of the Agreement, which provides: 'The CARIFORUM-EU Trade and Development Committee shall, no later than three months after the provisional application of this Agreement, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each of the Parties

shall select five individuals to serve as arbitrators. The two Parties shall also agree on five individuals that are not nationals of either Party and who shall act as Chairperson to the arbitration panel. The CARIFORUM-EU Trade and Development Committee will ensure that the list is always maintained at this level.’

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

Article 221(1) of the Agreement foresees the establishment of a list of fifteen individuals with specialised knowledge of or experience in law and international trade, and who are willing to serve as arbitrators. Each of the Parties has selected five individuals and the two Parties have also agreed on five individuals that are not nationals of either Party and who shall act as a Chairperson to the arbitration panel.

The annex of the attached draft Council Decision and the list of arbitrators were agreed with the CARIFORUM side during the sixth Trade and Development Committee meeting that took place in Jamaica on 25 November 2016.

The proposed position to be adopted on behalf of the Union aims at making the envisaged act binding.

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.’

4.1.2. Application to the present case

The Joint CARIFORUM-EU Council is a body set up by the Agreement.

The act which the Joint CARIFORUM-EU 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 221 of the Agreement.

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

The procedural legal basis for the proposed decision, therefore, 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 adopted on behalf of the Union.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common commercial policy.

The substantive legal basis of the proposed decision, therefore, is Article 207 TFEU.

4.3. Conclusion

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

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on the position to be adopted, on behalf of the European Union, in the Joint CARIFORUM-EU Council of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, as regards the establishment of a list of Arbitrators

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part¹ ('the Agreement'), was signed on 15 October 2008, and is provisionally applied as of 29 December 2008.
- (2) The Joint CARIFORUM-EU Council, during its fourth meeting on 17 November 2017, is to adopt a decision on the establishment of a list of Arbitrators.
- (3) It is appropriate to establish the position to be adopted on behalf of the Union in the Joint CARIFORUM-EU Council, as the decision will be binding upon the Union.
- (4) The attached proposal for a Council Decision constitutes the legal instrument for the establishment of a list of fifteen individuals with specialised knowledge of or experience in law and international trade, and who are willing to serve as arbitrators, as foreseen in Article 221(1) of the Agreement. It is necessary to implement the dispute settlement provisions of the agreement.
- (5) In the Joint CARIFORUM-EU Council, the Union is to be represented by the Commission in accordance with Article 17(1) TEU. The Member States are to support the position of the Union in accordance with Article 4(3) TEU,

¹ OJ L 289, 30.10.2008, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, in the fourth meeting of the Joint CARIFORUM-EU Council on 17 November 2017 shall be based on the draft Decision of the Joint CARIFORUM-EU Council attached to this Decision.

Article 2

This Decision is addressed to the Commission and the Member States.

Done at Brussels,

*For the Council
The President*