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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	31 May 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2024) 238 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union within the first meetings of the OACPS-EU Joint Institutions regarding the adoption of the Rules of Procedure of the OACPS-EU Joint Institutions, namely the OACPS-EU Council of Ministers, the Africa-EU Council of Ministers, the Caribbean-EU Council of Ministers, the Pacific-EU Council of Ministers, the OACPS-EU Ambassadorial Level Senior Officials Committee, the Africa-EU Joint Committee, the Caribbean-EU Joint Committee and the Pacific-EU Joint Committee

Delegations will find attached document COM(2024) 238 final.

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EUROPEAN
COMMISSION

Brussels, 31.5.2024
COM(2024) 238 final

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the first meetings of the OACPS-EU Joint Institutions regarding the adoption of the Rules of Procedure of the OACPS-EU Joint Institutions, namely the OACPS-EU Council of Ministers, the Africa-EU Council of Ministers, the Caribbean-EU Council of Ministers, the Pacific-EU Council of Ministers, the OACPS-EU Ambassadorial Level Senior Officials Committee, the Africa-EU Joint Committee, the Caribbean-EU Joint Committee and the Pacific-EU Joint Committee

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 first meetings of the joint institutions established by the Partnership Agreement between the European Union and its Member States of the one part, and the Members of the Organisation of the African, Caribbean and Pacific States, of the other part, signed in Samoa on 15 November 2023 ('the Agreement').

According to the Agreement, each Joint Institutions shall adopt its rules of procedure at its first meeting, but no later than six months after the entry into force of the Agreement.

OACPS-EU Joint Institutions covered by the present proposal are the following: the OACPS-EU Council of Ministers, the Africa-EU Council of Ministers, the Caribbean-EU Council of Ministers, the Pacific-EU Council of Ministers, the OACPS-EU Ambassadorial Level Senior Officials Committee, the Africa-EU Joint Committee, the Caribbean-EU Joint Committee and the Pacific-EU Joint Committee.

2. CONTEXT OF THE PROPOSAL

2.1. The Partnership Agreement between the European Union and its Member States, and the members of the Organisation of African, Caribbean and Pacific States

The Agreement aims to establish a strengthened political partnership between the Parties to generate mutually beneficial outcomes on common and intersecting interests and in accordance with their shared values. The Agreement has been provisionally applied since 1 January 2024, in accordance with its Article 98(4). The entry into force of the Agreement will follow the completion of the Parties' respective internal procedures, in accordance with Article 98(2) of the Agreement.

The European Union and all its Member States are parties to the Agreement¹.

The OACPS-EU Council of Ministers and each regional Councils of Ministers shall be co-chaired by the Chair nominated by the OACPS Members/respectively by the African, Caribbean or Pacific States Parties on the one hand and by the Chair nominated by the EU Party on the other hand. On the European Union side, the OACPS-EU Council of Ministers and each Regional Council of Ministers should be chaired by the High Representative of the Union for Foreign Affairs and Security Policy in his/her capacity of Vice President of the European Commission (hereinafter 'HR/VP') and/or a Commissioner of the European Commission.

2.2. The OACPS-EU Joint Institutions

Pursuant to Article 86(1) of the Agreement, the OACPS-EU Joint Institutions comprise, at the level of the members of the OACPS and the EU Party: the OACPS-EU Council of Ministers, the OACPS-EU Ambassadorial Level Senior Officials Committee (OACPS-EU ALSOC) and the OACPS-EU Joint Parliamentary Assembly. For each of the Regional Protocols, the joint institutions comprise the Africa-EU Council of Ministers, the Africa-EU Joint Committee, the Africa-EU Parliamentary Assembly, the Caribbean-EU Council of Ministers, the Caribbean-

¹ Council Decision of 20 July 2023 on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part (OJ L 2023/2861, 28.12.2023).

EU Joint Committee, the Caribbean-EU Parliamentary Assembly, the Pacific-EU Council of Ministers, the Pacific-EU Joint Committee and the Pacific-EU Parliamentary Assembly.

The Rules of Procedure of the OACPS-EU Joint Parliamentary Assembly, the Africa-EU Parliamentary Assembly, the Caribbean-EU Parliamentary Assembly and the Pacific-EU Parliamentary Assembly have been adopted at the first meetings of the four new Parliamentary Assemblies, that were held from 19 to 21 February 2024 in Luanda, Angola, in accordance with Article 90(3) of the Agreement.

2.2.1. The OACPS-EU Council of Ministers

Pursuant to Article 88 of the Agreement, the OACPS-EU Council of Ministers shall comprise, on the one hand, a representative of each OACPS Member at ministerial level and, on the other hand, representatives of the European Union and of its Member States at ministerial level. It shall be co-chaired by the Chair nominated by the OACPS Members on the one hand and by the Chair nominated by the EU Party on the other hand.

The OACPS-EU Council of Ministers shall meet in principle every three years and whenever it is deemed necessary on the initiative of the Co-chairs, in a form and composition appropriate to the issues to be addressed. Observers may take part in meetings as appropriate.

The OACPS-EU Council of Ministers may set up committees and working groups to deal with specific issues more effectively and efficiently, such as issues on trade and development finance. It may also delegate powers to the OACPS-EU ALSOC.

The functions of the OACPS-EU Council of Ministers shall be to:

- (a) Provide strategic political guidance;
- (b) Oversee the effective and consistent implementation of this Agreement;
- (c) Adopt policy guidelines and take decisions to give effect to specific aspects necessary for the implementation of the provisions of this Agreement; and
- (d) Adopt joint positions, agree on joint actions on international cooperation, and facilitate coordination in international organisations and forums.

The OACPS-EU Council of Ministers shall adopt decisions that are binding on all Parties unless otherwise specified, or make recommendations concerning any of its functions listed above by common agreement of the Parties.

The OACPS-EU Council of Ministers may take decisions or make recommendations by written procedure. The use of a written procedure may be proposed by any of the Parties and may be initiated following the agreement of the Co-Chairs. The rules laid down above shall apply *mutatis mutandis* to the written procedure.

2.2.2. The Regional Council of Ministers

Pursuant to Article 92(1) of the Agreement, the parties to the Agreement also establish a Council of Ministers for each of the three Regional Protocols of the Agreement.

The Africa-EU Council of Ministers shall comprise, on the one hand, a representative of each State Party in Africa at ministerial level and, on the other hand, representatives of the European Union and of its Member States at ministerial level. It shall be co-chaired by the Chair nominated by the African States Party, on the one hand, and by the Chair nominated by the EU Party on the other hand, according to their own procedures.

The Caribbean-EU Council of Ministers shall comprise, on the one hand, a representative of each State Party in the Caribbean at ministerial level and, on the other hand, representatives of the European Union and of its Member States at ministerial level. It shall be co-chaired by the

Chair nominated by the Caribbean States Party, on the one hand, and by the Chair nominated by the EU Party on the other hand, according to their own procedures.

The Pacific-EU Council of Ministers shall comprise, on the one hand, a representative of each State Party in the Pacific at ministerial level and, on the other hand, representatives of the European Union and of its Member States at ministerial level. It shall be co-chaired by the Chair nominated by the Pacific States Party, on the one hand, and by the Chair nominated by the EU Party on the other hand, according to their own procedures.

The functions of each Regional Council of Ministers shall be to:

- (a) Set priorities and, as appropriate, establish plans of action in relation to the objectives of their respective Regional Protocol;
- (b) Adopt decisions and make recommendations to give effect to specific aspects of their respective Regional Protocol, including decisions concerning the revision or amendment thereof, in accordance with Article 99(5); the decisions shall be binding on all Parties to the respective Regional Protocol, unless otherwise specified; and
- (c) Conduct dialogue and exchange views on any issues of common interest.

Each Regional Council of Ministers shall adopt decisions or make recommendations by common agreement.

Each Regional Council of Ministers:

- (a) May adopt decisions or make recommendations by written procedure; the rules laid down in Article 88 shall apply *mutatis mutandis* to the written procedure of the Regional Council of Ministers;
- (b) May set up subcommittees and working groups to deal with specific issues more effectively and efficiently, and may delegate powers to the respective Regional Joint Committee;
- (c) Shall submit a report to the OACPS-EU Council of Ministers on the implementation of its respective Protocol.

2.2.3. *The OACPS-EU Ambassadorial Level Senior Officials Committee (OACPS-EU ALSOC)*

The OACPS-EU ALSOC shall comprise, on the one hand, a representative of each OACPS Member at ambassadorial or senior official level and the Secretary General of the OACPS in an *ex officio* capacity and, on the other hand, representatives of the European Union and of its Member States at ambassadorial or senior level.

The OACPS-EU ALSOC shall meet annually and in special sessions at the request of the Co-chairs, and in particular to prepare for the sessions of the OACPS-EU Council of Ministers. It shall be co-chaired by the same Parties that hold the office of Co-chairs of the OACPS-EU Council of Ministers. It shall take its decisions and make recommendations by common agreement of the Parties. Observers may take part in meetings as appropriate.

The OACPS-EU Ambassadorial Level Senior Officials Committee (OACPS-EU ALSOC) shall prepare the sessions of, and assist, the OACPS-EU Council of Ministers in the fulfilment of its tasks and carry out any mandate entrusted to it by the OACPS-EU Council of Ministers.

2.2.4. *The Regional Joint Committees*

The Africa-EU Joint Committee shall comprise, on the one hand, a representative of each African OACPS Member at ambassadorial or senior official level, and, on the other hand, representatives of the European Union and of its Member States at ambassadorial or senior

official level. It shall be co-chaired by the same Parties that hold the office of Co-chairs of the Africa-EU Council of Ministers. When appropriate, it may decide to invite observers on the proposal of any Party following the agreement of the Co-chairs. It shall prepare the sessions and assist the Africa-EU Council of Ministers in the fulfilment of its tasks and carry out any mandate entrusted to it by the Africa-EU Council of Ministers.

The Caribbean-EU Joint Committee shall comprise, on the one hand, a representative of each Caribbean OACPS Member at ambassadorial or senior official level, and, on the other hand, representatives of the European Union and of its Member States at ambassadorial or senior official level. It shall be co-chaired by the same Parties that hold the office of Co-chairs of the Caribbean-EU Council of Ministers. When appropriate, it may decide to invite observers on the proposal of any Party following the agreement of the Co-chairs. It shall prepare the sessions and assist the Caribbean-EU Council of Ministers in the fulfilment of its tasks and carry out any mandate entrusted to it by the Caribbean-EU Council of Ministers.

The Pacific-EU Joint Committee shall comprise, on the one hand, a representative of each Pacific OACPS Member at ambassadorial or senior official level, and, on the other hand, representatives of the European Union and of its Member States at ambassadorial or senior official level. It shall be co-chaired by the same Parties that hold the office of Co-chairs of the Pacific-EU Council of Ministers. When appropriate, it may decide to invite observers on the proposal of any Party following the agreement of the Co-chairs. It shall prepare the sessions and assist the Pacific-EU Council of Ministers in the fulfilment of its tasks and carry out any mandate entrusted to it by the Pacific-EU Council of Ministers.

2.3. The envisaged acts of the first meetings of the OACPS-EU Joint Institutions

At its first meetings, each OACPS-EU Joint Institutions, namely the OACPS-EU Council of Ministers, the Africa-EU Council of Ministers, the Caribbean-EU Council of Ministers, the Pacific-EU Council of Ministers, the OACPS-EU Ambassadorial Level Senior Officials Committee (OACPS-EU ALSOC), the Africa-EU Joint Committee, the Caribbean-EU Joint Committee and the Pacific-EU Joint Committee is to adopt a Decision regarding the adoption of its respective Rules of Procedure ('the envisaged act').

The purpose of each envisaged act is to establish the Rules of Procedure of the OACPS-EU Council of Ministers, the Africa-EU Council of Ministers, the Caribbean-EU Council of Ministers, the Pacific-EU Council of Ministers, the OACPS-EU Ambassadorial Level Senior Officials Committee (OACPS-EU ALSOC), the Africa-EU Joint Committee, the Caribbean-EU Joint Committee and the Pacific-EU Joint Committee.

The envisaged act establishing the Rules of Procedure of the OACPS-EU Council of Ministers will become binding on the parties in accordance with Article 88(5) of the Agreement, which provides: 'The OACPS-EU Council of Ministers shall adopt decisions that are binding on all Parties'. Pursuant to Article 88(7), the OACPS-EU Council of Ministers shall adopt its rules of procedure at its first meeting, but no later than 6 months after the entry into force of the Agreement.

The envisaged act establishing the Rules of Procedure of the Africa-EU Council of Ministers will become binding on the EU Party and on the African OACPS Members in accordance with Article 92(2)(b) of the Agreement, which provides: 'the decisions shall be binding on all Parties to the respective Regional Protocol'. Pursuant to Article 92(4)(d), the Africa-EU Council of Ministers shall adopt its rules of procedure at its first meeting, but no later than 6 months after the entry into force of the Agreement.

The envisaged act establishing the Rules of Procedure of the Caribbean-EU Council of Ministers will become binding on the EU Party and on the Caribbean OACPS Members in

accordance with Article 92(2)(b) of the Agreement, which provides: ‘the decisions shall be binding on all Parties to the respective Regional Protocol’. Pursuant to Article 92(4)(d), the Caribbean-EU Council of Ministers shall adopt its rules of procedure at its first meeting, but no later than 6 months after the entry into force of the Agreement.

The envisaged act establishing the Rules of Procedure of the Pacific-EU Council of Ministers will become binding on the EU Party and on the Pacific OACPS Members in accordance with Article 92(2)(b) of the Agreement, which provides: ‘the decisions shall be binding on all Parties to the respective Regional Protocol’. Pursuant to Article 92(4)(d), the Pacific-EU Council of Ministers shall adopt its rules of procedure at its first meeting, but no later than 6 months after the entry into force of the Agreement.

The envisaged act establishing the Rules of Procedure of the OACPS-EU Ambassadorial Level Senior Officials Committee (OACPS-EU ALSOC) is pursuant to Article 89(3) of the Agreement, which provides: ‘The OACPS-EU ALSOC shall adopt its rules of procedure at its first meeting, but no later than six months after the entry into force of this Agreement’.

The envisaged act establishing the Rules of Procedure of the Africa-EU Joint Committee is pursuant to Article 93(4) of the Agreement, which provides: ‘Each Regional Joint Committee shall adopt its rules of procedure at its first meeting, but no later than six months after the entry into force of this Agreement’.

The envisaged act establishing the Rules of Procedure of the Caribbean-EU Joint Committee is pursuant to Article 93(4) of the Agreement, which provides: ‘Each Regional Joint Committee shall adopt its rules of procedure at its first meeting, but no later than six months after the entry into force of this Agreement’.

The envisaged act establishing the Rules of Procedure of the Pacific-EU Joint Committee is pursuant to Article 93(4) of the Agreement, which provides: ‘Each Regional Joint Committee shall adopt its rules of procedure at its first meeting, but no later than six months after the entry into force of this Agreement’.

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

The Commission proposes that the Union agrees to the adoption of the Rules of Procedure of the OACPS-EU Joint Institutions, namely the OACPS-EU Council of Ministers, the Africa-EU Council of Ministers, the Caribbean-EU Council of Ministers, the Pacific-EU Council of Ministers, the OACPS-EU Ambassadorial Level Senior Officials Committee, the Africa-EU Joint Committee, the Caribbean-EU Joint Committee and the Pacific-EU Joint Committee. The draft act of the OACPS-EU Joint Institutions, i.e. the draft Rules of Procedure, is set out in the Annex attached to this Proposal.

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 OACPS-EU Joint Institutions are bodies set up by an agreement, namely the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part.

The act, which the OACPS-EU Council of Ministers is called upon to adopt, constitutes an act having legal effects. The envisaged act will be binding under international law in accordance with Article 88(5) of the Agreement.

The acts, which the Africa-EU Council of Ministers, the Caribbean-EU Council of Ministers and the Pacific-EU Council of Ministers are called upon to adopt, constitute acts having legal effects. The envisaged acts will be binding under international law in accordance with Article 92(2)(b) of the Agreement.

The act, which the OACPS-EU ALSOC is called upon to adopt, constitutes an act having legal effects. The envisaged act has legal effects, as the decision of the OACPS-EU ALSOC will be taken by common agreement and allows for the fulfilment of its tasks and any mandate entrusted to it by the OACPS-EU Council of Ministers under a delegation of powers pursuant to Articles 88(3) and 89(2) of the Agreement.

The acts, which the Africa-EU Joint Committee, the Caribbean-EU Joint Committee and the Pacific-EU Joint Committee are called upon to adopt, constitute acts having legal effects, as they allow for the fulfilment of the Committee’s tasks and to carry out any mandate entrusted to it by the respective Regional Council of Ministers.

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 relates to the functioning of the bodies set up on the basis of the Agreement. For decisions approving rules of procedure of bodies that are to oversee the implementation of the agreement as a whole, the substantive legal basis follows that of the main, i.e. the one applicable to the agreement as a whole³. In that regard, the substantive legal basis of Council Decision 2023/2861 of 20 July 2023 on the signing, on

² Judgement of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

³ Judgement of the Court of Justice of 4 September 2018, European Commission v Council of the European Union, C-244/17, ECLI:EU:C:2018:662, paragraphs 39 to 40.

behalf of the European Union, and provisional application of the Agreement⁴, is based on Article 217 TFEU. Therefore, the substantive legal basis of the proposed decision is Article 217 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 217 TFEU, in conjunction with Article 218(9) TFEU.

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Council Decision of 20 July 2023 on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part (OJ L 2023/2861, 28.12.2023).

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union within the first meetings of the OACPS-EU Joint Institutions regarding the adoption of the Rules of Procedure of the OACPS-EU Joint Institutions, namely the OACPS-EU Council of Ministers, the Africa-EU Council of Ministers, the Caribbean-EU Council of Ministers, the Pacific-EU Council of Ministers, the OACPS-EU Ambassadorial Level Senior Officials Committee, the Africa-EU Joint Committee, the Caribbean-EU Joint Committee and the Pacific-EU Joint Committee

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Partnership Agreement between the European Union and its Member States, of the one part, and Members of the Organisation of African, Caribbean and Pacific States, of the other part ('the Agreement') was signed on 15 November 2023 by the European Union, its Member States and the Members of the Organisation of African, Caribbean and Pacific States ('OACPS Members') and entered into provisional application on 1 January 2024⁵.
- (2) The Agreement is to enter into force on the first day of the second month following the date on which the European Union and its Member States and at least two thirds of the OACPS Members have completed their respective internal procedures for that purpose and deposited their instruments expressing their consent to be bound with the General Secretariat of the Council of the European Union (the "depositary"), which shall send a certified copy to the OACPS Secretariat.
- (3) The functions of the OACPS-EU Council of Ministers are provided in Article 88(4) of the Agreement. The functions of each Regional Council of Ministers are provided in Article 92(2) of the Agreement. The functions of the OACPS-EU ALSOC are provided in Article 89(2) of the Agreement. Finally, the functions of each Regional Joint Committee are provided in Article 93(3) of the Agreement.
- (4) On the European Union side, the OACPS-EU Council of Ministers and each Regional Council of Ministers should be chaired by the High Representative of the Union for Foreign Affairs and Security Policy in his/her capacity of Vice President of the European Commission (hereinafter 'HR/VP') and/or a Commissioner of the European Commission.

⁵ Council Decision of 20 July 2023 on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part (OJ L 2023/2861, 28.12.2023).

- (5) Each of the OACPS-EU Joint Institutions should, during its first meeting, adopt a Decision on its Rules of Procedure.
- (6) It is appropriate to establish the position to be taken on the rules of procedure of each of the OACPS-EU Joint Institutions on the Union's behalf in the Council, as the Decision will be binding on the Union.

HAS ADOPTED THIS DECISION:

Article 1

- (1) The position to be taken on the Union's behalf in the first meeting of each of the OACPS-EU Joint Institutions, namely the OACPS-EU Council of Ministers, the Africa-EU Council of Ministers, the Caribbean-EU Council of Ministers, the Pacific-EU Council of Ministers, the OACPS-EU Ambassadorial Level Senior Officials Committee, the Africa-EU Joint Committee, the Caribbean-EU Joint Committee and the Pacific-EU Joint Committee shall be based on the various draft rules of procedure of the OACPS-EU Joint Institutions attached to this Decision.
- (2) Minor technical corrections to the annexed various draft rules of procedure of the OACPS-EU Joint Institutions may be agreed to by the representatives of the European Union within the OACPS-EU Joint Institutions without further decision of the Council.

Article 2

On the European Union side, the OACPS-EU Council of Ministers and each Regional Council of Ministers shall be chaired by the High Representative of the Union for Foreign Affairs and Security Policy in his/her capacity of Vice President of the European Commission (hereinafter 'HR/VP') and/or a Commissioner of the European Commission.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*