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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the Union in the Joint Monitoring and Review Committee under the Voluntary Partnership Agreement between the European Union and the Cooperative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union, regarding the establishment of the rules of procedure of the Joint Monitoring and Review Committee and the working procedures for arbitration

Delegations will find attached document COM(2024) 485 final.

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EUROPEAN
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Brussels, 22.10.2024

COM(2024) 485 final

2024/0268 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the Union in the Joint Monitoring and Review Committee under the Voluntary Partnership Agreement between the European Union and the Cooperative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union, regarding the establishment of the rules of procedure of the Joint Monitoring and Review Committee and the working procedures for arbitration

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision setting out the position to be taken on behalf of the European Union (EU) in the Joint Monitoring and Review Committee ('JMRC') under the Voluntary Partnership Agreement between the European Union and the Cooperative Republic of Guyana ('Guyana') on forest law enforcement, governance and trade in timber products to the EU (the 'Agreement') regarding the drawing up of the rules of procedure of the JMRC and the working procedures for arbitration.

2. CONTEXT OF THE PROPOSAL

2.1. The Voluntary Partnership Agreement between the EU and Guyana on forest law enforcement, governance, and trade in timber products to the EU

The Agreement aims to ensure that all imports from Guyana into the EU of timber products covered by the Agreement have been legally produced. To that end, the Agreement lays down a forest law enforcement, governance, and trade (FLEGT) licensing scheme comprising procedures and requirements to verify and to attest by means of FLEGT licences to the legality of the products concerned.

The Agreement was concluded on behalf of the EU by Council Decision (EU) 2023/904¹ and entered into force on 1 June 2023.

2.2. The Joint Monitoring and Review Committee

The JMRC is set up in accordance with Article 20 and point 1 of Annex X of the Agreement not only to help manage, monitor and review the Agreement, but also to manage the independent audit, and the dialogue and exchanges of information between the parties. The JMRC is co-chaired by a representative of the EU and a representative of Guyana and takes its decisions by consensus. Pursuant to Article 17(1) TEU and as reflected in Article 3 of Council Decision (EU) 2023/904, the Union is to be represented by the Commission in the JMRC. Its specific functions are set out in detail in Annex X to the Agreement.

The JMRC functions in accordance with the rules of procedure that it is to develop and adopt, as set out in Article 20(3) of the Agreement.

2.3. The working procedures for arbitration

The parties must endeavour to resolve any dispute in relation to the interpretation and application of the Agreement through consultations and, where necessary, mediation. If the parties fail to resolve the dispute through consultations and mediation, they may seek recourse to arbitration. They must set up an arbitration panel for that purpose in accordance with the PCA Arbitration Rules 2012 of the Permanent Court of Arbitration. The ruling of the arbitration panel is binding on the parties, which must take any measures necessary to comply in good faith with the panel's ruling.

The working procedures for arbitration are to be developed and adopted by the JMRC, as set out in Article 26(5) of the Agreement.

2.4. The decision to be adopted by the JMRC

The dual purpose of the decision to be adopted by the JMRC is to:

¹ OJ L121/1, 5.5.2023.

1) draw up its own rules of procedure, also in relation to: (i) its composition and chairmanship; (ii) the representation of the parties; (iii) the functioning of the secretariat; (iv) the organisation of the meetings; (v) the participation of stakeholders; (vi) the decision-making process for adopting decisions and recommendations; (vii) the scope and operation of the JMRC's technical committee ; and (viii) the role and tasks of the facilitator;

2) draw up the working procedures for arbitration, also in relation to: (i) appointing, challenging and replacing arbitrators; (ii) the place of arbitration; (iii) conducting hearings; (iv) the applicable law; and (v) the decision-making process for adopting the arbitration panel ruling.

The JMRC's rules of procedure and the working procedures for arbitration have been discussed in detail with Guyana in the framework of the JMRC. The final text of this proposal is the result of those detailed discussions.

3. POSITION TO BE TAKEN ON BEHALF OF THE EU

The JMRC will adopt the decision setting out its rules of procedure and the working procedures for arbitration at the next JMRC meeting following the adoption of this Council Decision.

The proposed Council Decision establishes the Union position on the decisions to be taken in the JMRC regarding the adoption of the Rules of Procedure of the JMRC and the Working Procedures for Arbitration. These positions to be taken on behalf of the Union shall be based on the draft decisions of the JMRC attached to this Council Decision.

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 JMRC is a body set up by an agreement within the meaning of Article 218(9) TFEU.

The draft of the decision which the JMRC is called upon to adopt constitutes an act having legal effects, as it regulates how the parties to the Agreement must collaborate to implement the Agreement. It also regulates the possibility of adopting amendments to its Annexes and how the arbitration proceedings will be conducted.

In particular, the decision establishing the Rules of Procedure of the Joint Committee will determine how the Joint Committee will function and influence how it will take its decisions, including regarding the implementation of the Agreement. In addition, the working

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

Procedures of Arbitration are capable of influencing the formation of the arbitration panel rulings, which will in turn be binding on the Parties pursuant to Article 26(3) of the Agreement.

It does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed Council 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 act to be adopted in respect of which a position is taken on the EU's behalf. If that 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 have 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 Agreement, to the implementation of which the envisaged decisions of the JMRC relate, concern the common commercial policy. Therefore, the substantive legal basis of the proposed Council Decision is the 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.

5. PUBLICATION OF THE ACT TO BE ADOPTED

As the decision to be adopted by the JMRC will implement the Agreement, it should be published in the *Official Journal of the European Union* after its adoption.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the Union in the Joint Monitoring and Review Committee under the Voluntary Partnership Agreement between the European Union and the Cooperative Republic of Guyana on forest law enforcement, governance and trade in timber products to the European Union, regarding the establishment of the rules of procedure of the Joint Monitoring and Review Committee and the working procedures for arbitration

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 Voluntary Partnership Agreement between the European Union (EU) and the Cooperative Republic of Guyana ('Guyana') on forest law enforcement, governance, and trade (the 'Agreement') was concluded by the Union by Council Decision (EU) 2023/904³ and entered into force on 1 June 2023.
- (2) Pursuant to Article 20 and point 1 of Annex X of the Agreement, a Joint Monitoring and Review Committee ('JMRC') is set up not only to help manage, monitor and review the Agreement, but also to manage the independent audit, and the dialogue and exchanges of information between the parties.
- (3) Pursuant to Article 20(3) of the Agreement, the JMRC should draw up its own rules of procedure.
- (4) Pursuant to Article 26(1) of the Agreement, if the Parties fail to resolve the dispute through consultations and mediation, they may seek recourse to arbitration.
- (5) Pursuant to Article 26(5) of the Agreement, the JMRC should draw up the working procedures for arbitration.
- (6) The JMRC, during its next meeting (fourth JMRC), will adopt the decision setting out its rules of procedure and the working procedures for arbitration.
- (7) The Union should determine the position to be taken regarding the adoption of that decision setting out the JMRC's rules of procedure and the working procedures for arbitration.
- (8) The Union's position in the JMRC is to be based on the JMRC's draft decision attached to this Council Decision,

³ OJ L121/1, 5.5.2023.

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the next meeting of the JMRC under the Agreement shall be based on the JMRC's draft decision on its rules of procedure and the working procedures for arbitration, which is attached to this Decision.
2. Minor technical changes to the JMRC's draft decision may be agreed to by the representatives of the Union in the JMRC without a further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President