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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, 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 European Union in the Joint Implementation Committee established pursuant to Article 18 of the Voluntary Partnership Agreement between the European Union and the Socialist Republic of Vietnam on forest law enforcement, governance and trade as regards the adoption of the Rules of Procedure of the Joint Implementation Committee

Delegations will find attached document COM(2019) 556 final.

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EUROPEAN
COMMISSION

Brussels, 31.10.2019
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2019/0244 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Joint Implementation Committee established pursuant to Article 18 of the Voluntary Partnership Agreement between the European Union and the Socialist Republic of Vietnam on forest law enforcement, governance and trade as regards the adoption of the Rules of Procedure of the Joint Implementation Committee

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the European Union's behalf in the Joint Implementation Committee ('JIC') established pursuant to Article 18 of the Voluntary Partnership agreement between the European Union and the Socialist Republic of Vietnam on forest law enforcement, governance and trade in conjunction with the envisaged adoption of its rules of procedure

2. CONTEXT OF THE PROPOSAL

2.1. The Voluntary Partnership agreement between the European Union and the Socialist Republic of Vietnam on forest law enforcement, governance and trade

The Voluntary Partnership agreement between the European Union and the Socialist Republic of Vietnam on forest law enforcement, governance and trade ('the Agreement') aims to ensure that all imports into the European Union from the Socialist Republic of Vietnam of timber and timber products covered by the Agreement have been legally produced. This will be achieved through the establishment and implementation of a Vietnam Timber Legality Assurance System ('VNTLAS') to verify that timber and timber products have been legally produced and to ensure that only shipments verified as such are exported to the Union. The Agreement entered into force on 1 June 2019.

2.2. The Joint Implementation Committee

The JIC, foreseen in Article 18 of the Agreement and described in more detail in Annex IX to the Agreement, serves to facilitate the management, monitoring and review of this Agreement. The JIC shall also facilitate dialogue and exchanges of information between the Parties to the Agreement. The JIC shall make its decisions by consensus. The JIC shall be co-chaired by the Vice Minister, Ministry of Agriculture and Rural Development and the Head of Delegation, Delegation of the European Union to the Socialist Republic of Vietnam.

2.3. The envisaged act of the JIC

In the week of 11 to 15 November 2019, during its first meeting, the JIC is to adopt its Rules of Procedure ('the envisaged act').

The purpose of the envisaged act is to regulate the way the Parties to the Agreement shall cooperate within the JIC. It describes its composition, the possibility to establish subsidiary bodies under it, its Secretariat and how meetings of the JIC shall be organised. The envisaged act foresees that the JIC adopts decisions and recommendations by consensus through written procedure, consisting in an exchange of notes, as empowered under the Agreement.

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

The envisaged act establishes the position to be taken on the Union's behalf in the JIC established in accordance with Article 18 of the Agreement with regard to the adoption of the Rules of Procedure of the JIC.

The Parties to the Agreement agreed on the draft Rules of Procedure. Subject to the Union's decision making procedures, they should be adopted at the first meeting of the JIC, which is scheduled for November 2019.

The attached Rules of Procedure of the JIC are very similar to those adopted by the Joint Implementation Committees established by other Voluntary Partnership Agreements.

The adoption of this document is essential for rendering the Agreement's provisions operational. More specifically, it enables the JIC to implement the provisions in Articles 9 (persistent disagreements or difficulties arising in consultations concerning FLEGT licenses), 10 (complaints arising from the Independent Evaluator referred to the Joint Implementation Committee) 12 (notification, commissioning of an independent assessment of the FLEGT licensing scheme, and recommendation of a date on which full FLEGT licensing will start operating), 18 (establishment and functioning of the Joint Implementation Committee) of the Agreement and Annex IX to the Agreement (Functions of the Joint Implementation Committee).

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'*¹.

4.1.2. Application to the present case

The JIC is a body set up by an agreement, namely the Voluntary Partnership agreement between the European Union and the Socialist Republic of Vietnam on forest law enforcement, governance and trade.

The act which the JIC is called upon to adopt constitutes an act having legal effects as it regulates the way the Parties to the Agreement shall collaborate in the implementation of the Agreement, including with regard to possibly adopting amendments to its Annexes.

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.

¹ 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.

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, generally, to the functioning of the international bodies set up on the basis of the Agreement. It follows that the field within which the contested decision falls must be determined in the light of the Agreement as a whole (Case C-244/17 *Commission v Council (Kazakhstan)*, ECLI:EU:C:2018:662). The objective of the Agreement is to provide a legal framework aimed at ensuring that all imports into the European Union from the Socialist Republic of Vietnam of timber and timber products covered by the Agreement have been legally produced. The main component of the Agreement is the common commercial policy.

Therefore, the substantive legal bases of the proposed decision are Article 207(3) and Article 207(4), first subparagraph TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 207(3) and Article 207(4), first subparagraph TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

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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(3) and Article 207(4), first subparagraph, 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 and the Socialist Republic of Vietnam on forest law enforcement, governance and trade ('the Agreement') was concluded by the Union by Council Decision EU) 2019/854 of 15 April 2019¹ and entered into force on 1 June 2019.
- (2) Pursuant to Article 18(3) of the Agreement, the Joint Implementation Committee of the Agreement ('JIC') adopts its rules of procedure.
- (3) The JIC, during its meeting on 13 November 2019, is to adopt its rules of procedure.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the JIC, as the Rules of Procedure will be binding on the Union.
- (5) The JIC should adopt at its first meeting the rules of procedure as attached to this Decision, to ensure a smooth and transparent collaboration of the European Union and the Socialist Republic of Vietnam from the outset on the implementation of the Agreement and eventually the EU Forest Law Enforcement, Governance and Trade licensing scheme,

HAS ADOPTED THIS DECISION:

Article 1

¹

1. The position to be taken on the Union's behalf in the first meeting of the JIC shall be based on the draft rules of procedure of the JIC attached to this Decision.
2. Minor changes to the draft rules of procedure attached to this Decision may be agreed to, in the light of developments at the upcoming Conference of the Parties, by representatives of the Union, in consultation with Member States, during on-the-spot coordination meetings, without a further decision of the Council.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President