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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, of the Voluntary Partnership Agreement between the European Union and the Socialist Republic of Viet Nam on forest law enforcement, governance and trade

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT)¹, endorsed by the Council in 2003², proposes a set of measures, including support for timber-producing countries, multilateral collaboration to tackle trade in illegal timber, support for private-sector initiatives, and measures to discourage investment in activities that encourage illegal logging. The cornerstone of the Action Plan is the establishment of FLEGT partnerships between the EU and timber-producing countries, aimed at stopping illegal logging. In 2005 the Council adopted Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community³, a mechanism that enables verification of the legality of timber imported into the EU under the FLEGT partnerships.

In 2005 the Council authorised the Commission to negotiate FLEGT partnership agreements with timber-producing countries⁴.

The Commission entered into negotiations with Vietnam in 2010. The Commission has been assisted by Member States, particularly Germany and Finland. The Commission has regularly kept the Council updated on progress, with reports to the Working Party on Forests as well as Member States' missions in Vietnam. The Commission has also informed the European Parliament of the negotiation developments. The parties have regularly offered public meetings after negotiating sessions to keep the stakeholders informed of the process.

The Voluntary Partnership Agreement between the EU and Vietnam (Agreement) addresses all elements of the Council negotiating directives. In particular, it establishes the framework, institutions and systems for the timber legality assurance system for the FLEGT licensing scheme. It also sets out the framework for monitoring compliance and for independent evaluation of the system. The Agreement includes a clear commitment by Vietnam to develop legislation to ensure that timber imported in Vietnam has been legally harvested in compliance with the applicable legislation in the country of harvest. These elements are set out in annexes to the Agreement, which provide a detailed description of the structures that will underpin the development and implementation of the Vietnam timber legality assurance system, as well as criteria to assess the operationality of the system before a future decision on start of the FLEGT licensing scheme.

The Agreement aims at strengthening forest governance and law enforcement and, by means of the FLEGT licensing scheme, will reassure the EU market that timber exported from Vietnam comes from legally harvested timber. Once FLEGT licences are issued, the Agreement will facilitate compliance of EU importers with the requirements of Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market⁵ which states that timber and timber products covered with a FLEGT licence is considered to have been legally harvested for the purposes of that Regulation.

¹ COM(2003) 251.

² OJ C 268, 7.11.2003, p. 1.

³ OJ L 347, 30.12.2005, p. 1.

⁴ Restricted Council document 10229/2/05 (declassified on 24 September 2015).

⁵ OJ L 295, 12.11.2010, p.23

The Agreement establishes a mechanism for dialogue and cooperation between the EU and Vietnam on the FLEGT licensing scheme, via a Joint Implementation Committee. It also establishes principles of stakeholder participation, social safeguards, accountability and transparency, and mechanisms for complaints on, monitoring of and reporting on implementation of the Agreement.

The Agreement is not limited only to the product coverage proposed in Annex II to Regulation (EC) No 2173/2005 and covers a wide range of exported timber products.

The Agreement makes provision for import controls at the EU's borders, as provided for in Regulation (EC) No 2173/2005 on the FLEGT licensing scheme and Regulation (EC) No 1024/2008 laying down detailed measures for implementing it. The Agreement includes a description of Vietnam's FLEGT licence, which uses the format prescribed in the above-mentioned Implementing Regulation.

- **Consistency with existing policy provisions in the policy area**

The initiative is consistent with Regulation (EU) No 995/2010 because the timber products that will be covered by FLEGT licences issued in Vietnam in accordance with this Agreement will be deemed to have been legally harvested in accordance with Article 3 of that Regulation.

- **Consistency with other Union policies**

As a part of the FLEGT Action Plan, the conclusion of this Agreement is relevant for the EU development cooperation policy because it does not only promote trade in legally harvested timber, but it also aims to strengthen forest governance in Vietnam by improving transparency, accountability and stakeholder participation. Since the implementation of the Agreement will reinforce sustainable forest management this initiative will also contribute to combating climate change through reduced emissions from deforestation and forest degradation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposed legal basis is the first subparagraph of Article 207(3), in conjunction with Article 218(5) of the Treaty on the functioning of the European Union (TFEU).

Having in mind the objective of the Agreement, which is to provide legal framework aimed at ensuring that all imports of timber and timber products covered by the Agreement into the Union from Vietnam have been legally produced, the Union has exclusive competence to conclude it in accordance with Article 207(3) TFEU. Article 218(5) TFEU authorises the Council to adopt a decision authorising the signing of the agreement on a proposal by the negotiator.

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

The conclusion of this Agreement is in line with the FLEGT Action Plan and does not go beyond what is necessary to achieve its aims.

- **Choice of the instrument**

This proposal is in accordance with Article 218(5) TFEU, which envisages the adoption by the Council of decisions authorising the signing of the international agreements.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

This initiative does not have budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Not applicable.

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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 the first subparagraph of Article 207(3), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) In May 2003, the Commission adopted a Communication to the European Parliament and to the Council entitled ‘Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan’¹ which called for measures to address illegal logging by developing voluntary partnership agreements with timber-producing countries. Council conclusions on that Action Plan were adopted in October 2003² and Parliament adopted a resolution on the subject on 11 July 2005³.
- (2) On 5 December 2005, the Council authorised the Commission to open negotiations with timber-producing countries on partnership agreements to implement the EU Action Plan for Forest Law Enforcement, Governance and Trade.
- (3) On 20 December 2005, the Council adopted Regulation (EC) No 2173/2005⁴ which established a FLEGT licensing scheme for imports of timber into the Union from countries with which the Union has concluded voluntary partnership agreements.
- (4) The negotiations with the Socialist Republic of Vietnam in view of the conclusion of a Voluntary Partnership Agreement between the European Union and the Socialist Republic of Vietnam on forest law enforcement, governance and trade (hereinafter referred to as ‘the Agreement’) were successfully concluded by the initialling of the Agreement on 11 May 2017.
- (5) Therefore, the Agreement should be signed on behalf of the European Union, subject to its conclusion at a later date,

¹ COM(2003) 251.

² OJ C 268, 7.11.2003, p. 1.

³ OJ C 157E, 6.7.2006, p. 482.

⁴ Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (OJ L 347, 30.12.2005, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Voluntary Partnership Agreement between the European Union and the Socialist Republic of Viet Nam on forest law enforcement, governance and trade is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement⁵.

The text of the Agreement to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiator of the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*

⁵ The text of the Agreement will be published together with the Decision on its conclusion.