



EUROPEAN
COMMISSION

Brussels, 22.10.2024
COM(2024) 485 final

ANNEX 2

ANNEX

to the 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

DECISION No

**of the JMRC adopting the Working Procedures for Arbitration, referred to in Article 26
of the Agreement between the EU and Guyana**

THE JMRC,

Having regard to the Agreement between the EU and the Guyana, signed in Montreal, Canada, on 15 December 2022, and entered into force on 1 June 2023, and in particular Article 26 thereof,

Whereas:

The Agreement provides that the JMRC shall adopt Working Procedures for Arbitration,

THE JMRC HAS DECIDED AS FOLLOWS:

1. The Working Procedures for Arbitration in case of dispute settlement under the Agreement are hereby adopted as set out in Annex to this Decision.
2. This Decision shall enter into force on ...

Done at ...

ANNEX

WORKING PROCEDURES FOR ARBITRATION

Section I. Introductory provisions

Article 1

Scope of application

1. These Working Procedures for Arbitration supplement and clarify the Voluntary Partnership Agreement, hereinafter Agreement, between the European Union, hereinafter Union and the Cooperative Republic of Guyana, hereinafter Guyana, in particular Article 26 thereof on arbitration.
2. These Working Procedures for Arbitration aim at enabling the Parties to resolve disputes that may arise between them in relation to the interpretation and application of this Agreement through an arbitration mechanism.

Article 2

Definitions

For the purposes of these Working Procedures for Arbitration, the following definitions apply:

- “Arbitration panel” means a panel established under Article 26.1 of the Agreement;
- “Arbitrator” means a member of the arbitration panel;
- “Complaining Party” means the Party that requests the establishment of an arbitration panel under Article 26.1 of the Agreement;
- “Respondent” means the other Party;
- “Representative of a Party” means an employee or any individual appointed by a Party who represents the Party for the purposes of a dispute under the Agreement;
- “Day” means a calendar day unless otherwise specified;
- “Third party” means a Party that is not a disputing party, but who participates in the arbitration proceedings;
- “International Bureau” means the International Bureau of the Permanent Court of Arbitration;

- “PCA rules” means the rules of the arbitration rules 2012 of the Permanent Court of Arbitration, effective from 17 December 2012, including any subsequent amendments;
- “PCA appointing authority” means the authority of the Permanent Court of Arbitration identified in the PCA rules as having the responsibility of appointing arbitrators in accordance with the PCA rules.

Article 3

Applicable law

1. The arbitration panel shall apply the Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other treaties, rules and principles of international law relevant to the dispute and applicable between the Parties.
2. Notwithstanding paragraph 1, where a dispute submitted to arbitration raises a question of interpretation and application of a provision of the Agreement defined by reference to a provision of the domestic law of a Party the arbitration panel may consider, as appropriate, the domestic law of the Party as a matter of fact. In doing so, the arbitration panel shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party. Any interpretation given to domestic law by the arbitration panel shall not be binding upon the courts or the authorities of that Party.

Article 4

Notifications

1. Any request, notice, written submission or other document of the arbitration panel shall be sent to both Parties and where relevant and appropriate to the International Bureau, at the same time.

Any request, notice, written submission or other document of a Party which is addressed to the arbitration panel shall be copied to the other Party and where relevant and appropriate to the International Bureau at the same time.

Any request, notice, written submission or other document of a Party which is addressed to the other Party shall be copied to the arbitration panel and where relevant and appropriate to the International Bureau at the same time.
2. Any notification referred to in paragraph 1 shall be made by email or, where appropriate, any other means of communication that provide a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.
3. In accordance with Article 22 of the Agreement, all notifications shall be addressed to the Minister responsible for Finance for Guyana and the Head of the Delegation of the Union in Guyana for the Union.

4. Minor errors of a clerical nature in a request, notice, written submission or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.
5. If the last day for delivery of a document falls on a public holiday of Guyana or the Union, the document shall be deemed delivered on the next business day.

Article 5

Representatives

The Parties may be represented or assisted by persons of their choice, in accordance with their internal rules and procedures. The names and addresses of such persons must be communicated in writing to the other Party including whether the appointment is being made for the purposes of assistance or representation.

Section II. Establishment of the arbitration panel

Article 6

Appointment of arbitrators

1. Subject to paragraph 5, the Parties shall each appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitration panel.
2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the International Bureau for the to appointment the second arbitrator. The PCA appointing authority shall appoint the second arbitrator as promptly as possible.
3. If within 30 days after the appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the third arbitrator, the Parties may request the International Bureau, subject to paragraph 5, for the appointment of the third arbitrator in accordance with the applicable PCA rules. The PCA appointing authority shall appoint the third arbitrator as promptly as possible. In making the appointment, the PCA appointing authority shall use the following list-procedure:
 - (a) The PCA appointing authority shall communicate to each of the parties an identical list containing at least three names;
 - (b) Within 15 days after the receipt of this list, each party may return the list to the International Bureau, without copying the other party, after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

- (c) After the expiration of the above period of time the PCA appointing authority shall appoint the third arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
 - (d) If for any reason the appointment cannot be made according to this procedure, the PCA appointing authority may exercise his or her discretion in appointing the third arbitrator.
- 4. In appointing arbitrators, the Parties and the PCA appointing authority are free to choose persons who are Members of the Permanent Court of Arbitration.
 - 5. In appointing arbitrators, the Parties and the PCA appointing authority shall not choose persons who are members, officials or other servants of the Union institutions, of the government of a Member State of the Union, or of the Government of Guyana.

Article 7

Failure to establish the arbitration panel

In the event of any failure to establish the arbitration panel pursuant to Article 6, the PCA appointing authority shall, at the request of any Party, constitute the arbitration panel and, in doing so, may revoke any appointment already made and appoint each of the arbitrators and designate one of them as the presiding arbitrator. The PCA appointing authority may, if it deems it appropriate, reappoint previous appointees.

Article 8

Independence and immunity of arbitrators

- 1. The arbitrators shall be independent and impartial, shall serve in their individual capacity and shall not take instructions from any organisation or government.
- 2. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose to the Parties and the PCA appointing authority any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence to the Parties and the International Bureau and the other arbitrators.
- 3. The arbitrators shall enjoy immunity from legal proceedings in the Union and Guyana with respect to acts or omissions in connection with the arbitration.

Article 9

Ex parte contacts

1. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.
2. An arbitrator shall not discuss any aspect of the subject matter of the proceedings with one or both of the Parties in the absence of the other arbitrators.

Article 10

Replacement of an arbitrator

1. In the event of death or resignation of an arbitrator during the course of the arbitration proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Article 6 which is applicable to the appointment or choice of the arbitrator being replaced.
2. In the event that an arbitrator fails to act, or is *de jure* or *de facto* unable to perform his or her functions, the procedure for challenging and replacing an arbitrator set out in Article 11 shall apply.
3. If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitration panel decides otherwise.

Article 11

Challenge of arbitrators

1. Any Party may challenge an arbitrator if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A Party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. A Party who intends to challenge an arbitrator shall send notice of this challenge within 30 days after the appointment of that arbitrator has been notified to the challenging Party or within 30 days after the circumstances which may give rise to justifiable doubts as to the arbitrator's impartiality or independence have become known to that Party.
4. The notice of challenge shall be communicated to the other Party, the arbitrator who is challenged, the other members of the arbitration panel and the International Bureau. The notice of challenge shall state the reasons for the challenge.

5. When an arbitrator has been challenged by a Party, all Parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
6. If, within 15 days from the date of the notice of challenge, the other Party does not agree to the challenge or the challenged arbitrator does not withdraw, the Party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the PCA appointing authority.
7. In rendering a decision on the challenge, the PCA appointing authority may indicate the reasons for the decision, unless the Parties agree that no reasons shall be given. If the PCA appointing authority sustains the challenge, a substitute arbitrator shall be appointed or chosen according to the procedure provided for in Article 6 which is applicable to the appointment or choice of the arbitrator being replaced.

Section III. Arbitration proceedings

Article 12

General provisions

1. The arbitration panel shall conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each Party is given a reasonable opportunity of presenting its case. The arbitration panel, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the dispute.
2. The ruling of the arbitration panel shall be final and binding on the Union and Guyana.
3. The Union and Guyana shall make the arbitration panel ruling publicly available in its entirety, subject to the protection of confidential information.

Article 13

Place of arbitration

4. The place of arbitration shall be the Hague, unless otherwise agreed.
5. The arbitration panel may meet at any place it deems appropriate for the inspection of goods, other property or documents. The Parties shall be given sufficient notice to enable them to be present at such an inspection.

Article 14

Confidentiality

1. Each Party and the arbitration panel shall treat as confidential any information submitted by the other Party to the arbitration panel that the other Party has designated as such. When a Party submits to the arbitration panel a written submission which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information and which can be disclosed to the public.
2. Nothing in these Procedures shall preclude a Party from disclosing statements of its own positions to the public. As long as the proceedings have not been concluded, a Party will not disclose any information designated by the other Party as confidential.
3. The arbitration panel shall meet in closed session when the submission and arguments of a Party contains confidential information. The Parties shall maintain the confidentiality of the arbitration panel hearings when the hearings are held in closed session.

Article 15

Operation of the arbitration panel

1. The presiding arbitrator shall chair all the meetings of the arbitration panel. The arbitration panel may delegate to the presiding arbitrator the authority to make administrative and procedural decisions.
2. The arbitration panel may conduct its activities by any means, including telephone, email, facsimile transmissions or computer links.
3. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit arbitrators' assistants to be present at its deliberations.
4. The drafting of any ruling or report shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.
5. In the event that the arbitration panel considers that there is a need to change any of the time periods for the proceedings to make any other procedural or administrative adjustment, it shall inform the Parties, in writing and after consulting them, of the reasons for the change or adjustment and of the new time period or adjustment needed.

Article 16

Time-frame of the arbitration

1. As soon as practicable after its establishment and after inviting the Parties to express their views, the arbitration panel shall establish the provisional timetable of the arbitration. The arbitration panel may, at any time, after inviting the Parties to express their views, extend or abridge this period of time.

2. Within 10 days of the establishment of the arbitration panel, either Party may submit a reasoned request to the effect that the case is urgent. In that case, the arbitration panel shall give a ruling on this request within 15 days from the receipt of such request.

Article 17

Organisational meeting

1. The Parties shall meet the arbitration panel within 30 days of its establishment in order to determine such matters as the Parties or the arbitration panel deem appropriate, including: (a) the remuneration and expenses to be paid to the arbitrators; (b) the terms of reference of the arbitration panel; and (c) the timetable of the proceedings.
2. Unless the Parties agree otherwise, the terms of reference of the arbitration panel shall be: (a) to examine, in the light of the relevant provisions of the Agreement cited by the Parties, the matter referred to in the request for the establishment of the arbitration panel; (b) to make findings on the conformity of a measure at issue with the provisions of the Agreement; and (c) to deliver a ruling.

Article 18

Written submissions

The complaining Party shall deliver its written submission no later than 10 days after the date of establishment of the arbitration panel. The respondent shall deliver its written submission no later than 20 days after the date of delivery of the written submission of the complaining Party.

Article 19

Hearings

1. Based upon the timetable determined in the organisational meeting, after consulting with the Parties and the other arbitrators, the presiding arbitrator shall notify the Parties of the date, time and venue of the hearing. Subject to paragraph 6, this information shall be made publicly available by the Party in whose territory the hearing takes place.
2. The arbitration panel may convene additional hearings if the Parties so agree.
3. All arbitrators shall be present during the entirety of the hearing.
4. the following persons may attend the hearing, irrespective of whether the hearing is open to the public or not. Attendance is subject to the prior agreement of the Parties.
 - (a) representatives of a Party;
 - (b) advisers, assistants and administrative staff to the arbitrators;

- (c) experts, as decided by the arbitration panel;
 - (d) witnesses;
 - (e) third parties.
5. No later than 7 days before the date of a hearing, each Party shall deliver to the arbitration panel and to the other Party a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party, other representatives who will be attending the hearing, and witnesses who will testify at the hearing .
 6. The hearings of the arbitration panel shall be open to the public, unless the arbitration panel decides otherwise on its own motion or at the request of the Parties.
 7. The arbitration panel shall, in consultation with the Parties, decide on appropriate logistical arrangements and procedures to ensure that hearings which are open to the public are managed in an effective way. These procedures may include the use of live web-broadcasting or closed-circuit television
 8. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the respondent are afforded equal time in both argument and rebuttal argument:
 - Argument
 - (a) argument of the complaining Party;
 - (b) argument of the respondent.
 - Rebuttal argument
 - (a) reply of the complaining Party;
 - (b) counter-reply of the respondent.
 9. The arbitration panel may direct questions to either Party or any witness at any time during the hearing.
 10. The arbitration panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties within 7 days after the hearing. The Parties may comment on the transcript, and the arbitration panel may consider those comments.
 11. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the date of the hearing.

Article 20

Default

1. If one of the Parties, duly notified under these procedures, fails to appear at a hearing without showing sufficient cause for such failure, the arbitration panel may proceed with arbitration.
2. If one of the Parties, duly required to produce documentary evidence, fails to do so within the given time limit, without showing sufficient cause for such failure, the arbitration panel may make the ruling on the evidence before it.

Article 21

Questions in writing

1. The arbitration panel may at any time during the proceedings submit questions in writing to one or both Parties. Any questions submitted to one Party shall be copied to the other Party.
2. Each Party shall provide the other Party with a copy of its responses to the questions submitted by the arbitration panel. The other Party shall have an opportunity to provide comments in writing on the Party's responses within 7 days of the delivery of that copy.

Article 22

Third parties

1. Unless the Parties agree otherwise, , the arbitration panel may receive unsolicited written submissions from a natural person of a Party or a legal person established in the territory of a Party that is independent from the governments of the Parties, provided that the submissions:
 - (a) are received by the arbitration panel within 10 days of the date of the establishment of the arbitration panel;
 - (b) are directly relevant to a factual or a legal issue under consideration by the arbitration panel;
 - (c) contain a description of the person making the submission, including for a natural person his or her nationality and for a legal person its place of establishment, the nature of its activities, its legal status, its general objectives and its source of financing; and
 - (d) specify the nature of the interest that the person has in the arbitration panel proceedings.
2. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments, within 15 days of the delivery, to the arbitration panel.
3. The arbitration panel shall list in its ruling all the submissions it has received pursuant to paragraph 1 of this Article. The arbitration panel shall not be obliged to address in its report the arguments made in such submissions.

4. Where the arbitration panel decides to address in its report the arguments mentioned in the submissions, it shall also take into account any comments made by the Parties pursuant to paragraph 2 of this Article.

Article 23

Experts

1. The arbitration panel may appoint one or more experts to report to it, in writing, on specific issues to be determined by the panel. A copy of the expert's terms of reference established by the panel shall be communicated to the Parties.
2. Upon receipt of the expert's report, the arbitration panel shall send a copy to the Parties, who shall be given the opportunity to express, in writing, their opinion on the report. A Party shall be entitled to examine any document on which the expert's report relies.
3. At the request of either Party, after delivering the report the expert may be heard at a hearing, where the Parties shall have the opportunity to question the expert. At this hearing, either Party may present expert witnesses in order to testify on the points at issue.

Section IV. The Arbitration panel rulings

Article 24

Decisions

The arbitration panel shall make every effort to take decisions by consensus. Where, a decision cannot be arrived at by consensus, the matter shall be decided by majority vote.

Article 25

Form of the ruling

1. The ruling shall be in writing and shall set out the findings of fact, the applicability of the relevant provisions of the Agreement, and the reasoning behind any findings and conclusions.
2. The ruling shall be signed by the arbitrators and it shall contain the date on which it was made and indicate the place of arbitration. Where any of the arbitrators fails to sign, the ruling shall state the reason for the absence of the signature(s).

Article 26

Interpretation of the ruling

1. Within 30 days after the receipt of the ruling, either Party, with notice to the other Party and to the PCA appointing authority, may request the arbitration panel to give an interpretation of the ruling.

2. The interpretation shall be given in writing within 30 days after the receipt of the request. The interpretation shall form part of the ruling and the provisions of Articles 15 and 25 shall apply, as appropriate.

Article 27

Correction of the ruling

1. Within 30 days after receipt of the ruling, either Party, with notice to the other Party and the PCA appointing authority, may request the arbitration panel to correct any errors in computation, any clerical or typographical errors, or any errors of similar nature in the ruling. The arbitration panel may, however, make such corrections on its own initiative within 30 days after the communication of the ruling.
2. All corrections shall be in writing and shall form part of the ruling and the provisions of Articles 15 and 25 shall apply, as appropriate.

Article 28

Additional ruling

1. Within 30 days after the receipt of the ruling, either Party, with notice to the other Party, and the PCA appointing authority may request the arbitration panel to make an additional ruling for claims presented in the arbitration proceedings but omitted from the ruling.
2. If the arbitration panel considers the request for an additional ruling to be justified and considers the omission rectifiable without any further hearings or evidence, it shall make the additional ruling within 30 days after the receipt of the request.
3. If an additional ruling is made, Articles 15 and 25 shall apply, as appropriate.

Article 29

Compliance with the arbitration panel ruling

1. The Parties shall take any measures necessary to comply in good faith with the arbitration panel ruling. The Parties shall agree within 10 days of the notification of the arbitration panel ruling on a reasonable period of time to comply with the arbitration panel ruling. In the event of disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, either Party shall request the original arbitration panel in writing to determine the length of the reasonable period of time and shall notify simultaneously the other Party pursuant to paragraph 7. The reasonable period of time may be extended by mutual agreement of the EU and Guyana.

2. In the event of disagreement between the Parties concerning the compatibility of any measure with the arbitration panel ruling, a Party may request in writing the arbitration panel to rule on the matter. The arbitration panel shall notify its ruling within 90 days or in cases of urgency within 45 days of the date of the submission of the request.

In the event of the original arbitration panel, or some of the arbitrators, being unable to reconvene to consider a request, a new arbitration panel shall be established as set out in Article 6. The time limit for notifying the ruling shall be 60 days from the date of establishment of the new arbitration panel.

3. If the arbitration panel rules that a Party has failed to comply with the arbitration panel ruling, it shall impose a new deadline for the compliance.

If the Party persists in not complying with the arbitration panel ruling, the other Party shall be entitled, upon notification to the respondent, to suspend the Agreement in accordance with Article 28 of the Agreement. Any suspension shall be proportionate to the breach of obligation concerned, taking into account the gravity of the breach and the rights in question and, where the suspension is based on the fact that the respondent persists in not complying with the arbitration panel ruling.

Any suspension shall be temporary and shall be applied only until the Party has complied with the arbitration panel ruling, or until the Parties have agreed to otherwise settle the dispute.

4. The Party shall notify the JMRC and the other Party of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension applied by the other Party.
5. If the Parties do not reach an agreement on whether the notified measure brings the Party into compliance with the arbitration panel ruling within 45 days of the date of submission of the notification, either Party may request the original arbitration panel in writing to rule on the matter. Such request shall be notified simultaneously to the other Party.

In the event of the original arbitration panel, or some of the arbitrators, being unable to reconvene to consider a request, a new arbitration panel shall be established as set out in Article 6. The arbitration panel ruling shall be notified to the Parties and to the JMRC within 75 days of the date of submission of the request.

6. In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 2, a new arbitration panel shall be established as set out in Article 6. The period for notifying the ruling of the new arbitration panel shall in that case be 90 days from the date of establishment of the new arbitration panel.

Article 30

Settlement or other grounds for termination

1. If, before the ruling is made, the Parties agree on a settlement of the dispute, the arbitration panel shall either issue an order for the termination of the arbitration proceedings or, if requested by both Parties and accepted by the panel, record the settlement in the form of an arbitration ruling on agreed terms. The arbitration panel is not obliged to give reasons for a ruling on agreed terms.
2. If, before the ruling is made, the continuation of the arbitration proceedings becomes impossible or rendered nugatory for any reason not mentioned in paragraph 1, the arbitration panel shall inform the Parties of its intention to issue an order unless a Party raises justifiable grounds for objection. The Parties shall then enter into consultations with the aim of settling the dispute.

Section V. Costs

Article 31

Costs

1. The arbitration panel shall fix the costs of arbitration in its ruling. The term ‘costs’ includes only:
 - (a) the fees of the arbitration panel, to be stated separately for each arbitrator and to be fixed by the arbitration panel in accordance with the daily fees agreed by the Parties at the time the arbitrators were appointed;
 - (b) travel and other expenses incurred by the arbitrators;
 - (c) the costs of expert advice and of other assistance required by the arbitration panel;
 - (d) travel and other expenses incurred by witnesses if such expenses are approved by the arbitration panel.
2. The costs of arbitration shall in principle be borne by the unsuccessful Party. However, the panel may apportion each of such costs between the Parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
3. No additional fees may be charged by an arbitration panel for interpreting, correcting or adding to its ruling.

Article 32

Deposit of costs

1. The arbitration panel, on its establishment, may request each Party to deposit an equal amount as an advance on the costs referred to in Article 31.
2. During the course of the arbitration proceedings, the arbitration panel may request supplementary deposits from the Parties.
3. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitration panel shall inform the Parties in order that one or another of them may make the required payment. If such payment is not made, the arbitration panel may order the suspension or termination of the arbitration proceedings.
4. After the ruling has been made, the arbitration panel shall account for the deposits received from the Parties and return any unexpended balance to the Parties.