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2024/0180 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union within the Joint Committee established by the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New Zealand in Union programmes, as regards the adoption of the Joint Committee's Rules of Procedure**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be taken on behalf of the European Union in the Joint Committee established by the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New Zealand in Union programmes, as regards the adoption of the Joint Committee's Rules of Procedure.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New Zealand in Union programmes**

The Agreement between the European Union, of the one part, and the Government of New Zealand of the other part, on the participation of New Zealand in Union programmes<sup>1</sup> ('the Agreement') aims to establish a lasting legal framework for cooperation between the Union and New Zealand, providing the terms and conditions for the participation of New Zealand in Union programmes or activities, as well as a mechanism facilitating the establishment of such participation in individual Union programmes or activities, such as the Horizon Europe Framework Programme for Research and Innovation (2021- 2027).

The Agreement was signed on 9 July 2023 and has been applied provisionally<sup>2</sup> since then.

#### **2.2. The Joint Committee**

The Joint Committee established by Article 14(1) of the Agreement is responsible for ensuring the proper implementation of the Agreement as well as discussion of and setting out possible future areas of cooperation. The Joint Committee is composed of representatives of the Parties to the Agreement. The Joint Committee's main task is to maintain and develop the participation of New Zealand entities in the relevant Union programmes. It also serves as a forum, best placed to monitor the performance and participation of New Zealand as an associated country in the relevant Union programme(s) or activities. The tasks of the Joint Committee are exhaustively listed in Article 14(1), points (a)-(g) of the Agreement and include:

- assessing, evaluating and reviewing the implementation of the Agreement and its Protocols directly or through the work of any *ad hoc* working party or advisory body reporting to it;
- adopting decisions, including amendments to the Agreement, adopting Protocols to the Agreement on specific terms and conditions on the participation of New Zealand to Union programmes other than the already included protocol on Horizon Europe;

In accordance with Article 14(3) of the Agreement, the Joint Committee must adopt its Rules of Procedure.

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<sup>1</sup> OJ L 182, 19.7.2023, p. 4.

<sup>2</sup> Council Decision (EU) 2023/1475 of 15 May 2023 on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New Zealand in Union programmes (OJ L 182, 19.7.2023, p. 1).

The Rules of Procedure govern the *modus operandi* of the Joint Committee, notably the organisation of meetings (correspondence, agenda setting, etc), distribution of documents, including transparency and access to documents, recording the outcome of the Committee's meetings, as well as other implementation-related items.

The Joint Committee's decisions are to be adopted by consensus and are binding on the Parties to the Agreement. The Joint Committee may adopt decisions by written procedure through an exchange of notes between the co-chairs if the Parties to the Agreement so agree.

The Joint Committee shall meet at least once a year and whenever special circumstances so require, at the request of either of the Parties. Joint Committee meetings may be also organised by videoconference or by teleconference.

### **2.3. The envisaged act of the Joint Committee**

During the first Joint Committee meeting which is planned to take place in 2024, the Joint Committee should adopt a decision regarding the adoption of its Rules of Procedure in accordance with Article 14(3) of the Agreement. The purpose of the Rules of Procedure is to facilitate the organisation and functioning of the Joint Committee in order to ensure the appropriate implementation of the Agreement.

## **3. POSITION TO BE TAKEN ON BEHALF OF THE UNION**

The position to be adopted on behalf of the Union should be to support the draft decision of the Joint Committee adopting the Rules of Procedure of the Joint Committee set up under Article 14(1) of the Agreement between the European Union and New Zealand on the participation of New Zealand in Union programmes, as attached to the draft Decision of the Joint Committee.

In order to ensure the proper functioning of the Joint Committee, it is crucial for it to operate according to agreed Rules of Procedure.

Whilst there is no specific date set in the Agreement for the adoption of the Rules of Procedure, it is advisable to adopt them at the first European Union – New Zealand Joint Committee meeting under Horizon Europe terms that is planned in the second half of 2024.

Pursuant to the Agreement, the Joint Committee is for the time being in relation to the Horizon Europe programme only. Should New Zealand become associated to other Union programmes in the future by means of new Protocols adopted by the Joint Committee in accordance with Article 14(1), point (f) of the Agreement, the Joint Committee should be convened in relation to those programme associations as well.

The present Rules of Procedure would be applicable to any such future associations.

The adoption of the Rules of Procedure of the Joint Committee would secure the functioning of the Joint Committee under the current Multiannual Financial Framework (MFF) and future ones.

## **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'<sup>3</sup>.

#### 4.1.2. Application to the present case

The Joint Committee is a body set up by the Agreement, the act that the Joint Committee is called upon to adopt has legal effects as the Rules of Procedure of the Joint Committee shall be binding under international law in accordance with Article 14(1), (2), (3) and (5) of the Agreement.

The envisaged act is not devised to supplement or amend the institutional framework of the Agreement. Consequently, Article 218(9) TFEU constitutes the procedural legal basis for the proposed decision.

### 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.<sup>4</sup>

#### 4.2.2. Application to the present case

The envisaged act pursues objectives and has components in the area of the Union's external action (Article 212 TFEU – economic, financial and technical cooperation with third countries) covering potential cooperation with New Zealand across Union programmes under the lasting framework of the agreement as well as in the Union's external action for research policy.

### 4.3. Conclusion

The legal bases of the proposed decision should be Article 212 TFEU in conjunction with Article 218(9) TFEU.

## 5. PUBLICATION OF THE ENVISAGED ACT

It is appropriate to publish the decision of the Joint Committee in the *Official Journal of the European Union* after its adoption.

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<sup>3</sup> Judgment of 7 October 2014, *Germany v Council*, C-399/12, EU:C:2014:2258, paragraph 63.

<sup>4</sup> Judgement of 4 September 2018, *Commission v. Council*, C-244/17, EU:C:2018:662, paragraph 38.

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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 212, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New Zealand in Union programmes<sup>5</sup> ('the Agreement') was signed by the Union and the Government of New Zealand, and provisionally applied from 9 July 2023 in accordance with Council Decision (EU) 2023/1475<sup>6</sup>.
- (2) Article 14(1) of the Agreement establishes a committee, composed of representatives of the Parties ('the Joint Committee'), to ensure the administration and proper implementation of the Agreement.
- (3) Article 14(3) of the Agreement provides that the Joint Committee is to adopt its Rules of Procedure.
- (4) The Joint Committee is expected to adopt a decision adopting its Rules of Procedure.
- (5) It is therefore appropriate to establish the position to be taken on behalf of the Union in the Joint Committee on the basis of the attached draft Decision of the Joint Committee on its Rules of Procedure in order to ensure the effective implementation of the Agreement,

HAS ADOPTED THIS DECISION:

### *Article 1*

- (1) The position to be adopted on behalf of the Union in the Joint Committee established by Article 14(1) of the Agreement between the European Union, of the one part, and New Zealand, of the other part, on the participation of New Zealand in Union programmes ('the Agreement'), shall be based on the draft Decision of the Joint Committee attached to this Decision.

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<sup>5</sup> OJ L 182, 19.7.2023, p. 4.

<sup>6</sup> OJ L 182, 19.7.2023, p. 1.

- (2) The representatives of the Union in the Joint Committee may agree upon minor technical corrections to the Rules of Procedure attached to this Decision without a further decision of the Council where these changes prove indispensable to enable the Joint Committee to adopt its Rules of Procedure.

*Article 2*

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

Done at Brussels,

*For the Council  
The President*