



Council of the
European Union

Brussels, 13 May 2020
(OR. en)

Interinstitutional File:
2020/0076(NLE)

7984/20
ADD 1

ACP 27
WTO 78
COAFR 137
RELEX 326

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 May 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 192 final - ANNEX
Subject:	ANNEX to the Draft Council Decision establishing the position to be taken on behalf of the European Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, in connection with the adoption of the procedure for the settlement of disputes and the code of conduct for arbitrators

Delegations will find attached document COM(2020) 192 final - ANNEX.

Encl.: COM(2020) 192 final - ANNEX



EUROPEAN
COMMISSION

Brussels, 12.5.2020
COM(2020) 192 final

ANNEX

ANNEX

to the

Draft Council Decision

establishing the position to be taken on behalf of the European Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, in connection with the adoption of the procedure for the settlement of disputes and the code of conduct for arbitrators

DRAFT

DECISION No 1/2020 OF THE EPA COMMITTEE
established by the stepping stone Economic Partnership Agreement between Côte
d'Ivoire, of the one part, and the European Community and its Member States, of the
other part

of ...

in connection with the adoption of the procedure for the settlement of disputes and a
code of conduct for arbitrators

THE EPA COMMITTEE,

Having regard to the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part (hereinafter referred to as 'the agreement'), signed in Brussels on 26 November 2008, and applied on a provisional basis since 3 September 2016, and in particular Articles 59(1) and 73 thereof,

Whereas:

- (1) Article 59(1) of the agreement provides that the procedures provided for under Chapter 3 (Procedures for the settlement of disputes) of Title V (Dispute avoidance and settlement) of the agreement are covered by the rules of procedure for the settlement of disputes which will be adopted by the EPA Committee.
- (2) Article 73 of the agreement provides, in relation to the implementation thereof, that the EPA Committee is to be responsible for the administration of all the fields covered by the agreement and for the performance of all the tasks mentioned therein.

HAS ADOPTED THIS DECISION:

Article 1

1. The procedures for the settlement of disputes and the code of conduct for arbitrators are established as set out in the annex.
2. The said procedures and code of conduct have been established without prejudice to any special rules provided for in the agreement or which may be decided by the EPA Committee.

Article 2

This Decision shall enter into force upon its signature.

Done at [place], [date]

For the Republic of Côte d'Ivoire

For the European Union

ANNEX

PROCEDURE FOR THE SETTLEMENT OF DISPUTES

Article 1

Definitions

For the purposes of these rules of procedure, the following definitions apply:

Advisor: a natural person retained by a Party to advise or assist that Party in connection with the arbitration proceeding;

Arbitration panel: a specific group set up under Article 50 of the agreement;

Arbitrator: a member of an arbitration panel set up under Article 50 of the agreement;

Assistant: a natural person who, under the terms of appointment of an arbitrator, conducts research for or provides assistance to the arbitrator;

Day: a calendar day;

Non-working day: Saturdays, Sundays and any other day designated by a Party as a holiday for the purposes of the application of these regulations;

Representative of a Party: an employee or any natural person appointed by a government department or agency or any other public entity of a Party who represents the Party in a dispute under this agreement;

Party complained against: the Party that is alleged to be in violation of the provisions referred to in Article 46 of the agreement;

Complaining party: the Party requesting the setting up of an arbitration panel under Article 49 of the agreement.

Article 2

Scope of application

1. The provisions of this Annex supplement and clarify the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part (hereinafter referred to as 'the agreement'), and in particular Article 49 *et seq.* thereof on arbitration.
2. These rules of procedure are intended to enable the Parties to resolve disputes that may arise between them through a mutually satisfactory solution reached by means of the arbitration mechanism.
3. Either Party may resort to arbitration in the framework of the implementation of the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, in order to resolve any disputes that may arise between them.

Article 3

Launch of arbitration proceedings and notifications

1. The arbitration procedure is considered to have been launched on the date on which the request for the establishment of an arbitration panel is received by the Party complained against and the EPA Committee, in line with Article 49(2) of the agreement.
2. 'Notification', for the purposes of these rules of procedure, means any request, notice, written submission or other document related to the arbitration procedure, on the understanding that:
 - a) any notification from the arbitration panel shall be sent to both Parties at the same time;
 - b) any notification from one Party which is addressed to the arbitration panel shall be copied to the other Party at the same time; and
 - c) any notification from one Party which is addressed to the other Party shall be copied to the arbitration panel at the same time, as appropriate.
3. Any notification shall be made by e-mail or, where appropriate, by any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to have been delivered on the date of its sending.
4. All notifications shall be addressed to the Directorate-General for Trade of the European Commission and to the coordinator appointed by Côte d'Ivoire.
5. Minor errors of a clerical nature in notifications may be corrected by delivery of a new notification clearly indicating the changes that have been made.
6. If the last day for delivery of a notification is a non-working day for the Côte d'Ivoire or the European Union, the notification may be delivered on the next business day. No notification or request of any kind shall be deemed to have been received on a non-working day.
7. Depending on the nature of the issues under dispute, copies of all requests and notifications addressed to the EPA Committee in accordance with these rules of procedure shall also be copied to the other relevant institutional bodies.

Article 4

Appointment of arbitrators

1. If, pursuant to Article 50 of the agreement, an arbitrator is selected by drawing lots, the Chairperson of the EPA Committee shall promptly inform the Parties of the date, time and venue of the drawing by lot.
2. The Parties may be present during the lot drawing, and the lot shall be drawn with the Party or Parties that are present.
3. The Chairperson of the EPA Committee shall, in writing, inform each individual selected of his or her appointment as arbitrator. Each individual shall confirm his or her availability to both Parties within five days from the date on which he or she was informed of his or her appointment.
4. The arbitrators shall be drawn from among the persons officially proposed by one or both of the Parties if the list of arbitrators referred to in Article 64 of the agreement has not been drawn up or does not contain enough names at the moment when the request is made under Article 50(2) of the agreement.

Article 5

Consultation between the Parties and the arbitration panel

1. Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including:
 - (a) the remuneration and expenses to be paid to the arbitrators, which shall be in accordance with WTO standards;
 - (b) the remuneration for each arbitrator's assistant, the total of which shall not exceed 50 per cent of the total remuneration of that arbitrator;
 - (c) the timetable of the proceeding.
2. The arbitrators and the representatives of the Parties may take part in this meeting by telephone or video conference.
3. Unless the Parties agree otherwise within five days of the date of the setting up of the arbitration panel, the terms of reference of the arbitration panel shall be:

'to examine, in the light of the relevant provisions of the agreement, the matter referred to in the request for the setting up of the arbitration panel, to rule on the compatibility of the measure in question with Article 46 of the agreement, and to make a ruling in accordance with Articles 52, 62 and 63 of the agreement.'
4. The Parties shall notify the agreed terms of reference to the arbitration panel within three days of their agreement on the mandate.

Article 6

Written submissions

The complaining Party shall deliver its initial written submission no later than twenty days after the date of the setting up of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than twenty days after the date of delivery of the initial written submission.

Article 7

Working of the arbitration panels

1. The Chairperson of the arbitration panel shall chair all meetings. An arbitration panel may delegate to its Chairperson the authority to make administrative and procedural decisions in the area concerned.
2. In accordance with Article 9 of these rules of procedure, the arbitrators and the persons requested shall attend the hearing. Unless otherwise provided for in the agreement or these rules of procedure and without prejudice to Article 9(5) of these rules of procedure, the arbitration panel may conduct its activities by telephone, by fax or by any other means, including electronically.
3. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.
4. The drafting of any ruling shall be the exclusive responsibility of the arbitration panel and shall not be delegated.

5. The observations, conclusions and recommendations of the arbitration panel referred to in Articles 51 and 52 of the agreement should be made by finding a consensus, where possible; if a consensus cannot be reached, they should be made by a majority of its members. Arbitrators may not issue separate opinions on matters not unanimously agreed.
6. Where a procedural question arises that is not covered by the provisions of title V of the agreement (Dispute avoidance and settlement), the arbitration panel, after consulting with the Parties, may adopt an appropriate procedure that is compatible with those provisions and that ensures equal treatment between the Parties.
7. If the arbitration panel considers that there is a need to change any of the time limits for its proceedings other than the time limits set out in title V (Dispute avoidance and settlement) of the agreement, or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for which the change or adjustment has been made and of the time limit or adjustment needed. The arbitration panel may adopt such change or adjustment after having consulted the Parties.
8. Any deadline established under these Rules of Procedure may be amended by the mutual agreement of the Parties. Upon the request of one Party, the arbitration panel may modify the time limits applicable in the proceedings.
9. At the request of both Parties, the arbitration panel may suspend the proceeding at any time for a period agreed by the Parties and not exceeding twelve consecutive months.
10. In the event of a suspension, the relevant time limits shall be extended by the same amount of time as the proceeding before the arbitration panel was suspended. The arbitration panel shall resume the proceeding at any time at the written request of both Parties, or at the end of the agreed suspension period at the written request of one of the Parties. The Chairperson of the arbitration panel and, where necessary, the other Party shall be informed of the request. If the proceeding before the arbitration panel has been suspended for over 12 consecutive months, the powers conferred for the setting up of the arbitration panel shall become invalid and the proceeding before the arbitration panel shall be terminated. The Parties may at any time agree to terminate the proceeding before the arbitration panel. The Parties shall jointly notify the Chairperson of the arbitration panel of this agreement.
11. The termination of the arbitration panel's work shall be without prejudice to the rights of the Parties in any other proceeding on the same matter under title V of the agreement (Dispute avoidance and settlement).

Article 8

Replacement

1. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 50 of the agreement.
2. Where a Party considers that an arbitrator does not comply with the requirements of the code of conduct for arbitrators and for this reason should be replaced, that Party shall notify the other Party within 15 days from the date on which it became aware of

the circumstances underlying the arbitrator's alleged failure to comply with the code of conduct established.

3. The Parties shall consult each other within 15 days of the date of the notification referred to in paragraph 2. The Parties shall inform the arbitrator of his or her alleged non-compliance and may request that the arbitrator take the steps necessary to remedy it. They may also, if they so agree, remove the arbitrator and select a new one in accordance with the procedure set out in Article 50(2) and, if relevant, Article 50(3) of the agreement.
4. If the Parties fail to agree on the need to replace an arbitrator, other than the Chairperson, either Party may request that such matter be referred to the Chairperson of the arbitration panel, whose decision shall be final.
5. If, pursuant to this request, the Chairperson finds that an arbitrator does not comply with the requirements of the code of conduct of arbitrators, a new arbitrator shall be selected in accordance with Article 50(3) of the agreement.
6. Where a Party considers that the Chairperson of the arbitration panel does not comply with the requirements of the code of conduct, the Parties shall consult and, if they so agree, shall dismiss the Chairperson and select a replacement following the procedure set out in Article 50 of the agreement.
7. If the Parties fail to agree on the need to replace the Chairperson, either Party may request that this matter be referred to one of the persons on the list of individuals selected to act as Chairperson of the arbitration panel established under Article 64 of the agreement. The name of this individual shall be drawn at random by the Chairperson of the EPA Committee. The individual thus selected shall decide whether or not the Chairperson complies with the requirements of the code of conduct of arbitrators. His or her decision shall be final.
8. If it is found that the Chairperson does not comply with the requirements of the code of conduct for arbitrators, the new Chairperson shall be selected in accordance with Article 50(3) of the agreement.

Article 9

Hearings

1. Based upon the timetable determined pursuant to Article 5(1), after consulting with the Parties and the other arbitrators, the Chairperson of the arbitration panel shall notify the Parties of the date, time and venue of the hearing. The Party responsible for the logistical administration of the proceeding shall make this information available to the public, subject to Article 11.
2. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is the Côte d'Ivoire and in Abidjan if the complaining Party is the European Union.
3. The arbitration panel may convene additional hearings if the Parties so agree.
4. All arbitrators shall be present during the entirety of the hearing.
5. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:
 - a) representatives of the Parties;

- b) advisers to the Parties;
 - c) administrative staff, interpreters, translators and court reporters;
 - d) arbitrators' assistants;
 - e) experts, as chosen by the arbitration panel pursuant to Article 60 of the agreement.
6. No later than five 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 the natural persons who will make oral arguments or presentations at the hearing on behalf of that Party and of the other representatives or advisers who will be attending the hearing.
 7. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

Argument

- a) argument of the complaining Party;
- b) argument of the Party complained against.

Rebuttal Argument

- a) reply of the complaining Party;
 - b) counter-reply of the Party complained against.
8. The arbitration panel may direct questions to either Party at any time during the hearing.
 9. The arbitration panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties within 15 days after the hearing. The Parties may comment on the transcript, which the arbitration panel may consider, within five days of transmission of the document.
 10. Each Party may deliver to the arbitrators and to the other Party a supplementary written submission concerning any matter arising during the hearing within ten days of the date of the hearing.

Article 10

Questions in writing

1. The arbitration panel may at any time during the proceeding address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.
2. Each Party shall also provide the other Party with a copy of its written response to the questions of the arbitration panel. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five days of the date of that response.

Article 11

Transparency and confidentiality

1. Each Party and the arbitration panel shall endeavour to ensure the confidentiality of any information submitted by the other Party to the arbitration panel and which that Party has classified as confidential. Where a Party's submission to the arbitration

panel contains confidential information, that Party shall also provide, within 15 days of delivery of that communication, a non-confidential version of the submission that could be disclosed to the public.

2. Nothing in these rules of procedure shall prevent a Party disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information classified by the other Party as confidential.
3. The arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential business information. The Parties shall maintain the confidentiality of the arbitration panel hearings when the hearings are held in closed session.

Article 12

Ex parte contacts

1. The arbitration panel shall not meet or contact a Party in the absence of the other Party.
2. No arbitrator may discuss any aspect of the subject matter of the proceeding with a Party or the Parties in the absence of the other arbitrators.

Article 13

Amicus curiae submissions

1. Non-governmental persons established on the territory of a Party may submit *amicus curiae* briefs to the arbitration panel in accordance with paragraphs 2 to 5.
2. Unless the Parties agree otherwise within five days of the date of the setting up of the arbitration panel, the arbitration panel may receive unsolicited written submissions, provided that they are made within ten days of the date of the setting up of the arbitration panel, and those submissions, including any annexes thereto, are in no case longer than fifteen typed pages, including any annexes, and that they are directly relevant to the issue under consideration by the arbitration panel.
3. Each submission shall contain a description of the person making the submission, whether natural or legal, including the nature of that person's activities and the source of that person's financing, and specify the nature of the interest that that person has in the arbitration proceeding. The submission shall be drafted in the languages chosen by the Parties, in accordance with Article 16(1) and (16), paragraph 2 of these rules of procedure.
4. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments, within ten days of the delivery, to the arbitration panel.
5. The arbitration panel shall list in its ruling all the submissions it has received that conform to these rules. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. The arbitration panel shall submit to the Parties for their comments any submission it obtains.

Article 14

Urgent cases

In the urgent cases referred to in Article 52(2) of the agreement, the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these rules as appropriate and shall notify the Parties of such adjustments.

Article 15

Costs

1. Each Party shall bear its costs of participation in the arbitration proceeding.
2. The Party complained against shall be responsible for the logistical administration of the arbitration proceeding, in particular for organising hearings, and shall bear all of the costs of the logistical administration of the hearing. However, the Parties shall jointly and equally bear the other administrative costs of the arbitration proceeding as well as the remuneration and expenses of the arbitrators and their assistants.

Article 16

Working language for the proceeding, translation and interpretation

1. During the consultations referred to in Article 50(2) of the agreement, and no later than the meeting referred to in Article 5(1) of these rules of procedure, the Parties shall endeavour to agree on a common working language for the proceeding before the arbitration panel.
2. If the Parties are unable to agree on a common working language, each Party shall arrange for the translation of its written submissions into the language chosen by the other Party, unless these submissions are written in one of the working languages of the WTO. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.
3. Arbitration panel reports and rulings shall be drafted in the language or languages chosen by the Parties. If the Parties have not agreed on a common working language, the interim and final report of the arbitration panel shall be issued in one of the working languages of the WTO.
4. Any costs incurred for the translation of an arbitration panel ruling into the language or languages chosen by the Parties shall be borne equally by the Parties.
5. A Party may provide comments on the accuracy of any translated version of a document drawn up in accordance with these rules of procedure.
6. Each Party shall bear the costs of the translation of its written submissions. Any costs incurred for translation of a ruling shall be borne equally by the Parties.

Article 17

Calculation of time limits

All the time limits set out in Title V (Dispute avoidance and settlement) of the agreement and in these rules of procedure, including the time limits for the arbitration panels to notify their rulings, may be modified by mutual consent of the Parties, and shall be calculated in calendar days from the day following the act or fact to which they refer, unless otherwise specified.

Article 18

Other procedures

The time limits set out in these rules of procedure shall be adjusted in line with the special time limits provided for the adoption of a ruling by the arbitration panel in proceedings under Articles 54 to 57 of the agreement.

Annex to the procedure for the settlement of disputes

CODE OF CONDUCT FOR ARBITRATORS

Article 1

Definitions

For the purposes of this code of conduct, the following definitions apply:

- **Arbitrator:** a member of an arbitration panel set up under Article 50 of the agreement;
- **Assistant:** a natural person who, under the terms of appointment of an arbitrator, conducts research for or provides assistance to the arbitrator;
- **Candidate:** an individual whose name is on the list of arbitrators referred to in Article 64 of the agreement and who is under consideration for selection as an arbitrator under Article 50 of the agreement;
- **Mediator:** a natural person who conducts mediation in accordance with Article 48 of the agreement;
- **Staff:** in respect of an arbitrator, the natural persons under the direction and control of the arbitrator, other than assistants.

Article 2

Basic principles

1. In order to preserve the integrity and impartiality of the dispute settlement mechanism, each candidate and arbitrator shall:
 - a) take note of this Code of Conduct;
 - b) be independent and impartial;
 - c) avoid direct or indirect conflicts of interest;
 - d) avoid impropriety and any act that may lead to the presumption of impropriety or of bias;
 - e) observe high standards of conduct; and
 - f) not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
2. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would interfere or appear to interfere with the proper performance of his or her duties.
3. An arbitrator shall not use his or her position on the arbitration panel to advance any personal or private interests. An arbitrator shall avoid actions that may lead to the presumption that others are in a special position to influence him or her.
4. An arbitrator shall not allow past or existing financial, business, professional, personal, or social relationships or responsibilities to influence his or her conduct or judgement.

5. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his or her impartiality or that might reasonably lead to the presumption of impropriety or of bias.

Article 3

Disclosure obligations

1. Prior to confirmation of his or her selection as an arbitrator under Article 50 of the agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably lead to the presumption of impropriety or of bias in the framework of the proceeding.
2. To that end, a candidate shall strive, to the extent possible, to become aware of any such interests, relationships and matters, including financial interests, professional interests, or employment or family interests.
3. The disclosure obligation under paragraph 1, being a continuing duty, means that arbitrators shall disclose any such interests, relationships or matters that may arise during any stage of the proceeding.
4. A candidate or an arbitrator shall communicate to the EPA Committee for consideration by the Parties any matters concerning actual or potential violations of this code of conduct as soon as possible after having become aware of them.

Article 4

Duties of the arbitrators

1. Upon acceptance of his or her appointment, an arbitrator shall be available to take up his or her duties and shall perform those duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.
2. An arbitrator shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
3. An arbitrator shall take all necessary steps to ensure that his or her assistant and staff are aware of, and comply with, Articles 2, 3, 4 and 6 of this code of conduct.

Article 5

Obligations of former arbitrators

All former arbitrators must avoid actions that may lead to the presumption that they were biased in carrying out their duties or derived advantage from the ruling of the arbitration panel.

Article 6

Confidentiality

1. An arbitrator or former arbitrator shall not, at any time, disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interests of others.

2. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with this Article 63 of the agreement.
3. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any member's view.

Article 7

Expenses

Each arbitrator shall keep a record and render a final account of the time devoted to the proceeding and of his or her expenses, as well as the time and expenses of his or her assistant, to the Parties.

Article 8

Mediators

This code of conduct applies *mutatis mutandis* to mediators.
