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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Investment Protection Agreement between the European Union and the Republic of Indonesia

PUBLIC

INVESTMENT PROTECTION AGREEMENT
BETWEEN THE EUROPEAN UNION
AND THE REPUBLIC OF INDONESIA

PREAMBLE

PUBLIC

THE EUROPEAN UNION, hereinafter referred to as "the Union",

and

THE REPUBLIC OF INDONESIA, hereinafter referred to as "Indonesia",

hereinafter individually referred to as a "Party" and jointly referred to as the "Parties",

RECOGNISING their longstanding and strong partnership based on the common principles and values reflected in the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part, signed in Jakarta on 9 November 2009, and their important economic, trade and investment relationship, including as reflected in the Comprehensive Economic Partnership Agreement between the European Union and Indonesia, signed in … on … (hereinafter referred to as the "Comprehensive Economic Partnership Agreement");

DESIRING to further strengthen their economic relationship as part of, and in a manner coherent with, their overall relations, and convinced that this Agreement will create a new climate for the development of investment between the Parties;

DETERMINED to strengthen their economic, trade and investment relations in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote investment under this Agreement;

CONVINCED that this Agreement will create a stable and predictable environment for investment, thus providing an opportunity to enhance the competitiveness of their companies in global markets;

RECOGNISING the importance of transparency as reflected in their commitments in the Comprehensive Economic Partnership Agreement;

SEEKING to establish clear and mutually advantageous rules governing investment between the Parties;

REAFFIRMING their commitment to the Charter of the United Nations done at San Francisco on 26 June 1945 and having regard to the principles articulated in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in Paris on 10 December 1948;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994 (hereinafter referred to as the "WTO Agreement"), and other multilateral, regional and bilateral agreements and arrangements to which both Parties are a party, in particular, the Comprehensive Economic Partnership Agreement,

HAVE AGREED AS FOLLOWS:

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CHAPTER 1

OBJECTIVES AND GENERAL DEFINITIONS

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ARTICLE 1.1

Objectives

The Parties, reaffirming their commitment to creating a better climate for the development of investment between them, hereby lay down the necessary arrangements for the effective protection of investment.

ARTICLE 1.2

Definitions

For the purposes of this Agreement:

(a) "activities performed or services supplied in the exercise of governmental authority" means activities performed or services supplied neither on a commercial basis nor in competition with one or more economic operators;

(b) "Articles of Agreement of the International Monetary Fund" means the Articles of Agreement of the International Monetary Fund, adopted in Bretton Woods, New Hampshire, on 22 July 1944;

(c) "covered investment" means an investment which is:

(i) owned, directly or indirectly, or controlled, directly or indirectly[1], by an investor of one Party in the territory of the other Party;

(ii) established in accordance with the applicable laws[2]; and

(iii) in existence at the date of entry into force of this Agreement or established thereafter;

(d) "days" means calendar days, including weekends and holidays;

(e) "economic activities" means activities, including the supply of services, of an industrial, commercial or professional character and activities of craftsmen, except for activities performed or services supplied in the exercise of governmental authority;

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[1] A juridical person is:
(a) "owned" by a natural or juridical person of a Party if more than 50 % of the equity interest is beneficially owned by a natural or juridical person of that Party; or
(b) "controlled" by a natural or juridical person of a Party if that natural or juridical person has the power to appoint a majority of its directors or otherwise to legally direct its actions.

[2] In the case of investments made in Indonesia, "in accordance with applicable laws" may include specific approval in writing, if applicable.

(f) "freely convertible currency" means a currency which can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions[1];

(g) "GATS" means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

(h) "GATT 1994" means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

(i) "IMF" means the International Monetary Fund;

(j) "investment" means every kind of asset which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, and a certain duration. Forms that an investment may take include:

(i) an enterprise;

(ii) shares, stocks and other financial instruments, including rights derived therefrom;

(iii) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

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[1] For greater certainty, currencies that are widely traded in international foreign exchange markets and widely used in international transactions include freely usable currencies as designated by the International Monetary Fund in accordance with the Articles of Agreement of the International Monetary Fund.

(iv) claims to money, or to other assets or to any contractual performance having an economic value;

(v) intellectual property licences and similar rights conferred pursuant to the law of a Party, including any concessions to search for, cultivate, extract or exploit natural resources; and

(vi) other tangible or intangible, movable or immovable property, including intellectual property, as well as any other property rights, such as leases, mortgages, liens, and pledges;

investments that confer neither control nor a lasting interest ("portfolio investment") in a juridical person of the other Party shall not constitute an investment for the purposes of this Agreement; for greater certainty:

(A) "claims to money" does not include claims to money that arise solely from commercial contracts for the sale of goods or services from the territory of a Party to the territory of the other Party or the financing of such contracts through the extension of credits; and

(B) an order or judgment entered in a judicial or administrative action or an arbitral award made in an arbitral proceeding shall not constitute in itself an investment;

(k) "investor of a Party" means:

(i) a natural person of a Party, or

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(ii) a juridical person of a Party,

that has made a covered investment in the territory of the other Party;

(l) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately owned or governmentally owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(m) "juridical person of a Party" means:

(i) for the Union, a juridical person set up in accordance with the laws and regulations of the Union or of at least one Member State of the Union and engaged in substantive business operations[1] in the territory of the Union; and

(ii) for Indonesia, a juridical person set up in accordance with the laws and regulations of Indonesia and engaged in substantive business operations in the territory of Indonesia;

(n) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

[1] In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the Union understands that the concept of "effective and continuous link" with the economy of a Member State of the Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

(o) "measures of a Party" means any measures adopted or maintained by[1]:

(i) central, regional or local governments or authorities, and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(p) "natural person of the Union" means a national of one of the Member States of the Union according to its legislation[2] and a "natural person of Indonesia" means a national of Indonesia according to its legislation[3];

(q) "operation" means the conduct, management, maintenance, use, enjoyment, or sale or other disposal of an investment by an investor of one Party in the territory of the other Party;

(r) "returns" means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and other lawful income;

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1 For greater certainty, "measures of a Party" covers measures by entities listed under points (o)(i) and (o)(ii), which are adopted or maintained by instructing, directing or controlling, either directly or indirectly, the conduct of other entities with regard to those measures.

2 In the case of the Union, the definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.

3 For greater certainty, if a person possesses dual nationality of both Parties, that person shall be deemed to be exclusively a national of the country of her or his dominant and effective nationality.

(s) "service" includes any service in any sector but not services supplied in the exercise of governmental authority;

(t) "territory" means the area to which this Agreement applies in accordance with Article 6.13;

(u) "TFEU" means the Treaty on the Functioning of the European Union;

(v) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement; and

(w) "WTO" means the World Trade Organization.

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CHAPTER 2

INVESTMENT PROTECTION

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ARTICLE 2.1

Scope

1. This Agreement applies to:

(a) covered investments; and

(b) investors of a Party in respect of a covered investment,

as regards any measure adopted or maintained by a Party and affecting the operation of such investment.

2. This Agreement applies to measures adopted or maintained by[1]:

(a) central, regional or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

[1] For greater certainty, the entities listed under points (a) and (b) of paragraph 2 can adopt or maintain a measure by instructing or directing other entities with regard to the measure.

3. Articles 2.3 and 2.4 do not apply to:

(a) audio-visual services;

(b) national maritime cabotage[1]; and

(c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than, as defined in Article 8.4 of the Comprehensive Economic Partnership Agreement:

(i) aircraft repair and maintenance services;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system (CRS) services; and

(iv) ground handling services.

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[1] Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Indonesia or in a Member State of the Union and another port or point located also in Indonesia including its continental shelf, archipelagic waters and exclusive economic zone or also in that same Member State of the Union, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and traffic originating and terminating in the same port or point located in Indonesia or in a Member State of the Union.

4. For greater certainty and subject to paragraph 6, a Party's decision not to grant, renew or maintain a subsidy:

(a) in the absence of any specific commitment under law or contract to grant, renew, or maintain the subsidy; or

(b) in accordance with any terms or conditions attached to the granting, renewal or maintenance of the subsidy,

shall not constitute a breach of this Agreement.

5. Nothing in this Agreement shall be construed as preventing a Party from discontinuing the granting of a subsidy or requesting its reimbursement, where such action has been ordered by one of its competent authorities listed in Annex 2-B (Competent Authorities Mentioned in Article 2.1(5)), or as requiring that Party to compensate the investor therefor.

6. Articles 2.3 and 2.4 do not apply to subsidies granted by the Parties[1] and to government procurement.

7. This Agreement shall not apply to any dispute between the contracting parties to a government procurement contract arising from a breach of a provision thereto.

[1] For the Union, "subsidy" includes "State aid" as defined in Union law. For Indonesia, "subsidy" includes investment incentive as regulated by Indonesian law.

ARTICLE 2.2

Investment and regulatory measures

1. The Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment including the tackling of climate change, public morals, social and consumer protection, privacy and data protection, sustainable development and the promotion and protection of cultural diversity.

2. The provisions of this Agreement shall not be interpreted as a commitment from a Party that it will not change its legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or an investor's expectations of profits.

ARTICLE 2.3

National treatment

1. Each Party shall accord to investors of the other Party and to covered investments, as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to its own investors and their investments.

2. The treatment to be accorded by a Party pursuant to paragraph 1 means, with respect to a government of a subnational region of Indonesia, treatment no less favourable than the most favourable treatment accorded in like situations, by that government to investors, and to their investments, of that subnational region.

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3. The treatment to be accorded by a Party pursuant to paragraph 1 means, with respect to a government of or in a Member State of the Union, treatment no less favourable than the most favourable treatment accorded in like situations, by that government to investors of that Member State and to their investments in its territory.

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ARTICLE 2.4

Most favoured nation treatment

1. Each Party shall accord to investors of the other Party and to covered investments, as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors and investments of any third country.

2. Notwithstanding paragraph 1, a Party shall not be obliged to extend to investors of the other Party or to their covered investments the benefits of any treatment accorded to investors and investments of any third country pursuant to any international investment treaty or other trade agreement in force or signed prior to the date of entry into force of this Agreement.

3. Paragraph 1 shall not be construed to oblige a Party to extend to the investors of the other Party the benefit of any treatment resulting from:

(a) an international agreement for the avoidance of double taxation or other international agreements or arrangements relating wholly or mainly to taxation; or

(b) measures providing for the recognition of qualifications, licences or prudential measures as provided for in Article VII of GATS or its Annex on Financial Services.

4. For greater certainty, the "treatment" referred to in paragraph 1 does not include dispute settlement procedures provided for in other international investment treaties and other trade agreements.

5. The substantive provisions in other international investment or trade agreements do not in themselves constitute "treatment" as referred to in paragraph 1 and thus cannot give rise to a breach of this Article. However, measures applied pursuant to such provisions can constitute "treatment" as referred to in paragraph 1 and thus give rise to a breach of this Article.

ARTICLE 2.5

Treatment of investors and of covered investments

1. Each Party shall accord to covered investments and to investors of the other Party with respect to their covered investments fair and equitable treatment and full protection and security in accordance with paragraphs 2 to 5.

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2. A Party breaches the obligation of fair and equitable treatment referred to in paragraph 1 through measures or series of measures that constitute:

(a) denial of justice in criminal, civil or administrative proceedings[1];

(b) fundamental disregard of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;

(c) manifest arbitrariness[2];

(d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or

(e) harassment, coercion, abuse of power or corruptive practices.

3. When applying the above fair and equitable treatment obligations, a tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, which created a legitimate expectation upon which that investor relied in deciding to make or maintain a covered investment, and which that Party subsequently frustrated. The mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

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1 For greater certainty, the mere fact that an investor's claim was rejected or unsuccessful in domestic proceedings does not amount to a denial of justice. In determining whether a measure amounts to a breach of point (a) of paragraph 2, a tribunal should take into account other relevant facts such as whether the measure involves gross misconduct by that Party.

2 A measure is manifestly arbitrary if it is evident that the measure is not rationally connected to a legitimate policy objective, or if a measure is based on prejudice or bias rather than on reason or fact.

4. For greater certainty, the term "full protection and security" refers to the Party's obligations to take such measures as may be reasonably necessary to ensure the physical protection and security of covered investments and of investors with respect to their covered investments.

5. A determination that there has been a breach of another provision of this Agreement, or of any other international agreement, does not in itself establish that there has been a breach of this Article.

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ARTICLE 2.6

Compensation for losses

1. Investors of a Party whose covered investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Party shall be accorded by that Party, with respect to restitution, indemnification, compensation or other form of settlement, treatment no less favourable than that accorded by that Party to its own investors or to the investors of any third country, whichever is more favourable to the investors.

2. Without prejudice to paragraph 1, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party shall be accorded adequate restitution or compensation by the other Party[1], if these losses result from:

(a) requisitioning of their covered investment or a part thereof by the latter's armed forces or authorities; or

(b) destruction of their covered investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation.

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ARTICLE 2.7

Expropriation

1. A Party shall not nationalise or expropriate a covered investment either directly or indirectly through measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") except:

(a) for a public purpose[2];

(b) under due process of law;

[1] For greater certainty, when a Party provides restitution or compensation under this paragraph, the value shall not exceed the loss suffered by the investor as a result of the intervention by the armed forces or authorities of that Party.

[2] The Parties acknowledge that the public purpose concept may be referred to in their law through terms such as "public necessity", "public interest" or "public use".

(c) in a non-discriminatory manner; and

(d) against payment of prompt, adequate and effective compensation[1].

This paragraph shall be interpreted in accordance with Annex 2-A (Expropriation).

2. The compensation referred to in paragraph 1 shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier.

The determination of the fair market value of an investment shall be based on the principles and criteria recognised in international financial standards, as appropriate.

3. The compensation referred to in paragraph 1 shall also include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective for the investor, be paid and made transferable, without delay in a freely convertible currency in accordance with Article 2.8.

4. Notwithstanding paragraphs 1, 2, and 3, if Indonesia is the expropriating Party, any measure of direct expropriation relating to land shall be:

(a) for a public purpose in accordance with the applicable Indonesian laws and regulations[2]; and

[1] The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

[2] The applicable laws and regulations are, among others, Indonesia's Law No. 2 of 2012 on Land Acquisition for Development for the Public Interest and Government Regulation No. 19 of 2021 Regulating Implementation of Land Acquisition for Development for the Public Interest, as at the date of entry into force of this Agreement.

(b) upon payment of compensation equivalent to the market value in accordance with the applicable Indonesian laws and regulations.

5. The investor affected shall have a right, under the law of the expropriating Party, to prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation[1], limitation or creation of intellectual property rights to the extent that such revocation, limitation or creation is consistent with Chapter 12 (Intellectual Property) of the Comprehensive Economic Partnership Agreement and the TRIPS Agreement.

ARTICLE 2.8

Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made in a freely convertible currency, without restriction or delay and at the market rate of exchange prevailing on the date of transfer with regard to the currency to be transferred. Such transfers include:

(a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;

[1] For greater certainty, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

(b) profits, dividends, capital gains and other returns, proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(e) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment;

(f) payments made pursuant to Articles 2.6 and 2.7; and

(g) payments of damages pursuant to an award issued by a tribunal.

2. Neither Party may require its investors to transfer, or penalise its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

3. This Article shall not be construed as preventing a Party from making returns in kind relating to a covered investment, which are subject to a written agreement between that Party and a covered investment or an investor of the other Party, as authorised or specified in that agreement, or from restricting transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement.

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ARTICLE 2.9

Subrogation

1. If a Party, or an agency of a Party, makes a payment to an investor of that Party under a guarantee or contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of a covered investment, the other Party shall recognise the subrogation or transfer of any rights or assignment of any claim of the investor under this Agreement in respect of the covered investment. The investor shall not, unless authorised by the Party or the agency making the payment, pursue those rights against the other Party.

2. The subrogated or transferred right or assigned claim shall not be greater than the original right or claim of the investor. The recognition of the subrogation referred to in paragraph 1 shall not be construed as implying recognition of the merits of any claim or the amount of damages arising therefrom.

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CHAPTER 3

MEDIATION MECHANISM FOR INVESTOR-TO-STATE DISPUTES

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ARTICLE 3.1

Objective and scope

1. The objective of the mediation mechanism provided for in this Chapter is to facilitate the finding of mutually agreed solutions through a comprehensive and expeditious procedure with the assistance of a mediator.

2. The mediation mechanism referred to in paragraph 1 applies to disputes between an investor of a Party and the other Party concerning the application of this Agreement (hereinafter referred to as "disputing parties").

3. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.

ARTICLE 3.2

Initiation of the procedure

1. Either disputing party may, at any time, request the commencement of a mediation procedure. Such request shall be addressed to the other disputing party in writing, with a copy to the home State of the investor, for information. Where the request is addressed to the Union, the Union may involve one or several Member States in the mediation, as appropriate.

2. The party to which such request is addressed shall give sympathetic consideration to the request and accept or reject it in writing within 30 days after the date of its receipt.

ARTICLE 3.3

Selection of the mediator

1. If both disputing parties agree to a mediation procedure, a mediator shall be selected in accordance with the procedure set out in paragraphs 2 and 3. The disputing parties shall endeavour to agree on a mediator within 15 days from the date of receipt of the reply to the request.

2. The Committee shall, upon the entry into force of this Agreement, establish a list of six individuals, of high moral character and recognised competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment and who are willing and able to serve as mediators.

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3. The mediator shall be appointed by agreement of the disputing parties from the list established pursuant to paragraph 2, unless otherwise agreed. In the absence of an agreement on the choice of the mediator, the disputing parties may jointly request the Secretary-General of the Permanent Court of Arbitration to appoint a mediator from that list or, in the absence of a list, from individuals proposed by either Party.

4. A mediator shall not be a national of either Party, unless the disputing parties agree otherwise.

5. The mediator shall assist, in an impartial and transparent manner, the disputing parties in reaching a mutually agreed solution.

PUBLIC

ARTICLE 3.4

Rules of the mediation procedure

1. Within 10 days after the appointment of the mediator, the disputing party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other disputing party. Within 20 days after the date of delivery of this submission, the other disputing party may provide, in writing, its comments to the description of the problem. Either disputing party may include in its description or comments any information that it deems relevant.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure at issue. In particular, the mediator may organise meetings between the disputing parties, consult the disputing parties jointly or individually, seek the assistance of or consult with relevant experts and stakeholders and provide any additional support requested by the disputing parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the disputing parties.

3. The mediator may offer advice and propose a solution for the consideration of the disputing parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.

4. The procedure shall take place in the territory of the Party concerned, or by mutual agreement in any other location or by any other means.

5. The disputing parties shall endeavour to reach a mutually agreed solution within 60 days after the date of the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.

6. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a disputing party has designated as confidential.

7. The procedure shall be terminated:

(a) by the adoption of a mutually agreed solution by the disputing parties, on the date of adoption;

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(b) by a written declaration of the mediator, after consultation with the disputing parties, that further efforts at mediation would be to no avail; or

(c) by written notice of a disputing party.

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ARTICLE 3.5

Implementation of a mutually agreed solution

1. Where a solution has been agreed, each disputing party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

2. The implementing disputing party shall inform the other disputing party in writing of any steps or measures taken to implement the mutually agreed solution.

3. On request of the disputing parties, the mediator shall issue to the disputing parties, in writing, a draft factual report, providing a brief summary of:

(a) the measure at issue in these procedures;

(b) the procedures followed; and

(c) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.

4. The mediator shall provide the disputing parties 15 days to comment on the draft report. After considering the comments of the disputing parties submitted within the period, the mediator shall submit, in writing, a final factual report to the disputing parties within 15 days. The factual report shall not include any interpretation of this Agreement.

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ARTICLE 3.6

Relationship to dispute settlement

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or another agreement. A disputing party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall any adjudicative body take into consideration:

(a) positions taken by a disputing party in the course of the mediation procedure;

(b) the fact that a disputing party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

2. The mediation mechanism is without prejudice to the rights and obligations of the Parties under Chapter 4 (Dispute Settlement between the Parties).

3. Unless the disputing parties agree otherwise, all steps of the procedure, including any advice or proposed solution, shall be confidential. However, any disputing party may disclose to the public that mediation is taking place.

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ARTICLE 3.7

Time limits

Any time limit referred to in this Chapter may be modified by mutual agreement between the disputing parties.

ARTICLE 3.8

Costs

1. Each disputing party shall bear its own expenses deriving from its participation in the mediation procedure.

2. The disputing parties shall share jointly and equally the expenses deriving from organisational matters, including the remuneration and expenses of the mediator.

CHAPTER 4

DISPUTE SETTLEMENT BETWEEN THE PARTIES

PUBLIC

SECTION A

OBJECTIVE AND SCOPE

ARTICLE 4.1

Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling any dispute between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.

ARTICLE 4.2

Scope

This Chapter shall apply to any dispute between the Parties concerning the interpretation and application of this Agreement (hereinafter referred to as "covered provisions").[1]

PUBLIC

ARTICLE 4.3

Definitions

For the purposes of this Chapter and Annexes 4-A (Rules of Procedure) and 4-B (Code of Conduct for Panellists and Mediators):

(a) "administrative staff" means individuals, other than assistants, under the direction and control of a panellist;

(b) "adviser" means an individual retained by a Party to advise or assist that Party in connection with the panel proceedings;

(c) "assistant" means an individual who, under the terms of appointment and under the direction and control of a panellist, conducts research or provides assistance to that panellist;

1 For greater certainty, non-violation complaints shall not be permitted under this Agreement.

(d) "candidate" means an individual whose name is on the list of panellists referred to in Article 4.7 and who is under consideration for selection as a panellist in accordance with Article 4.6;

(e) "complaining Party" means any Party that requests the establishment of a panel pursuant to Article 4.5;

(f) "mediator" means an individual who has been selected as mediator in accordance with Article 4.29;

(g) "panel" means a panel established pursuant to Article 4.6;

(h) "panellist" means a member of a panel;

(i) "Party complained against" means the Party that is alleged to be in violation of a covered provision; and

(j) "representative of a Party" means an employee or any individual appointed by a government department, agency, or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement.

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SECTION B

CONSULTATIONS

PUBLIC

ARTICLE 4.4

Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 4.2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request, including electronically, delivered to the other Party identifying the measure at issue and the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made shall reply to that request promptly, but no later than 10 days after the date of its receipt. Unless the Parties agree otherwise, consultations shall be held within 30 days after the date of receipt of the request and take place in the territory of the Party to which the request is made. The consultations shall be deemed concluded within 60 days after the date of receipt of the request, unless the Parties agree to continue consultations.

4. Consultations on matters which the Party seeking consultations considers to be of urgency, including those regarding perishable goods or seasonal goods or services, shall be held within 20 days after the date of receipt of the request. The consultations shall be deemed concluded within those 20 days, unless the Parties agree to continue consultations.

5. During consultations each Party shall provide sufficient factual information so as to allow a complete examination of the manner in which the measure at issue could affect the application of this Agreement. Each Party shall endeavour to ensure the participation of personnel of its competent governmental authorities who have expertise in the matter subject to the consultations.

6. Consultations, including all information disclosed and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

PUBLIC

SECTION C

PANEL PROCEDURES

PUBLIC

ARTICLE 4.5

Initiation of panel procedures

1. The Party that sought consultations pursuant to Article 4.4 may request the establishment of a panel if:

(a) the Party to which the request is made pursuant to Article 4.4(3) does not respond to the request for consultations within 10 days after the date of its receipt;

(b) the consultations are not held within the time periods set out Article 4.4(3) or 4.4(4) respectively;

(c) the Parties agree not to have consultations; or

(d) the consultations have been concluded and no mutually agreed solution has been reached.

2. The request for the establishment of a panel shall be made by means of a written request, including electronically, delivered to the other Party. The complaining Party shall identify the measure at issue in its request and explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly.

3. If a request is made pursuant to paragraph 1, a panel shall be established in accordance with Article 4.6.

4. The Committee may decide, if it deems necessary and appropriate, to entrust an external body with assisting panels under this Chapter, including providing administrative and legal support[1].

PUBLIC

ARTICLE 4.6

Establishment of a panel

1. A panel shall consist of three panellists.

2. Within 10 days after the date of receipt by the Party complained against of the written request, including electronically, for the establishment of a panel, the Parties shall consult with a view to agreeing on the composition of the panel.

3. If the Parties do not agree on the composition of the panel within the time period set out in paragraph 2, each Party shall, within five days after the expiry of the time period set out in paragraph 2, appoint a panellist from the sub-list of that Party established pursuant to Article 4.7.

[1] This shall cover the provision of research assistance and expertise for panellists on legal questions throughout the dispute settlement process.

4. If a Party does not appoint a panellist from its sub-list within the time period provided for in paragraph 3, the co-chair of the Committee from the complaining Party shall, within five days after the expiry of that time period, select by lot the panellist from the sub-list of that Party. The co-chair of the Committee from the complaining Party may delegate such selection by lot of the panellist.

5. If the Parties do not agree on the chairperson of the panel within the time period established in paragraph 2, the co-chair of the Committee from the complaining Party shall, within five days after the expiry of that time period, select by lot the chairperson of the panel from the sub-list of chairpersons established pursuant to Article 4.7. The co-chair of the Committee from the complaining Party may delegate such selection by lot of the chairperson of the panel.

6. The panel shall be deemed to be established 15 days after the three selected panellists have accepted their appointment in accordance with Rule 6 of Annex 4-A (Rules of Procedure), unless the Parties agree otherwise.

7. If an individual selected to serve as a panellist is not available or does not accept their appointment within the time period set out in Rule 6 of Annex 4-A (Rules of Procedure), a new individual shall be selected in accordance with the same selection method used for the selection of the individual who was not available or did not accept the appointment.

8. If the list provided for in Article 4.7 has not been established or if a sub-list does not contain any available individual at the time a selection by lot is to be made pursuant to paragraphs 4 or 5, the panellists shall be drawn by lot from the individuals who have been formally proposed by one Party or both Parties in accordance with Annex 4-A (Rules of Procedure) within five days after the expiry of the time period set out in paragraph 2 or after the confirmation that no individual is available, as the case may be.

PUBLIC

ARTICLE 4.7

List of panellists

1. The Committee shall, no later than six months after the date of entry into force of this Agreement, adopt a decision to establish a list of at least 15 individuals who are willing and able to serve as panellists. The list shall be composed of three sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the Union;

(b) one sub-list of individuals established on the basis of proposals by Indonesia; and

(c) one sub-list of individuals who are not nationals of either Party and who shall serve as chairperson to a panel.

2. Each sub-list shall include at least five individuals. The Committee shall ensure that each sub-list is always maintained at that minimum number of individuals.

3. The Committee may establish additional lists of individuals with expertise in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 4.6.

PUBLIC

ARTICLE 4.8

Requirements for panellists

PUBLIC

1. Each panellist shall:

(a) have demonstrated expertise in law, international trade or investment, and other matters covered by this Agreement;

(b) be independent of, and not be affiliated with[1], or take instructions from, either Party;

(c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

(d) comply with Annex 4-B (Code of Conduct for Panellists and Mediators).

2. The chairperson shall also have experience in dispute settlement procedures.

3. In view of the subject-matter of a particular dispute, the Parties may agree to derogate from the requirements listed in point (a) of paragraph 1.

[1] For greater certainty, the fact that a person receives an income from the government of a Party, was formerly employed by the government of a Party or has a family relationship with a government official of a Party is not in itself a reason to be considered as being affiliated with that Party.

ARTICLE 4.9

Functions of the panel

PUBLIC

The panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;

(b) shall set out, in its decisions and reports, the findings of fact, the applicability of the covered provisions and the basic rationale behind any findings and conclusions that it makes; and

(c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 4.10

Terms of reference

1. Unless the Parties agree otherwise within five days after the date of establishment of the panel, the terms of reference of the panel shall be:

"to examine, in the light of the relevant provisions of the Investment Protection Agreement between the Republic of Indonesia and the European Union (hereinafter "the Agreement"), cited by the Parties, the matter referred to in the request for the establishment of the panel and to make findings on the conformity of the measure at issue with the provisions of the Agreement referred to in Article 4.2 of the Agreement and to deliver a report in accordance with Articles 4.12 and 4.13 of the Agreement.".

2. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the panel within the time period set out in paragraph 1.

ARTICLE 4.11

Decision on urgency

1. If a Party so requests, the panel shall decide, within 10 days after its establishment, whether the dispute concerns matters of urgency.

PUBLIC

2. If the Panel decides that the dispute concerns matters of urgency, it shall, after consulting the Parties, shorten the applicable time periods set out in this Section, except for the time periods set out in Articles 4.6 and 4.10.

PUBLIC

ARTICLE 4.12

Interim report

1. The panel shall deliver an interim report to the Parties, to the extent practicable, within 90 days after the date of establishment of the panel. If the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, including electronically, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. The panel should, under no circumstances, deliver its interim report later than 120 days after the date of establishment of the panel. If the complaining Party chooses to deliver a second written submission pursuant to Rule 11 of Annex 4-A (Rules of Procedure), the time periods set out in this paragraph shall be extended by 30 days.

2. Each Party may deliver to the panel a written request, including electronically, to review precise aspects of the interim report within 10 days after its receipt. A Party may comment on the other Party's request within six days after the receipt of that request.

ARTICLE 4.13

Final report

1. The panel shall deliver its final report to the Parties, to the extent practicable, within 120 days after the date of establishment of the panel. If the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, including electronically, stating the reasons for the delay and the date on which the panel plans to deliver its final report. The panel should, under no circumstances, deliver its final report later than 150 days after the date of establishment of the panel. If the complaining Party chooses to deliver a second written submission pursuant to Rule 11 of Annex 4-A (Rules of Procedure), the time periods set out in this paragraph shall be extended by 30 days.

2. The final report shall include a discussion of any written request, including electronically, made by a Party on the interim report, and clearly address the comments of the Parties.

ARTICLE 4.14

Compliance measures

1. The Party complained against shall take any measure necessary to comply promptly with the findings and conclusions in the final report in order to bring itself in compliance with the covered provisions.

PUBLIC

2. The Party complained against shall, no later than 30 days after the receipt of the final report, deliver a notification to the complaining Party of the measures which it has taken or which it envisages to take to comply.

PUBLIC

ARTICLE 4.15

Reasonable period of time

1. If immediate compliance is not possible, the Party complained against shall, no later than 30 days after the receipt of the final report, deliver a notification to the complaining Party of the length of the reasonable period of time it will require for compliance. The Parties shall endeavour to agree on the length of the reasonable period of time to comply with the final report.

2. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party may, at the earliest 20 days after the receipt of the notification referred to in paragraph 1, request in writing, including electronically, the original panel to determine the length of the reasonable period of time. The panel shall deliver its decision to the Parties within 30 days after the date of receipt of the request.

3. The Party complained against shall deliver a written notification, including electronically, of its progress in complying with the final report to the complaining Party at least 30 days before the expiry of the reasonable period of time.

4. The Parties may agree to extend the reasonable period of time.

ARTICLE 4.16

Compliance review

1. The Party complained against shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report.

2. If the Parties disagree on the existence or the consistency with the covered provisions of any measure taken to comply, the complaining Party may deliver a written request, including electronically, to the original panel to decide on the matter. The request shall identify any measure at issue and explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly. The panel shall deliver its decision to the Parties within 46 days after the date of receipt of the request.

ARTICLE 4.17

Temporary remedies

1. The Party complained against shall, on request of, and after consultations with, the complaining Party, present an offer for temporary compensation if:

(a) the Party complained against delivers a notification to the complaining Party that it is not possible to comply with the final report;

PUBLIC

(b) the Party complained against fails to deliver a notification of any measure taken to comply within the deadline referred to in Article 4.14 or before the date of expiry of the reasonable period of time referred to in Article 4.15; or

(c) the panel finds that no measure taken to comply exists or that the measure taken to comply is inconsistent with the covered provisions.

2. In any of the situations referred to in points (a) to (c) of paragraph 1, the complaining Party may deliver a written notification, including electronically, to the Party complained against that it intends to take appropriate measures if:

(a) the complaining Party decides not to make a request pursuant to paragraph 1; or

(b) the Parties do not agree on the temporary compensation within 30 days after the expiry of the reasonable period of time referred to in Article 4.15 or the delivery of the panel decision pursuant to Article 4.16 when a request pursuant to paragraph 1 is made.

The notification shall specify such measures.

3. The complaining Party may suspend the obligations at the earliest 20 days after the date of delivery of the notification referred to in paragraph 2, unless the Party complained against made a request pursuant to paragraph 5.

4. The appropriate measures shall not exceed the level equivalent to the nullification or impairment caused by the violation.

PUBLIC

5. If the Party complained against considers that the notified measure exceed the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request, including electronically, to the original panel before the expiry of the 20-day period set out in paragraph 3 to decide on the matter. The panel shall deliver its decision on the level of the measures within 30 days after the date of the request. The measures shall not be taken until the panel has delivered its decision. The measures shall be consistent with that decision.

6. The measures or the compensation referred to in this Article shall be temporary and shall not be applied after:

(a) the Parties have reached a mutually agreed solution pursuant to Article 4.33;

(b) the Parties have agreed that the measure taken to comply brings the Party complained against into conformity with the covered provisions; or

(c) any measure taken to comply which the panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into conformity with those provisions.

PUBLIC

ARTICLE 4.18

Review of any measure taken to comply after the adoption of temporary remedies

1. The Party complained against shall deliver a notification to the complaining Party of any measure it has taken to comply following the appropriate measures or following the application of temporary compensation, as the case may be. With the exception of cases pursuant to paragraph 2, the complaining Party shall terminate the appropriate measures within 30 days after the date of receipt of the notification. In cases where compensation has been applied, and with the exception of cases pursuant to paragraph 2, the Party complained against may terminate the application of such compensation within 30 days after the date of receipt of its notification that it has complied.

2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the covered provisions within 30 days after the date of receipt of the notification referred to in paragraph 1 the complaining Party shall deliver a written request, including electronically, to the original panel to decide on the matter. The panel shall deliver its decision to the Parties within 46 days after the date of receipt of the request. If the panel finds that the measure taken to comply is in conformity with the covered provisions, the appropriate measures or compensation, as the case may be, shall be terminated. When relevant, the complaining Party shall adjust the level of the appropriate measures or of compensation in light of the panel decision.

PUBLIC

3. If the Party complained against considers that the level of the appropriate measures implemented by the complaining Party exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request, including electronically, to the original panel to decide on the matter.

PUBLIC

ARTICLE 4.19

Replacement of panellists

If during a dispute settlement procedure, a panellist is unable to participate, withdraws or needs to be replaced because that panellist does not comply with the requirements set out in Annex 4-B (Code of Conduct for Panellists and Mediators), the procedure provided for in Article 4.6 applies. The time period for the delivery of the report or decision of the panel shall be extended for the time necessary for the appointment of the new panellist.

ARTICLE 4.20

Rules of procedure

Panel procedures shall be governed by this Chapter and Annex 4-A (Rules of Procedure). The hearings of the panel shall be closed for any discussion of confidential information. Otherwise, the hearings shall be open to the public, unless the Parties to the dispute agree otherwise.

ARTICLE 4.21

Suspension and termination

1. On request of both Parties or the complaining Party, the panel shall suspend its work at any time for a period agreed by the Parties which does not exceed 12 consecutive months.

2. The panel shall resume its work before the expiry of the suspension period at the written request, including electronically, of both Parties or the complaining Party, or at the expiry of the suspension period at the written request, including electronically, of either Party. The requesting Party shall deliver a notification to the other Party accordingly. If a Party does not request the resumption of the panel's work at the expiry of the suspension period, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated.

3. If the work of the panel is suspended, the relevant time periods set out in this Section shall be extended by the same period of time for which the work of the panel was suspended.

ARTICLE 4.22

Receipt of information

1. On request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for such information.

PUBLIC

2. On request of a Party or on its own initiative, the panel may seek any information it deems appropriate from any source. The panel also has the right to seek the opinion of experts, as it deems appropriate, and subject to any terms and conditions agreed by the Parties, where applicable.

3. The panel shall consider *amicus curiae* submissions from natural persons of a Party or juridical persons established in a Party in accordance with Annex 4-A (Rules of Procedure).

4. Any information or expert opinion obtained by the panel pursuant to this Article shall be disclosed to the Parties and the Parties may provide comments thereon.

PUBLIC

ARTICLE 4.23

Rules of interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties.

2. The panel shall also take into account relevant interpretations in reports of WTO panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

3. All authentic language versions of this Agreement shall be equally authentic and have equal legal value. In case of divergences in interpretation between authentic language versions, the interpretation shall be based on the text serving as the common basis for the finalisation of the Agreement. This paragraph applies to all provisions in this Agreement including point (c) of Article 6.2(2).

ARTICLE 4.24

Reports and decisions of the panel

1. The deliberations of the panel shall be kept confidential. The panel shall make every effort to draft reports and take decisions by consensus. If that is not possible, the panel shall decide the matter by majority vote. In no case shall separate opinions of panellists be disclosed.

2. The decisions and reports of the panel shall be accepted unconditionally by the Parties.

3. Reports and decisions of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement. They shall not create any rights or obligations with respect to natural or juridical persons.

4. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel in accordance with Annex 4-A (Rules of Procedure).

ARTICLE 4.25

Choice of forum

1. If a dispute arises regarding a particular measure alleged to breach a covered provision and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.

PUBLIC

2. Once a Party has selected the forum and initiated dispute settlement procedures under this Section or under another international agreement, the Party shall not initiate dispute settlement procedures under any other agreement with respect to the particular measure referred to in paragraph 1, unless the forum selected first fails to make findings for procedural or jurisdictional reasons.

3. For the purposes of this Article:

(a) dispute settlement procedures under this Section are deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 4.5;

(b) dispute settlement procedures under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, contained in Annex 2 to the WTO Agreement; and

(c) dispute settlement procedures under any other international agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

4. Without prejudice to paragraph 2, nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of another international agreement to which the disputing Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under this Section.

PUBLIC

SECTION D

MEDIATION MECHANISM

PUBLIC

ARTICLE 4.26

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution to a dispute through a comprehensive and expeditious procedure with the assistance of a mediator.

ARTICLE 4.27

Request for information

1. At any time before the initiation of the mediation procedure, a Party may deliver a written request, including electronically, for information regarding a measure adversely affecting investment between the Parties. The Party to which such a request is made shall, within 21 days after the date of receipt of the request, deliver a written response, including electronically, containing its comments on the requested information.

2. If the responding Party considers that it will not be able to deliver a response within 21 days after the date of receipt of the request, it shall promptly notify the requesting Party, stating the reasons for the delay and providing an estimate of the shortest period within which it will be able to deliver its response.

3. A Party is normally expected to avail itself of this Article before the initiation of the mediation procedure.

PUBLIC

ARTICLE 4.28

Initiation of the mediation procedure

1. A Party may at any time request to enter into a mediation procedure with respect to any measure by a Party adversely affecting investment between the Parties.

2. The request shall be made by means of a written request, including electronically, delivered to the other Party. The request shall be sufficiently detailed to present the concerns of the requesting Party clearly and shall:

(a) identify the specific measure at issue;

(b) provide a statement of the adverse effects that the requesting Party considers the measure has, or will have, on investment between the Parties; and

(c) explain how the requesting Party considers that those effects are linked to the measure.

3. The mediation procedure may only be initiated by mutual agreement of the Parties in order to explore mutually agreed solutions and consider any advice and proposed solutions by the mediator.

4. The Party to which the request is made shall give sympathetic consideration to the request and deliver its written acceptance or rejection, including electronically, to the requesting Party within 10 days after its receipt. Otherwise, the request shall be regarded as rejected.

PUBLIC

ARTICLE 4.29

Selection of the mediator

1. The Parties shall endeavour to agree on a mediator within 10 days after the initiation of the mediation procedure.

2. If the Parties are unable to agree on the mediator within the time period laid down in paragraph 1, either Party may request the co-chair of the Committee from the complaining Party to select the mediator by lot, within five days after the date of the request, from the sub-list of chairpersons established pursuant to Article 4.7. The co-chair of the Committee from the complaining Party may delegate such selection by lot of the mediator.

3. Should the sub-list of chairpersons referred to in Article 4.7 not be established at the time a request is made pursuant to Article 4.28, the mediator shall be drawn by lot from the individuals formally proposed by one or both Parties for that sub-list.

4. A mediator shall not be a national of either Party or employed by either Party, unless the Parties agree otherwise.

5. A mediator shall comply with Annex 4-B (Code of Conduct for Panellists and Mediators).

PUBLIC

ARTICLE 4.30

Rules of the mediation procedure

1. Within 10 days after the appointment of the mediator, the Party which invoked the mediation procedure shall deliver to the mediator and to the other Party a detailed written description of its concerns, in particular of the operation of the measure at issue and its possible adverse effects on investment. Within 20 days after the receipt of that description, the other Party may deliver written comments on that description. Either Party may include any information that it deems relevant in its description or comments.

2. The mediator shall assist the Parties in a transparent manner in bringing clarity to the measure at issue and its possible adverse effects on investment. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the Parties. The mediator shall consult with the Parties before seeking the assistance of, or consulting with, relevant experts and stakeholders.

3. The mediator may offer advice and propose a solution for the consideration of the Parties. The Parties may accept or reject the proposed solution, or agree on a different solution. The mediator shall not advise or comment on the consistency of the measure at issue with this Agreement.

4. The mediation procedure shall take place in the territory of the Party to which the request was addressed, or by mutual agreement in any other location or by any other means.

5. The Parties shall endeavour to reach a mutually agreed solution within 60 days after the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, in particular if the measure relates to perishable goods or seasonal goods or services.

6. The mutually agreed solution may be adopted by means of a decision of the Committee. Either Party may make the solution subject to the completion of any necessary internal procedures.

7. On request of either Party, the mediator shall deliver a draft factual report to the Parties, providing:

(a) a brief summary of the measure at issue;

(b) the procedures followed; and

(c) if applicable, any mutually agreed solution reached, including possible interim solutions.

8. The mediator shall allow the Parties 15 days to comment on the draft report. After considering the comments of the Parties received, the mediator shall, within 15 days, deliver a final factual report to the Parties. The factual report shall not include any interpretation of this Agreement.

PUBLIC

9. The mediation procedure shall be terminated:

(a) by the adoption of a mutually agreed solution by the Parties, on the date of the adoption thereof;

(b) by mutual agreement of the Parties at any stage of the procedure, on the date of that agreement;

(c) by a written declaration of the mediator, after consultation with the Parties, that further efforts to mediate would be to no avail, on the date of that declaration; or

(d) by a written declaration of a Party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

ARTICLE 4.31

Confidentiality

Unless the Parties agree otherwise, all steps of the mediation procedure, including any advice or proposed solution, are confidential. A Party may disclose to the public the fact that mediation is taking place.

PUBLIC

ARTICLE 4.32

Relationship to dispute settlement procedures

1. The mediation procedure is without prejudice to the Parties' rights and obligations under Sections B and C or under dispute settlement procedures under any other agreement.

2. A Party shall not rely on, or introduce as evidence, in other dispute settlement procedures under this Agreement or under any other agreement, nor shall a panel take into consideration:

(a) positions taken by the other Party in the course of the mediation procedure or information exclusively gathered pursuant to Article 4.30(2);

(b) the fact that the other Party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

3. Unless the Parties agree otherwise, an individual shall not serve as a panellist in dispute settlement procedures under this Agreement or under any other agreement involving the same matter for which that individual has served as a mediator.

PUBLIC

SECTION E

COMMON PROVISIONS

PUBLIC

ARTICLE 4.33

Mutually agreed solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 4.2.

2. If a mutually agreed solution is reached during the panel or mediation procedure, the Parties shall jointly notify that solution to the chairperson of the panel or the mediator, respectively. Upon such notification, the panel or the mediation procedure shall be terminated.

3. Each Party shall take any measure necessary to implement the mutually agreed solution within the agreed time period.

4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party in writing, including electronically, of any measure that it has taken to implement the mutually agreed solution.

ARTICLE 4.34

Transparency

PUBLIC

1. Each Party shall promptly make public:

(a) a request for consultations pursuant to Article 4.4(2);

(b) a request to establish a panel pursuant to Article 4.5(2);

(c) the date of establishment of a panel in accordance with Article 4.6(6), the time-limit for amicus curiae submissions determined by the panel pursuant to Rule 42 of Annex 4-A (Rules of Procedure) and the working language for the panel procedure determined in accordance with Rule 46 of Annex 4-A (Rules of Procedure);

(d) its submissions in the panel procedure or, if a Party decides otherwise, a summary of its submissions within a short period of time after the issuance of the panel report;

(e) a mutually agreed solution reached pursuant to Article 4.30(6) or Article 4.33 unless the Parties agree otherwise and subject to the protection of confidential information; and

(f) the final reports and decisions of the panel.

2. Any hearing of the panel shall be closed to the public for the duration of any discussion of confidential information. Otherwise, the hearing shall be open to the public, unless the Parties to the dispute agree otherwise.

3. Natural persons of a Party or juridical persons established in a Party may make *amicus curiae* submissions to the panel in accordance with Rule 42 of Annex 4-A (Rules of Procedure).

4. Paragraphs 1 and 2 shall be subject to the protection of confidential information as set out in Rules 35 to 38 of Annex 4-A (Rules of Procedure).

PUBLIC

ARTICLE 4.35

Time periods

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act to which they refer.

2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

3. A panel established under Section C of this Chapter may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal.

ARTICLE 4.36

Costs

1. Each Party shall bear its own expenses and legal costs derived from the participation in the panel or mediation procedure.

2. Unless the Parties agree otherwise, the Parties shall be jointly liable for the remuneration and expenses of panellists and mediators. The Parties shall share such remuneration and expenses equally. Unless the Parties agree otherwise, the remuneration and expenses of panellists and mediators shall be determined in accordance with Rule 8 of Annex 4-A (Rules of Procedure).

3. Unless the Parties agree otherwise, other expenses associated with the conduct of the proceedings shall be borne in equal parts by the Parties to the dispute.

ARTICLE 4.37

Annexes

The Committee may amend the Annexes 4-A (Rules of Procedure) and 4-B (Code of Conduct for Panellists and Mediators), pursuant to Article 6.2.

PUBLIC

CHAPTER 5

EXCEPTIONS

PUBLIC

ARTICLE 5.1

Denial of benefits

1. A Party may deny the benefits of this Agreement to an investor of the other Party or to a covered investment if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including measures to address serious human rights violations and abuses, which:

(a) prohibit transactions with that investor or covered investment; or

(b) would be violated or circumvented if the benefits of this Agreement were accorded to that investor or covered investment, including where the measures prohibit transactions with a natural or juridical person who owns or controls either of them.

2. Notwithstanding paragraph 1, Indonesia may under its applicable laws and regulations deny the benefits of this Agreement to an investor of the Union if a person of a third country owns or controls the covered investment and Indonesia does not maintain diplomatic relations with that third country.

ARTICLE 5.2

General exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on covered investment, nothing in Articles 2.3, 2.4 and 2.8 shall be construed to prevent the adoption or enforcement by either Party of measures:

(a) necessary to protect public security[1] or public morals or to maintain public order[2];

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

[1] For greater certainty, public security may cover measures taken to protect critical public infrastructure (whether publicly or privately owned), including communications, power and water infrastructure, from deliberate attempts intended to disable or degrade such infrastructure.

[2] The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(iii) safety.

2. For greater certainty, the Parties understand that:

(a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of paragraph 1 of this Article include environmental measures, which are necessary to protect human, animal or plant life or health; and

(b) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For greater certainty, the Parties understand that this Article can only be invoked with respect to measures that are otherwise inconsistent with the provisions of the Articles referred to in paragraph 1.

ARTICLE 5.3

Prudential carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

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(b) ensuring the integrity and stability of a Party's financial system.

2. Where the measures referred to in paragraph 1 do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding a Party's commitments or obligations under such provisions.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

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ARTICLE 5.4

Security exceptions

Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests;

(b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the Charter of the United Nations for the purpose of maintaining international peace and security.

ARTICLE 5.5

Taxation

1. For the purposes of this Article, the following definitions apply:

(a) "residence" means residence for tax purposes; and

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(b) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation to which the Union or any of its Member States or Indonesia is party.

A "tax" and a "taxation measure" do not include a customs duty.

2. Each Party retains its right to regulate taxation measures, without prejudice to its rights and obligations under this Agreement.

3. Nothing in this Agreement shall affect the rights and obligations of either Indonesia or the Union or any of its Member States, under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, that tax convention shall prevail to the extent of the inconsistency.

4. Article 2.4 shall not apply to an advantage accorded by a Party pursuant to a tax convention. For the avoidance of doubt, nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future tax convention by which the Party is bound.

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5. Subject to the requirement that taxation measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing any measure which:

(a) aims at ensuring the equitable or effective[1] imposition or collection of direct taxes;

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[1] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

(i) apply to non-resident investors and service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;

(iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;

(v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in this paragraph and this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the law of the Party taking the measure.

(b) aims at preventing the avoidance or evasion of taxes pursuant to the provisions of any tax convention or the fiscal legislation of that Party; or

(c) distinguishes between taxpayers, who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.

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ARTICLE 5.6

Temporary safeguard measures

In exceptional circumstances of serious difficulties for the operation of economic and monetary policies, in the case of Indonesia, or for the economic and monetary union, in the case of the Union, or threat thereof, the Party concerned may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months[1]. Such measures must be strictly necessary to address such difficulties.

[1] For greater certainty, such measures can be renewed for additional periods of six months, provided that it remains strictly necessary under the current circumstances.

ARTICLE 5.7

Restrictions in case of balance-of-payments or external financial difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or a threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers[1].

2. The measures referred to in paragraph 1:

(a) shall be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;

(b) shall not exceed what is necessary to deal with the circumstances described in paragraph 1;

(c) shall be temporary and shall be phased out progressively as the situation specified in paragraph 1 improves;

(d) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

(e) shall not treat the other Party less favourably than a third country in like situations.

[1] In the case of the Union, such measures may be taken by a Member State of the Union in situations other than those referred to in Article 5.6, which affect the economy of that Member State. For greater certainty, serious balance-of-payments or external financial difficulties, or a threat thereof, may be caused, among other factors, by serious difficulties related to monetary or exchange rate policies, or threats thereof.

3. In the case of trade in goods, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. These measures shall be in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of GATT 1994.

4. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. These measures shall be in accordance with Article XII of GATS.

5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Party.

6. Where restrictions are adopted or maintained pursuant to this Article, consultations shall be held promptly in the Committee unless consultations are held in other fora. The consultations shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, inter alia, such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

7. The consultations pursuant to paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of a statistical or factual nature presented by the IMF, where available, shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

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ARTICLE 5.8

Application of laws and regulations relating to capital movements, payments or transfers

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The provisions of Article 2.8 shall not preclude a Party from applying its laws and regulations relating to:

(a) bankruptcy, insolvency, the protection of the rights of creditors, bank recovery and resolution, or the prudential supervision of financial institutions;

(b) issuing of, trading or dealing in financial instruments;

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences, deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

(f) social security, public retirement or compulsory savings schemes.

Such laws and regulations shall not be applied in an arbitrary or discriminatory manner, or in a manner which constitutes a disguised restriction on capital movements, payments, or transfers.

ARTICLE 5.9

Disclosure of information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private, except where a panel requires such confidential information in dispute settlement proceedings under Chapter 4 (Dispute Settlement between the Parties). In such cases, the panel shall ensure that confidentiality is fully protected.

2. When a Party submits information to the Committee which is considered as confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

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CHAPTER 6

INSTITUTIONAL AND FINAL PROVISIONS

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SECTION A

INSTITUTIONAL PROVISIONS

ARTICLE 6.1

Committee

1. The Parties hereby establish a Committee comprising representatives of the Parties.

2. The Committee shall meet no later than one year after the entry into force of this Agreement. Thereafter, the Committee shall meet on an annual basis, unless otherwise agreed by the co-chairs of the Committee.

3. The meetings of the Committee shall take place in the Union or Indonesia alternately, unless otherwise agreed by the representatives of the Parties. The Committee may meet in person or by other appropriate means of communication, as agreed by the co-chairs of the Committee.

4. The Committee shall be co-chaired by a representative of Indonesia at ministerial level and the Member of the European Commission responsible for trade, or their respective designees.

ARTICLE 6.2

Functions of the Committee

1. In order to ensure that this Agreement operates properly and effectively, the Committee shall:

(a) consider ways to further enhance investment relations between the Parties;

(b) supervise and facilitate the implementation and application of this Agreement, and promote its general aims;

(c) without prejudice to Chapter 4 (Dispute Settlement between the Parties) seek appropriate ways and methods of preventing problems that may arise in areas covered by this Agreement, or of resolving disputes that may arise regarding the interpretation or application of this Agreement;

(d) consider any other matter of interest relating to an area covered by this Agreement; and

(e) adopt at its first meeting its own rules of procedure.

2. In order to ensure that this Agreement operates properly and effectively, the Committee may:

(a) recommend to the Parties any amendments to this Agreement;

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(b) adopt decisions to amend this Agreement in accordance with Article 6.3, in the following cases:

(i) Annex 4-A (Rules of Procedure);

(ii) Annex 4-B (Code of Conduct for Panellists and Mediators);

(c) adopt, through decisions, binding interpretations of the provisions of this Agreement, in accordance with Article 6.3; such decisions on binding interpretations shall enter into force on the date on which the Parties have exchanged written notifications confirming that they have completed their respective procedures, and they shall be binding on the Parties and all bodies established under this Agreement, including any panel referred to under Chapter 4 (Dispute Settlement between the Parties);

(d) adopt any decisions as envisaged in this Agreement, or make recommendations as provided for in Article 6.3; and

(e) communicate on matters related to this Agreement with all interested parties, including business, trade unions and civil society organisations.

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3. The Committee shall exchange views on topics concerning the implementation of this Agreement with civil society representatives participating in a Civil Society Forum. The Committee shall agree at its first meeting on the operational guidelines for the conduct of the Civil Society Forum. The Civil Society Forum shall meet in conjunction with the meeting of the Committee, unless otherwise agreed by the representatives of the Parties. Representatives of the Parties shall facilitate the organisation of the Civil Society Forum including participation by virtual means. The Civil Society Forum includes members of the domestic advisory groups established pursuant to Article 6.5 and is open to other relevant independent civil society organisations established in the territories of the Parties. Each Party shall promote a balanced representation of interest groups in economic, social and environmental matters with fields of activity and expertise directly relating to the scope of this Agreement, as appropriate. The Parties may, jointly or individually, publish any formal statements made at the Civil Society Forum.

4. The Committee shall regularly report to the Trade Committee established under the Comprehensive Economic Partnership Agreement on its activities, at the regular meetings of the Trade Committee. The information to be reported may also be provided to the Trade Committee by representatives designated by the Committee or in writing.

PUBLIC

ARTICLE 6.3

Decisions and recommendations of the Committee

1. The Committee shall, for the purpose of attaining the objectives of this Agreement, have the power to adopt decisions as provided for in this Agreement. The decisions adopted by the Committee shall be binding upon the Parties and enter into force after the notification in writing of the completion of their respective applicable legal requirements and procedures. Each Party shall take all measures necessary to implement the decisions adopted by the Committee.

2. For the purposes of attaining the objectives of this Agreement, the Committee may make appropriate recommendations in respect of all matters covered by this Agreement.

3. The Committee shall adopt its decisions and make its recommendations by consensus.

ARTICLE 6.4

Contact points

1. Each Party shall designate an "IPA contact point" to facilitate communications between the Parties on matters pertaining to this Agreement, and shall notify the details of its IPA contact point to the other Party within 30 days after the entry into force of this Agreement.

PUBLIC

2. The designated IPA contact points shall:

(a) unless otherwise provided for in this Agreement, or otherwise agreed by the co-chairs of the Committee, deliver and receive all notifications and information to be provided between the Parties pursuant to this Agreement;

(b) facilitate communications between the Parties on any matter covered by this Agreement, as well as on its implementation; and

(c) coordinate preparations for the meetings of the Committee.

PUBLIC

ARTICLE 6.5

Domestic advisory groups

1. Each Party shall create a new or designate an existing domestic advisory group within a year of the date of entry into force of this Agreement, with the task of providing advice, including on its own initiative, on matters concerning the implementation of this Agreement. The composition of each domestic advisory group shall ensure a balanced representation of independent civil society organisations[1], based on a multi-stakeholder approach which includes relevant interest groups in economic, social and environmental matters.

[1] Civil society includes non-governmental organisations, business and employers' organisations as well as trade unions.

2. Each Party shall convene a meeting with its domestic advisory group at least once a year and consider the advice or recommendations that the group may provide. Each Party may decide on the follow-up to the advice or recommendations by its domestic advisory group. Domestic advisory groups may be convened in different configurations to discuss the implementation of different Chapters or provisions of this Agreement.

3. The Parties shall promote public awareness of their respective domestic advisory groups and encourage interaction between them. To that end, each Party shall make publicly available relevant information on the composition of its domestic advisory group and shall exchange information with the other Party on the contact point of its own domestic advisory group.

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SECTION B

FINAL PROVISIONS

ARTICLE 6.6

Amendments

1. The Parties may agree, in writing, to amend this Agreement. Amendments to this Agreement constitute integral parts thereof.

2. Amendments shall enter into force on the first day of the second month, or on such later date as may be agreed by the Parties, following the date on which the Parties exchange written notifications confirming that they have completed their respective applicable legal requirements for the entry into force of such amendments.

3. Notwithstanding paragraph 1, the Committee may, in accordance with the respective applicable legal requirements of the Parties, amend this Agreement, where provided for in point (b) of Article 6.2(2).

PUBLIC

ARTICLE 6.7

Entry into force

1. The Parties shall approve this Agreement in accordance with their respective applicable legal requirements and procedures.

2. This Agreement shall enter into force on the first day of the second month following the date on which the Parties have exchanged written notifications confirming that they have completed their respective applicable legal requirements for the entry into force of this Agreement. Such exchange shall be done only after the Parties have exchanged diplomatic notes confirming the completion of the languages authentication pursuant to Article 6.16(2). The Parties may agree on another date of entry into force of this Agreement.

3. Pending its entry into force, the Parties may provisionally apply this Agreement as from the first day of the first month following the date on which they have notified each other that their respective internal requirements and procedures necessary for provisional application of this Agreement have been completed or on an earlier date thereafter if so agreed by the Parties.

4. Notifications referred to in paragraphs 2 and 3 shall be sent in writing to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs of Indonesia, or their respective successors.

5. If pending the entry into force of this Agreement, the Parties decide to provisionally apply it in accordance with paragraph 3, all references in this Agreement to its date of entry into force shall be deemed to refer to the date on which provisional application takes effect.

ARTICLE 6.8

Relation with other agreements

1. Unless otherwise provided for in this Agreement, the existing agreements between the Member States of the Union or the European Community or the Union and Indonesia are not superseded or terminated by this Agreement.

2. This Agreement shall be an integral part of the overall bilateral relations as governed by the Comprehensive Economic Partnership Agreement and shall form part of the common institutional framework.

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3. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement. For greater certainty, nothing in this Agreement requires a Party to act in a manner inconsistent with its obligations under the WTO Agreement.

4. In the event of any inconsistency between this Agreement and any agreement other than the WTO Agreement to which both Parties are a party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

5. If any of the provisions of the WTO Agreement incorporated into this Agreement is amended, the Parties shall consult with a view to finding a mutually satisfactory solution, where necessary.

PUBLIC

ARTICLE 6.9

Work programme

1. The Parties shall, on the basis of the progress already made, and without prejudice to their respective positions, restart negotiations on the settlement of investment disputes between a Party and an investor of the other Party concerning breaches of Chapter 2 (Investment Protection) of this Agreement, and on an interpretative guidance on taxation measures and expropriation, no later than on the date of entry into force of this Agreement.

2. In such negotiations, the Parties shall work towards a state-of-the-art dispute settlement mechanism, considering, inter alia, progress on reforms of investment dispute settlement in relevant international fora. The Parties share the understanding that any parts of the dispute settlement mechanism, on which they already reached an agreement in the negotiations towards this Agreement, will be part of such work.

3. The Parties shall conclude the negotiations within three years after the date of the entry into force of this Agreement.

PUBLIC

ARTICLE 6.10

Duration and termination

1. This Agreement shall remain in force unless terminated pursuant to paragraph 2.

2. A Party may terminate this Agreement by written notification to the other Party. This notification shall be sent to the Secretary-General of the Council of the European Union and to the Ministry of Foreign Affairs of Indonesia, or their respective successors. This termination shall take effect six months after the date of receipt of that notification, unless the Parties agree otherwise.

3. In the event that this Agreement is terminated pursuant to paragraph 2, this Agreement shall continue to be effective for a further period of 10 years from the date of termination, with respect to investments made before the date of termination of the present Agreement.

ARTICLE 6.11

Fulfilment of obligations

1. Each Party is fully responsible for the observance of all provisions of this Agreement.

2. Each Party shall take all general or specific measures required to fulfil its obligations under this Agreement. Each Party shall ensure within its territory the observance of all obligations and commitments under this Agreement by its respective central, regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them.

ARTICLE 6.12

No direct effect

1. Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the legal systems of the Parties.

2. A Party shall not expressly provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

PUBLIC

ARTICLE 6.13

Territorial application

1. This Agreement shall apply:

(a) with respect to the Union, to the territories in which the Treaty on European Union and the TFEU are applied and under the conditions laid down in those Treaties; and

(b) with respect to Indonesia, to its territory, which is defined as the land territories, internal waters, archipelagic waters, territorial sea, including the seabed and subsoil thereof, and the airspace over such territories and waters, as well as continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction as defined in its laws and in accordance with international law, including the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

2. References to "territory" in this Agreement shall be understood in accordance with paragraph 1, except as otherwise expressly provided.

ARTICLE 6.14

Annexes

1. The Annexes to this Agreement constitute integral parts thereof.

PUBLIC

2. Each of the Annexes to this Agreement shall form an integral part of the Chapter that refers to that Annex or to which reference is made in that Annex.

PUBLIC

ARTICLE 6.15

Future accessions to the Union

1. The Union shall notify Indonesia of any request made by a country to accede to the Union.

2. During the negotiations between the Union and the country seeking accession, the Union should provide, upon request of Indonesia, and to the extent possible, any relevant information regarding any matter covered by this Agreement.

3. For greater certainty, this Agreement shall apply to trade and investment between the new Member State of the Union and Indonesia from the date of accession of that new Member State to the Union.

4. In order to facilitate the implementation of paragraph 3, the Committee shall examine any effect of the accession to the Union on this Agreement and decide on the necessary amendments to this Agreement, and on any necessary adjustment or transition measures, sufficiently in advance of the date of accession of the new Member State to the Union. Such decision shall take effect on the date of accession of the new Member State to the Union.

5. The Union shall notify Indonesia of the entry into force of any accession to the Union.

ARTICLE 6.16

Authentic texts

1. This Agreement is drawn up in duplicate and is authentic in the language in which it was negotiated.

2. If requested by either Party within one month after the signature of the Agreement, any of the Bulgarian, Croatian, Czech, Danish, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Indonesian language versions shall be authenticated by an exchange of diplomatic notes between the European Union and Indonesia.

IN WITNESS WHEREOF, the undersigned, duly authorised to this effect, have signed this Agreement.

Done at …, this … day of … in the year …

For the European Union

For the Republic of Indonesia

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