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PROPOSAL

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 22 April 2022

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: COM(2022) 176 final - Annex

Subject: ANNEX to the Proposal for a Council Decision on the position to be taken on behalf of the European Union in the EPA Committee established under the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Union and its Member States, of the other part, regarding the adoption of the Rules of Procedure for Dispute Settlement

Delegations will find attached document COM(2022) 176 final - Annex.

Encl.: COM(2022) 176 final - Annex



Brussels, 22.4.2022
COM(2022) 176 final

ANNEX

ANNEX

to the

Proposal for a Council Decision

on the position to be taken on behalf of the European Union in the EPA Committee established under the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Union and its Member States, of the other part, regarding the adoption of the Rules of Procedure for Dispute Settlement

ATTACHMENT

DECISION No .../2022 OF THE EPA COMMITTEE

established under the stepping stone Economic Partnership Agreement between Ghana of the one part, and the European Union and its Member States, of the other part, regarding the adoption of the Rules of Procedure for Dispute Settlement

THE EPA COMMITTEE,

Having regard to the stepping stone Economic Partnership Agreement between Ghana, of the one part, and the European Union and its Member States, of the other part¹ (hereinafter referred to as ‘the Agreement’), signed in Brussels on 28 July 2016, and in particular Article 59 thereof,

Whereas the Agreement provides that Dispute Settlement procedures shall be governed by the Rules of Procedure, which shall be adopted by the EPA Committee. The Code of Conduct shall be annexed to these Rules of Procedure.

HAS ADOPTED THIS DECISION:

Article 1

The Rules of Procedure for Dispute Settlement are adopted as set out in the Annex.

Article 2

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

Done at,

¹ OJ L 287, 21.10.2016, p. 3.

ANNEX

RULES OF PROCEDURE FOR DISPUTE SETTLEMENT

A. DEFINITIONS

1. In Chapter 3 (Dispute settlement procedures) of the Agreement and under these Rules of Procedure, the following definitions apply:
 - (a) “administrative staff” in respect of a panellist, means individuals under the direction and control of a panellist, other than assistants;
 - (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;
 - (d) “complaining Party” means any Party that requests the establishment of panel under Article 49 (Initiation of the arbitration procedure) of the Agreement;
 - (e) “day” means a calendar day;
 - (f) “panel” means a panel established under Article 50 (Establishment of the arbitration panel) of the Agreement;
 - (g) “panellist” or “arbitrator” means a member of a panel;
 - (h) “Party complained against” means the Party that is alleged to be in violation of the covered provisions;
 - (i) “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 the Agreement.

B. NOTIFICATIONS

2. Any request, notice, written submission or other document of:
 - (a) the panel shall be sent to both Parties at the same time;
 - (b) a Party which is addressed to the panel shall be copied to the other Party at the same time; and
 - (c) a Party which is addressed to the other Party shall be copied to the panel at the same time, as appropriate.
3. Any notification referred to under Rule 2 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.
4. All notifications shall be addressed to the Directorate-General for Trade of the European Commission and to Chief Director, Ministry of Trade and Industry of Ghana, respectively.
5. Minor errors of a clerical nature in a request, notice, written submission or other document related to the panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

6. If the last day for delivery of a document falls on non-working day of the institutions of the European Union or of the government of Ghana, the time period for the delivery of the document shall end on the first following working day.

C. APPOINTMENT OF PANELLISTS

7. If pursuant to Article 50.3 (Establishment of the arbitration panel) of the Agreement, a panellist is selected by lot, the co-chair of the EPA Committee from the complaining Party shall promptly inform the co-chair of the Party complained against of the date, time and venue of the lot. The co-chair of the EPA Committee from the complaining Party, or his or her delegate, shall be requested to and shall conduct the lot as envisaged in paragraphs 3 and 4 of Article 50 (Establishment of the arbitration panel) of the Agreement. The co-chair of the EPA Committee from the complaining Party may delegate such selection by lot of the panellist.
8. The co-chair of the EPA Committee from the complaining Party shall select by lot the panellist or chairperson, within five days from the expiry of the time period referred to in paragraph 2 of Article 50 (Establishment of the arbitration panel), if any of the sub-lists referred in paragraph 1 of Article 64 (List of arbitrators):
 - (a) is not established, amongst those individuals who have been formally proposed by one or both Parties for the establishment of that particular sub-list; or
 - (b) no longer contains at least five individuals, amongst those individuals who remain on that particular sub-list.

The co-chair of the EPA Committee from the complaining Party may delegate such selection by lot of the panellist.

9. The co-chair of the EPA Committee from the complaining Party shall notify, in writing, each individual who has been selected to serve as a panellist of his or her appointment. Each individual shall confirm his or her availability to both Parties within five days from the date on which he or she was informed of his or her appointment. For the purposes of determining the date of establishment of the panel under paragraph 5 of Article 50 (Establishment of the arbitration panel) of the Agreement, the date on which the panellists are selected shall be considered to be the date on which the last of the three selected panellists has notified their acceptance of appointment.

D. TERMS OF REFERENCE

10. 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 this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel, to make findings on the conformity of the measure at issue with the provisions of the Agreement referred to in Article 46 (Scope) and to deliver a report in accordance with Articles 51 (Interim panel report) and 52 (Arbitration panel ruling).”
11. 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 Rule 10.

E. FUNCTIONS OF THE PANEL

12. 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 facts, 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.
13. 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.

F. ORGANISATIONAL MEETING

14. Unless the Parties agree otherwise, they shall meet the panel within seven days of its establishment in order to determine such matters that the Parties or the panel deem appropriate, including:
- (a) the remuneration and expenses to be paid to the panellists, unless agreed earlier. The remuneration shall be in accordance with WTO standards;
 - (b) the remuneration to be paid to assistants, unless agreed earlier. The total amount of the remuneration of an assistant or assistants of each panellist shall not exceed 50% of the remuneration of that panellist;
 - (c) the timetable of the proceedings; and
 - (d) *ad hoc* procedures to protect confidential information.
15. Panellists and representatives of the Parties may take part in this meeting *via* telephone or video conference.

G. WRITTEN SUBMISSIONS

16. The complaining Party shall deliver its written submission no later than 20 days after the date of establishment of the panel. The Party complained against shall deliver its written submission no later than 20 days after the date of delivery of the written submission of the complaining Party.

H. OPERATION OF THE PANEL

17. The chairperson of the panel shall preside at all its meetings. The panel may delegate to the chairperson the authority to make administrative and procedural decisions.
18. Unless otherwise provided in Chapter 3 (Dispute settlement procedures) of the Agreement or in these Rules of Procedure, the panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
19. Only panellists may take part in the deliberations of the panel, but the panel may permit their assistants to be present at its deliberations.
20. The drafting of any decision and report shall remain the exclusive responsibility of the panel and shall not be delegated.
21. Where a procedural question arises that is not covered by the Chapter 3 (Dispute settlement procedures) of the Agreement, the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

22. When the panel considers that there is a need to modify any of the time periods for the proceedings other than the time periods set out in Chapter 3 (Dispute settlement procedures) of the Agreement, or to make any other procedural or administrative adjustment, it shall first consult the Parties and subsequently inform them, in writing, of the reasons for the change or adjustment and of the time period or adjustment needed.

I. REPLACEMENT

23. When a Party considers that a panellist does not comply with the requirements of the Code of Conduct for Panellists and Mediators (Annex I to these Rules of Procedure) and for that reason should be replaced, that Party shall notify the other Party within 15 days from when it obtained sufficient evidence of the panellist's alleged failure to comply with the requirements of that Code of Conduct.
24. The Parties shall consult within 15 days of the notification referred to in Rule 23. They shall inform the panellist of his or her alleged failure and they may request the panellist to take steps to ameliorate the failure. They may also, if they so agree, remove the panellist and select a new panellist in accordance with Article 50 (Establishment of the arbitration panel) of the Agreement.
25. If the Parties fail to agree on the need to replace the panellist, other than the chairperson of the panel, either Party may request that this matter be referred to the chairperson of the panel, whose decision shall be final.
- If the chairperson of the panel finds that the panellist does not comply with the requirements of the Code of Conduct for Panellists and Mediators, the new panellist shall be selected in accordance with Article 50 (Establishment of the arbitration panel) of the Agreement.
26. If the Parties fail to agree on the need to replace the chairperson, either Party may request that this matter be referred to one of the remaining members of the pool of individuals from the sub-list of chairpersons established under Article 64 (Lists of arbitrators) of the Agreement. His or her name shall be drawn by lot by the co-chair of the EPA Committee from the requesting Party, or the chair's delegate. The decision by the selected person on the need to replace the chairperson shall be final.
- If this person finds that the chairperson does not comply with the requirements of the Code of Conduct for Panellists and Mediators, the new chairperson shall be selected in accordance with Article 50 (Establishment of the arbitration panel) of the Agreement.
27. The time period for the delivery of the report or decision shall be extended for the time necessary for the appointment of the new panellist.

J. SUSPENSION AND TERMINATION

28. At the request of both Parties, the panel shall suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months. The panel shall resume its work before the end of the suspension period at the written request of both Parties, or at the end of the suspension period at the written request 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. In the event of a suspension of the work of the panel,

the relevant time periods under this Section shall be extended by the same period of time for which the work of the panel was suspended.

K. HEARINGS

29. On the basis of the timetable determined pursuant to Rule 14, after consulting with the Parties and the other panellists, the chairperson of the panel shall notify the Parties of the date, time and venue of the hearing. This information shall be made publicly available by the Party, on whose territory the hearing takes place, unless the hearing is closed to the public.
30. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Ghana and in Accra if the complaining Party is the European Union. The Party complained against shall bear the expenses derived from the logistical administration of the hearing.
31. The panel may convene additional hearings if the Parties so agree.
32. All panellists shall be present during the entirety of the hearing.
33. Unless the Parties agree otherwise, the following persons may attend the hearing, irrespective of whether the hearing is open to the public or not:
 - (a) representatives of a Party;
 - (b) advisers;
 - (c) assistants and administrative staff;
 - (d) interpreters, translators and court reporters of the panel; and
 - (e) experts, as decided by the panel pursuant to Article 60 (Information and technical advice) of the Agreement.
34. No later than five days before the date of a hearing, each Party shall deliver to the panel and to the other Party a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives and advisers who will be attending the hearing.
35. The panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time in both argument and rebuttal argument:

Argument

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

Rebuttal Argument

- (a) reply of the complaining Party;
 - (b) counter-reply of the Party complained against.
36. The panel may direct questions to either Party at any time during the hearing.
 37. The panel shall arrange for a transcript of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript and the panel may consider those comments.
 38. Each Party may deliver a supplementary written submission concerning any matter that arises during the hearing within 10 days after the date of the hearing.

L. QUESTIONS IN WRITING

39. The panel may submit, at any time during the proceedings, questions in writing to one or both Parties. Any questions submitted to one Party shall be copied to the other Party.
40. Each Party shall provide the other Party with a copy of its responses to the questions submitted by the panel. The other Party shall have an opportunity to provide comments in writing on the Party's responses within five days after the delivery of such copy.
41. At the request of a Party, or upon 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.

M. CONFIDENTIALITY

42. Each Party and the panel shall treat as confidential any information submitted by the other Party to the panel that the other Party has designated as confidential. When a Party submits to the panel a written submission, which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information and which shall be disclosed to the public.
43. Nothing in these Rules of Procedure shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.
44. The panel shall hold the relevant parts of the session in private when the submission and arguments of a Party contains confidential information. The Parties shall maintain the confidentiality of the panel hearings when the hearings are held in closed session.

N. EX PARTE CONTACTS

45. The panel shall not meet or communicate with a Party in the absence of the other Party.
46. A panellist shall not discuss any aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other panellists.

O. AMICUS CURIAE SUBMISSIONS

47. Unless the Parties agree otherwise within five days of the date of the establishment of the panel, the panel may receive unsolicited written submissions from natural persons of a Party or legal persons established in the territory of a Party that are independent from the governments of the Parties, provided that they:
 - (a) are received by the panel within 10 days of the date of the establishment of the panel;
 - (b) are concise and in no case longer than 15 pages, including any annexes, typed at double space;
 - (c) are directly relevant to a factual or a legal issue under consideration by the panel;
 - (d) contain a description of the person making the submission, including for a natural person his or her nationality and for a legal person its place of

establishment, the nature of its activities, its legal status, general objectives and its source of financing;

- (e) specify the nature of the interest that the person has in the panel proceedings; and
- (f) are drafted in the languages chosen by the Parties in accordance with rules 54 and 55 of these Rules of Procedure.

- 48. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments, within 10 days of the delivery, to the panel.
- 49. The panel shall list in its report all the submissions it has received pursuant to rule 47. The panel shall not be obliged to address in its report the arguments made in such submissions, however, if it does, it shall also take into account any comments made by the Parties pursuant to rule 48.

P. URGENT CASES

- 50. In cases of urgency referred to in paragraph 2 of Article 52 (Arbitration panel ruling) of the Agreement, the panel, after consulting the Parties, shall adjust, as appropriate, the time periods referred to in these Rules of Procedure except for the time periods referred to in Rule 10 (Terms of Reference). The panel shall notify the Parties of those adjustments.
- 51. If a Party so requests, the panel shall decide, within 10 days of its establishment, whether the case concerns matters of urgency.

Q. COSTS

- 52. Each Party shall bear its own expenses derived from the participation in the panel procedure.
- 53. Without prejudice to rule 30, the Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the panellists and their assistants.

R. TRANSLATION AND INTERPRETATION

- 54. During the consultations referred to in Article 47 of the Agreement or during the mediation referred to in Article 48 of the Agreement, and no later than the meeting referred to in rule 14 of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the panel.
- 55. If the Parties are unable to agree on a common working language, each Party shall make its written submissions in its chosen language. Each Party shall provide at the same time a translation in the language chosen by the other Party, unless its submissions are written in one of the working languages of the WTO. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.
- 56. Panel reports and decisions shall be issued in the language or languages chosen by the Parties. If the Parties have not agreed on a common working language, the interim and final report of the panel shall be issued in one of the working languages of the WTO.
- 57. Any Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these Rules of Procedure.

58. Each Party shall bear the costs of the translation of its written submissions. Any costs incurred for translation of a ruling shall be borne equally by the Parties.

S. OTHER PROCEDURES

59. The time periods laid down in these Rules of Procedure shall be adjusted in accordance with the special time periods provided for the adoption of a report or decision by the panel in the proceedings provided for in Article 54 (The reasonable period of time for compliance), Article 55 (Review of any measure taken to comply with the arbitration panel ruling), Article 56 (Temporary remedies in case of non-compliance) and Article 57 (Review of any measure taken to comply after the adoption of appropriate measures) of the Agreement.

ANNEX
CODE OF CONDUCT

I. Definitions

1. In this Code of Conduct:
 - (a) “administrative staff” means, in respect of a panellist, individuals under the direction and control of a panellist, other than assistants;
 - (b) “assistant” means an individual who, under the terms of appointment of an panellist, conducts research or provides assistance to that panellist;
 - (c) “candidate” means an individual whose name is on the list of panellists referred to in Article 64 (Lists of arbitrators) of the Agreement and who is under consideration for selection as a panellist under Article 50 (Establishment of the arbitration panel) of the Agreement;
 - (d) “mediator” means an individual who has been selected as mediator in accordance with Article 48 (Mediation) of the Agreement;
 - (e) “panellist” or “arbitrator” means a member of a panel.

II. Governing Principles

2. In order to preserve the integrity and impartiality of the dispute settlement mechanism each candidate and panellist shall:
 - (a) get acquainted with this Code of Conduct;
 - (b) be independent and impartial;
 - (c) avoid direct or indirect conflicts of interests;
 - (d) avoid impropriety and the appearance of impropriety or bias;
 - (e) observe high standards of conduct; and
 - (f) not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.
3. A panellist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.
4. A panellist shall not use his or her position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence him or her.
5. A panellist shall not allow past or existing financial, business, professional, personal, or social relationships or responsibilities to influence his or her conduct or judgement.
6. A panellist shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.

III. Disclosure obligations

7. Prior to the acceptance of his or her appointment as a panellist under Article 50 (Establishment of the arbitration panel) of the Agreement, a candidate requested to

serve as a panellist shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceedings. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters, including financial interests, professional interests, or employment or family interests.

8. The disclosure obligation under paragraph 7 is a continuing duty which requires a panellist to disclose any such interests, relationships or matters that may arise during any stage of the proceedings.
9. A candidate or a panellist shall communicate to the EPA Committee for consideration by the Parties any matters concerning actual or potential violations of this Code of Conduct at the earliest time he or she becomes aware of them.

IV. Duties of Panellists

10. Upon acceptance of his or her appointment, a panellist shall be available to perform and shall perform his or her duties thoroughly and expeditiously throughout the proceedings, and with fairness and diligence.
11. A panellist shall consider only the issues raised in the proceedings and necessary for a decision and shall not delegate this duty to any other person.
12. A panellist shall take all appropriate steps to ensure that his or her assistants and administrative staff are aware of, and comply with, the obligations incurred by panellists under Parts II, III, IV and VI of this Code of Conduct.

V. Obligations of Former Panellists

13. Each former panellist shall avoid actions that may create the appearance that he or she was biased in carrying out the duties or derived advantage from the decision of the panel.
14. Each former panellist shall comply with the obligations in Part VI of this Code of Conduct.

VI. Confidentiality

15. A panellist shall not, at any time, disclose any non-public information concerning the proceedings or acquired during the proceedings for which he or she has been appointed. A panellist shall not, in any case, disclose or use such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
16. A panellist shall not disclose a decision of the panel or parts thereof prior to its publication in accordance with Chapter 3 (Dispute settlement procedures) of the Agreement.
17. A panellist shall not, at any time, disclose the deliberations of a panel, or any panellist's view, nor make any statements on the proceedings for which he or she has been appointed or on the issues in dispute in the proceedings.

VII. Expenses

18. Each panellist shall keep a record and render a final account of the time devoted to the proceedings and of his or her expenses, as well as the time and expenses of his or her assistants and administrative staff.

VIII. Mediators

19. This Code of Conduct shall apply to mediators, *mutatis mutandis*.
