Council Decision (EU) 2019/1954 of 18 November 2019 establishing the position to be adopted, on behalf of the European Union, in the EPA Committee set up by the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, in connection with the adoption of the rules of procedure for mediation, the rules of procedure for arbitration and the code of conduct for arbitrators

COUNCIL DECISION (EU) 2019/1954

of 18 November 2019

establishing the position to be adopted, on behalf of the European Union, in the EPA Committee set up by the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, in connection with the adoption of the rules of procedure for mediation, the rules of procedure for arbitration and the code of conduct for arbitrators

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9), thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part[(1)] ('the Agreement'), was signed on behalf of the Union by Council Decision 2009/152/EC[(2)] and has been applied on a provisional basis since 4 August 2014.

(2) In accordance with Article 80(1) of the Agreement, the EPA Committee is required to lay down the rules of procedure and the code of conduct on the settlement of disputes.

(3) In accordance with Article 88 of the Agreement, the EPA Committee may decide to amend Title VI of the Agreement and the Annexes thereto.

(4) The EPA Committee, at its next annual meeting is to adopt a decision establishing the rules of procedure for mediation, the rules of procedure for arbitration, and the code of conduct of arbitrators.

(5) It is appropriate to establish the position to be taken, on behalf of the Union, in the EPA Committee concering the adoption of the envisaged decision, as that decision will be binding on the Union.

(6) It is therefore appropriate that the position of the Union in the EPA Committee be based on the attached draft Decision,

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/1954. (See end of Document for details)*

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken, on behalf of the Union, in the EPA Committee set up by the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part, shall be based on the EPA Committee's draft Decision on the rules of procedure for mediation, the rules of procedure for arbitration, and the code of conduct for arbitrators, annexed to this Decision.

Article 2

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

Done at Brussels, 18 November 2019.

For the Council

The President

J. LEPPÄ

***Changes to legislation:** There are currently no known outstanding effects for the Council Decision (EU) 2019/1954. (See end of Document for details)*

ANNEX I

RULES OF PROCEDURE FOR MEDIATION

Article 1

Scope of application

1 The provisions contained in these rules of procedure supplement and clarify the Interim Agreement with a view to an Economic Partnership Agreement between the European Community and its Member States, of the one part, and the Central Africa Party, of the other part ('the Agreement'), in particular Article 69 (mediation) thereof.

2 These rules of procedure are intended to enable the Parties to resolve any disputes that may arise between them through a mutually satisfying solution reached owing to a comprehensive and expeditious mediation procedure.

3 Within the meaning of these rules of procedure, 'mediation' means any proceeding, regardless of what that proceeding is called, in which the Parties ask a mediator to help them to settle their dispute amicably.

Article 2

Start of the proceeding

1 A Party may request, in writing and at any time, that the Parties enter into a mediation proceeding. The request must be sufficiently detailed to present clearly the concerns of the complaining Party. It must also:

2 The mediation proceeding may only be initiated by mutual consent of the Parties. Where a Party requests mediation pursuant to paragraph 1, the other Party shall consider the request and reply in writing within five days of the request. Failing this, the request shall be considered to have been dismissed.

Article 3

Selection of the mediator

1 The Parties shall mutually agree on a mediator at the beginning of the mediation proceeding, and no later than 15 days after receipt of the reply to the mediation request.

2 A mediator shall not be a citizen of either Party, unless the Parties agree otherwise.

3 The mediator shall provide a written statement confirming his or her impartiality and independence and his or her availability to oversee the mediation proceeding.

4 The mediator shall comply *mutatis mutandis* with the code of conduct for arbitrators.

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/1954. (See end of Document for details)*

Article 4

Conduct of the mediation proceeding

1 The mediator shall assist, in an impartial and transparent manner, the Parties in bringing clarity to the measure at issue and its possible trade effects between the Parties, and in reaching a mutually satisfying solution.

2 The mediator may decide on the most appropriate approach to bringing clarity to the measure concerned and its possible impact on trade between the Parties. In particular, the mediator may organise meetings between the Parties, consult the Parties jointly or individually, seek the assistance of, or consult, relevant experts and stakeholders, and provide any additional support requested by the Parties. However, before seeking the assistance of, or consulting, relevant experts and stakeholders, the mediator shall consult the Parties. Where the mediator wishes to meet, or talk to, one of the Parties and/or its counsel separately, he or she shall inform the other Party in advance or as soon as possible after his or her unilateral meeting or discussion with the first Party.

3 The mediator may offer advice and propose a solution that he or she submits to the Parties which may accept or reject the proposed solution or even agree on a different solution. However, the mediator may not, in any way, advise or comment on the consistency of the measure at issue with the Agreement.

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

5 The Parties shall endeavour to reach a mutually satisfactory solution within 60 days from the appointment of the mediator. Pending a final agreement, the Parties may consider possible interim solutions, especially if the measure relates to perishable goods.

6 The solution may be adopted by means of an EPA Committee decision. Mutually satisfactory solutions shall be made public, unless the Parties decide otherwise. However, the version disclosed to the public may not contain any information classified by either Party as confidential.

7 At the request of the Parties, the mediator shall submit in writing a draft factual report to the Parties, providing a brief summary of the measure at issue in the proceeding and any mutually satisfactory solution reached as the final outcome of the proceeding, including possible interim solutions. The mediator shall grant the Parties 15 days to comment on the draft report. After considering the comments of the Parties submitted within the deadline provided, the mediator shall submit, in writing, a final factual report to the Parties within 15 days. The factual report may not contain any interpretation of the Agreement.

Article 5

End of the mediation proceeding

The proceeding shall be terminated:

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

***Changes to legislation:** There are currently no known outstanding effects for the Council Decision (EU) 2019/1954. (See end of Document for details)*

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

(c) by a written declaration of a Party after exploring solutions mutually agreed under the mediation proceeding and after having considered any advice and proposed solutions by the mediator, on the date of that declaration. Such declaration may not be issued before the period set out in Article 4(5) of these rules of procedure has expired; or

(d) at any stage of the proceeding by mutual agreement of the Parties, on the date of that agreement.

Article 6

Implementation of a mutually satisfactory solution

1 Where the Parties have agreed to a solution, each Party shall take the measures necessary to implement it within the agreed time limit.

2 The implementing Party shall inform the other Party, in writing and within the agreed time limit, of any steps or measures taken to implement the mutually satisfactory solution.

Article 7

Confidentiality and relationship to dispute settlement

1 All information relating to the mediation proceeding must remain confidential, unless its disclosure is required by law or required for the implementation or performance of the agreement resulting from the mediation.

2 Unless the Parties agree otherwise, and without prejudice to Article 4(6) of these rules of procedure, all steps in the proceeding, including any advice or proposed solutions, shall be kept confidential. However, either Party may disclose to the public that mediation is taking place. The obligation of confidentiality does not extend to factual information already existing in the public domain.

3 The mediation proceeding is without prejudice to the Parties' rights and obligations under the provisions of the Agreement on dispute settlement or in any other relevant agreement.

4 The Parties shall not be required to undertake consultations before initiating the mediation proceeding. However, a Party should in principle apply the other relevant cooperation or consultation provisions of the Agreement before initiating the mediation proceeding.

5 A Party shall not rely on the following elements, or introduce them as evidence in the framework other dispute settlement proceedings under the Agreement or any other agreement, nor shall an arbitration panel take into consideration:

6 Unless the Parties agree otherwise, a mediator may not be a member of an arbitration panel in the framework of dispute settlement proceedings under the Agreement or under the World Trade Organization (WTO) Agreement involving the same matter for which he or she has been a mediator.