Decision (EU) 2019/339 of the President of the European Commission of 21 February 2019 on the function and terms of reference of the hearing officer in certain trade proceedings

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THE PRESIDENT OF THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Rules of Procedure of the Commission[(1)], and in particular Article 22 thereof,

Whereas:

(1) Article 41 of the Charter of Fundamental Rights of the European Union provides that every person has the right to have their affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. That article sets out a series of procedural rights that apply to interested parties involved in administrative proceedings which may affect their interests.

(2) In 2007, the Commission created the function of hearing officer, in order to safeguard the effective exercise of the procedural rights of interested parties and ensure that trade proceedings are handled impartially, fairly and within a reasonable time. From 2007 to 2012, that role was entrusted to an official of the Directorate-General for Trade experienced in trade defence issues.

(3) In 2012, in order to strengthen the role of the hearing officer, and to reinforce the transparency and fairness of trade proceedings, the President of the Commission adopted Decision 2012/199/EU[(2)]. In order to take into account past experience, new legal developments including the reference to the role of the hearing officer in Regulations (EU) 2016/1036[(3)] and (EU) 2016/1037[(4)] of the European Parliament and of the Council as well as increasing procedural constraints, that Decision should be replaced.

(4) The function of the hearing officer should be attributed to an independent person experienced in trade proceedings. The hearing officer should be appointed by the Commission in accordance with the rules laid down in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union. In accordance with those rules, consideration may be given to candidates who are not officials of the Commission.

Changes to legislation: *There are currently no known outstanding effects for the Decision (EU) 2019/339 of the President of the European Commission. (See end of Document for details)*

(5) In order to ensure full independence, the hearing officer should be attached, for administrative purposes only, to the member of the Commission responsible for trade policy.

(6) The main tasks of the hearing officer should be to advise the member of the Commission responsible for trade policy and the Director-General responsible for trade policy ('the Director-General'), to guarantee procedural rights, decide on requests for access to the file, to take decisions on the confidential nature of documents and to review the position of the Commission services responsible for the extension of deadlines. The hearing officer should seek to ensure that in the preparation of draft legal acts or proposals, due account is taken of all the relevant facts, whether favourable or unfavourable to the parties concerned.

(7) The hearing officer should ensure that the opportunities afforded to interested parties for presenting evidence of facts and defence of their interests during the proceeding are such as to enable them to exercise their rights of defence in the most effective manner.

(8) The intervention of the hearing officer should take place in a manner that any follow-up can be implemented, bearing in mind the time constraints of the proceedings.

(9) It is necessary to determine the manner and circumstances in which the hearing officer may intervene, and to establish rules for the organisation, conduct and follow-up of such interventions.

(10) The power of the hearing officer to decide on issues concerning access to the file, confidentiality and deadlines should provide the parties involved in a trade proceeding with an additional procedural guarantee whilst not impeding the orderly conduct and timely completion of proceedings.

(11) The reports of the hearing officer should ensure that the main issues dealt with, and recommendations made by the hearing officer are brought to the attention of the decision-makers and thus provide an additional guarantee for the respect of the rights of parties affected by a trade proceeding. The annual reports of the hearing officer should also inform the Member States, the European Parliament and the public about the main activities of the hearing officer.

(12) When processing personal data, the hearing officer should adhere to Regulation (EU) 2018/1725 of the European Parliament and of the Council[(5)].

(13) This Decision should be without prejudice to the general rules granting or excluding access to Commission documents,

HAS ADOPTED THIS DECISION:

Article 1

The hearing officer

A specific function of hearing officer in trade proceedings shall be created.

The task of the hearing officer shall be to safeguard the effective exercise of the procedural rights of the interested parties provided for in the following Regulations ('the basic Regulations') and to ensure that the trade proceedings are handled impartially, fairly and within a reasonable time:

(a) Regulation (EU) 2016/1036 and in particular Article 5(10) and (11), Article 6(5) to (8), Article 8(3), (4) and (9), and Articles 18 to 21 thereof;

(b) Regulation (EU) 2016/1037, and in particular Article 10(12) and (13), Article 11(5) to (8) and (10), Article 13(3), (4) and (9), and Articles 28 to 31 thereof;

(c) Regulation (EU) 2015/478 of the European Parliament and of the Council[(6)], and in particular Articles 5 and 8 thereof;

(d) Regulation (EU) 2015/755 of the European Parliament and of the Council[(7)], and in particular Articles 3 and 5 thereof;

(e) Regulation (EU) 2015/1843 of the European Parliament and of the Council[(8)], and in particular Articles 9 and 10 thereof;

(f) Regulation (EU) 2016/1035 of the European Parliament and of the Council[(9)], and in particular Article 5(12) and (13), Article 6(5) to (8), and Articles 12, 13 and 14 thereof;

(g) Regulation (EC) No 868/2004 of the European Parliament and of the Council[(10)], and in particular Articles 7 and 8 thereof;

(h) Regulation (EU) No 978/2012 of the European Parliament and of the Council[(11)], and in particular Article 24 thereof, and Commission Delegated Regulation (EU) No 155/2013[(12)], and in particular Article 6 thereof, and Commission Delegated Regulation (EU) No 1083/2013[(13)], and in particular Article 5 thereof;

(i) Regulation (EU) 2015/476 of the European Parliament and of the Council[(14)], and in particular Articles 1(2) and 2(2) thereof.

Article 2

Definitions

For the purposes of this Decision the following definitions shall apply:

(a) 'trade proceeding' means any investigation or administrative procedure performed by the Commission services under any of the basic Regulations;

(b) 'interested party' means any person whose interests are affected by a trade proceeding pursuant to the basic Regulations;

(c) 'rights of the interested parties' means procedural rights and the right of every person to have their affairs handled impartially, fairly and within a reasonable time in trade proceedings.

Changes to legislation: *There are currently no known outstanding effects for the Decision (EU) 2019/339 of the President of the European Commission. (See end of Document for details)*

Article 3

Appointment, termination of appointment and deputising

1 The Commission shall appoint the hearing officer in accordance with the rules laid down in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union.

2 The appointment of the hearing officer shall be published in the *Official Journal of the European Union*. Any interruption, termination of appointment or transfer of the hearing officer shall be the subject of a reasoned decision of the Commission. That decision shall be published in the *Official Journal*.

3 The hearing officer shall be attached, for administrative purposes, to the member of the Commission responsible for trade policy.

4 Where the hearing officer is unable to act in a given case, the member of the Commission responsible for trade policy, where possible after consultation with the hearing officer, shall designate an official, who is not involved in the case concerned and has sufficient experience in trade proceedings, to carry out the hearing officer's duties on a case by case basis.

5 Paragraph 4 shall apply where the hearing officer perceives an actual or potential conflict of interest in the performance of their functions, and duly submits a request to be relieved of their duties, in a specific case, to the member of the Commission responsible for trade policy.

6 Where the hearing officer is unable to act for a period of time not limited to a given case or has ceased to act as hearing officer, the member of the Commission responsible for trade policy shall designate an official experienced in trade proceedings to carry out the hearing officer's duties *ad interim*, until the hearing officer is in a position to resume their duties or until the Commission decides to appoint a new hearing officer.

Article 4

Principles of intervention of the hearing officer

1 The duties of the hearing officer shall be carried out in accordance with paragraphs 2 to 11.

2 The hearing officer shall act independently and shall not take instructions in fulfilling their tasks.

3 The hearing officer shall be bound by the rules of the Staff Regulations prohibiting unauthorised disclosure of information received in the line of duty and shall continue to be bound by that obligation after leaving the service.

4 The hearing officer shall take account of the need for effective application of the basic Regulations in accordance with Union law and the relevant case law of the Court of Justice of the European Union.

5 The hearing officer shall have access without restriction and undue delay to any files pertaining to a trade proceeding at any time of the proceeding.

6 The hearing officer shall make decisions as provided for in Articles 12 to 16 and may make recommendations to the Commission services responsible for the investigation on any issue concerning the rights of the interested parties who have requested the intervention of the hearing officer. The hearing officer shall seek to ensure that in the preparation of draft legal acts or proposals to the Commission, due account is taken of all the relevant facts, whether favourable or unfavourable to the parties concerned.

7 The hearing officer shall be kept informed by the Director responsible or their delegate about the development of all proceedings in which the hearing officer has intervened until the adoption of a final legal act.

8 The hearing officer shall be informed without delay of any substantial change of the Commission's position at the stage of imposition of definitive measures in trade proceedings in order to assess any potential impact on the rights of the interested parties.

9 The hearing officer shall advise the member of the Commission responsible for trade policy and, where appropriate, the Director-General, concerning the follow-up of the hearing officer's recommendations and, where necessary, on possible remedies.

10 The Director responsible shall consult the hearing office on any changes or updates of policy regarding procedural matters and substantive issues having an impact on the rights of the interested parties or on any other issue arising from a trade proceeding.

11 The hearing officer may present observations and recommendations on any matter arising out of a trade proceeding to the member of the Commission responsible for trade policy and, where necessary, the Director-General.

Article 5

Intervention of the hearing officer

1 Interested parties may request the intervention of the hearing officer in trade proceedings. Any request shall be submitted in good time, bearing in mind the time constraints of the proceedings. Interested parties shall request the intervention of the hearing officer at the earliest possible time following the occurrence of the event justifying such intervention.

2 The hearing officer may also act at the request of the member of the Commission responsible for trade policy, the Director-General, the Director responsible for a trade proceeding or their delegate, or a Director of another service consulted on a trade proceeding.

3 Any request for intervention of the hearing officer shall be made in writing and shall state the issues to be brought to the attention of the hearing officer, including an explanation on how the applicant's rights of defence are affected.

4 Any final legal act or proposal of the Commission shall be accompanied by a note from the hearing officer stating whether they intervened in the proceeding concerned and the nature of any intervention.

5 The hearing officer shall receive a copy of the consultations launched by the competent Commission services pursuant to Article 23(3) of the Rules of Procedure of the Commission.