Council Decision (EU) 2019/117 of 21 January 2019 on the position to be taken on behalf of the European Union within the Joint Council established under the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, as regards the adoption of the Rules of Procedure for dispute avoidance and settlement and the Code of Conduct for arbitrators and mediators

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on the position to be taken on behalf of the European Union within the Joint Council established under the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, as regards the adoption of the Rules of Procedure for dispute avoidance and settlement and the Code of Conduct for arbitrators and mediators

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part[(1)] ('the Agreement') was signed by the Union and its Member States on 10 June 2016. It has been provisionally applied between the Union, of the one part, and Botswana, Lesotho, Namibia, Eswatini and South Africa, of the other part, since 10 October 2016, and between the Union and Mozambique since 4 February 2018.

(2) Pursuant to Article 102(1) of the Agreement, the Joint Council is to have the power to take decisions in respect of all matters covered by the Agreement.

(3) Pursuant to Article 89(1) of the Agreement, the Joint Council is to adopt Rules of Procedure and a Code of Conduct for arbitrators and mediators. Therefore, the Joint Council is to adopt, at its first meeting, a decision with regard to the Rules of Procedure for dispute avoidance and settlement and the Code of Conduct for arbitrators and mediators acting under Part III of the Agreement.

(4) It is appropriate to establish the position to be taken on the Union's behalf within the Joint Council concerning the adoption of the Rules of Procedure for dispute avoidance and settlement and the Code of Conduct for arbitrators and mediators.

(5) The position of the Union within the Joint Council should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/117. (See end of Document for details)*

Article 1

The position to be taken on the Union's behalf within the Joint Council as regards the adoption of the Rules of Procedure for dispute avoidance and settlement and the Code of Conduct for arbitrators and mediators shall be based on the draft Decision of the Joint Council attached to this Decision.

Article 2

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

Done at Brussels, 21 January 2019.

For the Council

The President

F. MOGHERINI

***Changes to legislation:** There are currently no known outstanding effects for the Council Decision (EU) 2019/117. (See end of Document for details)*

ANNEX I

Rules of Procedure for dispute avoidance and settlement

Article 1

Definitions

In these Rules of Procedure and in accordance with Part III (Dispute avoidance and settlement) of the Agreement:

(a) ‘administrative staff’, in respect of an arbitrator, means individuals under the direction and control of an arbitrator, other than assistants;

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

(c) ‘the Agreement’ means the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part, signed on 10 June 2016;

(d) ‘arbitrator’ means a member of the arbitration panel;

(e) ‘arbitration panel’ means a panel established under Article 80 of the Agreement;

(f) ‘assistant’ means an individual who, under the terms of appointment and under the direction and control of an arbitrator, conducts research or provides assistance to that arbitrator;

(g) ‘complaining Party’ means any Party that requests the establishment of an arbitration panel under Article 80 of the Agreement;

(h) ‘day’ means a calendar day;

(i) ‘Party’ means a Party to the dispute;

(j) ‘Party complained against’ means the Party that is alleged to be in violation of the provisions covered under Article 76 of the Agreement; and

(k) ‘representative of a Party’ means an employee or any individual appointed by a government department, agencyF or any other public entity of a Party who represents the Party for the purposes of a dispute under the Agreement.

Article 2

Notifications

1 Any request, notice, written submission or other document of the arbitration panel shall be sent to both Parties at the same time.

2 Any notification referred to in paragraph 1 shall be made by email or, where appropriate, any other means of telecommunication that provide a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/117. (See end of Document for details)*

3 All notifications shall be addressed to the Directorate-General for Trade of the European Commission of the European Union and to the SADC EPA States coordinator, provided for in Article 105 of the Agreement.

4 Minor errors of a clerical nature in a request, notice, written submission or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

5 If the last day for delivery of a document falls on a public holiday of the European Commission or of the SADC EPA State or States concerned, the document shall be deemed delivered on the next business day.

6 Depending on the nature of the dispute, all requests and notifications addressed to the Trade and Development Committee shall also be copied to the other relevant subcommittees established under the Agreement.

Article 3

Appointment of arbitrators

1 If, pursuant to Article 80 of the Agreement, an arbitrator is selected by lot, the Chairperson of the Trade and Development Committee shall promptly inform the Parties of the date, time and venue of the lot.

2 The Parties may be present during the lot, and the lot shall be carried out with the Party or Parties that are present.

3 The Chairperson of the Trade and Development Committee shall notify, in writing, each individual who has been selected to serve as an arbitrator of his or her appointment. Each individual shall confirm his or her availability to both Parties within five days of the date on which he or she was informed of his or her appointment.

4 If the list referred to in Article 94 of the Agreement has not been established or does not contain sufficient names at the time a request is made pursuant to Article 80(3) of the Agreement, the arbitrators shall be drawn by lot from the individuals who have been formally proposed by one or both of the Parties.

Article 4

Organisational meeting

1 Unless the Parties agree otherwise, they shall meet the arbitration panel within 10 days of its establishment in order to determine such matters as the Parties or the arbitration panel deem appropriate, including:

2 Arbitrators and representatives of the Parties may take part in the meeting referred to in paragraph 1 via telephone or video conference.

Article 5

Terms of reference

1 Unless the Parties agree otherwise, within seven days of the date of establishment of the arbitration panel, the terms of reference of the arbitration panel shall be:

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

Article 6

Written submissions

The complaining Party shall deliver its written submission no later than 20 days after the date of establishment of the arbitration 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.

Article 7

Operation of the arbitration panel

1 The Chairperson of the arbitration panel shall preside at all its meetings. The arbitration panel may delegate to the Chairperson the authority to make administrative and procedural decisions.

2 Unless otherwise provided in Part III of the Agreement or in these Rules of Procedure, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

3 Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit arbitrators' assistants to be present at its deliberations.

4 The drafting of any decision or report shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

5 Where a procedural question arises that is not covered by Part III of the Agreement and the Annexes thereto, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

6 When the arbitration panel considers that there is a need to change any of the time periods for the proceedings other than the time periods set out in Part III of the Agreement or to make any other procedural or administrative adjustment, it shall inform the Parties, in writing and after consulting them, of the reasons for the change or adjustment and of the new time period or adjustment needed.

Article 8

Replacement

1 If an arbitrator is unable to participate in the proceedings, withdraws or needs to be replaced, a replacement shall be selected in accordance with Article 80(3) of the Agreement.

2 When a Party considers that an arbitrator does not comply with the requirements of Annex II (Code of Conduct for arbitrators and mediators) and for this reason should be replaced, that Party shall notify the other Party within 15 days of the date on which it obtained sufficient evidence of the arbitrator's alleged failure to comply with the requirements of that annex.

3 The Parties shall consult one another within 15 days of the notification to the other Party.