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European Union

Brussels, 13 May 2020  
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**Interinstitutional File:**  
**2020/0076(NLE)**

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ACP 27  
WTO 78  
COAFR 137  
RELEX 326

## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 May 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 192 final
Subject:	Proposal for a COUNCIL DECISION establishing the position to be taken on behalf of the European Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, in connection with the adoption of the procedure for the settlement of disputes and the code of conduct for arbitrators

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Delegations will find attached document COM(2020) 192 final.

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Encl.: COM(2020) 192 final



Brussels, 12.5.2020  
COM(2020) 192 final

2020/0076 (NLE)

Proposal for a

## **COUNCIL DECISION**

**establishing the position to be taken on behalf of the European Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, in connection with the adoption of the procedure for the settlement of disputes and the code of conduct for arbitrators**

## EXPLANATORY MEMORANDUM

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the Decision establishing the position to be adopted on behalf of the European Union ('the Union') in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part ('the Agreement')<sup>1</sup>, in connection with the envisaged adoption of the rules of procedure for the settlement of disputes and the code of conduct for arbitrators.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. EU-Côte d'Ivoire Stepping Stone Economic Partnership Agreement**

The aim of the Agreement is to establish an initial framework for an economic partnership agreement in accordance with the Cotonou Agreement. Since 3 September 2016, the Agreement has been applied on a provisional basis.

#### **2.2. EPA Committee**

The EPA Committee is the joint institutional body of the Agreement. Article 73 of the Agreement provides that the EPA Committee is to be responsible for the administration of all the fields covered by the Agreement and for the achievement of all the tasks mentioned therein. The EPA Committee is to reach its decisions by consensus. The operation of the EPA Committee is laid down in its rules of procedure<sup>2</sup>.

#### **2.3. Act envisaged by the EPA Committee**

At its fifth meeting on [date], the EPA Committee must adopt a decision concerning dispute settlement procedures ('the envisaged act').

Article 59(1) of the Agreement provides that dispute settlement procedures shall be governed by the rules of procedure to be adopted by the EPA Committee.

The purpose of the envisaged act is to lay down the rules and procedures for implementing the measures provided for in Title V of the Agreement in order to settle disputes which may arise between the Parties. The adoption of these rules is an essential element for finalising the operational framework for the Agreement's provisions on dispute settlement.

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

This proposal for a Council Decision establishes the position to be taken on behalf of the Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, regarding the establishment of procedures for the settlement of disputes and a code of conduct for arbitrators.

The Parties to the Agreement have approved this proposal for a decision, initialled it at the fourth EPA Committee meeting on 27 and 28 November 2019 and, subject to the EU's

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<sup>1</sup> OJ L 59, 3.3.2009, p. 3.

<sup>2</sup> OJ L 194, 31.7.2018, p. 158.

decision-making procedures, should adopt it at the next EPA Committee meeting due to take place at the end of 2020.

This decision is essential for rendering operational the provisions of Title V of the Agreement on dispute avoidance and settlement and hence for ensuring the smooth implementation of the Agreement.

#### **4. LEGAL BASIS**

##### **4.1. Procedural legal basis**

###### *4.1.1. Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’

The concept of ‘acts having legal effects’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’<sup>3</sup>.

###### *4.1.2. Application to the present case*

The EPA Committee is a body set up by an agreement, namely the stepping stone Economic Partnership Agreement between Côte d’Ivoire, of the one part, and the European Community and its Member States, of the other part.

The act which the EPA Committee is called upon to adopt is an act having legal effects. The envisaged act will be binding under international law in accordance with Articles 59 and 67 of the Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Accordingly, the procedural legal basis of the proposed decision is Article 218(9) TFEU.

##### **4.2. Substantive legal basis**

###### *4.2.1. Principles*

The substantive legal basis of a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on behalf of the Union. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

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<sup>3</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

#### *4.2.2. Application to the present case*

The main objective and content of the envisaged act relate to the common commercial policy. Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

#### **4.3. Conclusion**

The legal basis of the proposed decision should be the first subparagraph of Article 207(4) TFEU in conjunction with Article 218(9) TFEU.

#### **5. PUBLICATION OF THE ENVISAGED ACT**

As the decision of the EPA Committee will amend the Agreement, it must be published in the Official Journal of the European Union once it has been adopted.

Proposal for a

## COUNCIL DECISION

**establishing the position to be taken on behalf of the European Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, in connection with the adoption of the procedure for the settlement of disputes 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 Stepping Stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, (hereinafter referred to as 'the Agreement')<sup>4</sup> was signed on behalf of the Union pursuant to Council Decision 2009/156/EC<sup>5</sup>. It has been applied on a provisional basis since 3 September 2016.
- (2) In accordance with Article 59(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) The EPA Committee, at its next annual meeting, is to adopt a decision establishing the rules of procedure for the settlement of disputes and the code of conduct for arbitrators.
- (4) It is appropriate to establish the position to be taken, on behalf of the Union, in the EPA Committee concerning the adoption of the envisaged decision, as that decision will be binding on the Union.
- (5) It is therefore appropriate that the position of the Union in the EPA Committee be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

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<sup>4</sup> OJ L 59, 3.3.2009, p. 3.

<sup>5</sup> Council Decision 2009/156/EC of 21 November 2008 on the signature and provisional application of the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part (OJ L 59, 3.3.2009, p. 1).

*Article 1*

The position to be taken on behalf of the Union in the EPA Committee set up by the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, is based on the draft decision of the EPA Committee in connection with the adoption of the procedures for the settlement of disputes and the code of conduct for arbitrators, annexed to this Decision.

*Article 2*

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

Done at Brussels,

*For the Council  
The President*