2025/894

13.5.2025

COUNCIL DECISION (EU) 2025/894

of 5 May 2025

on the position to be taken on behalf of the European Union within the EPA Council and within the Committee of Senior Officials established by the Economic Partnership Agreement between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part as regards the adoption of the Rules of Procedure for the EPA Council, of the Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators, and of the Rules of Procedure for the Committee of Senior Officials

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Economic Partnership Agreement (EPA) between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part ([1]) (the 'Agreement') entered into force on 1 July 2024.

(2) Pursuant to Articles 104 and 106 of the Agreement, the EPA Council and the Committee of Senior Officials, respectively, are established upon the date of entry into force of the Agreement.

(3) Pursuant to Article 104(3) of the Agreement, the EPA Council is to establish its own rules of procedure.

(4) Pursuant to Article 105(3) and Article 120 of the Agreement, the EPA Council is to establish the Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators.

(5) Pursuant to Article 107(3) of the Agreement, the Committee of Senior Officials is to determine its own rules of procedure.

(6) It is appropriate to establish the position to be taken on the Union's behalf within the EPA Council and within the Committee of Senior Officials, as the decisions establishing their respective rules of procedure, and the Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators, will be binding on the Union.

(7) The position of the Union within the EPA Council and within the Committee of Senior Officials as regards the adoption of their respective rules of procedure, and the Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators, should therefore be based on the respective draft Decisions of the EPA Council and of the Committee of Senior Officials attached to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the first meeting of the EPA Council established under Article 104 of the Economic Partnership Agreement (EPA) between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part (the 'Agreement') regarding its Rules of Procedure shall be based on the draft Decision of the EPA Council attached to this Decision.

Article 2

The position to be taken on the Union's behalf at the first meeting of the EPA Council regarding the Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators shall be based on the draft Decision of the EPA Council attached to this Decision.

([1]) Economic Partnership Agreement between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part (OJ L, 2024/1648, 1.7.2024, ELI: http://data.europa.eu/eli/agree_internation/2024/1648/oj).

Article 3

The position to be taken on the Union's behalf at the first meeting of the Committee of Senior Officials established under Article 106 of the Agreement regarding its Rules of Procedure shall be based on the draft Decision of the Committee of Senior Officials attached to this Decision.

Article 4

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

Done at Brussels, 5 May 2025.

For the Council

The President

A. SZŁAPKA

DRAFT

DECISION No …/2025 OF THE EPA COUNCIL ESTABLISHED BY THE ECONOMIC PARTNERSHIP AGREEMENT (EPA) BETWEEN THE EUROPEAN UNION, OF THE ONE PART, AND THE REPUBLIC OF KENYA, MEMBER OF THE EAST AFRICAN COMMUNITY, OF THE OTHER PART

of …

regarding its Rules of Procedure

THE EPA COUNCIL,

Having regard to the Economic Partnership Agreement (EPA) between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part [1] (the 'Agreement'), signed in Nairobi on 18 December 2023, and in particular Article 104 thereof,

Whereas:

(1) Pursuant to Article 104(1) of the Agreement, the EPA Council is established upon the date of entry into force of the Agreement.

(2) Pursuant to Article 104(3) of the Agreement, the EPA Council is to establish its own Rules of Procedure,

HAS ADOPTED THIS DECISION:

Article 1

The Rules of Procedure of the EPA Council are established as set out in the Annex to this Decision.

Article 2

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

Done at …, …

For the EPA Council

The Co-Chairs

[1] OJ EU L, 2024/1648, 1.7.2024, ELI: http://data.europa.eu/eli/agree_internation/2024/1648/oj.

ANNEX

Rules of Procedure of the EPA Council established by Article 104 of the Economic Partnership Agreement (EPA) between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part

Article 1

Role of the EPA Council

The EPA Council established pursuant to Article 104 of the Economic Partnership Agreement between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part (hereafter referred to as 'Agreement') is responsible for all matters referred to in that Article.

Article 2

Composition and Chair

1. The EPA Council is composed of representatives of the European Union and of the Republic of Kenya at ministerial level, or their designees.

2. The EPA Council shall be co-chaired by the Member of the European Commission in charge of trade for the European Union, and by the relevant Cabinet Secretary responsible for international trade for the Republic of Kenya (the 'co-Chairs').

Article 3

Secretariat

1. Officials from the department responsible for international trade for each Party shall act together as Secretariat of the EPA Council ('the Secretariat').

2. Each Party shall notify the other Party of the name, position and contact details of the official who is the member of the Secretariat of the EPA Council (the 'Secretary') for that Party. That official is deemed to continue acting as Secretary for the Party until the date the Party has notified the other Party of the appointment of a new Secretary.

Article 4

Meetings

1. In accordance with Article 104(5) of the Agreement, the EPA Council shall meet at regular intervals, not exceeding a period of two years, and extraordinarily, whenever circumstances so require, with the agreement of the Parties.

2. The meetings shall be held at an agreed date and time alternately in Brussels and in Nairobi, unless agreed otherwise by the co-Chairs.

3. The meetings shall be convened by the co-Chair of the Party hosting the meeting.

4. A meeting may be held in person, by videoconference or by any other means as agreed by the Parties.

Article 5

Delegations

The Secretary for each Party shall, within a reasonable period of time in advance of a meeting, inform the Secretary of the other Party of the intended composition of the delegations of the European Union and of the Republic of Kenya, respectively. The lists shall specify the name and function of each member of the delegation.

Article 6

Agenda for the meetings

1. At least 21 days in advance of a meeting, the Secretary of the Party hosting the meeting shall send a proposal for a provisional agenda to the other Party, with a deadline to provide comments. At least 14 days in advance of the meeting, the Secretariat shall draw up the provisional agenda, taking into account the comments provided.

2. The agenda shall be adopted by the EPA Council at the beginning of each meeting. Items not appearing on the provisional agenda may be placed on the agenda by mutual agreement.

Article 7

Invitation of experts

The co-Chairs may, by mutual agreement, invite experts (i.e. non-government officials) to attend the meetings of the EPA Council in order to provide information on specific subjects and only for the parts of the meeting where such specific subjects are discussed.

Article 8

Minutes

1. Draft minutes of each meeting shall be drawn up by the Secretary of the Party hosting the meeting, within 15 days of the end of the meeting, unless otherwise decided by the co-Chairs. The draft minutes shall be transmitted for comments to the Secretary of the other Party.

2. The minutes shall, as a general rule, summarise each item on the agenda, specifying where applicable:

(a) all documents submitted to the EPA Council;

(b) any statement that one of the co-Chairs requested to be entered in the minutes; and

(c) the decisions taken, recommendations made, statements agreed upon and conclusions adopted on specific items.

3. The minutes shall include a list of all decisions of the EPA Council, taken by written procedure pursuant to Article 9(2) , since the last meeting of the EPA Council.

4. An annex to the minutes shall include a list of the names, titles and capacity of all individuals who attended the meeting of the EPA Council.

5. The Secretariat shall adjust the draft minutes on the basis of comments received and the draft minutes, as revised, shall be approved by the Parties within 30 days of the date of the meeting, or by any other date agreed by the co-Chairs. Once approved, two originals of the minutes shall be established by the Secretariat and the Parties shall each receive one original of the minutes.

Article 9

Decisions and recommendations

1. The EPA Council may adopt decisions and recommendations in respect of all matters where the Agreement so provides. The EPA Council shall adopt decisions and recommendations by mutual agreement, as provided for in Article 105(1) of the Agreement.

2. In the period between meetings, the EPA Council may adopt decisions or recommendations by written procedure.

3. The text of a draft decision or recommendation shall be presented in writing by a co-Chair to the other co-Chair in the working language of the EPA Council via diplomatic channels. The other Party shall have one month, or any longer period of time specified by the proposing Party, to express its agreement to the draft decision or recommendation. If the other Party does not express its agreement, the proposed decision or recommendation shall be discussed and may be adopted at the next meeting of the EPA Council. The draft decisions or recommendations shall be deemed to be adopted once the other Party expresses its agreement and shall be recorded in the minutes of the meeting of the EPA Council pursuant to Article 8(3).

4. Where the EPA Council is empowered under the Agreement to adopt decisions or recommendations, such acts shall be entitled 'Decision' or 'Recommendation', respectively. The Secretariat shall assign a progressive serial number to any decision or recommendation , specify its date of adoption and provide a description of their subject-matter. Each decision and recommendation shall provide for the date of its entry into force.

5. The decisions and recommendations adopted by the EPA Council shall be established in duplicate, authenticated by the co-Chairs and transmitted one to each Party.

Article 10

Transparency

1. The Parties may agree to meet in public.

2. Each Party may decide on the publication of the decisions and recommendations of the EPA Council in its respective official publication or online.

3. All documents submitted by a Party should be considered as confidential, unless that Party decides otherwise.

4. Provisional agendas of the meetings shall be made public before the meeting of the EPA Council takes place. The minutes of the meetings shall be made public following their approval in accordance with Article 8.

5. Publication of documents mentioned under paragraphs 2 to 4 shall be made in compliance with each Party's applicable data protection rules.

Article 11

Languages

1. The working language of the EPA Council shall be English.

2. The EPA Council shall adopt decisions concerning the amendment of the Agreement in the languages of the authentic texts of the Agreement. All other decisions of the EPA Council, including the one through which the present rules of procedure are adopted as well as any subsequent amendments adopted in accordance with Article 13, shall be adopted in the working language referred to in paragraph 1 of this Article.

3. Each Party shall be responsible for the translation of decisions and other documents into its own official language(s), where relevant, and it shall meet expenditures associated with such translations.

Article 12

Expenses

1. Each Party shall meet any expenses it incurs as a result of participating in the meetings of the EPA Council, in particular with regard to staff, travel and subsistence expenditure and with regard to video or teleconferences, postal and telecommunications expenditure.

2. Expenditure in connection with the organisation of meetings and reproduction of documents shall be borne by the Party hosting the meeting.

3. Expenditure in connection with the provision of interpretation services to and from the working language of the EPA Council at meetings shall be borne by the Party hosting the meeting.

Article 13

Amendments of the Rules of Procedure

These Rules of Procedure may be amended in writing by a decision of the EPA Council in accordance with Article 9.

DRAFT

DECISION No …/2025 OF THE EPA COUNCIL ESTABLISHED BY THE ECONOMIC PARTNERSHIP AGREEMENT (EPA) BETWEEN THE EUROPEAN UNION, OF THE ONE PART, AND THE REPUBLIC OF KENYA, MEMBER OF THE EAST AFRICAN COMMUNITY, OF THE OTHER PART

of …

regarding the Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators

THE EPA COUNCIL,

Having regard to the Economic Partnership Agreement (EPA) between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part [1] (the 'Agreement'), signed in Nairobi on 18 December 2023, and in particular Articles 105 and 120 thereof,

Whereas:

(1) Pursuant to Article 104(1) of the Agreement, the EPA Council is established upon the date of entry into force of the Agreement.

(2) Pursuant to Article 105(3) and Article 120 of the Agreement, the EPA Council is to establish the Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators,

HAS ADOPTED THIS DECISION:

Article 1

The Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators are established as set out in Annexes 1 and 2 to this Decision.

Article 2

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

Done at …, …

For the EPA Council

The Co-Chairs

[1] OJ EU L, 2024/1648, 1.7.2024, ELI: http://data.europa.eu/eli/agree_internation/2024/1648/oj.

ANNEX 1

Rules of Procedure for Dispute Settlement

I. Definitions

1. For the purposes of Part VII (Dispute Avoidance and Settlement) of the Agreement, and these Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators, the following definitions apply:

   (a) 'adviser' means an individual retained by a Party to advise or assist that Party in connection with an arbitration procedure;

   (b) 'arbitrator' means a member of an arbitration panel;

   (c) '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;

   (d) 'complaining Party' means the Party that requests the establishment of an arbitration panel pursuant to Article 112 (Initiation of the Arbitration Procedure) of the Agreement;

   (e) 'mediator' means an individual who has been selected as mediator in accordance with Article 111 (Mediation) of the Agreement;

   (f) 'Party complained against' means the Party that is alleged to be in breach of a provision covered by Part VII (Dispute Avoidance and Settlement) of the Agreement (hereinafter referred to as 'covered provision').

II. Notifications

2. Any request, notice, written submission, or other document (hereinafter referred to as 'notification') of:

   (a) the arbitration panel shall be sent to both Parties at the same time;

   (b) a Party, addressed to the arbitration panel, shall be copied to the other Party at the same time; and

   (c) a Party, addressed to the other Party, shall be copied to the arbitration panel at the same time.

3. Any notification shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of its sending. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.

4. Notifications shall be addressed to the Directorate-General of the European Commission responsible for Trade for the European Union, and to the department responsible for international trade of the Republic of Kenya, respectively.

5. Minor errors of a clerical nature in a notification related to an arbitration procedure may be corrected by the delivery of a new document clearly indicating the changes.

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

III. Appointment of arbitrators

7. If pursuant to Article 113 (Establishment of the Arbitration Panel) of the Agreement an arbitrator is selected by lot, the co-Chair of the Committee of Senior Officials of the complaining Party shall promptly inform the co-Chair of the Committee of Senior Officials of the Party complained against of the date, time and venue of the selection by lot. The Party complained against may, if it so chooses, be present during that selection. The selection shall be carried out with the Party or Parties that are present.

8. The co-Chair of the Committee of Senior Officials of the complaining Party shall notify, in writing, each individual who has been selected to serve as an arbitrator of his or her selection. Each individual shall confirm his or her availability to both Parties within five days of the date of delivery of such notification.

9. The arbitrators shall accept their appointment by signing the appointment contracts. Without prejudice to Article 112 (Initiation of the Arbitration Procedure) of the Agreement, the Parties shall endeavour to ensure that, at the latest by the time all the selected arbitrators have confirmed their availability, they have agreed on the remuneration and the reimbursement of expenses of the arbitrators and assistants, and have prepared the necessary appointment contracts, with a view to having them signed promptly. The remuneration and expenses of the arbitrators shall be based on WTO standards. The remuneration and expenses of an assistant or assistants of an arbitrator shall not exceed 50 % of the remuneration of that arbitrator.

IV. Organisational meeting

10. Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its establishment in order to determine such matters as the Parties or the arbitration panel deem appropriate, including the timetable of the arbitration panel procedure. Arbitrators and representatives of the Parties may take part in this meeting through any means, including telephone, video-conference or other electronic means of communication.

V. Terms of reference

11. Unless the Parties agree otherwise within five days of the date of establishment of the arbitration panel, the terms of reference of the panel shall be:

'to examine, in the light of the relevant provisions of the EU-Kenya EPA cited by the Parties, the matter referred to in the arbitration panel request, to make findings on the applicability of the covered provisions and the conformity of the measure at issue with those provisions, and to deliver a report in accordance with Articles 114 (Interim Panel Report) and 115 (Arbitration Panel Ruling) of that Agreement.'

12. 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 Rule 11.

VI. Written submissions

13. 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.

VII. Operation of the arbitration panel

14. 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.

15. Unless otherwise provided for in Title II (Dispute Settlement) of Part VII (Dispute Avoidance and Settlement) of the Agreement or in these Rules of Procedure, the arbitration panel may conduct its activities through any means, including telephone, video-conference or other electronic means of communication.

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

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

18. Where a procedural question arises that is not covered by Title II (Dispute Settlement) of Part VII (Dispute Avoidance and Settlement) of the Agreement or these Rules of Procedure and the Code of Conduct for Arbitrators and Mediators, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

19. The arbitration panel shall ensure a prompt settlement of the dispute. If the arbitration panel considers that there is a need to modify any of the time periods for the arbitration panel procedure other than the time periods set out in Title II (Dispute Settlement) of Part VII (Dispute Avoidance and Settlement) of the Agreement or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the modification or adjustment and of the time period or adjustment needed. The arbitration panel may adopt the modification or adjustment after consultation of the Parties.

VIII. Replacement

20. If a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct for Arbitrators and Mediators and for that 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 non-compliance with those requirements.

21. The Parties shall consult within 15 days of the date of the notification referred to in Rule 20. They shall inform the arbitrator of the alleged non-compliance and may request the arbitrator to take steps to remedy it. They may also, if they agree, remove the arbitrator and select a new arbitrator in accordance with Article 113 (Establishment of the Arbitration Panel) of the Agreement.

22. If the Parties fail to agree on the need to replace an arbitrator, other than the chairperson of the arbitration panel, either Party may request that this matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

    If the chairperson of the arbitration panel finds that the arbitrator does not comply with the requirements of the Code of Conduct for Arbitrators and Mediators, the arbitrator shall be removed and a new arbitrator shall be selected in accordance with Article 113 (Establishment of the Arbitration Panel) of the Agreement.

23. 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 other individuals on the relevant sub-list of chairpersons established pursuant to Article 125 (List of Arbitrators) of the Agreement. His or her name shall be drawn by lot by the co-Chair of the Committee of Senior Officials from the requesting Party, or the co-Chair's delegate. The decision by the selected person on the need to replace the chairperson shall be final. If that person finds that the chairperson does not comply with the requirements of the Code of Conduct for Arbitrators and Mediators, the chairperson shall be removed and a new chairperson shall be selected in accordance with Article 113 (Establishment of the Arbitration Panel) of the Agreement.

IX. Hearings

24. Based on the timetable determined pursuant to Rule 10, after consulting with the Parties and the other arbitrators, the chairperson of the arbitration panel shall notify the Parties of the date, time and venue of the hearing. That information shall be made publicly available by the Party in which the hearing takes place.

25. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is the Republic of Kenya and in Nairobi if the complaining Party is the European Union. The Party complained against shall be in charge of the logistical administration of the hearing and bear the expenses thereof.

26. Notwithstanding Rule 25, the arbitration panel may decide, at the request of a Party, to hold a virtual or hybrid hearing and make appropriate arrangements, taking into account the rights of due process and the need to ensure transparency in accordance with Rules 40 to 43.

27. The arbitration panel may convene additional hearings if the Parties so agree.

28. All arbitrators shall be present during the entirety of the hearing.

29. 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 and advisers of a Party; and

    (b) assistants, interpreters and other persons whose presence is required by the panel.

30. No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel and to the other Party a list of names of the 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.

31. The arbitration panel shall ensure that the Parties are treated on an equal footing and are afforded sufficient time to present their arguments.

32. The arbitration panel may direct questions to either Party at any time during the hearing.

33. The arbitration panel shall arrange for a recording of the hearing to be delivered to the Parties as soon as possible after the hearing.

34. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days of the date of the hearing.

X. Questions in writing

35. The arbitration panel may at any time during the arbitration panel procedure submit questions in writing to one or both Parties. Any question submitted to one Party shall be copied to the other Party.

36. A Party shall provide the other Party with a copy of its response to the questions submitted by the arbitration panel. The other Party shall have an opportunity to provide comments in writing on that response within five days of the delivery of that copy.

XI. Suspension and termination

37. At the request of the complaining Party, the arbitration panel may suspend its work at any time for a period not exceeding 12 consecutive months. At the request of both Parties, the arbitration panel shall suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months.

38. The arbitration panel shall resume its work before the expiry of the suspension period at the request of both Parties. The arbitration panel shall resume its work upon the expiry of the suspension period at the request of the complaining Party. The arbitration panel may resume its work upon the expiry of the suspension period at the request of the Party complained against if the suspension was requested by both Parties. The requesting Party shall deliver a notification to the other Party accordingly. If the arbitration panel does not resume its work upon the expiry of the suspension period in accordance with this Rule, the authority of the arbitration panel shall lapse, and the dispute settlement procedure shall be terminated.

39. If the work of the arbitration panel is suspended, the relevant time periods set out in Title II (Dispute Settlement) of Part VII (Dispute Avoidance and Settlement) of the Agreement shall be extended by the same time period for which the work of the arbitration panel was suspended.

XII. Confidentiality

40. Each Party and the arbitration panel shall treat as confidential any information that qualifies as confidential pursuant to Rule 41. If a Party submits to the arbitration panel a written submission which contains confidential information, it shall also provide a submission without the confidential information, which shall be made public.

41. Confidential information consists of:

(a) confidential business information;

(b) information that is protected against being made available to the public under the Agreement;

(c) information that is protected against being made available to the public, in the case of information from the complaining Party, under the law of the complaining Party, and in the case of information from the Party complained against, under the law of the Party complained against; or

(d) information the disclosure of which would impede law enforcement.

42. If the Parties disagree on whether information qualifies as confidential, the arbitration panel shall decide, at the request of a Party, after consultation with the Parties.

43. The arbitration panel shall meet in closed session if the submission and arguments of a Party contain confidential information. The Parties shall maintain the confidentiality of any hearing that is held in closed session.

XIII. Transparency

44. Each Party shall promptly make public:

(a) a request for consultations pursuant to Article 110(2) (Consultations) of the Agreement;

(b) an arbitration panel request pursuant to Article 112 (Initiation of the Arbitration Procedure) of the Agreement;

(c) the date of establishment of an arbitration panel in accordance with Article 113(5) (Establishment of the Arbitration panel) of the Agreement, the time-limit for amicus curiae submissions determined by the panel pursuant to Rule 51(a), and the working language for the arbitration panel procedure determined in accordance with Rule 55 or 56;

(d) its submissions and statements in the arbitration panel procedure;

(e) a mutually agreed solution pursuant to Article 119 (Mutually Agreed Solution) of the Agreement; and

(f) the final reports and decisions of the arbitration panel.

45. Any hearing of the arbitration panel shall be open to the public.

46. Natural persons of a Party or legal persons established in a Party may make amicus curiae submissions to the arbitration panel in accordance with Rule 51.

47. Rules 44 and 45 shall be subject to the protection of confidential information as set out in Rules 40 to 43.

XIV. *Ex parte* contacts

48. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.

49. An arbitrator shall not discuss any aspect of the subject matter of the arbitration panel procedure with one Party or both Parties in the absence of the other arbitrators.

50. A Party shall not have any contact with an arbitrator. Any contact between a Party and a person who is under consideration for selection as an arbitrator shall be limited to issues relating to that person's availability and the appointment contract.

XV. Amicus curiae submissions

51. Unless the Parties agree otherwise, within five days of the date of establishment of the arbitration panel the arbitration panel may receive unsolicited written submissions from natural persons of a Party or legal persons established in the territory of a Party who are independent from the governments of the Parties (hereinafter referred to as 'amicus curiae submissions'), provided that they:

(a) are received by the arbitration panel by a date determined by the arbitration panel and which shall not be later than the date set for the first written submission of the Party complained against;

(b) are concise, and in any case not 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 arbitration panel;

(d) contain a description of the person making the submission, including, if applicable, the nationality or place of establishment of that person, the nature of its activities, its legal status, its general objectives, the source of its financing and any controlling entity;

(e) specify the nature of the interest that the person has in the arbitration panel procedure; and

(f) are drafted in the working language determined in accordance with Rule 55 or 56.

52. The amicus curiae submissions shall be delivered to the Parties for comments. The Parties may submit comments, within 10 days after the date of their delivery to the Parties.

53. The arbitration panel shall list in its report all the amicus curiae submissions it has received pursuant to Rule 51. The arbitration panel shall not be obliged to address in its report the arguments made in those submissions. If the arbitration panel addresses arguments made therein, it shall also take into account any comments made by the Parties pursuant to Rule 52.

XVI. Urgent cases

54. In cases of urgency as referred to in Part VII (Dispute Avoidance and Settlement) of the Agreement, the arbitration panel, after consulting the Parties, shall adjust, as appropriate, the time periods set out in these Rules of Procedure. The arbitration panel shall notify the Parties of such adjustments.

XVII. Working language and translation

55. During the consultations referred to in Article 110 (Consultations) of the Agreement, and no later than at the organisational meeting referred to in Rule 10, the Parties shall endeavour to agree on a common working language for the arbitration panel procedure.

56. If the Parties are unable to agree on a common working language, the language in which the Agreement was negotiated shall be the working language for the arbitration panel procedure.

57. Arbitration panel reports and decisions shall be issued in the working language.

58. If a Party submits a document in a language that is not the working language, it shall at the same time submit a translation thereof into the working language at its own costs.

XVIII. Time periods

59. All time periods set out in these Rules of Procedure shall be counted in calendar days as from the day following the act to which they refer, unless otherwise specified.

60. Any time period set out in these Rules of Procedure may be modified by mutual agreement of the Parties.

61. The panel may at any time propose to the Parties to modify any time period set out in these Rules of Procedure, stating the reasons for such proposal.

XIX. Costs

62. Each Party shall bear its own expenses derived from the participation in the arbitration panel procedure.

63. Unless otherwise provided, the Parties shall be jointly liable for the expenses for organisational matters, including the remuneration and expenses of the arbitrators, and share them equally.

XX. Other procedures

64. The time periods set out in these Rules of Procedure shall be adjusted in line with the special time periods provided for for the delivery of a report or decision by the arbitration panel pursuant to Article 115 (Arbitration Panel Ruling), Article 116 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling), Article 117 (Temporary Remedies in case of Non-Compliance) and Article 118 (Review of Any Measure Taken to Comply after the Adoption of Appropriate Measures) of Title II (Dispute Settlement) of Part VII (Dispute Avoidance and Settlement) of the Agreement.

XXI. Amendment of the Rules of Procedure and the Code of Conduct for Arbitrators and Mediators

65. The EPA Council may amend these Rules of Procedure and the Code of Conduct for Arbitrators and Mediators.

ANNEX 2

Code of Conduct for Arbitrators and Mediators

I. Definitions

1. For the purposes of this Code of Conduct, the following definitions apply:

(a) 'candidate' means an individual who is under consideration for selection as an arbitrator pursuant to Article 113 (Establishment of the Arbitration Panel) or Article 125 (List of Arbitrators) of Part VII (Dispute Avoidance and Settlement) of the Agreement;

(b) 'mediator' means an individual who has been selected as mediator in accordance with Article 111 (Mediation) of Part VII (Dispute Avoidance and Settlement) of the Agreement; and

(c) 'arbitrator' means a member of an arbitration panel.

II. Governing principles

2. In order to preserve the integrity and impartiality of the dispute settlement mechanism candidates and arbitrators 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 or bias and the appearance of impropriety or bias;

(e) observe high standards of conduct;

(f) not take instructions from any organisation or government with regard to dispute settlement under this Agreement; and

(g) not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

3. Arbitrators 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 their duties.

4. Arbitrators shall not use their position on the arbitration panel to advance any personal or private interests. Arbitrators shall avoid actions that may create the impression that others are in a special position to influence them.

5. Arbitrators shall not allow past or present financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgement.

6. Arbitrators shall avoid entering into any relationship or acquiring any financial interest that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or bias.

III. Disclosure obligations

7. Prior to the acceptance of their appointment as an Arbitrator pursuant to Article 113 (Establishment of the Arbitration Panel) of the Agreement, candidates requested to serve as an arbitrator shall receive a copy of this Code of Conduct and disclose any past or present interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias. To that end, candidates shall make all reasonable efforts to become aware of any such interest, relationship or matter.

8. The disclosure obligation is a continuing duty which requires arbitrators to make at all times reasonable efforts to become aware of any interest, relationship or matter referred to in paragraph 7 that may arise during any stage of the proceedings, and to disclose it at the earliest time they become aware of it.

9. Candidates and arbitrators shall communicate any matter concerning actual or potential violations of this Code of Conduct to the Parties for their consideration.

IV. Duties of Arbitrators

10. Upon acceptance of their appointment, arbitrators shall be available to perform and shall perform their duties thoroughly, expeditiously and with fairness and diligence throughout the proceedings.

11. Arbitrators shall consider only the issues raised in the proceedings and necessary for a decision or report. They shall not delegate that duty to any other person.

12. Assistants shall comply with the obligations set out for arbitrators in Parts II (Governing principles), III (Disclosure obligations) and VII (Confidentiality), *mutatis mutandis*. Arbitrators shall take all appropriate steps to ensure that their assistants are aware of, and comply with, those obligations.

V. Duties of potential candidates

13. Individuals included on the list established pursuant to Article 125 (List of Arbitrators) of the Agreement shall observe high standards of conduct and avoid impropriety or the appearance thereof. Individuals included, or considered for inclusion, on that list shall communicate to the Parties without delay any matter that may warrant consideration in this respect.

VI. Obligations of Former Arbitrators

14. Former arbitrators shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from any decision or report of the arbitration panel.

15. Former arbitrators shall comply with the obligations set out in Part VII (Confidentiality) of this Code of Conduct.

VII. Confidentiality

16. Arbitrators shall not disclose or use, at any time, any non-public information concerning the proceedings or acquired during the proceedings for which they have been appointed, except for the purposes of those proceedings. In particular, they shall not disclose or use any such information to gain personal advantage or advantage for others, or to adversely affect the interest of others.

17. Arbitrators shall not disclose a decision or report of the arbitration panel or parts thereof prior to its publication in accordance with Article XIII (Transparency) of the Rules of Procedure for Dispute Settlement.

18. Arbitrators shall not, at any time, disclose the deliberations of an arbitration panel, or any arbitrator's view, or make any statements on the proceedings for which they have been appointed or on the issues in dispute in the proceedings.

VIII. Expenses

19. Arbitrators shall keep a record and render a final account of the time devoted to the proceedings and of their expenses, as well as of the time and expenses of an assistant, if applicable.

IX. Mediators

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

DRAFT

DECISION No …/2025 OF THE COMMITTEE OF SENIOR OFFICIALS ESTABLISHED BY THE ECONOMIC PARTNERSHIP AGREEMENT (EPA) BETWEEN THE EUROPEAN UNION, OF THE ONE PART, AND THE REPUBLIC OF KENYA, MEMBER OF THE EAST AFRICAN COMMUNITY, OF THE OTHER PART

of …

regarding its Rules of Procedure

THE COMMITTEE OF SENIOR OFFICIALS,

Having regard to the Economic Partnership Agreement (EPA) between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part [1] (the 'Agreement'), signed in Nairobi on 18 December 2023, and in particular Articles 106 and 107 thereof,

Whereas:

(1) Pursuant to Article 106(1) of the Agreement, the Committee of Senior Officials is established upon the date of entry into force of the Agreement.

(2) Pursuant to Article 107(3) of the Agreement, the Committee of Senior Officials is to determine its own Rules of Procedure,

HAS ADOPTED THIS DECISION:

Article 1

The Rules of Procedure of the Committee of Senior Officials are established as set out in the Annex to this Decision.

Article 2

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

Done at …, …

For the Committee of Senior Officials

The Co-Chairs

[1] OJ EU L, 2024/1648, 1.7.2024, ELI: http://data.europa.eu/eli/agree_internation/2024/1648/oj.

ANNEX

Rules of Procedure of the Committee of Senior Officials established by Article 106 of the Economic Partnership Agreement between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part

Article 1

Role of the Committee of Senior Officials

The Committee of Senior Officials established pursuant to Article 106 of the Economic Partnership Agreement between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community, of the other part (hereafter referred to as 'Agreement') is responsible for all matters referred to in Article 106(5) of the Agreement.

Article 2

Composition and Chair

1. The Committee of Senior Officials is composed of and co-chaired by representatives of the European Union and of the Republic of Kenya, in accordance with article 106 of the Agreement, or their designees.

2. Each Party shall notify the other Party of the name, position and contact details of the senior official or the Principal Secretary who is in charge of co-chairing the Committee of Senior Officials for that Party (the 'co-Chair'). That senior official or Principal Secretary is deemed to have the authorisation of representing the Party until the date the Party has notified the other Party of the appointment of a new co-Chair.

Article 3

Secretariat

1. Officials from the department responsible for Trade for each Party shall act together as Secretariat of the Committee of Senior Officials ('the Secretariat').

2. Each Party shall notify the other Party of the name, position and contact details of the official who is the member of the Secretariat of the Committee of Senior Officials (the 'Secretary') for that Party. That official is deemed to continue acting as Secretary for the Party until the date the Party has notified the other Party of the appointment of a new Secretary.

Article 4

Meetings

1. Pursuant to Article 106(3) of the Agreement, and subject to any directions which may be given by the EPA Council, the Committee of Senior Officials shall meet at least once a year and may hold extraordinary meetings whenever circumstances so require, at any time agreed by the Parties. The Committee of Senior Officials shall also meet preceding the meetings of the EPA Council.

2. The meetings shall be held at an agreed date and time alternately in Brussels and in Nairobi, unless agreed otherwise by the co-Chairs.

3. The meetings shall be convened by the co-Chair of the Party hosting the meeting.

4. A meeting may be held in person, by videoconference or by any other means as agreed by the Parties.

Article 5

Delegations

The Secretary for each Party shall, within a reasonable period of time in advance of a meeting, inform the Secretary of the other Party of the intended composition of the delegations of the European Union and of the Republic of Kenya, respectively. The lists shall specify the name and function of each member of the delegation.

Article 6

Agenda for the meetings

1. At least 21 days in advance of a meeting, the Secretary of the Party hosting the meeting shall send a proposal for a provisional agenda to the other Party, with a deadline to provide comments. At least 14 days in advance of the meeting, the Secretariat shall draw up the provisional agenda, taking into account the comments provided.

2. The agenda shall be adopted by the Committee of Senior Officials at the beginning of each meeting. Items not appearing on the provisional agenda may be placed on the agenda by mutual agreement.

Article 7

Invitation of experts

The Co-chairs may, by mutual agreement, invite experts (i.e. non-government officials) to attend the meetings of the Committee of Senior Officials in order to provide information on specific subjects and only for the parts of the meeting where such specific subjects are discussed.

Article 8

Minutes

1. Draft minutes of each meeting shall be drawn up by the Secretary of the Party hosting the meeting, within 15 days of the end of the meeting, unless otherwise decided by the co-Chairs. The draft minutes shall be transmitted for comments to the Secretary of the other Party.

2. Where these rules apply to the meetings of specialised committees or of the Special Committee on Customs and Trade Facilitation, the minutes of those committees' meetings shall be made available for any subsequent meetings of the Committee of Senior Officials or of the EPA Council, as appropriate.

3. The minutes shall, as a general rule, summarise each item on the agenda, specifying where applicable:

(a) all documents submitted to the Committee of Senior Officials;

(b) any statement that one of the co-Chairs requested to be entered in the minutes; and

(c) the decisions taken, recommendations made, statements agreed upon and conclusions adopted on specific items.

4. The minutes shall include a list of all decisions of the Committee of Senior Officials, taken by written procedure pursuant to Article 9(2), since the last meeting of the Committee of Senior Officials.

5. An annex to the minutes shall also include a list of the names, titles and capacity of all individuals who attended the meeting of the Committee of Senior Officials.

6. The Secretariat shall adjust the draft minutes on the basis of comments received and the draft minutes, as revised, shall be approved by the Parties within 30 days of the date of the meeting, or by any other date agreed by the co-Chairs. Once approved, two originals of the minutes shall be established by the Secretariat and the Parties shall each receive one original of the minutes.

Article 9

Decisions and recommendations

1. The Committee of Senior Officials may adopt decisions and recommendations in respect of all matters where the Agreement so provides. The Committee of Senior Officials shall adopt decisions and recommendations by mutual agreement, as provided for in Article 107 of the Agreement.

2. In the period between meetings, the Committee of Senior Officials may adopt decisions or recommendations by written procedure.

3. The text of a draft decision or recommendation shall be presented in writing by a co-Chair to the other co-Chair in the working language of the Committee of Senior Officials. The other Party shall have one month, or any longer period of time specified by the proposing Party, to express its agreement to the draft decision or recommendation. If the other Party does not express its agreement, the proposed decision or recommendation shall be discussed and may be adopted at the next meeting of the Committee of Senior Officials. The draft decisions or recommendations shall be deemed to be adopted once the other Party expresses its agreement and shall be recorded in the minutes of the meeting of the Committee of Senior Officials pursuant to Article 8(3).

4. Where the Committee of Senior Officials is empowered under the Agreement to adopt decisions or recommendations, such acts shall be entitled 'Decision' or 'Recommendation', respectively. The Secretariat shall assign a progressive serial number to any decision or recommendation, specify its date of adoption and provide a description of their subject-matter. Each decision and recommendation shall provide for the date of its entry into force.

5. The decisions and recommendations adopted by the Committee of Senior Officials shall be established in duplicate, authenticated by the co-Chairs and transmitted one to each Party.

Article 10

Transparency

1. The Parties may agree to meet in public.

2. Each Party may decide on the publication of the decisions and recommendations of the Committee of Senior Officials in its respective official publication or online.

3. All documents submitted by a Party should be considered as confidential, unless that Party decides otherwise.

4. Provisional agendas of the meetings of the Committee of Senior Officials shall be made public before the meeting of the Committee of Senior Officials takes place. The minutes of the meetings shall be made public following their approval in accordance with Article 8.

5. Publication of documents mentioned under paragraphs 2 to 4 shall be made in compliance with each Party's applicable data protection rules.

Article 11

Languages

1. The working language of the Committee of Senior Officials shall be English.

2. The Committee of Senior Officials shall adopt decisions in the working language referred to in paragraph 1.

3. Each Party shall be responsible for the translation of decisions and other documents into its own official language(s), where relevant, and it shall meet expenditures associated with such translations.

Article 12

Expenses

1. Each Party shall meet any expenses it incurs as a result of participating in the meetings of the Committee of Senior Officials, in particular with regard to staff, travel and subsistence expenditure and with regard to video or teleconferences, postal and telecommunications expenditure.

2. Expenditure in connection with the organisation of meetings and reproduction of documents shall be borne by the Party hosting the meeting.

3. Expenditure in connection with the provision of interpretation services to and from the working language of the Committee of Senior Officials at meetings shall be borne by the Party hosting the meeting.

Article 13

Specialised Committees and other bodies established under the Agreement

1. In the performance of its functions, pursuant to Article 107 of the Agreement, the Committee of Senior Officials may set up under its authority specialised committees responsible for dealing with specific subjects under the Agreement. To that end, the Committee of Senior Officials shall determine the composition and tasks of such specialised committees.

2. Pursuant to Article 107 of the Agreement, the Committee of Senior Officials shall give directives to, and oversee, all specialised committees and other bodies established under the Agreement.

3. The Committee of Senior Officials shall be informed in writing of the contact points designated by specialised committees or other bodies established under the Agreement. All relevant correspondence, documents and communications between the contact points of each specialised committee regarding the implementation of the Agreement shall be forwarded to the Secretariat of the Committee of Senior Officials simultaneously.

4. Unless otherwise decided by the Committee of Senior Officials, the present Rules of Procedure shall apply *mutatis mutandis* to the specialised committees and other bodies established under the Agreement.

Article 14

Amendments of the Rules of Procedure

These Rules of Procedure may be amended in writing by a decision of the Committee of Senior Officials in accordance with Article 9.