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ANNEX 2

ANNEX

to the

Proposal for a Council Decision

on the conclusion of the Investment Protection Agreement between the European Union and Indonesia

ANNEX 2-A

EXPROPRIATION

The Parties confirm their shared understanding that:

1. Expropriation may be either direct or indirect:

(a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure;

(b) indirect expropriation occurs when a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.

2. The determination of whether a measure or series of measures by a Party, in a specific situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

(b) the duration of the measure or series of measures by a Party;

(c) the character of the measure or series of measures, notably their object and context;

(d) whether the expectations of the investor arising out of the covered investment were distinct and reasonable.

3. For greater certainty, non-discriminatory measures by a Party that are designed and applied to protect legitimate policy objectives, such as the protection of public health, safety, the environment including the tackling of climate change, or public morals, social and consumer protection or promotion and protection of cultural diversity, do not constitute indirect expropriation, except in rare circumstances where they are manifestly excessive in light of the above-mentioned objectives.

ANNEX 2-B

COMPETENT AUTHORITIES MENTIONED IN ARTICLE 2.1(5)

In the case of the Union, the competent authorities entitled to order the actions referred to in Article 2.1(5) are the European Commission or a court or tribunal of a Member State when applying Union law on State aid.

In the case of Indonesia, the competent authority entitled to order the actions referred to in Article 2.1(5) is the Government of Indonesia pursuant to its law.

ANNEX 4-A

RULES OF PROCEDURE

I. Notifications

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

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

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

(c) a Party, which is addressed to the other Party, shall be copied to the panel at the same time, as appropriate.

Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.

2. All notifications shall be addressed to the Directorate-General for Trade and Economic Security of the European Commission and to the Directorate-General of Legal Affairs and International Treaties, Ministry of Foreign Affairs of Indonesia, respectively.

3. Minor errors of a clerical nature in a notification related to a panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

4. If the last day for delivery of a document falls on a non-working day of the institutions of the Union or of the Government of Indonesia, the time period for the delivery of the document shall end on the first following working day. For the purpose of determining the beginning and the end of a calendar day, the time zone of the Party complained against shall be applicable.

II. Appointment of panellists

5. If pursuant to Article 4.6, a panellist is selected by lot, the co-chair of the Committee of the complaining Party shall promptly inform the co-chair of the Committee 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 the selection by lot. In any event, the selection by lot shall be carried out with the Party or Parties that are present.

6. The co-chair of the Committee of the complaining Party shall notify, in writing, including electronically, each individual who has been selected to serve as a panellist. Each individual shall confirm their availability to both Parties within five days after the date of receipt of the notification.

7. For the purposes of Article 4.6, the co-chair of the Committee of the complaining Party shall select by lot the panellist or chairperson:

(a) if a sub-list referred to in point (a) or (b) of Article 4.7(1) has not yet been established, from those individuals who have been formally proposed by a Party as panellists for its sub-list or, in the absence of those, from the individuals who have been formally proposed by the other Party for that Party's sub-list;

(b) if the sub-list referred to in point (c) of Article 4.7(1) has not yet been established, from the individuals who have been formally proposed by one or both Parties for the sub-list of chairpersons.

III. Expenses

8. The Parties shall agree, at the latest by the time all the panellists have accepted their appointment in accordance with Article 4.6(6), on the remuneration and expenses of the panellists and assistants, prepare any necessary appointment contracts, and ensure their prompt signature. The Committee may adopt a decision setting out the parameters or other details for the remuneration and expenses of panellists and of the mediator, including any related expenses that could be incurred in the panel proceedings. Unless otherwise provided for in such a decision, the remuneration and expenses of the panellists shall be based on WTO standards. The remuneration of an assistant or assistants of each panellist shall not exceed 50 % of the remuneration of that panellist. This Rule applies to mediators *mutatis mutandis*.

IV. Organisational meeting

9. Unless agreed otherwise, the Parties shall meet the panel within seven days after its establishment in order to determine such matters as the Parties or the panel deem appropriate, including working procedures and the timetable of the proceedings.

Panellists and representatives of the Parties may take part in this meeting through any appropriate means including telephone, video-conference or other electronic means of communication.

V. Written submissions

10. The complaining Party shall deliver its written submission no later than 20 days after the date of establishment of the panel. The Party complained against shall deliver its written submission no later than 20 days after the date of receipt of the written submission of the complaining Party.

11. If the Party complained against raises novel issues or defences the complaining Party has not addressed, the complaining Party may choose to deliver a second written submission within 15 days after the date of receipt of the first written submission of the Party complained against. The complaining Party shall assess whether the benefit of a second written submission is sufficient when weighted against the additional delay. In such case, the Party complained against may submit its response within 15 days after the date of receipt of the second written submission of the complaining Party.

VI. Operation of the panel

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

13. Unless otherwise provided in Chapter 4 (Dispute Settlement between the Parties) or in this Annex, the panel may conduct its activities by any appropriate means, including telephone, video-conference or other means of electronic communication.

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

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

16. Where a procedural question arises that is not covered by Chapter 4 (Dispute Settlement between the Parties) and its Annexes, the panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

17. If the panel considers that there is a need to modify any of the time periods for the proceedings other than the time periods set out in Chapter 4 (Dispute Settlement between the Parties) or to make any other procedural or administrative adjustment, it shall inform the Parties, in writing, including electronically, and after consultation of the Parties, of the reasons for the modification or adjustment and of the time period or adjustment needed. Any Party may propose to the panel such procedural or administrative adjustments.

VII. Replacement

18. If a Party considers that a panellist does not comply with the requirements of Annex 4-B (Code of Conduct for Panellists and Mediators) and for this reason should be replaced, that Party shall notify the other Party within 15 days from the time at which it obtained sufficient evidence of the panellist's alleged failure to comply with the requirements of Annex 4-B (Code of Conduct for Panellists and Mediators).

19. The Parties shall consult within 15 days from the date of notification referred to in Rule 18. They shall inform the panellist of their alleged failure and may request the panellist to take steps to remedy the failure. They may also, if they so agree, remove the panellist and select a new panellist in accordance with Article 4.6.

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

If the chairperson of the panel finds that the panellist does not comply with the requirements of Annex 4-B (Code of Conduct for Panellists and Mediators), that panellist shall be removed and a new panellist shall be selected in accordance with Article 4.6.

21. 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 sub-list of chairpersons established under Article 4.7. Their name shall be selected by lot by the co-chair of the Committee from the requesting Party, or that co-chair's delegate. The decision by the selected person on the need to replace the chairperson shall be final.

If this person finds that the chairperson does not comply with the requirements of Annex 4-B (Code of Conduct for Panellists and Mediators), the chairperson shall be removed and a new chairperson shall be selected in accordance with Article 4.6.

VIII. Hearings

22. Based on the timetable determined pursuant to Rule 9 of this Annex, after consulting with the Parties and the other panellists, the chairperson of the panel shall notify the Parties the date, time and venue of the hearing. This information shall be made publicly available by the Party in which the hearing takes place, unless the hearing is closed to the public.

23. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Indonesia and in Jakarta if the complaining Party is the Union. The Party complained against shall bear the expenses derived from the logistical administration of the hearing.

24. Notwithstanding Rule 23, the panel may decide, on 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 Article 4.34.

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

26. All panellists shall be present during the entirety of the hearing.

27. 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 of a Party;

(b) advisers;

(c) assistants and administrative staff;

(d) interpreters, translators and court reporters of the panel; and

(e) experts, as decided by the panel pursuant to Article 4.22(2).

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

29. The panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time to present the argument and rebuttal argument:

(a) Argument

(i) argument of the complaining Party;

(ii) argument of the Party complained against.

(b) Rebuttal Argument

(i) reply of the complaining Party;

(ii) counter-reply of the Party complained against.

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

31. The panel shall arrange for either a transcript or a video and audio recording of the hearing to be prepared and delivered to the Parties as soon as possible after the hearing. The Parties may comment on the transcript or on the video and audio recording, and the panel may consider those comments and deliver any revised version of the transcript to the Parties as soon as possible. The cost of a full transcript or a video and audio recording shall be jointly shared between the Parties.

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

IX. Questions in writing

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

34. Each Party shall provide the other Party with a copy of its responses to the questions submitted by the panel. The other Party shall have an opportunity to provide comments in writing on the Party's responses within six days after the receipt of such copy.

X. Confidentiality

35. Each Party and the panel shall treat as confidential information that qualifies as confidential pursuant to Rule 36. If a Party submits to the panel a written submission which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information and which can be disclosed to the public.

36. Confidential information consists of:

(a) confidential business information;

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

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

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

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

37. Nothing in this Annex shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

38. The panel shall meet in closed session if the submission and arguments of a Party contain confidential information. The Parties shall maintain the confidentiality of the panel hearings if the hearings are held in closed session.

XI. *Ex parte* contacts

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

40. A panellist shall not discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other panellists.

41. A Party shall not have any contact with a panellist. Any contact between a Party and a person who is under consideration for selection as a panellist shall be limited to issues relating to the selection process and appointment.

XII. *Amicus curiae* submissions

42. The 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, provided that they:

(a) are received by the panel by a date determined by the 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 no case 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 panel and the natural or legal person concerned explains how the submission would assist the panel in determining such factual or legal issue by bringing a perspective, particular knowledge, or insight that is different from that of the Parties;

(d) contain a description of the person making the submission, including for a natural person their nationality and for a legal person its place of establishment, the nature of its activities, its legal status, its general objectives and its source of financing;

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

(f) are drafted in the working language determined in accordance with Rule 46 of this Annex.

The Parties may agree to modify the conditions in points (a) to (f) within five days after the date of the establishment of the panel.

43. The submissions shall be delivered to the Parties for their comments. The Parties may submit comments to the panel within 10 days after the date of their receipt.

44. The panel shall list in its report all the submissions it has received pursuant to Rule 42 of this Annex. The panel shall not be obliged to address in its report the arguments made in such submissions. If the panel addresses the arguments made therein, it shall also take into account any comments made by the Parties pursuant to Rule 43 of this Annex.

XIII. Urgent cases

45. In cases of urgency referred to in Article 4.11, the panel, after consulting the Parties, shall adjust, as appropriate, the time periods set out in this Annex. The panel shall notify the Parties of those adjustments.

XIV. Translation and interpretation

46. During the consultations referred to in Article 4.4 and no later than the meeting referred to in Rule 9 of this Annex, the Parties shall endeavour to agree on a working language for the proceedings before the panel. If the Parties are unable to agree on a working language, the language in which the Agreement was negotiated shall be the working language for the panel procedure.

47. If a Party submits a document in a language that is not the working language, it shall at the same time submit a translation in a working language at its own cost.

48. Panel reports and decisions shall be issued in the working language.

49. Any Party may provide comments on the accuracy of the translation of any document into the working language in accordance with Rule 47.

XV. Other procedures

50. The time periods laid down in this Annex shall be adjusted in line with the special time periods provided for the adoption of a report or decision by the panel in the proceedings under Articles 4.15, 4.16, 4.17, 4.18 and 4.19.

ANNEX 4-B

CODE OF CONDUCT FOR PANELLISTS AND MEDIATORS

I. Governing principles

1. In order to preserve the integrity and impartiality of the dispute settlement mechanism, each candidate and panellist shall:

(a) get acquainted with this Annex;

(b) be independent and impartial;

(c) avoid direct or indirect conflicts of interest;

(d) avoid impropriety or bias and the appearance of impropriety or bias;

(e) observe high standards of conduct; and

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

2. A panellist 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.

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

4. A panellist shall not allow past or existing financial, business, professional, personal, or social relationships or responsibilities to influence their conduct or judgement.

5. A panellist 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.

II. Disclosure obligations

6. Prior to the acceptance of their appointment as a panellist pursuant to Article 4.6, a candidate requested to serve as a panellist shall disclose in writing to the Parties any interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceedings. To that end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters, including financial, professional, employment or family interests.

7. The disclosure obligation under Rule 6 is a continuing duty which requires a panellist to disclose any such interests, relationships or matters that may arise during any stage of the proceedings.

8. A candidate or a panellist shall communicate in writing to the Committee for consideration by the Parties any matters concerning actual or potential violations of this Annex at the earliest time they become aware of them.

III. Duties of panellists

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

10. A panellist shall consider only the issues that are raised in the proceedings and that are necessary for a decision or report. A panellist shall not delegate this duty to any other person, except as provided for in Rule 12 of Annex 4-A (Rules of Procedure).

11. A panellist shall take all appropriate steps to ensure that their assistants and administrative staff are aware of, and comply with, the obligations of panellists under Parts I, II, III, IV and V of this Annex.

IV. Obligations of former panellists

12. Each former panellist shall avoid actions that may create the appearance that they were biased in carrying out their duties or that they derived advantage from any decision or report of the panel.

13. Each former panellist shall comply with the obligations in Part V of this Annex.

V. Confidentiality

14. A panellist shall not, at any time, disclose any confidential or non-public information concerning the proceedings or acquired during the proceedings for which the panellist has been appointed. A panellist shall not, in any case, disclose or use such information to gain personal advantage or advantage for others, or to adversely affect the interest of others.

15. A panellist shall not disclose a decision or report of the panel or parts thereof prior to its publication in accordance with Chapter 4 (Dispute Settlement between the Parties).

16. A panellist shall not, at any time, disclose the deliberations of the panel, or any panellist's view, nor make any statements on the proceedings for which the panellist has been appointed or on the issues in dispute in the proceedings, except to the extent required by law.

VI. Expenses

17. Each panellist shall keep a record and render a final account of the time devoted to the proceedings and of their expenses, as well as the time and expenses of their assistants and administrative staff.

VII. Mediators

18. This Annex shall apply to mediators mutatis mutandis.