EUROPEAN
COMMISSION

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COM(2026) 396 final

2026/0221 (NLE)

Proposal for a

# COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Trade and Development Committee established by 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 replacement of the list of individuals who are willing and able to serve as arbitrators**

# EXPLANATORY MEMORANDUM

## 1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the Union position to be taken in the EU-SADC Trade and Development Committee on the replacement of the list of individuals who are willing and able to serve as arbitrators for state-to-state dispute settlement.

## 2. CONTEXT OF THE PROPOSAL

### 2.1. The EU-SADC Economic Partnership Agreement

The Economic Partnership Agreement between the European Union, of the one part, and six countries from the Southern African Development Community (SADC): Botswana, Eswatini, Lesotho, Mozambique, Namibia and South Africa, of the other part, ('the Agreement') has been provisionally applied since 10 October 2016 between all Parties to the Agreement, except for Mozambique. The Agreement has been provisionally applied between Mozambique and the European Union as from 4 February 2018[1].

### 2.2. The Trade and Development Committee

The Trade and Development Committee, established by Article 103 of the Agreement, is composed of representatives of the Parties. Pursuant to Article 103(7), the Trade and Development Committee meets in a specific configuration to address trade and trade related matters. Article 103(6) of the Agreement sets out that the Trade and Development Committee shall adopt its decisions by agreement between the Parties, with due respect for the completion of their respective internal procedures.

### 2.3. The envisaged act of the Trade and Development Committee

It is envisaged that the Trade and Development Committee, when meeting in Brussels in 2026, adopts a decision regarding the replacement of the list of 21 individuals who are willing and able to serve as arbitrators pursuant to Article 94 of the Agreement ('the envisaged act').

The purpose of the envisaged act is to assure that the minimum number of available arbitrators is maintained.

The list of individuals who are willing and able to serve as arbitrators is composed of three sub-lists: one sub-list for each Party including eight individuals to serve as arbitrators and one sub-list of five individuals who are not nationals of either Party and who could serve as chairperson of the arbitration panel, meeting the requirements set out in Article 94(1) of the Agreement.

The envisaged act does not modify the text of the Agreement and does not require any implementing action by the Member States. As the envisaged act concerns only the internal operation of the dispute settlement mechanism of Part III of the Agreement, which has to be implemented by the Commission, it is appropriate to adopt the envisaged act in the English language. Translations can be provided for the internal decision making process of each Party and the information of the public.

The envisaged act will become binding on the parties in accordance with Article 103(6) and 94(1) of the Agreement. It will enter into force on the date of its adoption.

[1] Notice concerning the provisional application - 10.2.2018 - EUR-Lex - 22018X0210(01) - EN - EUR-Lex

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

The position to be taken on behalf of the Union should be to support the adoption of the envisaged act. The position should be based on the draft decision of the Trade and Development Committee attached to this proposal for a Council Decision.

## 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.'

*4.1.2. Application to the present case*

The Trade and Development Committee is a body set up by an international agreement.

The act which the Trade and Development Committee is called upon to adopt constitutes an act having legal effects. The envisaged act will be binding on the Parties under international law in accordance with Article 103 of the Agreement.

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

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

### 4.2. Substantive legal basis

*4.2.1. Principles*

The substantive legal basis for 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 the Union's behalf.

*4.2.2. Application to the present case*

The main objective and content of the envisaged act relates to the implementation of the common commercial policy through the implementation of an international agreement.

Therefore, the substantive legal basis of the proposed decision is Article 207(4) TFEU.

### 4.3. Conclusion

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

## 5. PUBLICATION OF THE ENVISAGED ACT

For the purposes of transparency, the Commission will publish the envisaged act of the Trade and Development Committee in the *Official Journal of the European Union* after its adoption. As the publication of the envisaged act is not required by law, a legal act has to provide for such publication.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), 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 their Member States, of the one part, and the SADC EPA States of the other part ('the Agreement'), was concluded by the Union by Council Decision (EU) 2016/1623 of 1 June 2016[2] and provisionally applied since 10 October 2016 between all Parties to the Agreement, except for Mozambique. The Agreement has been provisionally applied between Mozambique and the European Union as from 4 February 2018[3].

(2) Pursuant to Article 94(1) of the Agreement, the Trade and Development Committee has to establish a list of 21 individuals who are willing and able to serve as arbitrators.

(3) To ensure the proper functioning of the dispute settlement system established in Part III of the Agreement, the Trade and Development Committee should replace its list of individuals who are willing and able to serve as arbitrators.

(4) It is appropriate to establish the position to be taken on the Union's behalf in the Trade and Development Committee, as the Decision will be binding on the Union.

(5) To ensure transparency, it is preferable to publish the decision of the Trade and Development Committee as finally adopted,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the Trade and Development Committee shall be based on the draft decision of the Trade and Development Committee attached to this Decision.

[2] OJ L 250, 16.9.2016, p. 1–2.
[3] OJ L 38, 10.2.2018, p. 1–1.

*Article 2*

The decision of the Trade and Development Committee shall be published after its adoption.

*Article 3*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*
*The President*