EUROPEAN
COMMISSION

Brussels, 25.9.2025
COM(2025) 532 final

2025/0294 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EPA Council, in the Committee of Senior Officials and in the EPA Consultative Committee, 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 Consultative Committee, the recommendation of the Committee of Senior Officials to the EPA Council on the participation in the EPA Consultative Committee, the EPA Council decision on the participation in the EPA Consultative Committee and the decision of the Committee of Senior Officials agreeing to the adoption of Rules of Procedure of the EPA Consultative Committee

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decisions establishing the position to be taken on the Union's behalf in three bodies of the EU-Kenya Economic Partnership Agreement (EPA) – the EPA Council, the Committee of Senior Officials and the EPA Consultative Committee – in connection with the envisaged adoption of the Rules of Procedure for the EPA Consultative Committee; the Committee of Senior Officials recommendation to the EPA Council on the participation in the EPA Consultative Committee; the EPA Council decision on the participation in the EPA Consultative Committee; the Committee of Senior Officials decision agreeing to the adoption of Rules of Procedure of the EPA Consultative Committee.

Context of the proposal

1.1. The EU-Kenya Economic Partnership Agreement

The Economic Partnership Agreement (EPA) between the European Union, of the one part, and the Republic of Kenya, Member of the East African Community (EAC), of the other part ('the Agreement') aims to bilaterally implement the EU-EAC EPA concluded in 2014, and which never entered into force as not all the EAC Member States signed and ratified it. The EU-Kenya EPA provides for asymmetric trade liberalisation of goods and for provisions on sustainable development and development cooperation. The Agreement entered into force on 1 July 2024.

1.2. The EPA Council, the Committee of Senior Officials and the EPA Consultative Committee

Article 104 of the Agreement established an EPA Council (the highest body) and Article 105(3) provides that its functions shall include "determining its own rules of procedures". According to Article 105(3) and Article 120 of the Agreement, the EPA Council will adopt the Rules of Procedure for Dispute Settlement and the Code of Conduct for Arbitrators and Mediators. Both were adopted by the Council on 6 May 2025.

The Committee of Senior Officials is established by Article 106 of the Agreement to assist the Council in the performance of its functions and Article 107(3) provides that its functions shall include "determining its own rules of procedures" which were also adopted by the Council on 6 May 2025.

The EPA Consultative Committee is established by Article 108 of the Agreement with the task of assisting the Committee of Senior Officials to promote dialogue and cooperation between representatives of the private sector, organisations of civil society, including the academic community, and social and economic partners, on all matters covered under the Agreement. Pursuant to Article 108(2) of the Agreement, participation in the EPA Consultative Committee will be decided by the EPA Council, upon recommendations from the Committee of Senior Officials, with a view to ensuring a broad representation of all interested parties. Article 108(4) of the Agreement provides that the EPA Consultative Committee "shall adopt its rules of procedure […] in agreement with the Committee of Senior Officials."

1.3. The envisaged acts of the EPA Council, the Committee of Senior Officials and the EPA Consultative Committee

The EPA Council, the Committee of Senior Officials and the EPA Consultative Committee are to adopt the following decisions and recommendation:

1. Committee of Senior Officials recommendation to the EPA Council on the participation in the EPA Consultative Committee;
2. EPA Council decision on the participation in the EPA Consultative Committee;
3. Committee of Senior Officials decision agreeing to the adoption of Rules of Procedure of the EPA Consultative Committee;
4. EPA Consultative Committee decision adopting its own Rules of Procedure.

2. POSITION TO BE TAKEN ON THE UNION'S BEHALF

This proposal for a Council Decision establishes the position to be taken on the Union's behalf in the EPA Council, the Committee of Senior Officials and the EPA Consultative Committee set up by the Agreement, with regard to the adoption of: the Rules of Procedure for the EPA Consultative Committee; the Committee of Senior Officials recommendation to the EPA Council on the participation in the EPA Consultative Committee; the EPA Council decision on the participation in the EPA Consultative Committee and the decision of the Committee of Senior Officials agreeing to the adoption of Rules of Procedure of the EPA Consultative Committee.

The Parties to the Agreement discussed these rules of procedures and the above mentioned draft EPA Council and Committee of Senior Officials decisions and recommendation and agreed that, subject to the Parties' decision making procedures, these should be swiftly adopted to allow for the smooth implementation of the Agreement.

The substance of the attached Rules of Procedure is similar to that of rules of procedure of other Economic Partnership Agreements or other trade agreements. The attached recommendation from the Committee of Senior Officials to the EPA Council on the participation in the EPA Consultative Committee and the decision of the EPA Council decision in this regard are required by Article 108(2) of the Agreement. The attached decision of the Committee of Senior Officials agreeing to the adoption of Rules of Procedure of the EPA Consultative Committee is required by Article 108(4) of the Agreement.

Rules of Procedure of the EPA Consultative Committee are essential for completing the institutional framework of the Agreement and hence for ensuring its smooth implementation. The decisions on the participation in the EPA Consultative Committee and agreeing to the adoption of its Rules of Procedure are key to ensure its fuctioning.

3. LEGAL BASIS

3.1. Procedural legal basis

3.1.1. 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'[1]. Finally, the notion of 'acts having legal effects' also includes acts of an organisational nature that influence the way in which decisions are made within the body, for instance if a body with decision-making powers adopts or modifies its rules of procedure.

3.1.2. Application to the present case

The EPA Council, the Committee of Senior Officials and the EPA Consultative Committee are bodies set up by an agreement, namely the EU-Kenya EPA.

The respective draft acts which the three committees are called upon to adopt constitute acts having legal effects because they are acts of an organisational nature that influence the way in which decisions are made within the relevant bodies. The envisaged acts will be binding under international law in accordance with Articles 104, 105, 107 and 108 of the Agreement.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

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

3.2. Substantive legal basis

3.2.1. 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. 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.

3.2.2. Application to the present case

The main objective and content of the envisaged acts relate to the common commercial policy.

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

3.3. Conclusion

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

4. PUBLICATION OF THE ENVISAGED ACTS

As the acts of the EPA Council, the Committee of Senior Officials and the EPA Consultative Committee will adopt the Committee of Senior Officials recommendation and the EPA Council decision on the participation in the EPA Consultative Committee; the decision agreeing to the adoption of Rules of Procedure of the EPA Consultative Committee and the Rules of Procedure for the EPA Consultative Committee, it is appropriate to publish them in the *Official Journal of the European Union* after their adoption.

[1] 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.

2025/0294 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the EPA Council, in the Committee of Senior Officials and in the EPA Consultative Committee, 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 Consultative Committee, the recommendation of the Committee of Senior Officials to the EPA Council on the participation in the EPA Consultative Committee, the EPA Council decision on the participation in the EPA Consultative Committee and the decision of the Committee of Senior Officials agreeing to the adoption of Rules of Procedure of the EPA Consultative Committee

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 ('the Agreement'), entered into force on 1 July 2024.[2]

(2) Pursuant to Article 104, 106 and 108 of the Agreement, the EPA Council, the Committee of Senior Officials and the EPA Consultative Committee were, respectively, established upon entry into force of the Agreement.

(3) Pursuant to Article 108(2) of the Agreement, the EPA Council is to determine the participation in the EPA Consultative Committee, upon recommendations from the Committee of Senior Officials.

(4) Pursuant to Article 108(4) of the Agreement, the Committee of Senior Officials is to agree to the adoption of Rules of Procedure by the EPA Consultative Committee.

(5) Pursuant to Article 108(4) of the Agreement, the EPA Consultative Committee is to determine its Rules of Procedure.

(6) It is appropriate to establish the position to be taken on the Union's behalf within these three committees, as the decisions establishing the Rules of Procedure for the EPA Consultative Committee, the recommendation of the Committee of Senior Officials to the EPA Council on the participation in the EPA Consultative Committee, the EPA Council decision on the participation in the EPA Consultative Committee and the decision of the Committee of Senior Officials regarding its agreement to the adoption

[2] 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).

of Rules of Procedure of the EPA Consultative Committee will have legal effects in the Union.

(7) The position of the Union within these three committees as regards the adoption of the Rules of Procedure for the EPA Consultative Committee, the recommendation of the Committee of Senior Officials to the EPA Council on the participation in the EPA Consultative Committee, the EPA Council decision on the participation in the EPA Consultative Committee and the decision of the Committee of Senior Officials regarding its agreement to the adoption of Rules of Procedure of the EPA Consultative Committee should be based on the respective draft Decisions of the three committees attached to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Committee of Senior Officials, established under 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, regarding the recommendation to the EPA Council on the participation in the EPA Consultative Committee shall be based on the draft Recommendation of the Committee of Senior Officials attached to this Decision (Annex 1).

Article 2

The position to be taken on the Union's behalf within the EPA Council, established under 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, regarding the decision on the participation in the EPA Consultative Committee shall be based on the draft Decision of the EPA Council attached to this Decision (Annex 2).

Article 3

The position to be taken on the Union's behalf within the Committee of Senior Officials, established under 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, regarding the decision agreeing to the adoption of Rules of Procedure of the EPA Consultative Committee shall be based on the draft Decision of the Committee of Senior Officials attached to this Decision (Annex 3).

Article 4

The position to be taken on the Union's behalf within the EPA Consultative Committee, established under Article 108 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, regarding its Rules of Procedure shall be based on the draft Decision of the EPA Consultative Committee attached to this Decision (Annex 4).

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President