

MEDIATION MECHANISM FOR THE RESOLUTION OF DISPUTES  
BETWEEN INVESTORS AND PARTIES

ARTICLE 1

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator referred to in Article 3.31 (Mediation).

SECTION A

PROCEDURE UNDER THE MEDIATION MECHANISM

ARTICLE 2

Initiation of the Procedure

1. Either disputing party may request, at any time, the commencement of a mediation procedure. Such request shall be addressed to the other party in writing.

2. Where the request concerns an alleged breach of this Agreement by the authorities of the Union or by the authorities of a Member State of the Union it shall be addressed to the respondent as determined pursuant to Article 3.32 (Notice of Intent to Submit a Claim). If no respondent has been determined, it shall be addressed to the Union. Where the request is accepted, it shall specify whether the Union or the Member State of the Union concerned is a party to the mediation<sup>1</sup>.
3. The disputing party to which the request is addressed shall give sympathetic consideration to the request and accept or reject it in writing within 45 days or, where such request is submitted after a request for consultation has been submitted pursuant to Article 3.30 (Consultations), within 30 working days of its receipt.
4. The request shall contain:
  - (a) a summary of the differences or disputes, including, where appropriate, an identification of relevant legal instruments sufficient to identify the matter giving rise to the request;
  - (b) the names and contact details of the requesting party and its representatives; and

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<sup>1</sup> For greater certainty, where the request concerns treatment by the Union, the party to the mediation shall be the Union and any Member State of the Union concerned shall be fully associated in the mediation. Where the request concern exclusively treatment by a Member State of the Union, the party to the mediation shall be the Member State of the Union concerned, unless it requests the Union to be party.

- (c) either a reference to the agreement to mediate or an invitation to the other disputing party or parties to mediate under this mediation mechanism.

### ARTICLE 3

#### Selection of the Mediator

1. If both disputing parties agree to a mediation procedure, the disputing parties shall endeavour to agree on the choice of a mediator within 15 working days from the receipt of the reply to the request.
2. If the disputing parties cannot agree on the choice of the mediator within the established time frame, either disputing party may request the President of the Tribunal to draw by lot and appoint a mediator from among the Members of the Tribunal who are neither nationals of a Member State of the Union, nor of Viet Nam.
3. The President of the Tribunal shall appoint the mediator within five working days of the request referred to in paragraph 2.
4. The mediator shall assist, in an impartial and transparent manner, the disputing parties in reaching a mutually agreed solution.

ARTICLE 4

Rules of the Mediation Procedure

1. As soon as practicable following the mediator's designation, the mediator shall discuss with the disputing parties, whether in person, by telephone or by any other means of communication:
  - (a) the conduct of the mediation, in particular any outstanding procedural issues such as the languages and location of the mediation sessions;
  - (b) a provisional timetable for the conduct of the mediation;
  - (c) any legal disclosure obligation that may be relevant to the conduct of the mediation;
  - (d) whether the disputing parties wish to agree in writing not to commence or not to continue any other dispute settlement proceedings relating to the differences or disputes that are subject of the mediation while mediation is pending;
  - (e) whether special arrangements for the approval of a settlement agreement need to be made; and
  - (f) the financial arrangements, such as the calculation and payment of the mediator's fees and expenses in accordance with Article 8 (Costs) of this Annex.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure at issue. In particular, the mediator may organise meetings between the disputing parties, consult the disputing parties jointly or individually, seek the assistance of, or consult with, relevant experts and stakeholders and provide any additional support requested by the disputing parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the disputing parties.
3. The mediator may offer advice to, and propose a solution for the consideration of, the disputing parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.
4. The procedure shall take place in the territory of the Party concerned or, by mutual agreement, in any other location or by any other means.
5. Subject to subparagraph 1(b), the disputing parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.
6. Either the Union, a Member State of the Union or Viet Nam, when acting as a party to a mediation procedure, may make publicly available mutually agreed solutions, subject to the redaction of any information designated as confidential or protected.

7. The procedure shall be terminated by:
  - (a) the adoption of a mutually agreed solution by the disputing parties, on the date of adoption;
  - (b) a written declaration of the mediator, after consultation with the disputing parties, that further efforts at mediation would be to no avail; or
  - (c) written notice of a disputing party.

## SECTION B

### IMPLEMENTATION

#### ARTICLE 5

##### Implementation of a Mutually Agreed Solution

1. Where a solution has been agreed, each disputing party shall endeavour to take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing disputing party shall inform the other disputing party in writing of any steps or measures taken to implement the mutually agreed solution.

3. On request of the disputing parties, the mediator shall issue to the disputing parties, in writing, a draft factual report, providing a brief summary of:
  - (a) the measure at issue in these procedures;
  - (b) the procedures followed; and
  - (c) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.
  
4. The mediator shall provide the disputing parties with 15 working days to comment on the draft factual report. After considering the comments of the disputing parties submitted within that period, the mediator shall submit, in writing, a final factual report to the disputing parties within 15 working days. The factual report shall not include any interpretation of this Agreement.

SECTION C

GENERAL PROVISIONS

ARTICLE 6

Relationship to Dispute Settlement

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or any other agreement. A disputing party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall any adjudicate body take into consideration:
  - (a) positions taken by a disputing party in the course of the mediation procedure;
  - (b) the fact that a disputing party has indicated its willingness to accept a solution to the measure subject to mediation; or
  - (c) advice given or proposals made by the mediator.
  
2. Subject to any agreement pursuant to subparagraph 1(d) of Article 4 (Rules of the Mediation Procedure) of this Annex, the mediation mechanism is without prejudice to the rights and obligations of the Parties and the disputing parties under Chapter 3 (Dispute Settlement).

3. Unless the disputing parties agree otherwise, and without prejudice to paragraph 6 of Article 4 (Rules of the Mediation Procedure) of this Annex, all steps of the procedure, including any advice or proposed solution, shall be confidential. However, any disputing party may disclose to the public that mediation is taking place.

## ARTICLE 7

### Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the disputing parties.

## ARTICLE 8

### Costs

1. Each disputing party shall bear its own expenses derived from the participation in the mediation procedure.
2. The disputing parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be in accordance with that provided for the Members of the Tribunal under paragraph 16 of Article 3.38 (Tribunal).

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