

In view of the Commission's transparency policy, the Commission is publishing the text of the EU-China Investment Agreement following the agreement in principle announced on 30 December 2020.

The text is published for information purposes only and may undergo further modifications as a result of the process of legal and technical revision, including of the final structure (such as numbering, sequencing, or titles of articles, or any duplication). However, in view of the growing public interest in the negotiations, the text is published at this stage of the negotiations for information purposes. This text is without prejudice to the final outcome of the agreement between the EU and China.

The text will be final upon signature. The agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

Annex I Rules of Procedure for State-to-State Dispute Settlement

I. Definitions

1. In Section [X] (State-to-State Dispute Settlement) and under these Rules of Procedure:
 - (a) "arbitration panel" means a panel established pursuant to Article 6 (Establishment of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement);
 - (b) "assistant" means an individual who, under the terms of appointment and under the direction and control of a panellist, conducts research or provides assistance to that panellist;
 - (c) "complaining Party" means any Party that requests the establishment of panel pursuant to Article 6 (Establishment of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement);
 - (d) "day" means a calendar day;
 - (e) "panellist" means a member of an arbitration panel;
 - (f) "Party complained against" means the Party that is alleged to be in violation of the covered provisions referred to in Article 2 (Scope of Application) of Section [X] (State-to-State Dispute Settlement);
 - (g) "representative of a Party" means an employee or an individual appointed by a Party who represents, advises or assists the Party for the purposes of a dispute under this Agreement.

II. Notifications

2. Any request, notice, written submission or other document, as applicable, of:
 - (a) the arbitration panel shall be sent to both Parties at the same time;

- (b) a Party which is addressed to the arbitration 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 arbitration panel at the same time.
3. Any notification referred to in rule 2 shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.
 4. All notifications shall be addressed to [...] of China and to the Directorate-General for Trade of the Commission of the European Union, respectively.
 5. Minor errors of a clerical nature in a request, notice, written submission or other document related to the arbitration panel proceedings may be corrected by the delivery of a new document clearly indicating the changes.
 6. If the last day for delivery of a document falls on a non-working day of the institutions of the European Union or of the government of China, the time period for the delivery of the document shall end on the first following working day.

III. Appointment of Panellists

7. If pursuant to Article 7 (Composition of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement), a panellist is selected by lot, the complaining Party shall promptly inform the Party complained against of the date, time and venue of the lot. The Party complained against may, if it so chooses, be present during the lot. The lot shall be carried out with the Party or Parties that are present.
8. The complaining Party shall notify, in writing, each individual who has been selected to serve as a panellist of his or her appointment. Each individual shall confirm his or her availability to both Parties no later than five days after the date of notification of the appointment.
9. For the purposes of Article 7(6) (Composition of an Arbitration Panel), the complaining Party shall select by lot the panellists or the chairperson:
 - (a) from the individuals who have been formally proposed by a Party for its particular sub-list, if that sub-list is not established;
 - (b) from the individuals who have been formally proposed by one or both Parties for the sub-list of chairpersons, if that sub-list is not established;
 - (c) from the individuals that remain on that particular sub-list, if a sub-list no longer contains at least four individuals.

IV. Organisational Meeting

10. Unless the Parties agree otherwise, they shall meet the arbitration panel within seven days of its composition in order to determine such matters as the Parties or the arbitration panel deem appropriate, including the timetable of the proceedings. Panellists and representatives of the Parties may take part in this meeting.

V. Written Submissions

11. The complaining Party shall deliver its written submission no later than 20 days after the date of the composition of the arbitration panel. The Party complained against shall deliver its written submission no later than 30 days after the date of delivery of the written submission of the complaining Party.

VI. Operation of the Arbitration Panel

12. 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.
13. Unless otherwise provided in Section [X] (State-to-State Dispute Settlement) or in these Rules of Procedure, the arbitration panel may conduct its activities by any means.
14. Only panellists may take part in the deliberations of the arbitration panel, but the arbitration panel may permit assistants to be present at its deliberations.
15. The drafting of any decision and report shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.
16. Where a procedural question arises that is not covered by Section [X] (State-to-State Dispute Settlement) and its Annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.
17. If the arbitration 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 Section [X] (State-to-State Dispute Settlement) or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the time period or adjustment needed.

VII. Replacement

18. If a panellist is unable to participate in the proceedings, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 7 (Composition of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement).
19. If a Party considers that a panellist does not comply with the requirements of Annex XX (Code of Conduct for Panellists and Mediators) and for this 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 panellist's alleged non-compliance.
20. The Parties shall consult within 15 days. They shall inform the panellist of its alleged non-compliance and may request the panellist to take steps to remedy the non-compliance. They may also, if they so agree, remove the panellist and select a new panellist in accordance with Article 7 (Composition of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement).
21. If the Parties fail to agree on the need to replace a panellist 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 panel finds that the panellist does not comply with the requirements of Annex XX (Code of Conduct for Panellists and Mediators), the new panellist shall be selected in accordance with Article 7 (Composition of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement).

22. If the Parties fail to agree on the need to replace the chairperson, either Party may request that this matter be referred to the two remaining panellists. The decision by the panellists on the need to replace the chairperson shall be final.

If the panellists finds that the chairperson does not comply with the requirements of Annex XX (Code of Conduct for Panellists and Mediators), the new chairperson shall be selected in accordance with Article 7 (Composition of an Arbitration Panel) of Section [X] (State-to-State Dispute Settlement).

23. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in rules 18 to 22.

VIII. Hearings

24. Based upon the timetable determined pursuant to rule 10, after consulting with the Parties and the other panellists, the chairperson of the arbitration panel shall notify the Parties of 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. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.

25. The hearing shall be open to the public, unless the Parties decide that the hearing shall be partially or completely closed to the public. If the hearing is open to the public, the following conditions apply, unless the Parties agree otherwise:

- (a) public viewing shall take place via simultaneous or delayed closed circuit television broadcasting in a separate viewing room at the venue of the hearing;
- (b) registration for public viewing of the hearing shall be required and the arbitration panel may decide on further logistical arrangements, in particular by limiting the number of places and allocating them on a first-come first-served basis; and
- (c) no audio or video recording, photography, or web-streaming shall be permitted in the viewing room.

26. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is China and in Beijing 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 derived therefrom.

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

28. All panellists 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 of a Party; and
- (b) assistants, interpreters, if necessary, and other persons whose presence is requested by the arbitration 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 the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives who will be attending the hearing.
31. In conducting the hearing, the arbitration panel shall ensure that the complaining Party and the Party complained against 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 the audio-recording of the hearing to be prepared and 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 no later than 20 days after the date of the hearing.

IX. Questions in Writing

35. The arbitration 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.
36. Each Party shall provide the other Party with a copy of its responses to the questions submitted by the arbitration panel. Each Party shall have an opportunity to provide comments in writing on the other Party's responses no later than five days after the delivery of such copy.

X. Transparency

37. A party making a request for consultations or a request for the establishment of an arbitration panel shall make that request publicly available without delay, subject to the protection of confidential information.
38. Each Party may make its submissions or statements to the arbitration panel publicly available, subject to the protection of confidential information.

XI. Confidentiality

39. Any information submitted by the other Party to the arbitration panel, which that other Party has designated as confidential shall be treated as confidential. Where a Party submits to the arbitration panel a written document which contains confidential information, it shall also, upon request of the other Party, provide, no later than 15 days after the submission, a non-confidential summary of the information contained in the submission that could be disclosed to the public.
40. Notwithstanding rule 25, the arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential information. The Parties shall maintain the confidentiality of the hearings where the hearings are held in closed session.

XII. Ex parte contacts

41. The arbitration panel shall not meet or communicate with a Party in the absence of the other Party.
42. 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.

XIII. Amicus curiae submissions

43. Unless the Parties agree otherwise within five days of the date of the establishment of the panel, natural persons of a Party or legal persons established in the territory of a Party, who are independent from the governments of the Parties, may deliver unsolicited written submissions to the arbitration panel, provided that they:
 - (a) are received by the panel within 10 days after the panel was composed;
 - (b) are concise and in no case longer than 20 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 for a natural person his or her nationality and for a legal person its place of establishment, the nature of its activities, its legal status, general objectives, the source of its financing, and any controlling entity;
 - (e) disclose any connection with a Party;
 - (f) specify the nature of the interest that the person has in the arbitration proceedings; and
 - (g) are drafted in the languages chosen by the Parties in accordance with rules 48 and 49 of these Rules of Procedure.
44. The submissions shall be delivered to the Parties for their comments. Within 10 days of the delivery of the submissions the Parties may submit comments to the arbitration panel.
45. The arbitration panel shall annex to its report a list of all the persons having made an amicus curiae submissions that complied with rule 43. The arbitration panel shall not be obliged to address in its report the arguments made in such submissions.
46. The arbitration panel shall ensure that the amicus curiae submissions do not disrupt the proceedings or unduly burden or unfairly prejudice either Party.

XIV. Urgent cases

47. In cases of urgency as referred to in paragraph 4 of Article 22 (Time Periods) of Section [X] (State-to-State Dispute Settlement), the arbitration panel, after consulting the Parties, shall adjust, as appropriate, the time periods referred to in these Rules of Procedure. The arbitration panel shall notify the Parties of those adjustments.

XV. Working Language, Translation and Interpretation

48. During the consultations referred to in Article 3 of Section [X] (State-to-State Dispute Settlement), and no later than the organisational meeting referred to in rule 10 of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.
49. If the Parties are unable to agree on a common working language, the arbitration panel shall, after consulting the Parties, decide on the most appropriate working language, taking into account the languages both Parties are familiar with.
50. Panel reports and decisions shall be issued in the working language.
51. Any Party may provide comments on the accuracy of the translation of any translated version of a document drawn up in accordance with these Rules of Procedure.
52. Each Party shall bear the costs of the translation of its written submissions and interpretation of oral submissions into the working language, if any.

XVI. Costs

53. Each Party shall bear its own expenses derived from the participation in the arbitration panel or the mediation.
54. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the panellists and the mediator.
55. The remuneration and expenses to be paid to the panellists shall be in accordance with WTO standards. The total amount of the remuneration of an assistant or assistants of each panellist, if any, shall not exceed 50% of the remuneration of that panellist.

XVII. Other Procedures

56. The time periods laid down in these Rules of Procedure shall be adjusted in line with the special time periods provided for the issuance of a report or decision by the panel in the proceedings under Article 14 (Reasonable Period of Time), Article 15 (Compliance Review), Article 16 (Temporary Remedies) and Article 17 (Review of any Measure taken to comply after the Adoption of Temporary Remedies) of Section X (State-to-State Dispute Settlement).