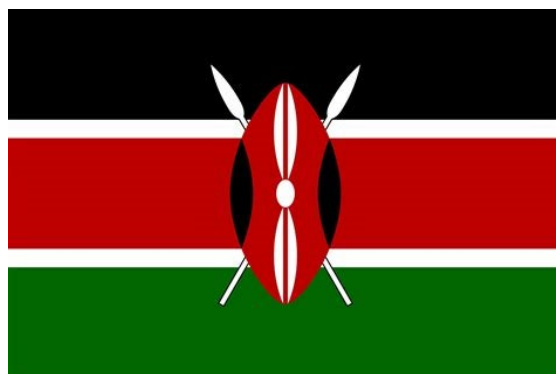


KENYA



Information of 1 July 2024
[*OJL, 2024/1684, 1.7.2024*](#)

Council Decision of 30 May 2024
[*OJL, 2024/1647, 1.7.2024*](#)

Council Decision of 12 December 2023
[*OJL, 2023/2853, 19.12.2023*](#)

Agreement, Article 23
[*OJL, 2024/1648, 1.7.2024*](#)

Protocol 1
[*OJL, 2024/1648, 1.7.2024*](#)

**Information concerning the entry into force 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**

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 ⁽¹⁾, enters into force on 1 July 2024, in accordance with Article 139(2) of the Agreement, as the Parties notified each other of the completion of their internal legal procedures on 30 May 2024.

¹ OJ L, 2024/1648, 1.7.2024, ELI: http://data.europa.eu/eli/agree_internation/2024/1648/oj.

COUNCIL DECISION (EU) 2024/1647
of 30 May 2024

**on the conclusion, on behalf of the Union, 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**

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(6), point (a)(v) thereof,

Having regard to the proposal from the European Commission ⁽¹⁾,

Having regard to the consent of the European Parliament ⁽²⁾,

Whereas:

- (1) On 12 June 2002, the Council authorised the Commission to open negotiations on behalf of the Union for Economic Partnership Agreements (EPA) with the African, Caribbean and Pacific Group of States.
- (2) The negotiations between the Union and the East African Community (EAC) Partner States (the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania and the Republic of Uganda) for an EU-EAC EPA were concluded 14 October 2014 and the EU-EAC EPA was initialled on 16 October 2014.
- (3) The Republic of Kenya ('Kenya') signed and ratified the EU-EAC EPA on 1 September and 28 September 2016, respectively. For the EU-EAC EPA to enter into force, all EAC members need to sign and ratify it. To this date, the signature and ratification of the other EAC members are still pending, thus preventing the EU-EAC EPA from entering into force.
- (4) On 19 December 2019, the Council updated the Commission's negotiating directives of 2002 by including the conclusion of a chapter on trade and sustainable development in EPAs.
- (5) On 27 February 2021, the EAC Summit authorised individual EAC members to proceed with the bilateral implementation of the EU-EAC EPA under the principle of 'variable geometry'. On 4 May 2021, Kenya notified the Commission of its request to move forward in that sense.
- (6) On 17 February 2022, the Union and Kenya signed a Joint Statement on the margins of the EU-African Union Summit agreeing to advance the negotiations on an EPA between the Union and Kenya ('the Agreement'), which is to remain open for accession by other

¹ Not yet published in the Official Journal.

² The European Parliament gave its consent on 29 February 2024.

EAC Partner States.

- (7) On 24 May 2023, the negotiations for the Agreement were successfully concluded.
- (8) In accordance with Council Decision (EU) 2023/2853 ⁽³⁾, the Agreement was signed on 18 December 2023, subject to its conclusion at a later date.
- (9) The Agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

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 ⁽⁴⁾ ('the Agreement'), is hereby approved on behalf of the Union.

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 139(3) of the Agreement ⁽⁵⁾.

Article 3

The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 30 May 2024.

For the Council
The President
H. LAHBIB

³ Council Decision (EU) 2023/2853 of 12 December 2023 on the signing, on behalf of the Union, 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 (OJ L, 2023/2853, 19.12.2023, ELI: <http://data.europa.eu/eli/dec/2023/2853/oj>).

⁴ The text of the Agreement is published in OJ L, 2024/1648, 1.7.2024, ELI: http://data.europa.eu/eli/agree_internation/2024/1648/oj.

⁵ The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.

COUNCIL DECISION (EU) 2023/2853

of 12 December 2023

on the signing, on behalf of the Union, 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

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(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 12 June 2002, the Council authorised the Commission to open negotiations on behalf of the Union for Economic Partnership Agreements (EPA) with the African, Caribbean and Pacific Group of States.
- (2) The negotiations between the Union and the East African Community (EAC) Partner States (the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania and the Republic of Uganda) for an EU-EAC EPA were concluded on 14 October 2014 and the EU-EAC EPA was initialled on 16 October 2014.
- (3) The Republic of Kenya ('Kenya') signed and ratified the EU-EAC EPA on 1 and 28 September 2016, respectively. For the EU-EAC EPA to enter into force, all EAC members need to sign and ratify it. To this date, the signature and ratification of the other EAC members are still pending, thus preventing the EU-EAC EPA from entering into force.
- (4) On 19 December 2019, the Council updated the Commission's negotiating directives of 2002 by including the conclusion of a chapter on trade and sustainable development in EPAs.
- (5) On 27 February 2021, the EAC Summit authorised individual EAC members to proceed with the bilateral implementation of the EU-EAC EPA under the principle of 'variable geometry'. On 4 May 2021, Kenya notified the Commission of its request to move forward in that sense.
- (6) On 17 February 2022, the Union and Kenya signed a Joint Statement on the margins of the EU-African Union Summit agreeing to advance the negotiations on an EPA between the Union and Kenya ('the Agreement'), which is to remain open for accession by other EAC Partner States.

- (7) On 24 May 2023, the negotiations for the Agreement were successfully concluded.
- (8) The Agreement should therefore be signed on behalf of the Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the Union 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 ('the Agreement'), is hereby authorised, subject to the conclusion of the said Agreement (¹).

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 3

The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts or tribunals.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 12 December 2023.

For the Council
The President
P. NAVARRO RÍOS

¹ The text of the Agreement will be published together with the decision on its conclusion.

**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**

[...]

**TITLE III
CUSTOMS COOPERATION AND TRADE FACILITATION**

[...]

Article 23

Customs Cooperation and Mutual Administrative Assistance

1. In order to ensure compliance with the provisions of this Title and effectively respond to the objectives laid down in Article 22, the Parties shall:
 - (a) exchange information on customs legislation and procedures;
[...]
2. Notwithstanding paragraph 1, the Parties shall provide each other with mutual administrative assistance in customs matters in accordance with the provisions of Protocol 1.

PROTOCOL 1 ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

ARTICLE 1

Definitions

For the purposes of this Protocol:

- (a) ‘goods’ means all goods falling within the scope of the Harmonised System, irrespective of the scope of this Agreement;
- (b) ‘customs legislation’ means any legal or regulatory provisions, applicable in the territories of a Party, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (c) ‘Applicant Authority’ means a competent administrative authority which has been designated by a Party for the implementation of this Protocol and which makes a request for assistance on the basis of this Protocol;
- (d) ‘Requested Authority’ means a competent administrative authority which has been designated by a Party for the implementation of this Protocol and which receives a request for assistance on the basis of this Protocol;
- (e) ‘personal data’ means all information relating to an identified or identifiable individual;
- (f) ‘operation in breach of customs legislation’ means any violation or attempted violation of customs legislation.

ARTICLE 2

Scope

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combatting operations in breach of customs legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information has the prior authorisation of that authority.
3. Assistance in recovery proceedings regarding duties, taxes or fines is not covered by this Protocol.

ARTICLE 3

Assistance on Request

1. At the request of the Applicant Authority, the Requested Authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.

2. At the request of the Applicant Authority, the Requested Authority shall inform it:

(a) whether goods exported from the territory of a Party have been lawfully imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;

(b) whether goods imported into the territory of a Party have been lawfully exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the Applicant Authority, the Requested Authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:

(a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;

(b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;

(c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation; and

(d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

ARTICLE 4

Spontaneous Assistance

The Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

(a) operations which are or appear to be in breach of customs legislation and which may be of interest to the other Party;

(b) new means or methods employed in carrying out operations in breach of customs legislation;

(c) goods known to be subject to operations in breach of customs legislation;

(d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation; and

(e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

ARTICLE 5

Delivery and Notification

1. At the request of the Applicant Authority, the Requested Authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order:

(a) to deliver any documents emanating from the Applicant Authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the Requested Authority, and, where appropriate;

(b) to notify any decisions emanating from the Applicant Authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the Requested Authority.

2. Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the Requested Authority or in a language acceptable to that authority.

ARTICLE 6

Form and Substance of Requests for Assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately. Requests may also be communicated in electronic form.

2. Requests pursuant to paragraph 1 shall include the following information:

(a) the name of the Applicant Authority;

(b) the measure requested;

(c) the object of and the reason for the request;

(d) the legal or regulatory provisions and other legal elements involved;

(e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations; and

(f) a summary of the relevant facts and of the enquiries already carried out.

3. Requests shall be submitted in an official language of the Requested Authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may be ordered.

ARTICLE 7

Execution of Requests

1. In order to comply with a request for assistance, the Requested Authority shall proceed, within the

limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Party by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the Requested Authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

3. Duly authorised officials of a Party may, with the agreement of the other Party involved and subject to the conditions laid down by the latter:

(a) be present to obtain in the offices of the Requested Authority or any other concerned authority in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation which the Applicant Authority needs for the purposes of this Protocol;

(b) be present at enquiries carried out in the latter's territory.

ARTICLE 8

Form in which Information is to be Communicated

1. The Requested Authority shall communicate results of enquiries to the Applicant Authority in writing together with relevant documents, certified copies or other items.

2. If requested, the information provided for in paragraph 1 may be in electronic form.

3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

ARTICLE 9

Exceptions to the Obligation to Provide Assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party concerned is of the opinion that assistance under this Protocol would:

(a) be likely to prejudice the sovereignty of an EAC Partner State or that of an EU Member State which has been requested to provide assistance under this Protocol; or

(b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2); or

(c) violate an industrial, commercial or professional secret.

2. Assistance may be postponed by the Requested Authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the Requested Authority shall

consult with the Applicant Authority to determine if assistance can be given subject to such terms or conditions as the Requested Authority may require.

3. Where the Applicant Authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the Requested Authority to decide how to respond to such a request.

4. For the cases referred to in paragraphs 1 and 2, the decision of the Requested Authority and the reasons must be communicated to the Applicant Authority without delay.

ARTICLE 10

Information Exchange and Confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Parties. Such information shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Party that received it, and in the case of the EU the corresponding provisions applying to the EU authorities (¹).

2. Personal data may be exchanged only where the Party which may receive them agrees to ensure an adequate level of protection of such data in at least an equivalent way to the one applicable to that particular case in the Party that may supply them. To that end, the Parties shall communicate to each other information on their applicable rules and legal provisions.

3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, is considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

ARTICLE 11

Experts and Witnesses

An official of a Requested Authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which

¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data (OJ EU L 8, 12.1.2001, p. 1).

judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

ARTICLE 12
Assistance Expenses

The Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

ARTICLE 13
Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of the EAC Partner State(s) and on the other hand to the competent services of the European Commission and the customs authorities of the EU Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection.

2. The Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

ARTICLE 14
Amendments

The Parties may recommend to the competent bodies amendments which they consider should be made to this Protocol.

ARTICLE 15
Final Provisions

1. This Protocol shall complement and not impede the application of any agreements on mutual administrative assistance which have been concluded or may be concluded between the Parties nor shall it preclude more extensive mutual assistance granted under such agreements.

2. The provisions of this Protocol shall not affect the obligations of the Parties under any other international agreement or convention.

3. The provisions of this Protocol shall not affect the provisions of the EU governing the communication between the competent services of the European Commission and the customs authorities of the EU Member States of any information obtained under this Protocol which could be of EU interest.

4. The provisions of this Protocol shall not affect the provisions of the EAC Partner State(s) governing

the communication between the competent EAC Organs and the customs authorities of the EAC Partner State(s) of any information obtained under this Protocol which could be of interest to the EAC Partner State(s).

5. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual EU Member States and an EAC Partner State in so far as the provisions of the latter are incompatible with those of this Protocol.

6. In respect of questions relating to the applicability of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Special Committee on Customs and Trade Facilitation.