

MADAGASCAR



Decision of 13 July 2009
[*OJ L 111 of 24 April 2012*](#)

Article of the Agreement
None

Protocol
[*OJ L 111 of 24 April 2012*](#)

COUNCIL DECISION

of 13 July 2009

on the signing and provisional application of the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part

(2012/196/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 133 and 181, in conjunction with the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) On 12 June 2002 the Council authorised the Commission to open negotiations to conclude Economic Partnership Agreements with African, Caribbean and Pacific (ACP) States.
- (2) Negotiations for an interim agreement establishing a framework for an Economic Partnership Agreement (hereinafter referred to as the 'Interim EPA') were concluded on 28 November 2007 with Seychelles, Zambia and Zimbabwe. On 4 December 2007, the Interim EPA was initialled by Mauritius and on 11 December 2007 by Comoros and Madagascar.
- (3) Article 62(4) of the Interim EPA provides for its provisional application pending its entry into force.
- (4) The Interim EPA should be signed on behalf of the Community and applied, as concerns elements falling within the competence of the Community, on a provisional basis subject to its conclusion at a later date,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, is hereby approved on behalf of the Community, subject to a Council Decision concerning the conclusion of the said Economic Partnership Agreement.

The text of the Interim EPA is attached to this Decision.

Article 2

1. For the purposes of Article 64(3) of the Interim EPA, the delegation of the EC Party to the EPA Committee shall be composed of the members of the Council and of representatives

of the Commission. It shall be chaired jointly by the Commission and the Presidency of the Council.

2. The position to be taken by the Community within the EPA Committee shall be determined by the Council on the basis of a proposal by the Commission in accordance with the corresponding provisions of the Treaty.

Article 3

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Interim EPA on behalf of the Community subject to its conclusion.

Article 4

As concerns elements falling within the competence of the Community, the Interim EPA shall be applied on a provisional basis as provided for in Article 62(4) thereof, pending completion of the procedure for its conclusion. The Commission shall publish a notice providing information on the date of provisional application.

Done at Brussels, 13 July 2009.

For the Council

The President

E. ERLANDSSON

INTERIM AGREEMENT

establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part

UNION OF COMOROS,

THE REPUBLIC OF MADAGASCAR,

THE REPUBLIC OF MAURITIUS,

THE REPUBLIC OF SEYCHELLES,

THE REPUBLIC OF ZAMBIA,

THE REPUBLIC OF ZIMBABWE,

hereinafter referred to as the 'ESA States',

on the one part, and

(...)

THE EUROPEAN COMMUNITY,

hereinafter referred to as 'the EC Party',

on the other part,

together hereinafter referred to as 'the Parties',

PREAMBLE

WE the African, Caribbean and Pacific (ACP) States of the Eastern and Southern African (ESA) region, constituted as the ESA Group and its individual member States, on the one hand, and the European Community (EC) and its Member States, on the other;

HAVING REGARD to the Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the one part, and the EC and its Member States of the other part signed on 23 June 2000 (hereinafter referred to as the 'Cotonou Agreement'), the Common Market for Eastern and Southern Africa (COMESA) Treaty signed on 5 November 1993, the Southern Africa Development Community (SADC) Treaty signed on 17 August 1992 and its Protocol on Trade, the East African Community (EAC) Treaty signed on 30 November 1999, and the African Union Constitutive Act signed and adopted on 11 July 2002;

HAVING REGARD to the Treaty Establishing the European Community;

HAVING ALSO REGARD to the decision of the eighth Summit of the COMESA Authority of Heads of State and Government held in Khartoum, Sudan on 17 March 2003 on the establishment of the ESA configuration for the purpose of negotiation of an Economic Partnership Agreement (EPA) with the European Union (EU);

CONSIDERING that the ESA States and the EC and its Member States have agreed that their trade and economic cooperation shall aim at fostering the smooth and gradual integration of the ESA States into the world economy with due regard to their political choices, levels of development and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ESA States;

REAFFIRMING their commitment to promote and expedite the economic, cultural and social development of the ESA States with a view to contributing to peace and security and to promoting a stable and democratic political environment conducive for sustainable national and regional development;

REAFFIRMING also that the EPA shall be consistent with the objectives and principles of the Cotonou Agreement and, in particular, with the provisions of Part III, Title II thereof;

REAFFIRMING that the EPA shall serve as an instrument for development and shall promote sustained growth, increase the production and supply-side capacity of ESA States, foster structural transformation of ESA economies and their diversification and competitiveness and lead to the development of trade, the attraction of investment and technology and the creation of employment in ESA States;

RECALLING the commitments of the international community on the achievements of the Millennium Development Goals as contained in the UN Declaration of September 2000;

REAFFIRMING that advancing the development agenda requires genuine international cooperation and the full implementation of agreed commitments made at the Conferences of Rio, Beijing, Copenhagen, Cairo and Monterrey, as well as in the Programmes of Action in favour of Least Developed Countries (LDCs), Landlocked Developing Countries (LLDCs) and Small Island Developing States (SIDS) respectively;

BEARING in mind the rights and obligations of the Members of the World Trade Organisation (WTO), the importance they attach to the principles and rules governing international trade and the need for a transparent, predictable, open and fair multilateral trading system;

REITERATING the need to ensure that particular emphasis be placed on regional integration and the provision of special and differential treatment to all ESA States, maintain special treatment for ESA LDCs, and take due account of the vulnerability of small economies, landlocked, island, coastal, drought prone and ESA States emerging from conflict;

COGNISANT that substantial investments are required to uplift the standards of living of ESA States;

RECALLING the commitments of the Parties within the framework of the WTO,

HAVE AGREED AS FOLLOWS: (...)

PROTOCOL 2

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 the Economic Partnership Agreement concluded between the European Union States and the Signatory ESA States;
- (b) ‘Customs legislation’ means any legal or regulatory provisions applicable in the territories of the Parties, 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 the Parties for this purpose 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 the Parties for this purpose 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 combating operations in breach of that 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 the 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 the 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 a Signatory ESA State or that of a Member State of the European Community 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. It 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 the corresponding provisions applying to the European Community authorities.
2. Personal data may be exchanged only where the Party which may receive them undertakes to protect 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, Parties shall communicate to each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the European Community.
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 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 Signatory ESA States and on the other hand to the competent services of the Commission of the European Communities and the customs authorities of the 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 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 European Community provisions governing the communication between the competent services of the Commission of the European Communities and the customs authorities of the Member States of the European Community of any information obtained under this Protocol which could be of interest to the European Community.
4. 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 Member States of the European Community and any Signatory ESA State in so far as the provisions of the latter are incompatible with those of this Protocol.
5. 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 EPA Committee.