

## CÔTE D'IVOIRE



<p><b>DECISION</b> <a href="#"><u>OJ L59/1, of 3.3.2009</u></a></p>
<p><b>NOTICE ON PROVISIONAL APPLICATION</b> <a href="#"><u>OJ L 272/1 of 7.10.2016</u></a></p>
<p><b>ANTI-FRAUD MEASURES, Article 21</b> <a href="#"><u>OJ L59/9, of 3.3.2009</u></a></p>
<p><b>AGREEMENT, Article 28</b> <a href="#"><u>OJ L59/12, of 3.3.2009</u></a></p>
<p><b>PROTOCOL</b> <a href="#"><u>OJ L59/270, of 3.3.2009</u></a></p>

**COUNCIL DECISION**

**of 21 November 2008**

**on the signature and provisional application of the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part**

(2009/156/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 sentence of 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 of Economic Partnership Agreements with ACP countries.
- (2) Negotiations of a stepping stone Economic Partnership Agreement have been concluded and the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part (hereinafter the stepping stone EPA) was initialled on 7 December 2007.
- (3) Article 75(4) of the stepping stone EPA provides for its provisional application of the Agreement pending its entry into force.
- (4) The stepping stone 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 stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part, is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement.

The text of the stepping stone EPA is attached to this Decision.

*Article 2*

For the purposes of Article 73(2) of the stepping stone EPA, the EPA Committee shall be composed, on the one hand, of the members of the Council and of representatives of the Commission and, on the other hand, of representatives of the Government of the Côte d'Ivoire. The Commission shall propose to the Council, for its decision, the position of the European Community with a view to the negotiation of the EPA Committee's rules of procedure.

*Article 3*

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

*Article 4*

As concerns elements falling within the competence of the Community, the stepping stone EPA shall be applied on a provisional basis as provided for in Article 75(4) of this Agreement, pending completion of the procedures necessary for its conclusion. The Commission will publish a notice providing information on the date of provisional application.

Done at Brussels, 21 November 2008.

*For the Council*

*The President*

E. WOERTH

**Notice concerning the provisional application of the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part**

The European Union and the Republic of Côte d'Ivoire have notified the completion of the procedures necessary for the provisional application of the stepping stone Economic Partnership Agreement between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part (1), in accordance with Article 75 of that Agreement. Consequently, the Agreement applies provisionally as from 3 September 2016 between the European Union and the Republic of Côte d'Ivoire.

Pending application of the new reciprocal common regime provided for in Article 14 paragraph 2 of the Agreement, both Parties have agreed to apply the provisions contained in Annex II of Regulation (EU) 2016/1076 of the European Parliament and of the Council of 8 June 2016 concerning the definition of the concept of 'originating products' and methods of administrative cooperation.

**STEPPING STONE ECONOMIC PARTNERSHIP AGREEMENT between Côte d'Ivoire, of the one part, and the European Community and its Member States, of the other part**

(...)

**Article 21**

**Special provisions on administrative cooperation**

1. The Parties agree that administrative cooperation is essential to the implementation and control of the preferential treatment granted in this Chapter and underline their commitment to combating irregularities and fraud as regards customs and related fields.
2. When a Party obtains proof from objective information of a lack of administrative cooperation and/or irregularities or fraud, this Party may temporarily suspend the preferential treatment granted to the product(s) concerned in accordance with this Article.
3. For the purposes of this Article, a lack of administrative cooperation shall include the following:
  - (a) repeated failure to comply with the obligation to verify the originating status of the product(s) concerned;
  - (b) repeated refusal to conduct a subsequent check of proof of origin and communicate the results, or undue delay in doing so;
  - (c) repeated refusal to grant authorisation for a cooperation mission to check the authenticity of documents or the accuracy of information of relevance to the preferential treatment in question, or undue delay in doing so.
4. The application of a temporary suspension shall be subject to the following conditions:
  - (a) A Party which obtains proof from objective information of a lack of administrative cooperation and/or irregularities or fraud must notify the EPA Committee without undue delay that it has obtained the proof and the objective information, and must consult with the EPA Committee to find a solution acceptable to both Parties, drawing on all relevant information and objective evidence;
  - (b) When the Parties have entered into consultation with the EPA Committee, as provided for above, and have been unable to agree on an acceptable solution in the three months following notification, the Party concerned can temporarily suspend the preferential

treatment granted to the product(s) concerned. The EPA Committee must be notified of the temporary suspension without undue delay;

(c) Temporary suspensions under this Article shall be limited to those necessary to protect the financial interests of the Party concerned. They shall not exceed a renewable period of six months. The EPA Committee shall be notified of temporary suspensions immediately after their adoption. They shall be subject to periodic consultations within the EPA Committee, in particular with a view to repealing them once the conditions for application no longer exist.

5. At the same time as the notification to the EPA Committee specified in paragraph 4(a), the Party concerned shall publish a notice for importers in its Official Journal. This notice for importers shall indicate that, for the product concerned, and on the basis of objective information, proof has been obtained of a lack of administrative cooperation and/or irregularities or fraud.

(...)

## Article 28

### Customs and administrative cooperation

1. In order to ensure compliance with the provisions of this Title, and to respond effectively to the objectives set out in Article 27, the Parties shall:

- (a) exchange information concerning customs legislation and procedures;
- (b) develop joint initiatives relating to import, export and transit procedures and initiatives to offer an efficient service to the business community;
- (c) cooperate on the automation of customs procedures and other trade procedures and, where appropriate, endeavour to establish common data exchange standards;
- (d) establish wherever possible, common positions in relation to customs in international organisations such as the WTO, the World Customs Organisation (WCO), the United Nations (UN) and the United Nations Conference on Trade and Development (UNCTAD);
- (e) cooperate on the planning and implementation of technical assistance, in particular with a view to facilitating customs reforms and to facilitating trade in accordance with the provisions of the Agreement; and
- (f) encourage cooperation between all the agencies concerned, both within the country and between countries.

2. Notwithstanding paragraph 1, the administrative authorities of the Parties shall provide mutual administrative assistance for customs matters, in accordance with the provisions of the Protocol on Mutual Administrative Assistance in Customs Matters.

(...)

**Protocol**  
**on Mutual Administrative Assistance in customs matters**

**Article 1**

**Definitions**

For the purposes of this Protocol:

- (a) "customs legislation" means any legal or regulatory provisions 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;
- (b) "applicant authority" means a competent administrative authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Protocol;
- (c) "requested authority" means a competent administrative authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Protocol;
- (d) "personal data" means all information relating to an identified or identifiable individual;
- (e) "operation in breach of customs legislation" means any infringement or attempted infringement 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 prosecuting 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 is authorised by that authority.
3. Assistance to recover 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 one of the Parties have been properly imported into the territory of another Party, specifying, where appropriate, the customs procedure applied to the goods;

(b) whether goods imported into the territory of one of the Parties have been properly 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 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;

(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) activities which are or appear to be operations in breach of customs legislation and which may be of interest to another 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;
- (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/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 to:

- deliver any documents or
- notify all 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 and 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.

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

- (a) the applicant authority;
- (b) the action 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;

(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 which 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 in application of this Protocol 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 one of the Parties may, with the agreement of the other Party involved and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other authority concerned 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.

4. Duly authorised officials of a Party may, with the agreement of the other Party involved and within the conditions laid down by the latter, 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. This information may be in computerised 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 is of the opinion that assistance under this Protocol would:

(a) be likely to prejudice the sovereignty of Côte d'Ivoire or that of a Member State whose assistance has been requested pursuant to 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) be likely to disclose 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 whether 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 therefore must be communicated to the applicant authority without delay.

## **Article 10**

### **Exchange of information and confidentiality**

1. Any information communicated in whatever 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 Community authorities.

2. Personal data may be exchanged only where the Party which may receive it undertakes to protect such data in at least an equivalent way to that applicable to that particular case in the Party which may supply it. To that end, the Parties shall inform each other of their

applicable rules, including, where appropriate, legal provisions in force in the Member States of the 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 must appear, on what matters and by virtue of what capacity or qualification he/she 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 the expenses of experts and witnesses, and those for 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 Côte d'Ivoire and, on the other hand, to the competent departments of the Commission of the European Communities and, where appropriate, the customs authorities of the Member States of the European Community. 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. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.

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

#### **Article 14**

##### **Other agreements**

1. Taking into account the respective competencies of the European Community and the Member States, the provisions of this Protocol shall:

- not affect the obligations of the Parties under any other international agreement or convention,

- be deemed complementary to agreements on mutual assistance which have been or may be concluded between individual Member States of the European Community and Côte d'Ivoire,

- not affect the 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 any information obtained in the fields covered by this Protocol which could be of interest to the Community.

2. 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 and Côte d'Ivoire insofar as the provisions of the latter are incompatible with those of this Protocol.

3. 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 set up under Article 73 of the stepping stone Economic Partnership Agreement between Cote d'Ivoire and the European Community and its Member States.