



Brussels, 11.2.2016  
COM(2016) 63 final

2016/0037 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the signing and provisional application of the Economic Partnership Agreement  
between the East African Community Partner States, of the one part, and the European  
Union and its Member States, of the other part**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

The attached proposal for a Council Decision constitutes the legal instrument for the signing and provisional application of the Economic Partnership Agreement (EPA) between the East African Community (EAC) Partner States, of the one part, and the European Union and its Member States, of the other part (EAC EPA). The EAC Partner States are Burundi, Kenya, Rwanda, Tanzania and Uganda.

The negotiations were completed at the level of the Chief Negotiators in Brussels on 14 October 2014. The Agreement was initialled on 16 October 2014 in Brussels.

Kenya currently benefits from the scheme contained in the Market Access Regulation (MAR). The other countries of the region currently benefit from the 'Everything But Arms' initiative, since they are classified among the Least Developed Countries (LDCs).

The Agreement will provide a uniform access regime for the EAC Partner States as soon as it enters into force.

#### **• Consistency with existing policy provisions in the policy area**

This proposal implements the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part<sup>1</sup> ('ACP-EU Partnership Agreement'), which calls for the conclusion of WTO-compatible Economic Partnership Agreements.

#### **• Consistency with other Union policies**

The EAC EPA is a development-oriented trade agreement. It offers asymmetric market access to the EAC Partner States, which allows them to shield sensitive sectors from liberalisation; it provides a large number of safeguards and a clause for infant industry protection; it contains provisions on the rules of origin that facilitate exports; and it eliminates the use of export subsidies in trade between the Parties. These provisions contribute to the objective of Policy Coherence for Development and are consistent with Article 208(2) TFEU.

### **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

#### **• Legal basis**

The legal basis for this Council decision is the Treaty on the Functioning of the European Union, in particular its Articles 207(3) and (4) and 209(2), in conjunction with Article 218(5), thereof.

#### **• Subsidiarity (for non-exclusive competence)**

The common commercial policy, in accordance with Article 3 of the TFEU, is defined as an exclusive Union competence.

#### **• Proportionality**

This proposal is necessary in order to implement the Union's international commitments, as set out in the ACP-EC Partnership Agreement.

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<sup>1</sup> OJ L 317, 15.12.2000, p. 3 Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

- **Choice of the instrument**

This proposal is in accordance with Article 218(5) TFEU, which envisages the adoption by the Council of decisions on international agreements. There exists no other legal instrument that could be used in order to achieve the objective expressed in this proposal.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Not applicable.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

A Sustainability Impact Assessment (SIA) of the EU-ACP Economic Partnership Agreements was carried out between 2003 and 2007. The terms of reference for this project were published by the European Commission in 2002 under a competitive call for tender. As a result of this call for tender a five-year framework contract was awarded to PwC France in August 2002. A draft version of the SIA's final report was presented to stakeholders in Europe during the EU Civil Society Dialogue meeting organised by the European Commission on 23 March 2007 in Brussels, Belgium.

- **Regulatory fitness and simplification**

The EAC EPA is not subject to REFIT procedures; it does not imply any costs for the Union SMEs; and it does not raise any issues from the viewpoint of the digital environment.

- **Fundamental rights**

The proposal does not have consequences for the protection of fundamental rights in the Union.

### **4. BUDGETARY IMPLICATIONS**

Four out of five EAC Partner States are LDCs benefitting from the 'Everything But Arms' initiative which offers them duty-free quota-free market access into the EU. Kenya benefits from the Market Access regulation which also offers duty-free quota-free market access into the EU. Therefore, there will be no budgetary implications given that the Agreement will continue their market access into the EU on the same terms.

### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The institutional provisions of the EAC EPA foresee the establishment of an EPA Council, responsible for supervising the implementation of the EPA. The EPA Council shall be

composed of the representatives of the Parties at ministerial level and will be assisted by a Committee of Senior Officials.

A Consultative Committee will assist the Committee of Senior Officials with a view to promoting dialogue and co-operation between representatives of civil society, the private sector and social and economic partners. Finally, the EAC EPA shall be reviewed after every five years from the date of its entry into force.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The EAC EPA contains provisions on trade in goods, customs and trade facilitation, technical barriers to trade, sanitary and phytosanitary measures, and agriculture and fisheries.

The provisions concerning cooperation for the implementation of the development dimension lay down the priority areas of action for the implementation of the EAC EPA, which are set out in the Regional Indicative Programme for 2014-2020.

The EAC EPA contains commitments relating to regional integration, which will support the implementation of the EAC custom union.

The EAC EPA also provides for negotiations to be continued at the regional level on services, competition policy, investment and private sector development, environment and sustainable development, intellectual property rights, and transparency in public procurement.

Proposal for a

## COUNCIL DECISION

### **on the signing and provisional application of the Economic Partnership Agreement between the East African Community Partner States, of the one part, and the European Union and its Member States, 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 Articles 207(3) and (4) and 209(2), in conjunction with Article 218(5), thereof,

Having regard to the proposal from the European Commission,<sup>2</sup>

Whereas:

- (1) On 12 June 2002 the Council authorised the Commission to open negotiations for Economic Partnership Agreements with the African, Caribbean and Pacific Group of States.
- (2) The negotiations have been concluded and the Economic Partnership Agreement between the East African Community Partner States (Republic of Burundi, Republic of Kenya, Republic of Rwanda, the United Republic of Tanzania, and the Republic of Uganda), of the one part, and the European Union and its Member States, of the other part, (hereinafter referred to as 'the Agreement') was initialled on 16 October 2014.
- (3) The Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part<sup>3</sup>, calls for the conclusion of WTO-compatible Economic Partnership Agreements.
- (4) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.
- (5) In view of Article 139(4) of the Agreement which provides for its provisional application pending its entry into force, it should be applied, as regards those elements falling within the competence of the Union, on a provisional basis,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Commission is authorised to sign, on behalf of the Union, the Economic Partnership Agreement between the East African Community Partner States, of the one part, and the European Union and its Member States, of the other part, subject to the conclusion of the said Agreement at a later stage.

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<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ L 317, 15.12.2000, p. 3 Agreement as amended by the Agreement signed in Luxembourg on 25 June 2005 (OJ L 209, 11.8.2005, p. 27) and by the Agreement signed in Ouagadougou on 22 June 2010 (OJ L 287, 4.11.2010, p. 3).

The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council shall establish the instrument of full powers to sign the Agreement on behalf of the Union, subject to its conclusion, for the person(s) indicated by the negotiator.

*Article 3*

1. As regards those elements falling within the competence of the Union, the Agreement shall be applied on a provisional basis as provided for in Article 139(4) thereof.
2. The following provision of the Agreement shall not be provisionally applied by the Union:
  - Article 102(3).
3. The Commission shall publish a notice indicating the date of provisional application of the Agreement.

*Article 4*

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 5*

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

Done at Brussels,

*For the Council  
The President*

**LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS HAVING A  
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

**1. NAME OF THE PROPOSAL:**

COUNCIL DECISION on the signing and provisional application of the Economic Partnership Agreement between the East African Community Partner States, of the one part, and the European Union and its Member States, of the other part

**2. BUDGET LINES**

Chapter and Article: Chapter 12, Article 120

Amount budgeted for the year 2014: € 16 185 600 000

**3. FINANCIAL IMPACT**

Proposal has no financial implications

**4. ANTI-FRAUD MEASURES**

In order to protect the European Union's Own Resources, the Agreement contains provisions aimed at ensuring the correct application by the partner country of the conditions laid down for application of the trade concessions under §3 "Financial Impact", in particular in Article 16 'Special provisions on administrative cooperation' (so-called 'OLAF clause') and in its Protocol 1 on Rules of Origin and Protocol 2 on Mutual Administrative Assistance in Customs Matters. These provisions complement the customs legislation of the European Union applicable to all imported goods (in particular the European Union's Customs Code and Implementing Provisions) and that on Member States' responsibilities with respect to the control of Own Resources (in particular Council Regulation (EC) No 1150/2000).