



Council of the
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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 28 November 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2019) 608 final

Subject: Recommendation for a COUNCIL DECISION updating the negotiating
directives for the negotiations of Economic Partnership Agreements (EPAs)
with African, Caribbean and Pacific (ACP) countries and regions

Delegations will find attached document COM(2019) 608 final.

Encl.: COM(2019) 608 final



Brussels, 28.11.2019
COM(2019) 608 final

Recommendation for a

COUNCIL DECISION

updating the negotiating directives for the negotiations of Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries and regions

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The EU has been negotiating Economic Partnership Agreements (EPA) with African, Caribbean and Pacific (ACP) countries and regions between 2002 and 2014. The EU conducted these negotiations based on a wide-ranging mandate and negotiating directives issued by the Council on 12 June 2002 (9930/02).

However, due to a number of circumstances, including capacity constraints on partner side, the concluded and implemented Agreements today mostly cover trade in goods only. Other areas (such as services, investment and trade-related issues) were not included in the agreements but were mentioned explicitly for a future review in the so-called “rendez-vous clauses”. This situation means that the current EPAs are not fully adapted to the trade realities of the 21st century and the interests of both the EU and the partner countries concerned. It is therefore possible that in the coming years, there will be an interest in “deepening” these agreements to cover also services, investment, trade and sustainable development, intellectual property rights, competition policy and public procurement, among other issues.

To date, there are 31 countries implementing seven different EPAs in the ACP countries and regions.

Amongst these, five countries currently implementing the interim EPA in Eastern and Southern Africa (ESA) (Mauritius, Madagascar, Seychelles, Zimbabwe and since recently Comoros) have requested to launch negotiations based on the rendez-vous clause. The aim is to establish a comprehensive agreement that will help them seize opportunities of global value chains. Negotiations towards such a comprehensive Agreement were launched on 2nd October 2019 in Mauritius.

Future negotiations with ACP countries and regions, including with ESA, would be conducted based on the existing negotiating directives established by the Council in 2002, accompanying its authorisation to open negotiations. The existing 2002 directives are already comprehensive in nature, covering almost all trade-related areas. Nevertheless, they are today partly outdated in terms of wording, and lack coherence with recent EU policy initiatives and priorities as trade evolves worldwide, such as the reinforcement of our trade and sustainable development policy.

Therefore, the Council requested an update of the negotiating directives adopted in 2002 in order to align the wording and content of these directives with recent developments and policies in trade-related areas, in particular the Trade for all Communication of the European Commission from 2015 but also the 2030 Agenda, with its core 17 Sustainable Development Goals, and the Paris Agreement to combat climate change adopted by the international community in 2015.

This initiative therefore constitutes a contribution to the implementation of the Trade for all Communication, while taking into account the on-going negotiations on post-Cotonou Partnership Agreement. It also factors in the Africa-Europe Alliance for Sustainable

Investment and Jobs launched by the President of the Commission in September 2018 and the External Investment Plan as its important component.

The immediate objective of this initiative is to equip the Commission with up-to-date negotiating directives for Economic Partnership Agreements with ACP countries and regions that are aligned with current EU negotiation practice, and that ensure that any further negotiations with ACP countries and regions respond to current trade challenges.

The global objective is to negotiate up-to-date and modern trade agreements with ACP countries and regions that will boost trade and investment and support these countries in their integration into the global economy.

- **Consistency with existing policy provisions in the policy area**

The above objectives are consistent with the Treaty on the European Union (TEU) that provides that the EU should ‘encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade’.¹

The objectives are also fully in line with the objectives of the Cotonou Agreement and the general principles, which that agreement promotes.

- **Consistency with other Union policies**

The objectives are consistent with other EU policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 207 (4) first subparagraph in conjunction with Article 218(3) and (4) of the TFEU.

Pursuant to Article 207(4), for the negotiation and conclusion of the agreements referred to in Article 207 (3), the Council shall act by a qualified majority.

Under Article Article 218 (3) TFEU the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations.

Under Article 218(4) TFEU the Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

As regards the negotiations for EPAs, the Council has already authorised the opening of negotiations, and issued directives to the Commission in 2002. However, the updating of the negotiating directives is necessary to frame more accurately new negotiations in light of recent EU policy initiatives and priorities as trade evolves worldwide. This means, inter alia, that the directives will need to reflect current ambitions of the EU to include in its agreements internationally agreed principles and rules on labour and environmental aspects, including references to the 2030 Agenda for Sustainable Development and the Paris Agreement to tackle climate change. The existing directives also do not reflect the need for provisions for the effective implementation and monitoring of these rules, as well as a mechanism to address any disputes arising between the Parties in this area.

¹ Article 21(2)(e) TEU

Accordingly, the Commission recommends to the Council to adopt a Decision on the basis of Article 207 (4) first subparagraph in conjunction with Article 218 (3) and (4) TFEU.

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

The common commercial policy is an area of exclusive EU competence under Article 3 TFEU. Accordingly, the subsidiarity principle does not apply (Article 5(3) TEU).

- **Proportionality**

The recommendation of the Commission is in line with the principle of proportionality.

- **Choice of the instrument**

Decision of the Council of the European Union on updating the negotiating directives for the negotiations of Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries and regions.

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

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

An ex-post evaluation section concerning the implementation of the current interim EPA with ESA countries will be included in the forthcoming Sustainability Impact Assessment (SIA).

- **Stakeholder consultations**

No specific consultations with citizens and stakeholders are foreseen, as the update of the wording is limited.

However, the Commission will consult citizens and stakeholders on individual negotiations that may be conducted in the future under the updated negotiating directives.

In particular, for the upcoming negotiations with the ESA Economic Partnership Agreement States, a Sustainability Impact Assessment (SIA) will be launched to consult widely citizens and stakeholders, both in the EU and the ESA region, on the potential impact of the new trade topics to be included in the Agreement. Initial discussions have started in October 2019 and the SIA will be conducted in parallel to the negotiations in order to feed into the process.

The SIA is a platform for systematic dialogue between stakeholders and trade negotiators, through in-depth consultation in which all stakeholders are given an opportunity to participate.

The main stakeholders to be consulted during the SIA will include the public sector, non-governmental organizations, businesses, social partners and academia.

Beyond the ESA EU EPA, no further negotiations to deepen or expand other existing Economic Partnership Agreements are planned at this stage. Any such undertakings will be accompanied by region- and country specific assessments of potential impact and comprehensive stakeholder consultations.

The Commission also regularly consults stakeholders *inter alia* in the Expert Group on Trade Agreements² and the Civil Society Dialogue.³

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

An impact assessment (IA) is not required at this stage since the negotiations for EPAs with ACP countries and regions are based on the existing authorisation of the Commission by the Council of 2002. The substance of the negotiations does not represent a new policy area; they are the continuation of negotiations that have been in progress for years.

Furthermore, an ex-ante IA is usually only done if there is a need to support the decision to launch or not negotiations with certain trade partners, i.e. before the Council gives its authorisation to start negotiations. In this case, the Council has already confirmed that there is no need for a new authorisation for the ESA deepening negotiations.

As the scope of the amendments of the current negotiating directives is limited, the impact should not be major.

As mentioned in the stakeholder consultations section, the European Commission is planning a sustainable impact assessment (SIA) for the negotiations of the new negotiations with ESA that will be launched early in 2020. It will include an ex-post evaluation section concerning the implementation of the current iEPA. This would provide us with an evaluation of the effects that go beyond what we do in classical sustainable impact assessments. The same approach could apply for any future negotiations regarding the deepening of the other existing EPAs.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The initiative fully respects the Charter of Fundamental Rights of the European Union, and in particular Article 8 on the protection of personal data.

4. BUDGETARY IMPLICATIONS

The initiative does not have budgetary implications.

5. OTHER ELEMENTS

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

Not applicable.

² <http://ec.europa.eu/trade/trade-policy-and-you/expert-groups/>

³ <http://trade.ec.europa.eu/civilsoc/meetdetails.cfm?meet=11531>

- **Explanatory documents (for directives)**

Not applicable.

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

Not applicable.

Recommendation for a

COUNCIL DECISION

updating the negotiating directives for the negotiations of Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries and regions

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 (3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) On 12 June 2002, the Council of the European Union adopted directives for the negotiations of Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries and regions.
- (2) Concluded EPAs with ACP countries and regions include rendez-vous clauses for future review of these agreements.
- (3) The updating of negotiating directives is necessary to frame more accurately new negotiations in light of recent EU policy initiatives and priorities as trade evolves worldwide.

HAS ADOPTED THIS DECISION:

Article

The negotiating directives addressed to the Commission on the negotiations of Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) countries and regions are amended as set out in the Annex.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*