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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	23 March 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations with Angola for an agreement on investment facilitation

Delegations will find attached document COM(2021) 138 final.

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EUROPEAN
COMMISSION

Brussels, 23.3.2021
COM(2021) 138 final

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations with Angola for an agreement on investment
facilitation**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 19 December 2019, the Council adopted its decision¹ amending the negotiating directives for the negotiation of Economic Partnership Agreements (EPAs) with the African, Caribbean and Pacific (ACP) countries and regions, to the extent that they fall within the competence of the Union (“the 2019 negotiating directives”). Those new negotiating directives updated the wide-ranging mandate and negotiating directives issued by the Council on 12 June 2002 (9930/02).

Under section 6.2, first paragraph of the amended negotiated directives, it is stated: *“Investment. In accordance with the objective of “reducing and eventually eradicating poverty consistent with the objective of sustainable development” (and with regard to articles 1, 29, 75 to 78, and to Annex II to the Cotonou Agreement and the relevant provisions of its successor agreement, once applicable) the parties agree to establish a framework which shall facilitate, enhance and stimulate mutually beneficial sustainable investment between them, taking into account multilateral initiatives on investment facilitation. This framework will be based on principles of non-discrimination, openness, transparency and stability. The parties will foster the development of attractive and stable investment environments by supporting stable and transparent rules for investors, and seek to improve financial inclusion and access to finance.”*

Angola is not yet a party to the EPA between the EU and the SADC EPA group², and that agreement does not contain provisions on investment facilitation.

In a joint statement³ dated 8 September 2020, Executive Vice-President of the European Commission, Mr. Valdis Dombrovskis and Minister of Trade and Industry of Angola, Mr. Victor Fernandes, issued a joint statement confirming *“their intention to start exploratory discussions on an EU-Angola investment agreement, on top of the EPA, focusing on investment facilitation.”*

Under the existing negotiating directives as updated in 2019, the Commission is authorised by the Council to negotiate, with ACP countries and regions, Economic Partnership Agreements covering a wide range of topics, including provisions related to investment facilitation.⁴ In light of this, and of the willingness by Angola to negotiate an agreement with the EU on this matter, the Commission recommends **opening negotiations with Angola for an agreement on investment facilitation**. In order to ensure coherence and consistency with negotiations on investment facilitation with other ACP countries, the negotiations with Angola should be conducted **on the basis of the provisions of the 2019 negotiating directives, relating to investment facilitation** (section 6.2, first paragraph).

The overall objective of this Agreement would be to improve the investment climate and

¹ Council Decision (EU) 2020/13 of 19 December 2019 amending the negotiating directives for the negotiation of Economic Partnership Agreements with the African, Caribbean and Pacific countries and regions, to the extent that they fall within the competence of the Union, OJ L 6, 10.1.2020, p. 101–111

² Angola is in the process of joining the existing EPA between the EU and the SADC EPA Group (consisting currently of Botswana, Eswatini, Lesotho, Mozambique, Namibia, and South Africa)

³ https://eeas.europa.eu/headquarters/headquarters-homepage/84859/5th-angola-eu-ministerial-meeting-joint-way-forward_en

⁴ Such a negotiation is currently taking place with five countries of Eastern and Southern Africa (ESA) in the context of the “deepening” of the existing Economic Partnership Agreement.

facilitate the mobilisation and retention of investment between the Parties on the basis of modern and simplified rules, measures and procedures relating to foreign direct investment. In doing so, the agreement would promote sustainable development, economic growth and job creation, and strengthen the bilateral investment relationship between the EU and Angola. It would also provide a solid platform for contributing to the diversification of Angola's economy and its 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'.⁵

The objectives are also fully in line with the objectives of the Cotonou Agreement and its successor agreement, and the general principles promoted therein.

It is also in line with the EU's comprehensive strategy with Africa⁶ which "*proposed that the EU develops more ambitious arrangements to facilitate, attract and support investment in Africa.*"

This proposal would also complement the ongoing negotiations on "Investment Facilitation for Development" currently taking place in the World Trade Organisation.

- **Consistency with other Union policies**

The objectives are consistent with other EU policies, notably the EU's development policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The procedural legal basis for this act is Article 218(3) and (4) of the TFEU. When the Commission recommends the negotiation of an international agreement, it does not indicate the substantial legal basis.

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

The subject matter of the envisaged negotiations relates essentially to the common commercial policy. According to Article 5(3) of the TEU, the subsidiarity principle does not apply in areas of exclusive EU competence. The common commercial policy is listed among the areas of exclusive competence of the Union in Article 3 of the TFEU. This policy includes the negotiation of trade agreements pursuant to, inter alia, Article 207 TFEU.

The recommendation of the Commission is in line with the principle of proportionality, as the conclusion of an international agreement is the main instrument for assuming reciprocal rights and obligations with a subject of international law such as a foreign country.

- **Choice of the instrument**

Decision of the Council of the European Union.

⁵ Article 21(2)(e) TEU

⁶ 2020 Joint Communication Towards a comprehensive Strategy with Africa
https://ec.europa.eu/international-partnerships/system/files/communication-eu-africa-strategy-join-2020-4-final_en.pdf

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

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

Not applicable.

- **Stakeholder consultations**

From June to November 2020, the Commission carried out a public consultation⁷ seeking input from the European Parliament, Member States, stakeholders and civil society review of the European Union's trade policy, including on ways to strengthen the EU's trade and investment relationships with the neighbouring countries and Africa.

The Commission regularly consults stakeholders *inter alia* in the Expert Group on Trade Agreements⁸ and the Civil Society Dialogue.⁹

- **Collection and use of expertise**

This proposal relies on external expertise gathered in the context of a project carried out by the World Bank and commissioned by the European Commission. The reports notably identified that investors¹⁰ put forward, as critical factors affecting their investment decisions in developing countries, the lack of transparency and predictability in dealing with public agencies, the sudden change in the laws and regulations, and the delays in obtaining government permits and approvals. Those are the areas that would be covered by the proposal.

- **Impact assessment**

The Council Decision on the 2019 negotiations directives already covered investment facilitation to be negotiated with ACP countries and regions. The present Decision is a procedural requirement that will not in itself have an additional impact compared with the Council Decision to the 2019 negotiations directives.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The initiative fully respects the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

The initiative does not have budgetary implications.

⁷ https://trade.ec.europa.eu/consultations/index.cfm?consul_id=266

⁸ <http://ec.europa.eu/trade/trade-policy-and-you/expert-groups/>

⁹ <http://trade.ec.europa.eu/civilsoc/meetdetails.cfm?meet=11531>

¹⁰ See World Bank, *Retention and Expansion of Foreign Direct Investment, Political Risk and Policy Responses* <http://documents1.worldbank.org/curated/en/387801576142339003/pdf/Political-Risk-and-Policy-Responses.pdf>

5. OTHER ELEMENTS

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

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Procedural aspects**

The Commission will negotiate on behalf of the EU. In accordance with Article 218(4) TFEU, it is suggested that the Council of the European Union designates a committee, in consultation with which the negotiations must be conducted.

The European Parliament will be informed at all stages of the procedure, in line with Article 218(10) TFEU.

The Commission will make this Recommendation public immediately after its adoption.

The Commission recommends that the authorisation be made public immediately after its adoption by Council.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on an agreement between the European Union and the Republic of Angola on investment facilitation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Negotiations should be opened with a view to concluding an agreement on investment facilitation with Angola.
- (2) Council Decision (EU) 2020/13¹¹ amended the negotiating directives for the negotiation of Economic Partnership Agreements with the African, Caribbean and Pacific (ACP) countries and regions, to the extent that they fall within the competence of the Union.
- (3) In order to ensure coherence and consistency in negotiations on investment facilitation with other ACP countries, the negotiations with Angola should be conducted on the basis of the negotiating directives relating to investment facilitation set out in Decision (EU) 2020/13,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, an agreement on investment facilitation with the Republic of Angola.

Article 2

The negotiating directives are set out in section 6.2, first paragraph, of the addendum to Decision (EU) 2020/13.

Article 3

The negotiations shall be conducted in consultation with [*name of the special committee to be inserted by the Council*].

¹¹ Council Decision (EU) 2020/13 of 19 December 2019 amending the negotiating directives for the negotiation of Economic Partnership Agreements with the African, Caribbean and Pacific countries and regions, to the extent that they fall within the competence of the Union (OJ L 6, 10.1.2020, p. 101).

Article 4

This decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*