



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.6.2007
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Proposal for a

COUNCIL DECISION

on the position to be adopted by the Community within the ACP-EC Council of Ministers concerning the modification of Protocol N°3 on South Africa to the ACP-EC Partnership Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 8th July 2004, the negotiations between the European Community and seven members of the Southern African Development Community¹ for an Economic Partnership Agreement as laid down in Article 36 and 37 of the Cotonou Partnership Agreement were opened in Windhoek, Namibia. In those negotiations, the Republic of South Africa had the status of observer.

On 7 March 2006, the SADC EPA group and South Africa proposed the full inclusion of South Africa in the negotiations. The EC Council decided on 12 February 2007 to give a favourable response, subject to certain conditions and considered that for reasons of legal clarity Protocol N°3 to the Cotonou Agreement should be amended to take into account the inclusion of South Africa in the negotiations.

This aims at preventing any risk of legal uncertainty, given that Protocol N°3, Article 5, states that the provisions of the Cotonou Agreement on economic and trade cooperation shall not apply on South Africa and the EPA negotiations are in fact based on those provisions.

The Commission therefore suggests that the Council adopts the attached Decision.

¹ Angola, Botswana, Lesotho, Mozambique, Namibia, Tanzania and Swaziland (SADC EPA group).

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on the position to be adopted by the Community within the ACP-EC Council of Ministers concerning the modification of Protocol N°3 on South Africa to the ACP-EC Partnership Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2), second subparagraph, thereof,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States (hereinafter called 'the ACP') of the one part, and the European Community and its Member States, of the other part, signed in Cotonou (Benin) on 23 June 2000 and revised in Luxembourg (Grand Duchy of Luxembourg) on 25 June 2005 (hereinafter called 'the ACP-EC Partnership Agreement'),²

Whereas:

- (1) Protocol N° 3 to the ACP-EC Partnership Agreement lays down in its Article 5 that the provisions of the Agreement on economic and trade cooperation shall not apply to South Africa;
- (2) On 7 March 2006 the group of ACP countries members of the Southern African Development Community (SADC) negotiating an Economic Partnership Agreement (EPA) with the European Community have requested that South Africa should be associated as a full member of that negotiation and on 12 February 2007 the EU Council of Ministers has agreed to the request, subject to certain conditions;
- (3) The negotiation of EPA are based on the economic and trade provisions of the ACP-EC Partnership Agreement, in particular Article 36 and 37;
- (4) For reasons of legal clarity it is necessary to amend Protocol N°3 with a view of taking into account the full inclusion of South Africa in the EPA negotiations and its eventual accession to the EPA;
- (5) In accordance with its Article 7, Protocol N°3 may be revised by Decision of the Council of Ministers;

² OJ L 287, 28.10.2005.

HAS DECIDED AS FOLLOWS:

Sole Article

The Community position within the ACP-EC Council of Ministers on the modification of Protocol N°3 on South Africa to the ACP-EC Partnership Agreement shall be based on the draft decision of the ACP-EC Council of Ministers set out in the Annex.

Minor changes to the draft decision may be agreed without need for a further decision by the Council.

Done at Brussels, [...]

*For the Council
The President*

Draft Decision

Of the ACP – EC Council of Ministers

Of.....2007
(2007/.../....)

Modifying Protocol N° 3 to the Cotonou Agreement to take into account the inclusion of the Republic of South Africa in the negotiations for an Economic Partnership Agreement.

THE ACP-EC COUNCIL OF MINISTERS,

Having regard to 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, signed in Cotonou on 23 June 2000 [1], as revised in Luxembourg on 25 June 2005 [2] (hereinafter referred to as the ACP-EC Partnership Agreement), and in particular Protocol N°3 thereto,

Whereas:

- (1) Protocol N° 3 to the ACP-EC Partnership Agreement lays down in its Article 5 that the provisions of the Agreement on economic and trade cooperation shall not apply to South Africa;
- (2) On 7 March 2006 the group of ACP countries members of the Southern African Development Community (SADC) negotiating an Economic Partnership Agreement (EPA) with the European Community have requested that South Africa should be associated as a full member of that negotiation and on 12 February 2007 the EU Council of Ministers has agreed to the request, subject to certain conditions;
- (3) The negotiation of EPA are based on the economic and trade provisions of the ACP-EC Partnership Agreement, in particular Article 36 and 37;
- (4) For reasons of legal clarity it is necessary to amend Protocol N°3 with a view of taking into account the full inclusion of South Africa in the EPA negotiations and its eventual accession to the EPA;
- (5) In accordance with its Article 7, Protocol N°3 may be revised by Decision of the Council of Ministers;

HAS DECIDED AS FOLLOWS:

Article 1

The following paragraph 3 is added to Article 5 of Protocol N°3 to the ACP-EC Partnership Agreement:

"3. This Protocol shall not prevent South Africa from negotiating and signing one of the Economic Partnership Agreement (EPA) foreseen in Part 3, Title II of this Agreement if the other parties to that EPA so agree."

Article 2

This Decision shall enter into force on the day on which it is adopted.

Done at, 2007.

For the ACP-EC Council of Ministers

The President