Council of the European Union

Brussels, 26 January 2016
(OR. en)

5571/16

Interinstitutional File:
2016/0005 (NLE)

ACP 13
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RELEX 57

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	22 January 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 18 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part

Delegations will find attached document COM(2016) 18 final.

Encl.: COM(2016) 18 final

EUROPEAN
COMMISSION

Brussels, 22.1.2016
COM(2016) 18 final

2016/0005 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA 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 conclusion of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part (SADC EPA). The SADC EPA States are Botswana, Lesotho, Mozambique, Namibia, Swaziland (BLMNS) and South Africa.

The negotiations were completed at the level of the Chief Negotiators on 15 July 2014 in Pretoria. The Agreement was initialled on 15 July 2014 in Pretoria.

Botswana, Namibia and Swaziland currently benefit from preferential market access to the EU under the arrangements laid down in the Market Access Regulation (MAR). Lesotho and Mozambique currently benefit from the arrangements under the 'Everything But Arms' initiative, since they are classified among the Least Developed Countries (LDCs). Trade between the EU and South Africa is currently governed by the Trade, Development and Cooperation Agreement (TDCA).

The SADC EPA will provide a uniform access regime for the BLMNS countries. For South Africa, the SADC EPA will replace the relevant provisions of Titles II and III of the TDCA, dealing respectively with trade and trade related issues.

- **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, signed in Cotonou on 23 June 2000 (‘ACP-EC Partnership Agreement’), which calls for the conclusion of WTO-compatible Economic Partnership Agreements.

- **Consistency with other Union policies**

The SADC EPA is a development-oriented trade agreement. It offers asymmetric market access to the SADC EPA 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 contibute to the objective of Policy Coherence for Development and are consistent with Article 208(2) TFEU. The SADC EPA also contains a chapter on Trade and Sustainable Development that links the trade agreement to EU objectives in the field of labour, environment, and climate change.

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(6)(a), 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, and sufficient to contribute to the Union's trade and development objectives.

- **Choice of the instrument**

This proposal is in accordance with Article 218(6) 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 SADC 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

Foregone duty is estimated to amount to EUR 33.3 million upon full implementation of the Agreement after ten years.

5. OTHER ELEMENTS

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

Under the general provisions of the Agreement, the Parties undertake to continuously monitor the operation and impact of this Agreement. The institutional provisions establish a Joint Council at Ministerial level to be responsible for the operation and implementation of the Agreement and to monitor the fulfilment of its objectives. The Joint Council shall be assisted by a Trade and Development Committee. The Agreement also

- Establishes a *Special Committee on Geographical Indications and Trade in Wines and Spirits* with the purpose of monitoring the development of the Protocol on GIs and trade in wines and spirits.

- Establishes a *Special Committee on Customs and Trade Facilitation* that will monitor the implementation and operation of the chapter on Customs and Trade Facilitation and the Protocol on rules of origin.

- Contains a provision that allows each Party to request consultations regarding any matter under the Trade and Sustainable Development chapter. Dialogue and cooperation may include other relevant authorities and stakeholders.

- **Explanatory documents (for directives)**

Not applicable.

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

The Agreement contains provisions on cooperation, trade in goods, trade and sustainable development, customs and trade facilitation, technical barriers to trade, sanitary and phytosanitary measures, dispute settlement, Geographical Indications, and rules of origin. The Agreement also contains rendez-vous clauses on trade in services and investment, competition policy, intellectual property rights, and public procurement.

The EPA guarantees duty-free, quota-free access to the EU market for Botswana, Lesotho, Mozambique, Namibia, and Swaziland, with the exception of arms and ammunition. South Africa will benefit from new market access additional to the TDCA, that currently governs its trade relations with the EU. The EU will obtain meaningful new market access into the Southern African Customs Union (SACU) and will have the security of a bilateral agreement with Mozambique, one of the LDCs in the region.

The EPA is designed to be compatible with the operation of SACU, in particular by fully harmonising SACU's import trade regime. SACU presents a single external schedule of tariffs and quota arrangements applied to imports from the EU.

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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(6)(a), thereof,

Having regard to the proposal from the European Commission,[1]

Having regard to the consent of the European Parliament,

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 European Union and its Member States, of the one part, and the SADC EPA States (comprising Botswana, Lesotho, Mozambique, Namibia, Swaziland and South Africa), of the other part ('the Agreement'), was initialled on 15 July 2014.

(3) In accordance with Council Decision No [..] of [..],[2] the Agreement was signed on [..] subject to its conclusion at a later date.

(4) The Agreement has been provisionally applied since [..] pending its entry into force.

(5) 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, calls for the conclusion of WTO-compatible Economic Partnership Agreements.

(6) The Agreement should be approved on behalf of the European Union,

[1] OJ C […], […], p. […].
[2] OJ C […], […], p. […].

HAS ADOPTED THIS DECISION:

Article 1

The Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part is hereby concluded.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to making the deposit of the instrument of approval provided for in Article 113(2) of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.[3]

Article 3

The Agreement shall not be construed as conferring rights or imposing obligations which can be directly invoked before Union or Member State courts and tribunals.

Article 4

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

Done at Brussels,

For the Council
The President

[3] The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.

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

1. NAME OF THE PROPOSAL:

COUNCIL DECISION on the conclusion of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part.

2. BUDGET LINES

Chapter and Article: Chapter 12, Article 120

Amount budgeted for the year 2016: EUR 18 465 300 000

3. FINANCIAL IMPACT

☐ Proposal has no financial implications

☒ Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(EUR million to one decimal place)

Budget line	Revenue[4]	12 month period, starting dd/mm/yyyy	[Year n]
Article 120	*Impact on own resources*	Date of provisional application	€23,7 million

Situation following action					
	[n + 1]	[n + 2]	[n + 3]	[n + 4]	[n + 5]
Article 120	€24,8 million	€25,9 million	€27,2 million	€28,3 million	€29,5 million

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

[4] Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % of collection costs.

for application of the trade concessions under §3 "Financial Impact", in particular in Article 30 on Special Provisions on Administrative Cooperation and in the Protocol on Rules of Origin (Protocol 1 to the Agreement) and the Protocol on Mutual Administrative Assistance in Customs Matters (Protocol 2 to the Agreement). 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).

5. OTHER REMARKS

This estimate is based on the average volume of imports over the period 2012-2014. With the exception of a number of products imported from South Africa, imports from the SADC EPA Group already enter the European Union duty free.