

Cabinet Memorandum

From: Ministry for Foreign Affairs

To: Cabinet

Subject: Ratification of Agreement between the European Community and its Member States, and the Republic of South Africa amending the Agreement on Trade, Development and Cooperation

Date: 17 March 2014

1. Background

The European Union (EU) and South Africa have concluded an Agreement on Trade, Development and Cooperation (TDCA). This Agreement was designed to strengthen cooperation in various fields. It pursues several **objectives** including: strengthening dialogue between the parties, supporting South Africa in its economic and social transition process, promoting regional cooperation and the country's economic integration in southern Africa and in the world economy, and expanding and liberalising trade in goods, services and capital between the parties.

The TDCA was signed on 11 October 1999 in Pretoria, and entered into force on 1 May 2004. However, some provisions which fall within Community competence have been applied since 1 January 2000.

Based on respect for democratic principles, human rights and the rule of law, the Agreement establishes a regular political dialogue on subjects of common interest, both at bilateral and regional level (within the framework of the EU's dialogue with the countries of southern Africa and with the group of the African, Caribbean and Pacific (ACP) countries).

The duration of the Agreement is unspecified, but provision is made for its revision within five years of the date of its entry into force in order to consider possible amendments.

2. Ratification of Agreement between the European Community and its MS and South Africa amending the Agreement on Trade, Development and Cooperation

Following a review of the TDCA in 2004, which was conducted in terms of the requirements of Articles 18 and 103 of the TDCA calling for a review within five years of its entry into force, South Africa and the EU negotiated new texts during 2007 under Titles I (Political Dialogue), IV (Economic Cooperation), V (Development Cooperation), VI (Other areas of cooperation, and VII (Financial aspects of cooperation) of the Agreement. TDCA Revision negotiations were

officially launched in Pretoria on 29 March 2007 and on 10 October 2007 the two chief negotiators initialled a total of 35 new and revised articles. As regards the revision of the trade chapters (Title II – Trade, and Title III – Trade related issues), it was decided in March 2007 to de-link them from the broader TDCA revision and to conduct them under the SADC EPA negotiating process. The Amended Agreement was **signed on 11 September 2009**¹ and opened for ratification. So far the Agreement has been ratified by **17 EU Member States**, namely: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, Greece, Ireland, Italy, Latvia, Netherlands, Slovenia, Slovakia, Sweden, Portugal, Romania and Spain.

3. Malta's Position²

Malta agrees with the provisions of the Amended version of the Trade, Development and Cooperation Agreement with South Africa as it broadens the scope by which the first Agreement was done and lays the foundation for coherent sustainable trade cooperation between the two sides.

Consultations: Clearance of the revised text was requested from Director Multilaterals & Global Issues at the Ministry for Foreign Affairs (MFA), the Malta Council for Science and Technology (MCST), the Ministry for Infrastructure, Transport and Communications (MITC), the Office of the Prime Minister (OPM) (PS for Tourism, Environment & Culture), the Ministry for Resource and Rural Affairs (MRRA), the Ministry for Justice and Home Affairs (MJHA) and the Ministry for Finance, the Economy and Investment (MFEI) respectively. MITC and MJHA proposed some changes to the text where Transport and Migration are concerned:

- In the case of MITC, proposals were submitted to Article 59A para. (b) concerning Maritime Transport where the word to “*improve*” was preferred to the word “*perfect*” in the text:

(b) “formulate and improve the legislation relating to maritime transport and market administration;”
- As regards paragraph (d), MITC recommended that it would be more suitable to substitute ‘*guarantee*’ with ‘*to promote ship safety and the prevention of pollution*’ in line with existing international maritime instruments. MITC argued that the existing wording ‘to guarantee shipping safety and prevent marine pollution’ is inappropriate as no Government can guarantee such matters.
- In the case of recommendations submitted by MJHA, reference was made to Article 91H (2) (a) concerning Cooperation on Migration. MJHA proposed that para. (2) (a) shall read as follows:

¹ Annex I – Copy of Agreement between the EC and its MS and South Africa amending the Agreement on Trade, Development and Cooperation.

² Nomenclature of Ministries refers to the situation as it stood prior to March 2013.

“fair treatment of foreign nationals residing legally on their territories, integration policy, where applicable and without prejudice to the respective legislative frameworks, aimed at granting them rights and obligations to those of their citizens, enhancing non-discrimination in economic, social and cultural life and developing protective measures against racism, xenophobia and related intolerance and violence.”

Since Malta has already signed the first version of the Agreement between the EC and its MS on the one part and the Republic of South Africa of the other part, the Ministry sought the advice of the Office of the Attorney General (AG) on proposed minor changes arguing that since Malta signed the first version of the Agreement, a statement of interpretation is usually left as a last resort to resolve grave concerns in relation to neutrality status and policy issues.

4. Advice by the Attorney General (AG)

In its remarks the AG's office took note of the reasoning laid down by the Ministry and agreed that at this stage, no reference will be made in the form of a statement of interpretation upon ratification of the text as all Ministries concerned have already manifested their political will to bind themselves with the provisions of the TDCA with South Africa as signed on 11 September 2009.

5. Recommendation

In view of the fact that:

- Malta has already signed the Agreement amending the Agreement on Trade, Development and Cooperation with South Africa; and
- The amended Agreement aims to further enhance and strengthen cooperation between EU MS and Third World Countries through long-term cooperation and their gradual integration in the world economy

and following also consultations with the Office of the Attorney General, it is MFA's understanding that with regard to **treaties and international conventions which Malta may accede to as Member State of the European Union, and treaties and international conventions which Malta is bound to ratify in its own name or on behalf of the European Community by virtue of its membership within the European Union**, then by Article 4(2)(b) of CAP.460 these shall come into force one month following their being submitted in order to be discussed by the Standing Committee on Foreign and European Affairs (or any such Standing Committee from time to time substituting the same).

Considering that reference is made solely to the treaty or international convention in question “com[ing] into force one month following their being submitted in order to

be discussed by the Standing Committee on Foreign and European Affairs”, it can be taken that the referral to the Standing Committee for discussion may take place either before or after a cabinet decision to ratify has been taken.

Accordingly, this matter is being referred to Cabinet, following which it is suggested that ratification of the Agreement should be discussed for information purposes with the Standing Committee on Foreign and European Affairs in terms of Article 4(2)(b) of the European Union Act.



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