

Grants

Financial assistance in the form of grants shall be covered by:

- (a) a special financial facility established under the Community budget, in support of the development cooperation activities referred to in Articles 65 and 66;
- (b) other financial resources made available from other Community budget lines for development and international cooperation activities falling within the scope of those budget lines. The procedure for presentation and approval of requests, implementation, and monitoring/evaluation will be in accordance with the general conditions relating to the budget line in question.

Article 95

Loans

As regards financial assistance in the form of loans, the European Investment Bank could consider, at the request of the Council of the European Union, the extension of its financing of investment projects in South Africa by means of long-term loans, within the limits of maximum amounts and periods of validity to be determined in application of the relevant dispositions of the Treaty establishing the European Community.

Article 96

Regional Cooperation

The financial assistance from the Community referred to in the previous Articles may be used to fund projects or programmes of national or local interest in South Africa as well as the participation of South Africa in regional cooperation activities which it undertakes together with other developing countries.

TITLE VIII

Final Provisions

Article 97

Institutional Set-Up

1. The Parties agree on the establishment of a Cooperation Council which will perform the following functions:
 - (a) to ensure the proper functioning and implementation of the Agreement and the dialogue between the Parties;
 - (b) to study the development of trade and cooperation between the Parties;
 - (c) to seek appropriate methods of forestalling problems which might arise in areas covered by the Agreement;
 - (d) to exchange opinions and make suggestions on any issue of mutual interest relating to trade and cooperation, including future action and the resources available to carry it out.
2. The composition, frequency, agenda and venue of Cooperation Council meetings shall be agreed on through consultation between the Parties.

3. The Cooperation Council referred to above shall have the power to take decisions in respect of all matters covered by this Agreement.

4. The Parties agree to encourage and facilitate regular contacts between their respective Parliaments on the various areas of cooperation covered by the Agreement.

5. The Parties will also encourage contacts between other similar and relevant institutions in South Africa and the European Union such as the Economic and Social Committee of the European Community and the National Economic Development and Labour Council (NEDLAC) of South Africa.

Article 98

Tax Carve-Out Clause

1. The most-favoured-nation treatment granted in accordance with the provisions of this Agreement, or any arrangements adopted under this Agreement, do not apply to tax advantages which South Africa and the Member States of the European Union are providing or may provide in the future on the basis of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation.

2. Nothing in this Agreement, or in any arrangements adopted under this Agreement, may be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation.

3. Nothing in this Agreement, or in any arrangements adopted under this Agreement, shall be construed to prevent the Member States of the European Union or South Africa from distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence, or with regard to the place where their capital is invested.

Article 99

Duration

This Agreement shall be valid for an unlimited period. Either Party may denounce this Agreement by notifying the other Party in writing. The Agreement shall cease to apply six months after the date of such notification.

Article 100

Non-Discrimination

In the fields covered by this Agreement, and without prejudice to any special provisions contained therein;

(a) the arrangements applied by South Africa in respect of the Community shall not give rise to any discrimination between the Member States, their nationals, or their companies or firms;

(b) the arrangements applied by the Community and the Member States in respect of South Africa shall not give rise to any discrimination between South African nationals or its companies or firms.

Article 101

Territorial Application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, and, on the other hand, in respect of South Africa, to the territories as defined in the South African Constitution.

Article 102

Future Developments

The Parties may, by mutual consent and within their respective spheres of competence, expand the Agreement in order to enhance the level of cooperation and add to it by means of agreements on specific sectors or activities.

Within the framework of this Agreement, either of the Parties may put forward suggestions for expanding the scope of the cooperation, taking into account the experience gained in its application.

Article 103

Review

The Parties will review this Agreement within five years of its entering into force in order to address the possible implications of other arrangements which may affect this Agreement. Further reviews may be mutually agreed on.

Article 104

Dispute Settlement

1. Each Party may refer to the Cooperation Council any dispute relating to the application or interpretation of this Agreement.
2. The Cooperation Council may settle any dispute by means of a decision.
3. Each Party shall be bound to take the measures involved in carrying out the decision referred to in paragraph 2.
4. In the event of it not being possible to settle the dispute in accordance with paragraph 2, either Party may notify the other of an appointment of an arbitrator; the other Party must then appoint a second arbitrator within two months of the appointment of the first arbitrator.
5. The Cooperation Council shall appoint a third arbitrator within six months of the appointment of the second arbitrator.

6. The arbitrators' decisions shall be taken by majority vote within 12 months.
7. Each Party to the dispute must take the steps required to implement the decision of the arbitrators.
8. The Cooperation Council shall establish the working procedures for arbitration.
9. In the case of disputes arising under Titles II and III of this Agreement, the following procedures shall apply:
- (a) the appointment of a second arbitrator must be made within 30 days;
 - (b) the Cooperation Council shall appoint a third arbitrator within 60 days of the appointment of the second arbitrator;
 - (c) the arbitrators shall, as a general rule, submit their findings and decisions to the Parties and to the Cooperation Council not later than six months from the date of the composition of the arbitration panel. In cases of urgency, including those involving perishable goods, the arbitrators shall aim to issue their report to the parties within three months;
 - (d) the Party concerned shall inform the other Party and the Cooperation Council within 60 days of its intentions in respect of implementation of the findings and decisions of the Cooperation Council or the arbitrators, as the case may be;
 - (e) If it is impractical to comply immediately with the findings and decisions of the Cooperation Council or the arbitrators, the Party concerned shall be afforded a reasonable period of time to do so. The reasonable period of time shall not exceed 15 months from the date of submission of the findings and decisions to the Parties. However, that period of time may, by mutual consent of the Parties, be reduced or extended, depending on the particular circumstances.
10. Without prejudice to their right to have recourse to WTO dispute settlement procedures, the Community and South Africa shall endeavour to settle disputes relating to specific obligations arising under Titles II and III of this Agreement through recourse to the specific dispute settlement provisions of this Agreement. Arbitration proceedings established under this Agreement will not consider issues relating to each Party's WTO rights and obligations, unless the Parties agree to refer any such issues to the arbitration.

Article 105

Clause on Bilateral Agreements

Except in so far as it creates equivalent or greater rights for the Parties involved, this Agreement shall not affect rights contained in existing Agreements binding one or more Member States, on the one hand, and South Africa, on the other.

Article 106

Amendment Clause

1. Any Party desirous of amending this Agreement may put forward its proposal for the amendment, together with its submissions in motivation of the proposed amendment, to the Cooperation Council for consideration and decision.

2. In the event that the other Party considers that the proposed amendment could detrimentally impact on its rights in terms of the Agreement, it may submit a proposal for compensatory adjustments of the Agreement to the Cooperation Council for consideration and decision.

Article 107

Annexes

Protocols and Annexes shall form an integral part of the Agreement.

Article 108

Languages and Number of Originals

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages and the official languages of South Africa, other than English, namely Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, isiNdebele, isiXhosa and isiZulu, each of these texts being equally authentic.

Article 109

Entry into Force

This Agreement shall enter into force on the first day of the month following that during which the Contracting Parties have notified each other of the completion of the necessary procedures.

If pending the entry into force of the Agreement, the Parties decide to apply it provisionally, all references to the date of entry into force shall be deemed to refer to the date such provisional application takes effect.

Done at Pretoria on the Eleventh day of October in the year One thousand Nine Hundred and Ninety-Nine.

For the Joint Council

The President

1 These Annexes have been submitted to the Secretariat for consultation by interested Members (Office 3006). They are also available at the Europa web site, http://europa.eu.int/comm/development/south_africa/annex.pdf (for the annexes), & /protocol.pdf (for the Protocols) and & /agreement.pdf (for the text of the agreement).

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