

East African Community, African Regional Bodies

## Protocol on the establishment of the East African Community Common Market

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East African Community

# Protocol on the establishment of the East African Community Common Market

Commenced in full on 1 January 2010

*[This is the version of this document at 20 November 2009.]*

## PREAMBLE

**Pursuant to the provisions of articles 76 and 104 of the Treaty for the establishment of the East African Community, the provisions for the establishment of the East African Community common market are hereby set forth:**

**WHEREAS** The United Republic of Tanzania, the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda and the Republic of Uganda (hereinafter referred to as "the Partner States"), are Parties to the Treaty for the Establishment of the East African Community (hereinafter referred to as "the Treaty");

**AND WHEREAS** by the provisions of paragraph 1 of Article 151 of the Treaty, the Partner States undertook to conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for co-operation and integration;

### AND WHEREAS:

- (a) under the provisions of paragraph 2 of Article 2 and paragraph 2 of Article 5 of the Treaty, the Partner States undertook to, *inter alia*, establish among themselves a Common Market, as a transitional stage to, and an integral part of the Community;
- (b) under the provisions of paragraph 2 of Article 76 of the Treaty, the Partner States have determined that the establishment of a Common Market shall be progressive;
- (c) under the provisions of paragraph 4 of Article 76 of the Treaty, the Partner States agreed to conclude the Protocol on the establishment of a Common Market;

**RECALLING** the decision of the 11<sup>th</sup> Meeting of the Council to conclude one protocol covering the provisions of Articles 76 and 104 of the Treaty;

**NOTING** that the Partner States concluded the Protocol Establishing the East African Community Customs Union;

**CONSIDERING** that the objective of establishing a Common Market is the realisation of accelerated economic growth and development through the attainment of the free movement of goods, persons, labour, the rights of establishment and residence, the free movement of services and capital;

**NOTING** the importance of the development of the social dimensions in the Community and the desire to ensure economic and social development in promoting employment and improving standards of living and working conditions within the Community;

**CONSCIOUS** of their individual obligations and commitments under the Treaty and under other regional and international agreements;

**RECALLING** the objectives of the Community to develop policies and programmes aimed at widening and deepening cooperation among the Partner States in the economic and social fields;

### AGREE AS FOLLOWS:

## Part A – Interpretation

### Article 1 – Interpretation

In this Protocol, except where the context otherwise requires:

"**child**" means a son or daughter of a worker or self employed person under the age of eighteen years, who is a citizen;

"**citizen**" means a national of a Partner State recognized under the laws governing citizenship in the Partner State;

"**common market**" means the common market as defined under Article 1 of the Treaty;

"**common standard travel document**" means a passport or any other valid travel document establishing the identity of the holder, issued by or on behalf of the Partner State of which he or she is a citizen and shall also include inter-state passes;

"**Community**" means the East African Community established by Article 2 of the Treaty;

"**company**" means a business entity incorporated as a company under the laws of a Partner State;

"**co-operation**" includes the undertaking by the Partner States in common, jointly or in concert, of activities undertaken in furtherance of the objectives of the Community, as provided for under the Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Community;

"**Council**" means the Council of Ministers of the Community established by Article 9 of the Treaty;

"**Customs Union**" means the East African Community Customs Union established by Article 2 of the Protocol on the Establishment of the East African Community Customs Union;

"**dependant**" means a son or daughter of a worker or a self employed person who has attained the age of eighteen years, the mother, the father, a sister or a brother of a worker or a self employed person who is wholly dependent on the worker or self employed person, who is a citizen;

"**economic activity**" means any legitimate income generating activity;

"**environment**" means the natural resources of air, water, soil, fauna and flora, eco-systems, land, the man-made physical features, cultural heritage, the characteristic aspects of the landscape and the socio-economic interaction between the said factors and any living and non-living organisms;

"**firm**" means a business entity other than a company, registered in accordance with the laws governing registration of such business entity in a Partner State;

"**labour**" includes a worker and a self employed person;

"**national of a Partner State**" means a natural or legal person who is a national in accordance with the laws of the Partner State;

"**Partner States**" means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, The United Republic of Tanzania, the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;

"**piracy**" means infringement of intellectual property rights;

"**public security**" means the function of governments which ensures the protection of citizens and other nationals, organizations and institutions against threats to their well-being and to the prosperity of their communities;

"**public service**" means government ministries, government departments and government agencies providing services to the public in a Partner State;

"**self employed person**" means a person engaged in an economic activity not under any contract of employment or supervision and who earns a living through this activity;

"**spouse**" means a husband or a wife of a worker or a self employed person, in a legally recognised marriage in accordance with the national laws of a Partner State, who is a citizen;

"**third parties**" means foreign countries or persons;

"**Treaty**" means the Treaty for the Establishment of the East African Community and any annexes and protocols thereto;

"**vulnerable group**" includes groups of persons who are marginalised on grounds of stigmatised illness, gender, ethnicity, disability or age;

"**worker**" means a person who performs services for and under the direction of another person in return for remuneration.

## **Part B – Establishment of the East African Community Common Market**

### **Article 2 – Establishment of the East African Community Common Market**

1. In order to promote the objectives of the Community provided for under Article 5 of the Treaty and in accordance with the provisions of this Protocol, the Partner States hereby establish a common market as an integral part of the Community.
2. The Common Market established under paragraph 1, shall be called the East African Community Common Market (hereinafter referred to as "the Common Market").
3. The Common Market shall be managed in accordance with the relevant laws of the Community.
4. In accordance with the provisions of Articles 76 and 104 of the Treaty, this Protocol provides for the following:
  - (a) the free movement of goods;
  - (b) the free movement of persons;
  - (c) the free movement of labour;
  - (d) the right of establishment;
  - (e) the right of residence;
  - (f) the free movement of services; and
  - (g) the free movement of capital.
5. The establishment of the Common Market shall, notwithstanding paragraph 1, be progressive.

### **Article 3 – Principles of the Common Market**

1. The Common Market shall be guided by the fundamental and operational principles of the Community as enshrined in Articles 6 and 7 of the Treaty.
2. Without prejudice to paragraph 1, the Partner States undertake to:
  - (a) observe the principle of non-discrimination of nationals of other Partner States on grounds of nationality;
  - (b) accord treatment to nationals of other Partner States, not less favourable than the treatment accorded to third parties;

- (c) ensure transparency in matters concerning the other Partner States; and
- (d) share information for the implementation of this Protocol.

#### **Article 4 – Objectives of the Common Market**

1. The overall objective of the Common Market is to widen and deepen cooperation among the Partner States in the economic and social fields for the benefit of the Partner States.
2. The specific objectives of the Common Market are to:
  - (a) accelerate economic growth and development of the Partner States through the attainment of the free movement of goods, persons and labour, the rights of establishment and residence and the free movement of services and capital;
  - (b) strengthen, coordinate and regulate the economic and trade relations among the Partner States in order to promote accelerated, harmonious and balanced development within the Community;
  - (c) sustain the expansion and integration of economic activities within the Community, the benefit of which shall be equitably distributed among the Partner States;
  - (d) promote common understanding and cooperation among the nationals of the Partner States for their economic and social development; and
  - (e) enhance research and technological advancement to accelerate economic and social development.
3. In order to realise and attain the objectives provided for in this Article, the Partner States shall co-operate in, integrate and harmonise their policies in areas provided for in this Protocol and in such other areas as the Council may determine in order to achieve the objectives of the Common Market.

#### **Article 5 – Scope of co-operation in the Common Market**

1. The provisions of this Protocol shall apply to any activity undertaken in cooperation by the Partner States to achieve the free movement of goods, persons, labour, services and capital and to ensure the enjoyment of the rights of establishment and residence of their nationals within the Community.
2. For the purposes of paragraph 1 and pursuant to paragraph 4 of Article 2 of this Protocol, the Partner States agree to:
  - (a) eliminate tariff, non-tariff and technical barriers to trade; harmonise and mutually recognize standards and implement a common trade policy for the Community;
  - (b) ease cross-border movement of persons and eventually adopt an integrated border management system;
  - (c) remove restrictions on movement of labour, harmonise labour policies, programs, legislation, social services, provide for social security benefits and establish common standards and measures for association of workers and employers, establish employment promotion centres and eventually adopt a common employment policy;
  - (d) remove restrictions on the right of establishment and residence of nationals of other Partner States in their territory in accordance with the provisions of this Protocol;
  - (e) remove measures that restrict movement of services and service suppliers, harmonise standards to ensure acceptability of services traded; and
  - (f) eliminate restrictions on free movement of capital; ensure convertibility of currencies; promote investments in capital markets (stock exchange) eventually leading to an integrated financial system.

3. For the purposes of facilitating the implementation of the Common Market, the Partner States further agree to:
- (a) co-operate to harmonise and to mutually recognise academic and professional qualifications;
  - (b) co-operate to ensure protection of cross border investments;
  - (c) co-ordinate and harmonise their economic, monetary and financial policies;
  - (d) co-operate to ensure fair competition and promote consumer welfare;
  - (e) co-ordinate their trade relations to govern international trade and trade relations between the Community and third parties;
  - (f) co-ordinate and harmonise their transport policies and develop their transport infrastructure modes;
  - (g) co-ordinate and harmonise their social policies;
  - (h) integrate environmental and natural resources management principles in the activities relating to the Common Market;
  - (i) ensure the availability of relevant, timely and reliable statistical data for purposes of the Common Market;
  - (j) promote research and technological development within the Community;
  - (k) co-operate in the promotion and protection of intellectual property rights;
  - (l) promote industrial development for the attainment of sustainable growth and development in the Community; and
  - (m) sustainably develop and promote agriculture and ensure food security in the Community.

## **Part C – Free movement of goods**

### **Article 6 – Free movement of goods**

1. The free movement of goods between the Partner States shall be governed by the Customs Law of the Community as specified in Article 39 of the Protocol on the Establishment of the East African Community Customs Union.
2. In addition to the Customs Law of the Community, the free movement of goods shall be governed by:
  - (a) the East African Community Protocol on Standardisation, Quality Assurance, Metrology and Testing;
  - (b) the East African Community Standardisation, Quality Assurance, Metrology and Testing Act, 2006;
  - (c) the provisions of this Protocol;
  - (d) protocols that may be concluded in the areas of cooperation on sanitary and phyto-sanitary and technical barriers to trade; and
  - (e) any other instruments relevant to the free movement of goods.

## **Part D – Free movement of persons and labour**

### **Article 7 – Free movement of persons**

1. The Partner States hereby guarantee the free movement of persons who are citizens of the other Partner States, within their territories.
2. In accordance with paragraph 1, each Partner State shall ensure non-discrimination of the citizens of the other Partner States based on their nationalities by ensuring:
  - (a) the entry of citizens of the other Partner States into the territory of the Partner State without a visa;
  - (b) free movement of persons who are citizens of the other Partner States within the territory of the Partner State;
  - (c) that the citizens of the other Partner States are allowed to stay in the territory of the Partner State; and
  - (d) that the citizens of the other Partner States are allowed to exit the territory of the Partner State without restrictions.
3. The Partner States shall, in accordance with their national laws, guarantee the protection of the citizens of the other Partner States while in their territories.
4. The free movement of persons shall not exempt from prosecution or extradition, a national of a Partner State who commits a crime in another Partner State.
5. The free movement of persons shall be subject to limitations imposed by the host Partner State on grounds of public policy, public security or public health.
6. A Partner State imposing a limitation under paragraph 5, shall notify the other Partner States accordingly.
7. The Partner States shall effect reciprocal opening of border posts and keep the posts opened and manned for twenty four hours.
8. The movement of refugees within the Community shall be governed by the relevant international conventions.
9. The implementation of this Article shall be in accordance with the East African Community Common Market (Free Movement of Persons) Regulations, specified in Annex I to this Protocol.

### **Article 8 – Standard identification system**

The Partner States shall establish a common standard system of issuing national identification documents to their nationals which shall be the basis for identifying the citizens of the Partner States within the Community.

### **Article 9 – Travel documents**

1. A citizen of a Partner State who wishes to travel to another Partner State shall use a valid common standard travel document.
2. The Partner States which have agreed to use machine-readable and electronic national identity cards as travel documents may do so.
3. The Partner States which have agreed to use machine-readable and electronic national identity cards shall work out modalities for the implementation of paragraph 2.



## Article 10 – Free movement of workers

1. The Partner States hereby guarantee the free movement of workers, who are citizens of the other Partner States, within their territories.
2. For the purposes of paragraph 1, the Partner States shall ensure non discrimination of the workers of the other Partner States, based on their nationalities, in relation to employment, remuneration and other conditions of work and employment.
3. For the purpose of this Article, the free movement of workers shall entitle a worker to:
  - (a) apply for employment and accept offers of employment actually made;
  - (b) move freely within the territories of the Partner States for the purpose of employment;
  - (c) conclude contracts and take up employment in accordance with the contracts, national laws and administrative actions, without any discrimination;
  - (d) stay in the territory of a Partner State for the purpose of employment in accordance with the national laws and administrative procedures governing the employment of workers of that Partner State;
  - (e) enjoy the freedom of association and collective bargaining for better working conditions in accordance with the national laws of the host Partner State; and
  - (f) enjoy the rights and benefits of social security as accorded to the workers of the host Partner State.
4. For the purposes of the implementation of subparagraph (f) of paragraph 3, the Council shall issue directives and make regulations on social security benefits.
5. A worker shall have the right to be accompanied by a spouse and a child, and:
  - (a) a spouse who accompanies the worker shall be entitled to be employed as a worker or to engage in any economic activity as a self employed person in the territory of that Partner State;
  - (b) a child who accompanies the worker shall be entitled to be employed as a worker or to engage in any economic activity as a self employed person in the territory of that Partner State subject to the age limits under the national laws of that Partner State.
6. The Partner States shall facilitate the admission of a dependant of a worker in accordance with the national laws of the Partner States.
7. The office responsible for employment in a Partner State shall facilitate a citizen of another Partner State who seeks employment in the territory of that Partner State to receive the same assistance as would be accorded to a citizen of that Partner State who seeks employment.
8. The Partner States shall, within the framework of a joint programme, encourage the exchange of young workers amongst the Partner States.
9. The national laws and administrative procedures of a Partner State shall not apply where the principal aim or effect is to deny citizens of other Partner States the employment that has been offered.
10. The provisions of this Article shall not apply to employment in the public service unless the national laws and regulations of a host Partner State so permit.
11. The free movement of workers shall be subject to limitations imposed by the host Partner State on grounds of public policy, public security or public health.
12. A Partner State imposing a limitation under paragraph 11, shall notify the other Partner States accordingly.
13. The implementation of this Article shall be in accordance with the East African Community Common Market (Free Movement of Workers) Regulations, specified in Annex II to this Protocol.

### **Article 11 – Harmonisation and mutual recognition of academic and professional qualifications**

1. For the purpose of ensuring the free movement of labour, the Partner States undertake to:
  - (a) mutually recognise the academic and professional qualifications granted, experience obtained, requirements met, licences or certifications granted, in other Partner States; and
  - (b) harmonise their curricula, examinations, standards, certification and accreditation of educational and training institutions.
2. The implementation of this Article shall be in accordance with Annexes to be concluded by the Partner States.

### **Article 12 – Harmonisation of labour policies, laws and programmes**

1. The Partner States undertake to harmonise their labour policies, national laws and programmes to facilitate the free movement of labour within the Community.
2. The Partner States undertake to review and harmonise their national social security policies, laws and systems to provide for social security for self-employed persons who are citizens of other Partner States.
3. The implementation of this Article shall be in accordance with directives and regulations issued by the Council.

## **Part E – Rights of establishment and residence**

### **Article 13 – Right of establishment**

1. The Partner States hereby guarantee the right of establishment of nationals of the other Partner States within their territories.
2. For the purposes of paragraph 1, the Partner States shall ensure non discrimination of the nationals of the other Partner States, based on their nationalities.
3. For the purposes of paragraph 1, the right of establishment shall entitle:
  - (a) a national of a Partner State to:
    - (i) take up and pursue economic activities as a self employed person; and
    - (ii) set up and manage economic undertakings, in the territory of another Partner State;
  - (b) a self-employed person who is in the territory of another Partner State to join a social security scheme of that Partner State in accordance with the national laws of that Partner State.
4. The rights applicable to a spouse, child and dependant of a worker under Article 10 of this Protocol shall apply to the spouse, child and dependant of a self employed person.
5. The Partner States shall ensure that all restrictions on the right of establishment based on the nationality of companies, firms and self employed persons of the Partner States are removed, and shall not introduce any new restrictions on the right of establishment in their territories, save as otherwise provided in this Protocol.
6. Companies and firms established in accordance with the national laws of a Partner State and having their registered office, central administration or principal place of business and which undertake

- substantial economic activities in the Partner State shall, for purposes of establishment, be accorded non discriminatory treatment in other Partner States.
7. For the purposes of undertaking any economic activity in accordance with the provisions of this Article, the Partner States shall mutually recognize the relevant experience obtained, requirements met, licenses and certificates granted to a company or firm in the other Partner States.
  8. The right of establishment shall be subject to limitations imposed by the host Partner State on grounds of public policy, public security or public health.
  9. A Partner State imposing a limitation under paragraph 8, shall notify the other Partner States accordingly.
  10. The provisions of this Protocol shall not prejudice the application of national laws and administrative procedures and practices providing for special treatment for third parties accorded by individual Partner States on grounds of public policy, public security or public health.
  11. For the purposes of this Article, the Partner States shall:
    - (a) remove the administrative procedures and practices, resulting from national laws or from agreements previously concluded between the Partner States, that form an obstacle to the right of establishment;
    - (b) progressively remove any administrative procedures and practices resulting from national laws that restrict the right of establishment, in respect of the conditions for:
      - (i) setting up agencies, branches or subsidiaries of companies or firms in their territories; and
      - (ii) the entry of personnel of the companies or firms registered in another Partner State into managerial or supervisory positions in agencies, branches or subsidiaries in that Partner State;
    - (c) ensure that workers who are citizens of a Partner State employed in the territory of another Partner State are allowed to remain in that territory for the purpose of taking up economic activities as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that Partner State at the time when they intended to take up such economic activities;
    - (d) coordinate safeguard measures, which in the interest of the Community, are required for the protection of the companies and firms to ensure that the safeguard measures are similar throughout the Community; and
    - (e) satisfy themselves that the conditions of the right of establishment are not distorted by prohibited subsidies or aid granted by a Partner State to companies or firms owned by the nationals of the Partner State.
  12. The implementation of this Article shall be in accordance with the East African Community Common Market (Right of Establishment) Regulations, specified in Annex III to this Protocol.

### **Article 14 – Right of residence**

1. The Partner States hereby guarantee the right of residence to the citizens of the other Partner States who have been admitted in their territories in accordance with Articles 10 and 13 of this Protocol.
2. The right of residence guaranteed under paragraph 1, shall apply to the spouse, child and a dependant of a worker or self-employed person entitled to rights provided in Articles 10 and 13 of this Protocol.
3. The Partner States shall issue residence permits to citizens of other Partner States who qualify in accordance with the provisions of this Article.
4. The right of residence shall be subject to limitations imposed by the host Partner State on grounds of public policy, public security or public health.

5. A Partner State imposing a limitation under paragraph 4, shall notify the other Partner States accordingly.
6. The provisions of this Article shall not affect any provisions of national laws, administrative procedures and practices of a Partner State which would be more favourable to citizens of the other Partner States.
7. The Partner States hereby agree that matters relating to permanent residence shall be governed by the national policies and laws of the Partner States.
8. The implementation of this Article shall be in accordance with the East African Community Common Market (Right of Residence) Regulations, specified in Annex IV to this Protocol.

### **Article 15 – Access to and use of land and premises**

1. The Partner States hereby agree that access to and use of land and premises shall be governed by the national policies and laws of the Partner States.
2. The rights provided under Articles 13 and 14 in as far as they relate to access to and use of land and premises shall be subject to this Article.

## **Part F – Free movement of services**

### **Article 16 – Free movement of services**

1. The Partner States hereby guarantee the free movement of services supplied by nationals of Partner States and the free movement of service suppliers who are nationals of the Partner States within the Community.
2. The free movement of services shall cover the supply of services:
  - (a) from the territory of a Partner State into the territory of another Partner State;
  - (b) in the territory of a Partner State to service consumers from another Partner State;
  - (c) by a service supplier of a Partner State, through commercial presence of the service supplier in the territory of another Partner State; and
  - (d) by the presence of a service supplier, who is a citizen of a Partner State, in the territory of another Partner State.
3. In fulfilling their obligations and commitments under this Part, the Partner States shall take such measures to ensure the observance of the measures by local governments and local authorities and non governmental bodies within the Partner States.
4. The measures to be taken by the Partner States under paragraph 3 include any laws and administrative actions taken by:
  - (a) national governments, local governments or local authorities; and
  - (b) non-governmental bodies in the exercise of powers delegated by national governments, local governments or local authorities.
5. For the purposes of paragraph 1, the Partner States shall progressively remove existing restrictions and shall not introduce any new restrictions on the provision of services in the Partner States, by nationals of other Partner States except as otherwise provided in this Protocol.
6. Without prejudice to any other provisions of this Protocol, a person providing a service may, in order to provide the service, temporarily engage in activities related to the service in the Partner State, where the service is to be supplied, under the same conditions as are applicable to the nationals of the Partner State.

7. For the purposes of this Part "services" includes:
  - (a) services in any sector except services supplied in the exercise of governmental authority which are not provided on a commercial basis or in competition with one or more service suppliers;
  - (b) services normally provided for remuneration, in so far as they are not governed by the provisions relating to free movement of goods, capital and persons.

### **Article 17 – National treatment**

1. Each Partner State shall accord to services and service suppliers of other Partner States, treatment not less favourable than that accorded to similar services and service suppliers of the Partner State.
2. For the purposes of fulfilling the requirement of paragraph 1, each Partner State may accord to services and service suppliers of other Partner States, either formally identical treatment or formally different treatment to that it accords to like services and service suppliers of the Partner State.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Partner State compared to like services or service suppliers of the other Partner States.

### **Article 18 – Most favoured nation treatment**

Each Partner State shall upon the coming into force of this Protocol, accord unconditionally, to services and service suppliers of the other Partner States, treatment no less favourable than that it accords to like services and service suppliers of other Partner States or any third party or a customs territory.

### **Article 19 – Notification**

1. Each Partner State shall promptly notify the Council of all measures of general application affecting the free movement of services at the entry into force of this Protocol.
2. The Partner States shall notify the Council of any international agreements pertaining to or affecting trade in services with third parties that they are signatory to, prior to and after the entry into force of this Protocol.
3. Where a Partner State submits a notification to the Council under paragraph 2, the Secretariat shall transmit a copy of that notification to the other Partner States.
4. Each Partner State shall, promptly and at least annually, inform the Council of the introduction of any new national laws or administrative guidelines, or any changes to existing laws or administrative guidelines which affect trade in services provided for in this Protocol.
5. Each Partner State shall respond promptly to any request by another Partner State for specific information on any of its measures of general application or international agreements.
6. The Council may make decisions on the measures or international agreements referred to in this Article.

### **Article 20 – Domestic regulation**

1. The Partner States may regulate their services sectors in accordance with their national policy objectives provided that the measures are consistent with the provisions of this Protocol and do not constitute barriers to trade in services.
2. The Partner States shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

## Article 21 – General exceptions to trade in services

1. Subject to the requirement that measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Partner States where like conditions prevail, or a disguised restriction on trade in services, nothing in this Part shall be construed to prevent the adoption or enforcement by any Partner State of measures:
  - (a) necessary to protect public morals or to maintain public order;
  - (b) necessary to protect human, animal or plant life or health;
  - (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Part including those relating to:
    - (i) the prevention of deceptive and fraudulent practices or which deal with the effects of a default on services contracts;
    - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and
    - (iii) safety;
  - (d) inconsistent with Article 17 of this Protocol, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Partner States; or
  - (e) inconsistent with Article 18 of this Protocol, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Partner State is bound.
2. Pursuant to subparagraph (d) of paragraph 1, measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Partner State under its taxation system which:
  - (a) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the territory of the Partner States;
  - (b) apply to non-residents in order to ensure the imposition or collection of taxes in the territory of the Partner States;
  - (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
  - (d) apply to consumers of services supplied in or from the territory of another Partner State in order to ensure the imposition or collection of taxes on such consumers derived from sources in the territory of the Partner States;
  - (e) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
  - (f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident citizens, companies or firms or the branches of the companies or firms, or between related companies or firms or their branches, in order to safeguard the tax base of the Partner State.

## **Article 22 – Security exceptions on trade in services**

1. Nothing in this Part shall be construed:
  - (a) to require any Partner State to furnish any information, the disclosure of which it considers contrary to its essential security interests;
  - (b) to prevent any Partner State from taking any action which it considers necessary for the protection of its essential security interests:
    - (i) relating to the supply of services carried out directly or indirectly for the purpose of provisioning a military establishment;
    - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
    - (iii) taken in time of war or other emergency in international relations; or
  - (c) to prevent any Partner State from taking any action in pursuance of its obligations under the United Nations Charter for the Maintenance of International Peace and Security.
2. The Partner States shall, to the fullest extent possible, inform the Council of measures taken under subparagraphs (b) and (c) of paragraph 1 and of their termination.

## **Article 23 – Implementation of the free movement of services**

1. The implementation of Article 16 of this Protocol shall be progressive and in accordance with the Schedule on the Progressive Liberalisation of Services, specified in Annex V to this Protocol.
2. The Partner States, undertake to make additional commitments on the elimination of restrictions on the service sectors and sub sectors that are not specified in Annex V of this Protocol, after entry into force of this Protocol.
3. The Council shall issue directives on the modalities for the implementation of paragraph 2.

## **Part G – Free movement of capital**

### **Article 24 – Elimination of restrictions on the free movement of capital**

1. Except as provided in this Part, the Partner States shall upon the coming into force of this Protocol:
  - (a) remove restrictions between the Partner States, on the movement of capital belonging to persons resident in the Community;
  - (b) remove any discrimination based on the nationality or on the place of residence of the persons or on the place where the capital is invested;
  - (c) remove any existing restrictions and shall not introduce any new restrictions on the movement of capital and payments connected with such movement and on current payments and transfers, or apply more restrictive regulations; and
  - (d) remove restrictions relating to current payments connected with the movement of goods, persons, services or capital between Partner States in accordance with the provisions of this Protocol.
2. The implementation of this Article shall be progressive and in accordance with the Schedule on the Removal of Restriction on the Free Movement of Capital, specified in Annex VI to this Protocol.

### **Article 25 – General exceptions**

1. The free movement of capital may be restricted upon justified reasons related to:
  - (a) prudential supervision;
  - (b) public policy considerations;
  - (c) money laundering; and
  - (d) financial sanctions agreed to by the Partner States.
2. Where a Partner State adopts a restriction under paragraph 1, the Partner State shall inform the Secretariat and the other Partner States and furnish proof that the action taken was appropriate, reasonable and justified.

### **Article 26 – Safeguard measures**

1. Where the movement of capital leads to disturbances in the functioning of the financial markets in a Partner State, the Partner State concerned may take safeguard measures subject to the conditions provided under Article 27 of this Protocol.
2. Where a competent authority of a Partner State makes an intervention in the foreign exchange market, which seriously distorts the conditions of competition, the other Partner States may take, for a strictly limited period, the necessary measures in order to counter the consequences of the intervention.
3. A Partner State may take safeguard measures, where the Partner State is in difficulties or is seriously threatened with difficulties, as regards its balance of payments.

### **Article 27 – Conditions for application of the safeguard measures**

1. The safeguard measures which may be adopted or maintained pursuant to the provisions of Article 26 of this Protocol shall:
  - (a) subject to the provisions of this Protocol, not discriminate among Partner States in favour of third parties;
  - (b) at all times seek to minimize damage to the commercial, economic or financial interests of other Partner States;
  - (c) not exceed the safeguard measures necessary to deal with the circumstances described in Article 26; and
  - (d) be temporary and be phased out progressively as the situation described in Article 26 improves.
2. In determining the imposition of the safeguard measures provided for in Article 26 of this Protocol, the Partner State concerned may accord priority to activities which are essential to its economic stability.
3. Safeguard measures shall not be adopted or maintained for the purpose of protecting a particular sector in contravention of the provisions of this Protocol.
4. The safeguard measures adopted or maintained pursuant to Article 26 of this Protocol or any changes to the safeguard measures shall be notified to the Secretariat and to the other Partner States.
5. The Council shall establish procedures for periodic consultations including, where possible and desirable, prior consultations with the objective of making recommendations to the concerned Partner State for the removal of the safeguard measures.



6. The consultations under paragraph 5 shall address the compliance of any safeguard measures taken under paragraph 1 and, in particular, the progressive phase-out of the safeguard measures in accordance with paragraph 1(d).

### **Article 28 – Capital and related payments and transfers**

For the purposes of this Protocol, capital and related payments and transfers include:

- (a) direct investment;
- (b) equity and portfolio investments;
- (c) bank and credit transactions;
- (d) payment of interest on loans and amortisation;
- (e) dividends and other income on investments;
- (f) repatriation of proceeds from the sale of assets; and
- (g) other transfers and payments relating to investment flows.

## **Part H – Other areas of co-operation in the Common Market**

### **Article 29 – Protection of cross-border investments**

1. The Partner States undertake to protect cross border investments and returns of investors of other Partner States within their territories.
2. For the purposes of paragraph 1, the Partner States shall ensure:
  - (a) protection and security of cross border investments of investors of other Partner States;
  - (b) non-discrimination of the investors of the other Partner States, by according, to these investors treatment no less favourable than that accorded in like circumstances to the nationals of that Partner State or to third parties;
  - (c) that in case of expropriation, any measures taken are for a public purpose, non-discriminatory, and in accordance with due process of law, accompanied by prompt payment of reasonable and effective compensation.
3. The Partner States shall within two years after coming into force of this Protocol take measures to secure the protection of cross border investments within the Community.
4. For the purpose of this Article:

"cross-border investment" means any investment by a national of a Partner State in the territory of another Partner State;

"investment" means any kind of asset owned or controlled by an investor of a Partner State in another Partner State in accordance with the national laws and investment policies of that Partner State and includes:

  - (a) an enterprise;
  - (b) shares, stock, and other forms of equity participation in an enterprise;
  - (c) bonds, debentures, other debt instruments and loans;
  - (d) futures, options and other derivatives;

- (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits and similar rights conferred pursuant to applicable national laws; and
- (h) other tangible or intangible, movable or immovable property, and related property rights such as leases, mortgages, liens and pledges;

"investor" means a national of a Partner State who has made an investment in the territory of another Partner State.

### **Article 30 – Economic and monetary policy co-ordination**

1. For the proper functioning of the Common Market, the Partner States shall co-ordinate and harmonize their economic and monetary policies to ensure macroeconomic stability, sustainable economic growth and balanced development.
2. The Council shall monitor the implementation of the economic and monetary policies by the Partner States to ensure macro-economic stability and sustainable economic development.
3. The Partner States undertake to adhere to the macroeconomic convergence criteria as determined by the Council.
4. The Partner States shall submit to the Council periodic progress reports on the performance of their national economies to facilitate close co-ordination of economic policies and adherence to the macroeconomic convergence criteria.

### **Article 31 – Financial sector policy co-ordination**

1. For the proper functioning of the Common Market the Partner States undertake to co-ordinate and harmonize their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment systems.
2. The Partner States shall ensure and maintain convertibility of their national currencies and promote the use of national currencies in the settlement of payments for all transactions within the Community.

### **Article 32 – Harmonisation of tax policies and laws**

The Partner States undertake to progressively harmonize their tax policies and laws to remove tax distortions in order to facilitate the free movement of goods, services and capital and to promote investment within the Community.

### **Article 33 – Prohibited business practices**

1. The Partner States shall prohibit any practices that adversely affect free trade.
2. The provisions of paragraph 1 shall apply in the case of:
  - (a) all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Partner States and which have as their objective or effect the prevention, restriction or distortion of competition within the Community;

- (b) concentrations which create or strengthen a dominant position and as a result of which effective competition would be significantly impeded within the Community or in a substantial part of the Community; and
  - (c) any abuse by one or more undertakings of a dominant position within the Community or in a substantial part of the Community.
3. The provisions of paragraph 1 shall not apply in the case of:
- (a) any agreement or category of agreements between undertakings;
  - (b) any decision by associations of undertakings; or
  - (c) any concerted practice or category of concerted practices, which improves production or distribution of goods, promotes technical or economic development or which has the effect of promoting consumer welfare and does not impose restrictions inconsistent with the attainment of the objectives of the Common Market or has the effect of eliminating competition in respect of a substantial part of a product.

### **Article 34 – Prohibited subsidies**

1. The Partner States shall not grant any subsidy through resources in any form, which distorts or threatens to distort effective competition by favouring an undertaking, in so far as it affects trade between the Partner States.
2. Paragraph 1 shall not apply where a subsidy granted is authorised by the Treaty or by Acts or policies of the Community or decisions of the Council.

### **Article 35 – Public procurement**

The Partner States shall not discriminate against suppliers, products or services originating from other Partner States, for purposes of achieving the benefits of free competition in the field of public procurement.

### **Article 36 – Consumer protection**

1. The Partner States shall promote the interests of the consumers in the Community by appropriate measures that:
  - (a) ensure the protection of life, health and safety of consumers; and
  - (b) encourage fair and effective competition in order to provide consumers with greater choice among goods and services at the lowest cost.
2. The implementation of Articles 33 to 36 of this Protocol shall be in accordance with directives and regulations issued by the Council.

### **Article 37 – Co-ordination of trade relations**

1. The Partner States shall coordinate their trade relations to promote international trade and trade relations between the Community and third parties.
2. For the purposes of paragraph 1, the Partner States shall adopt common principles in particular in relation to:
  - (a) tariff rates;
  - (b) conclusion of tariff and trade agreements;

- (c) the achievements of uniformity of measures of liberalisation;
  - (d) export promotion strategies ; and
  - (e) trade remedies.
3. The Council shall establish a mechanism for the co-ordination of trade relations with third parties and shall:
- (a) adopt common negotiating positions in the development of mutually beneficial trade agreements with third parties; and
  - (b) promote participation and joint representation in international trade negotiations.
4. The Partner States shall provide information to the Council on trade relations with third parties, to facilitate the effective implementation of paragraph 3.
5. For purposes of trade arrangements between individual Partner States and third parties, the provisions of Article 37 of the Protocol on the Establishment of the East African Community Customs Union shall apply.

### **Article 38 – Co-ordination of transport policies**

1. The Partner States undertake to evolve coordinated and harmonized transport policies to provide for adequate, reliable, safe and internationally competitive transport infrastructure modes and services for the development and consolidation of the Common Market.
2. Paragraph 1 shall apply to logistics and transport by road, rail, inland waterways, maritime, pipeline and air and facilities such as ports, airports and inland dry ports.
3. For the purposes of implementing this Article, the Partner States:
- (a) shall honour the existing ratified agreements entered between the Partner States;
  - (b) may in future enter into other agreements;
  - (c) shall honour their existing commitments and obligations emanating from international conventions and agreements; and
  - (d) shall subject to the provisions of subparagraph (c) of this paragraph, align all other agreements on transport to the provisions of this Protocol.
4. The Council shall within three years upon entry into force of this Protocol, make regulations applicable to:
- (a) railway transport;
  - (b) maritime transport and port operations;
  - (c) pipeline transport;
  - (d) air transport;
  - (e) non-motorized transport; and
  - (f) multimodal transport and logistics.

### **Article 39 – Harmonisation of social policies**

1. The Partner States undertake to coordinate and harmonise their social policies to promote and protect decent work and improve the living conditions of the citizens of the Partner States for the development of the Common Market.

2. For the purposes of paragraph 1, the Partner States shall coordinate and harmonise their social policies relating to:
  - (a) good governance, the rule of law and social justice;
  - (b) promotion and protection of human and peoples' rights;
  - (c) promotion of equal opportunities and gender equality;
  - (d) promotion and protection of the rights of marginalised and vulnerable groups;
  - (e) promotion of African moral values, social values and ethics; and
  - (f) promotion of unity and cohesion among the people in the Community.
3. The Partner States undertake to implement programmes to:
  - (a) promote employment creation;
  - (b) strengthen labour laws and improve working conditions;
  - (c) eliminate compulsory and forced labour;
  - (d) promote occupational safety and health at the work places;
  - (e) abolish child labour in particular the worst forms of child labour;
  - (f) promote formal education to advance social development;
  - (g) promote vocational and technical training;
  - (h) expand and improve social protection;
  - (i) promote social dialogue between the social partners and other stakeholders;
  - (j) promote the right of persons with disabilities;
  - (k) promote sports;
  - (l) prevent and manage HIV and AIDS, malaria and tuberculosis;
  - (m) prevent and manage the outbreak of epidemics and other diseases in order to improve the general hygiene and health of the people;
  - (n) prevent social vices such as alcoholism, drug abuse or substance abuse and perverse behaviour;
  - (o) eliminate human smuggling and trafficking; and
  - (p) eliminate ignorance, diseases and poverty.
4. The Partner States shall, in implementing programmes under paragraph 3:
  - (a) promote, preserve and mainstream cultural activities and heritage in development initiatives; and
  - (b) adopt measures and programmes aimed at promoting the welfare of the vulnerable groups.

### **Article 40 – Environmental management**

1. The Partner States undertake to ensure sound environmental and natural resources management principles for the proper functioning of the Common Market, through prevention of activities that are detrimental to the environment.
2. For the purposes of paragraph 1, the Partner States shall manage the environment in accordance with:
  - (a) the East African Community Protocol on Environment and Natural Resources Management;

- (b) the East African Community Protocol for Sustainable Development of Lake Victoria Basin;
  - (c) the Lake Victoria Transport Act, 2008;
  - (d) the Protocol on the Establishment of the East African Community Customs Union;
  - (e) the East African Community Customs Management Act, 2004;
  - (f) the relevant provisions of this Protocol; and
  - (g) any other relevant laws of the Community.
3. The Partner States shall respect the principles of international environmental law and honour their commitments in respect of international agreements which relate to environmental management.
  4. The Partner States shall develop common policies in responding to emerging issues on the environment.
  5. The provisions of this Article shall not preclude the Partner States from maintaining or introducing more stringent protective measures regarding the environment, where the measures are compatible with this Protocol.

### **Article 41 – Cooperation in statistics**

1. The Partner States shall cooperate to ensure the availability of relevant, timely and reliable statistical data for:
  - (a) describing, monitoring and evaluating all aspects of the Common Market; and
  - (b) sound decision making and effective service delivery in the Common Market.
2. For the purposes of paragraph 1, the Partner States undertake to develop and adopt harmonised statistical methods, concepts, definitions and classifications for organizing statistical work while duly observing internationally accepted best practices.
3. For the purposes of paragraph 1 the Partner States shall collect, compile, store and disseminate relevant, reliable, timely, consistent and comparable statistical information.
4. The Council may issue directives on:
  - (a) statistics to be collected and compiled as well as the periodicity and format in which statistical data shall be submitted by the Partner States to the Secretariat;
  - (b) the key indicators for monitoring the implementation of the integration process of the Common Market and evaluating the impact of the integration process on the welfare of the people in the Community and the competitiveness of the Community;
  - (c) statistics to be aggregated and disseminated by the Community;
  - (d) the coordination of Community statistics programmes and the development and maintenance of an integrated Community statistical database; and
  - (e) the development of infrastructural and human resource capacities in the field of statistics in the Partner States.

### **Article 42 – Research and technological development**

1. The Partner States undertake to promote research and technological development through market-led research, technological development and the adaptation of technologies in the Community, to support the sustainable production of goods and services and enhance international competitiveness.

2. For the purposes of paragraph 1, the Partner States shall:
  - (a) disseminate the results of activities in research, technological development and demonstration programmes;
  - (b) facilitate access to their technological and research facilities by researchers and other experts;
  - (c) encourage private sector participation in activities relating to intra-regional research and transfer of technology;
  - (d) adopt measures to develop the human resource of the Community in research and development;
  - (e) establish and support research infrastructure, facilities and institutions;
  - (f) collaborate with the East African Science and Technology Commission and other institutions on research, science and technology; and
  - (g) establish a mechanism for the coordination of the activities specified in this paragraph.
3. Pursuant to the objectives set out in paragraph 1, the Council shall issue directives and make regulations to:
  - (a) promote co-operation in research, technological development and demonstration programmes within Partner States, and with regional institutions, foreign countries and international organizations;
  - (b) stimulate creativity and excellence in research through the funding of 'frontier research' carried out by individual teams competing at the Community level;
  - (c) implement research, technological development and demonstration programmes with and between undertakings, including small and medium-sized enterprises, research centres and universities and to assist the undertakings in their research and technological development activities;
  - (d) develop technological policies and strategies, having due regard to the importance of technology management and protection of intellectual property rights;
  - (e) provide measures for protecting, developing and commercialising indigenous knowledge;
  - (f) promote and ensure sustainability of an information and communications technology culture;
  - (g) promote and facilitate technology transfer, acquisition and dissemination in order to achieve increased production and productivity; and
  - (h) establish and develop a technology innovation system for the productive sector of the economy of the Community.
4. The Partner States undertake to establish a Research and Technological Development Fund for purposes of implementing this Article.
5. The Council shall issue directives and make regulations for the implementation of paragraph 4.

### **Article 43 – Co-operation in intellectual property rights**

1. The Partner States undertake to co-operate in the field of intellectual property rights to:
  - (a) promote and protect creativity and innovation for economic, technological, social and cultural development in the Community; and
  - (b) enhance the protection of intellectual property rights.
2. For the purposes of paragraph 1, the Partner States undertake to cooperate in the following areas:
  - (a) copyright and related rights;

- (b) patents;
  - (c) layout designs of integrated circuits;
  - (d) industrial designs;
  - (e) new plant varieties;
  - (f) geographical indications;
  - (g) trade and service marks;
  - (h) trade secrets;
  - (i) utility models;
  - (j) traditional knowledge;
  - (k) genetic resources;
  - (l) traditional cultural expressions and folklore; and
  - (m) any other areas that may be determined by the Partner States.
3. For the purposes of paragraph 1, Partner States shall:
- (a) put in place measures to prevent infringement, misuse and abuse of intellectual property rights;
  - (b) cooperate in fighting piracy and counterfeit activities;
  - (c) exchange information on matters relating to intellectual property rights;
  - (d) promote public awareness on intellectual property rights issues;
  - (e) enhance capacity in intellectual property;
  - (f) increase dissemination and use of patent documentation as a source of technological information;
  - (g) adopt common positions in regional and international norm setting in the field of intellectual property; and
  - (h) put in place intellectual property policies that promote creativity, innovation and development of intellectual capital.
4. The Partner States shall establish mechanisms to ensure:
- (a) the legal protection of the traditional cultural expressions, traditional knowledge, genetic resources and national heritage;
  - (b) the protection and promotion of cultural industries;
  - (c) the use of protected works for the benefits of the communities in the Partner States ; and
  - (d) the cooperation in public health, food security, research and technological development.
5. The Council shall issue directives for:
- (a) co-operation in the administration, management and enforcement of intellectual property rights;
  - (b) the elimination of discriminatory practices in the administration of intellectual property rights amongst Partner States.
6. The Partner States shall honour their commitments in respect of international agreements which relate to intellectual property rights.



## Article 44 – Co-operation in industrial development

1. The Partner States undertake to cooperate in the area of industrial development in the activities related to the production of goods and services in the Common Market, for the attainment of sustainable growth and development in the Community.
2. For the purposes of paragraph 1, the Partner States shall adopt common principles to:
  - (a) promote linkages among industries and other economic sectors within the Community;
  - (b) promote value addition and product diversification to improve resource utilisation;
  - (c) promote industrial research and development, transfer, acquisitions, adaptation and development of modern technology;
  - (d) promote sustainable and balanced industrialisation in the Community to cater for the least industrialized Partner States;
  - (e) facilitate the development of micro, small and medium industries and promote indigenous entrepreneurs;
  - (f) promote investment and employment opportunities in the Community;
  - (g) promote knowledge based industries;
  - (h) promote industrial productivity and competitiveness of industries at national, Community and international levels;
  - (i) promote sustainable industrial development that ensures environmental protection, management and efficient resource utilisation; and
  - (j) disseminate and exchange industrial and technological information.
3. The Council shall issue directives and make regulations on:
  - (a) the implementation of the East African Industrial Development Strategy;
  - (b) the promotion of new technologies and the infrastructure necessary for industrial development;
  - (c) the improvement of quality and technical regulatory infrastructure to ensure compliance of industrial products to standards and technical regulations;
  - (d) the establishment of physical infrastructure for industrial development including industrial parks and special economic zones;
  - (e) the establishment of a regional mechanism for developing human capacity for industrial and technological advancement;
  - (f) support for regional fora for Public-Private Partnership and Civil Society dialogue;
  - (g) the development of a regional mechanism to provide sustainable and affordable industrial development finance;
  - (h) support for the development of a regional productive base for capital, intermediate goods, tools and implements; and
  - (i) any other measures that may be necessary.

## Article 45 – Co-operation in agriculture and food security

1. The Partner States undertake to:
  - (a) sustainably develop and promote agriculture with regard to crops, livestock, fish, forestry and their products; and
  - (b) ensure food security in the Community through access to quality and sufficient food.
2. The objectives of promoting agriculture and ensuring food security in the Common Market shall be to:
  - (a) increase agricultural production and productivity;
  - (b) achieve food and nutrition security;
  - (c) promote investments in agriculture and food security;
  - (d) develop effective agricultural markets and marketing systems in the Community; and
  - (e) promote agro processing and value addition to agricultural products.
3. For the purposes of this Article, Partner States shall:
  - (a) cooperate in agricultural research and development;
  - (b) cooperate in plant breeding;
  - (c) promote the production and distribution of quality seeds of crops, livestock, fish and forest trees;
  - (d) develop capacity in the agricultural sector;
  - (e) cooperate in breeding, multiplication, distribution and artificial insemination of livestock including domesticated animals;
  - (f) develop, promote, manage and conserve fisheries resources on a sustainable basis within the Community;
  - (g) cooperate in the control of plant and animal pests, vectors and diseases;
  - (h) establish early warning systems and manage food security;
  - (i) develop, promote and manage forests and forestry products;
  - (j) promote and support the development of sustainable water use and irrigation facilities;
  - (k) stabilize markets and ensure the availability of supplies for both domestic consumption and exports;
  - (l) establish an effective regime of sanitary and phyto-sanitary measures, standards and technical regulations;
  - (m) establish and promote the production and availability of farm inputs and implements in sufficient quantities in the Partner States; and
  - (n) promote and encourage private sector participation in agricultural commercial activities and provision of support services.
4. The implementation of this Article shall be in accordance with the existing and any other relevant instruments that may be approved by the Council.
5. The Partner States undertake to establish an Agricultural Development Fund.
6. The purposes of the Agricultural Development Fund shall be to:
  - (a) promote sustainable and competitive agricultural production;

- (b) finance agricultural capital investment and working capital;
- (c) finance agricultural mechanisation and inputs;
- (d) facilitate access to credit by all categories of farmers and agricultural entrepreneurs especially small-scale farmers and agricultural entrepreneurs;
- (e) facilitate financing for value addition and processing capacity; and
- (f) cater for any other financing requirement in the agricultural sector.

## **Part I – General provisions**

### **Article 46 – Institutional framework**

In accordance with paragraph 3 of Article 76 of the Treaty, the Council may establish and confer powers and authority upon such institutions as it may deem necessary to administer the Common Market.

### **Article 47 – Approximation and harmonisation of policies, laws and systems**

1. The Partner States undertake to approximate their national laws and to harmonise their policies and systems, for purposes of implementing this Protocol.
2. The Council shall issue directives for purposes of implementing this Article.

### **Article 48 – Safeguard measures**

1. The Partner States agree to apply safeguard measures in the event of serious injury or of a threat of serious injury occurring to the economy of a Partner State, following the application of the relevant provision of this Protocol.
2. In the event of serious injury, where prompt and immediate action is deemed necessary, the Partner State concerned shall take necessary safeguard measures after informing the Council and the other Partner States through the Secretary General.
3. In the case of threat of serious injury, the Partner State concerned shall consult the Council before taking necessary safeguard measures.
4. The Council shall examine the basis, consider the method and the effect of the application of the safeguard measures taken by the Partner State under paragraphs 2 and 3 and make an appropriate decision.

### **Article 49 – Measures to address imbalances**

The Council shall approve measures to address imbalances that may arise from the implementation of this Protocol.

### **Article 50 – Monitoring and evaluation of implementation of the Common Market**

1. The Council shall establish a framework for monitoring and evaluating the implementation of this Protocol.
2. For the purposes of this Article, the Council shall:
  - (a) ensure that the operations of the Common Market conform to the objectives of this Protocol;

- (b) annually review the specific commitments and programmes in this Protocol and take the necessary measures to ensure that the Partner States adhere to their commitments and programmes within the agreed timeframe;
  - (c) evaluate the implementation of this Protocol; and
  - (d) assess any causes of delay in the implementation of this Protocol and take the appropriate measures to remedy the situation.
3. For the purposes of the implementation of paragraph 2, the Council shall take into account any changes occurring in the economic and social circumstances of the Partner States.
4. The annual review in subparagraph (b) of paragraph 2 shall:
  - (a) consist of an assessment of the implementation of the agreed commitments and programmes, taking into account the results of any relevant activities of the monitoring and evaluation exercise; and
  - (b) in particular, include an assessment of the results achieved in the realisation and enjoyment of the freedoms and rights of citizens guaranteed under this Protocol, measured against:
    - (i) the agreed commitments;
    - (ii) the effectiveness in the implementation of the agreed commitments; and
    - (iii) the extent to which the commitments agreed to in the implementation Schedules have been adhered to.
5. The evaluation of the implementation of the Common Market referred to in subparagraph (c) of paragraph 2 shall be carried out every three years.

### **Article 51 – Regulations, directives and decisions**

The Council shall from time to time make regulations, issue directives and make decisions as may be necessary for the effective implementation of the provisions of this Protocol.

### **Article 52 – Annexes**

The Partner States shall conclude such annexes to this Protocol as shall be deemed necessary and such annexes shall form an integral part of this Protocol.

### **Article 53 – Amendment of the Protocol**

1. This Protocol may be amended by Partner States in accordance with the provisions of Article 150 of the Treaty.
2. Subject to the provisions of paragraph 1, the Council may:
  - (a) with the approval of the Summit, review the annexes to this Protocol and make such modifications as it deems necessary;
  - (b) submit to the Partner States proposals for the amendment of the provisions of this Protocol.

### **Article 54 – Settlement of disputes**

1. Any dispute between the Partner States arising from the interpretation or application of this Protocol shall be settled in accordance with the provisions of the Treaty.

2. In accordance with their Constitutions, national laws and administrative procedures and with the provisions of this Protocol, Partner States guarantee that:
  - (a) any person whose rights and liberties as recognised by this Protocol have been infringed upon, shall have the right to redress, even where this infringement has been committed by persons acting in their official capacities; and
  - (b) the competent judicial, administrative or legislative authority or any other competent authority, shall rule on the rights of the person who is seeking redress.

### **Article 55 – Entry into force**

This Protocol shall enter into force upon ratification and deposit of instruments of ratification with the Secretary General by all the Partner States.

### **Article 56 – Depository and registration**

1. This Protocol and all instruments of ratification shall be deposited with the Secretary General who shall transmit certified true copies of the Protocol and instruments of ratification to all the Partner States.
2. The Secretary General shall register this Protocol with the African Union, the United Nations, the World Trade Organisation and such other organisations as the Council may determine.

**DONE** at Arusha, Tanzania, on the 20<sup>th</sup> day of November in the year Two Thousand and Nine.

**IN FAITH WHEREOF** the undersigned have appended their signatures hereto: