

# TREATY ESTABLISHING A COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

*The founding treaty of COMESA was signed in November 1993 in Kampala, Uganda and entered into force on 8 December 1994. Available at [www.comesa.int](http://www.comesa.int). Also reprinted in 33:1 International Legal Materials (1994) 1072*

## PREAMBLE

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*Conscious* of the overriding need to establish a Common Market for Eastern and Southern Africa; *Bearing in mind* the establishment among their respective states of the Preferential Trade Area for Eastern and Southern African states as a first step towards the creation of a Common Market and eventually of an Economic Community for Eastern and Southern Africa;

*Recalling* the provisions of article 29 of the Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African states to the effect that steps should be taken to develop the Preferential Trade Area established by that Treaty into a Common Market and eventually into an Economic Community;

*Recalling* further the decision of the Authority of the Preferential Trade Area for Eastern and Southern African states, taken at its Tenth Meeting held in Lusaka, Zambia from 30 - 31 January 1992, to transform the Preferential Trade Area for Eastern and Southern African states into a Common Market for Eastern and Southern Africa;

*Inspired* by the objectives of the Treaty for the Establishment of the African Economic Community and in compliance with the provisions of article 28(1) of the said Treaty;

*Determined* to mark a new stage in the process of economic integration with the establishment of a Common Market for Eastern and Southern Africa and the consolidation of their economic co-operation through the implementation of common policies and programmes aimed at achieving sustainable growth and development;

*Resolved* to strengthen and achieve convergence of their economies through the attainment of a full market integration;

*Having regard* to the principles of international law governing relations between sovereign states, and the principles of liberty, fundamental freedoms and the rule of law;

and in view of further steps which have to be taken in order to advance the economic integration of Eastern and Southern Africa;

HEREBY AGREE AS FOLLOWS:

## CHAPTER ONE: THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

### Article 1: Establishment and Membership

1. The high contracting parties hereby establish among themselves a Common Market for Eastern and Southern Africa hereinafter referred to as the Common Market.
2. Membership of the Common Market shall be open to the following member states of the Preferential Trade Area for Eastern and Southern African states:

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## CHAPTER THREE: AIMS AND OBJECTIVES

### Article 3: Aims and Objectives of the Common Market

The aims and objectives of the Common Market shall be:

- (a) to attain sustainable growth and development of the member states by promoting a more balanced and harmonious development of its production and marketing structures;
- (b) to promote joint development in all fields of economic activity and the joint adoption of macro-economic policies and programmes to raise the standard of living of its peoples and to foster closer relations among its member states;
- (c) to co-operate in the creation of an enabling environment for foreign, cross border and domestic investment including the joint promotion of research and adaptation of science and technology for development;

- (d) to co-operate in the promotion of peace, security and stability among the member states in order to enhance economic development in the region;
- (e) to co-operate in strengthening the relations between the Common Market and the rest of the world and the adoption of common positions in international fora; and
- (f) to contribute towards the establishment, progress and the realisation of the objectives of the African Economic Community.

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#### **Article 6: Fundamental Principles**

The member states, in pursuit of the aims and objectives stated in article 3 of this Treaty, and in conformity with the Treaty for the Establishment of the African Economic Community signed at Abuja, Nigeria on 3 June 1991, agree to adhere to the following principles:

- (a) equality and inter-dependence of the member states;
- (b) solidarity and collective self-reliance among the member states;
- (c) inter-state co-operation, harmonisation of policies and integration of programmes among the member states;
- (d) non-aggression between the member states;
- (e) recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;
- (f) accountability, economic justice and popular participation in development;
- (g) the recognition and observance of the rule of law;
- (h) the promotion and sustenance of a democratic system of governance in each member state;
- (i) the maintenance of regional peace and stability through the promotion and strengthening of good neighbourliness; and
- (j) the peaceful settlement of disputes among the member states, the active co-operation between neighbouring countries and the promotion of a peaceful environment as a pre-requisite for their economic development.

#### **Article 7: Organs of the Common Market**

1. There shall be established as organs of the Common Market:
  - (a) the Authority;
  - (b) the Council;
  - (c) the Court of Justice;
  - (d) the Committee of Governors of Central Banks;
  - (e) the Intergovernmental Committee;
  - (f) the Technical Committees;
  - (g) the Secretariat; and
  - (h) the Consultative Committee.
2. The Secretary-General, in consultation with the Bureau of the Council may convene Sectoral Ministerial meetings to consider and take decisions on technical sectoral issues not having budgetary implications.
3. The decisions of the Sectoral Ministerial meetings taken in pursuance of the provisions of paragraph 2 of this Article shall take effect and shall be endorsed at the next meeting of the Council following the Sectoral Ministerial meeting.
4. The organs of the Common Market shall perform their functions and act within the limits of the powers conferred upon them by or under this Treaty.

### **CHAPTER FIVE: THE COURT OF JUSTICE**

#### **Article 19: Establishment of the Court**

The Court of Justice established under article 7 of this Treaty shall ensure the adherence to law in the interpretation and application of this Treaty.

#### **Article 20: Composition of the Court**

1. Subject to paragraph 2 of this article, the court shall be composed of seven judges who shall be appointed by the Authority and one of whom shall be appointed by the Authority as the President of the court.
2. The judges of the court shall be chosen from among persons of impartiality and independence who fulfil the conditions required for the holding of high judicial office in their respective countries of domicile or who are jurists of recognised competence:

Provided that no two or more judges shall at any time be nationals of the same member state.

3. Notwithstanding the provisions of paragraph 1 of this article, the Authority may, upon the request of the court, appoint additional judges.

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#### **Article 23: General Jurisdiction of the Court**

The court shall have jurisdiction to adjudicate upon all matters which may be referred to it pursuant to this Treaty.

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#### **Article 26: Reference by Legal and Natural Persons**

Any person who is resident in a member state may refer for determination by the court the legality of any act, regulation, directive, or decision of the Council or of a member state on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions of this Treaty:

Provided that where the matter for determination relates to any act, regulation, directive or decision by a member state, such person shall not refer the matter for determination under this article unless he has first exhausted local remedies in the national courts or tribunals of the member state.

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#### **Article 30: National Courts and Preliminary Rulings**

1. Where a question is raised before any court or tribunal of a member state concerning the application or interpretation of this Treaty or the validity of the regulations, directives and decisions of the Common Market, such court or tribunal shall, if it considers that a ruling on the question is necessary to enable it to give judgment, request the court to give a preliminary ruling thereon.
2. Where any question [such] as that referred to in paragraph 1 of this article is raised in a case pending before a court or tribunal of a member state against whose judgment there is no judicial remedy under the national law of that member state, that court or tribunal shall refer the matter to the court.

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### **CHAPTER FOURTEEN: CO-OPERATION IN HEALTH MATTERS**

#### **Article 110: Scope of Co-operation**

1. The member states agree to undertake concerted measures to co-operate in health through:
  - (a) the control of pandemics or epidemics, communicable and water-borne diseases that might endanger the health and welfare of citizens of the Common Market;
  - (b) the facilitation of movement of pharmaceuticals within the Common Market and control of their quality;
  - (c) joint action in the prevention of drug trafficking;
  - (d) the training of manpower to deliver effective health care; and
  - (e) the exchange of research, development and information on health issues.
2. For the purposes of paragraph 1 of this article, the member states undertake to:

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- (b) evolve mechanisms for joint action in combating outbreak of epidemics such as AIDS, cholera, malaria, hepatitis and yellow fever as well as co-operation in facilitating mass immunisation and other public health community campaigns;

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- (d) develop a national drug policy which would include establishing quality control capacities, national formularies and good procurement practices;

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### **CHAPTER SIXTEEN: CO-OPERATION IN THE DEVELOPMENT OF NATURAL RESOURCES, ENVIRONMENT AND WILDLIFE**

#### **Article 122: Scope and Principles of Co-operation**

1. The member states agree to take for their mutual benefit, concerted measures to foster co-operation in the joint and efficient management and sustainable utilisation of natural resources within the Common Market.
2. The member states recognise that economic activity is often accompanied by environmental degradation, excessive depletion of resources and serious damage to

- natural heritage and that a clean as well as an attractive environment is a prerequisite for long-term economic growth.
3. The member states undertake, through a regional conservation strategy, to co-operate and coordinate strategies for the protection and preservation of the environment against all forms of pollution including atmospheric and industrial pollution, pollution of the water resources, and pollution from urban development.
  4. The member states undertake to co-operate and adopt common policies for the control of hazardous waste, nuclear materials, radioactive materials and any other materials used in the development or exploitation of nuclear energy.
  5. Action by the Common Market relating to the environment shall have the following objectives:
    - (a) to preserve, protect and improve the quality of the environment;
    - (b) to contribute towards protecting human health; and
    - (c) to ensure the prudent and rational utilisation of natural resources.
  6. Action by the Common Market relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at the source and that the polluter should pay. Environmental protection requirements shall be a component of the Common Market's policy in all the fields of Common Market activity.

#### **Article 123: Co-operation in Management of Natural Resources**

1. The member states agree to take concerted measures to foster co-operation in the joint and efficient management and sustainable utilisation of natural resources within the Common Market for the mutual benefit of the member states. ...
2. The member states agree to take necessary measures to conserve and manage forests ...
- ...
4. The member states agree to co-operate in the management of their fresh water and marine resources ...
5. The member states undertake to accede to international conventions or agreements that are designed to improve the policies of development, management and protection of their natural resources.

#### **Article 124: Co-operation in the Management of the Environment**

1. The member states undertake to co-operate in the management of the environment ...

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#### **Article 125: Prevention of Illegal International Trade in Toxic and Hazardous Wastes**

1. The member states undertake to co-operate and adopt common positions against illegal dumping of toxic and undesirable wastes within the Common Market from either a member state or third country.

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4. The member states agree to include environmental management and conservation measures in trade, transport, agricultural, industrial, mining and tourism activities in the Common Market.

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### **CHAPTER EIGHTEEN: CO-OPERATION IN AGRICULTURE AND RURAL DEVELOPMENT**

#### **Article 129: Objectives of Co-operation in Agricultural Development**

The overall objectives of co-operation in the agricultural sector are the achievement of regional food security and rational agricultural production within the Common Market. To this end, the member states undertake to adopt a scheme for the rationalisation of agricultural production with a view to promoting complementarity and specialisation in and sustainability of national agricultural programmes in order to ensure:

- (a) a common agricultural policy;
- (b) regional food sufficiency;

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#### **Article 136: Co-operation in Rural Development**

The member states shall promote rural development through the adoption of measures such as:

- (a) appropriate mechanisation;
- (b) improved water supply;
- (c) health services;
- (d) improved nutrition;

- (e) improved rural access roads and means of transport and telecommunications;
- (f) rural electrification and supply of wood fuel;
- (g) educational services;
- (h) rural resettlement to facilitate the rational utilisation of land; and
- (i) the development of rural industries.

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## CHAPTER TWENTY-ONE: SOCIAL AND CULTURAL AFFAIRS

### Article 143: Co-operation in Social and Cultural Affairs

1. The member states shall promote close co-operation between themselves in the social and cultural fields, particularly with respect to:
  - (a) employment and working conditions;
  - (b) labour laws;
  - (c) vocational training and the eradication of adult illiteracy in the region;
  - (d) cultural and sporting exchanges;
  - (e) the prevention of occupational accidents and diseases;
  - (f) the provision of facilities for the disabled;
  - (g) the right of association and collective bargaining between employers and workers; and
  - (h) radio and television programmes on matters that will promote cultural development of the Common Market.
2. The Council shall adopt a social charter, programmes and regulations, as the case may be, on the better implementation of the provisions of paragraph 1 of this article.

## CHAPTER TWENTY-TWO: LEAST DEVELOPED COUNTRIES AND ECONOMICALLY DEPRESSED AREAS

### Article 144: Strengthening Capacity for Co-operation

1. The member states, recognising the need for the promotion of harmonious and balanced development in the Common Market and in particular the need for reducing the disparities among various areas in the region and paying attention to the special problems of each member state, particularly those of the least developed countries and economically depressed areas, agree to take several measures designed to strengthen the capacities of those groups of states of the Common Market to solve these problems.

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### Article 145: Development of Infrastructures

The member states agree that one of the major pre-requisites for sustained economic growth of the least developed countries and economically depressed areas of the Common Market is the development of adequate and reliable infrastructure, especially transport and communications. The short- and-medium-term objectives for the development of the transport and communications infrastructure of the least developed countries and economically depressed areas shall include:

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- (e) special assistance for the development of other infrastructural facilities as may be deemed necessary for the accelerated development of such depressed areas. These facilities shall include those necessary for the supply of adequate utilities such as electricity and water.

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### Article 150: Special Fund for Co-operation, Compensation and Development

1. The Council shall establish a special Fund for Co-operation, Compensation and Development for tackling the special problems of under-developed areas and other disadvantages arising from the integration process.
2. For the purposes of paragraph 1 of this article, the member states shall conclude a Protocol which shall, *inter alia*, determine the machinery and formula to be used in granting compensation under this article.

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## CHAPTER TWENTY-FOUR: WOMEN IN DEVELOPMENT AND BUSINESS

### Article 154: Role of Women in Development

The member states agree that women make [a] significant contribution towards the process of socio-economic transformation and sustainable growth and that it is impossible to implement effective programmes for rural transformation and improvements in the informal sector without the full participation of women. To this end, the member states shall through appropriate legislative and other measures:

- (a) promote the effective integration and participation of women at all levels of development especially at the decision-making levels;
- (b) eliminate regulations and customs that are discriminatory against women and specifically regulations and customs which prevent women from owning land and other assets;
- (c) promote effective education awareness programmes aimed at changing negative attitudes towards women;
- (d) create or adopt technologies which will ensure the stability of employment and professional progress for women workers; and
- (e) encourage and strengthen institutions which are engaged in the promotion and development of labour-saving devices aimed at improving the productive capacity of women.

### Article 155: Role of Women in Business

1. Having recognised the importance of women as a vital economic link within the chain of agriculture, industry and trade, the member states agree to:
  - (a) increase the awareness of Women in Business issues at the policy level;
  - (b) create an enabling environment for the effective participation of women in Common Market trade and development activities;
  - (c) promote special programmes for women in small and medium-size enterprises;
  - (d) eliminate such laws and regulations that hinder women's access to credit;
  - (e) initiate changes in educational and training strategies to enable women to improve their technical and industrial employment levels through the acquisition of transferable skills offered by various forms of vocational and on-the-job training schemes; and
  - (f) recognise and support the Federation of National Associations of Women in Business established to promote the effective participation of women in the Common Market trade and development activities.

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## CHAPTER TWENTY-SEVEN: REGIONAL PEACE AND SECURITY

### Article 163: Scope of Co-operation

1. The member states agree that regional peace and security are prerequisites to social and economic development and vital to the achievement of regional economic integration objectives of the Common Market. In this regard, the member states agree to foster and maintain an atmosphere that is conducive to peace and security through co-operation and consultations on issues pertaining to peace and security of the member states with a view to preventing, better managing and resolving inter-state or intra-state conflicts.
2. The member states undertake to promote and maintain good neighbourliness as a basis for promoting regional peace and security within the Common Market.

## CHAPTER TWENTY-EIGHT: FREE MOVEMENT OF PERSONS, LABOUR, SERVICES, RIGHT OF ESTABLISHMENT AND RESIDENCE

### Article 164: Scope of Co-operation

1. The member states agree to adopt, individually, at bilateral or regional levels the necessary measures in order to achieve progressively the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence by their citizens within the Common Market.
2. The member states agree to conclude a Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence.
3. The member states agree that the Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements within the PTA adopted under the PTA Treaty shall remain in force until such time that a Protocol on the Free Movement of Persons, Labour, Service, Right of Establishment and Residence enters into force.

## CHAPTER TWENTY-NINE: CO-OPERATION IN OTHER FIELDS

### Article 165: General Co-operation

1. Subject to the provisions of this Treaty, the member states undertake to consult with one another through appropriate organs of the Common Market for the purpose of harmonising their respective policies in such fields as they may, from time to time, consider necessary or desirable for the efficient and harmonious functioning and development of the Common Market and the implementation of the provisions of this Treaty.
2. For the purposes of paragraph 1 of this article, the member states may take in common such other steps as are calculated to further the aims of the Common Market and the implementation of the provisions of this Treaty.

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## CHAPTER THIRTY-ONE: SANCTIONS

### Article 171: Sanctions

1. The member states agree that for the attainment of the objectives of the Common Market, full commitment of each member state to the fulfilment of the obligations contained in this Treaty shall be required. To this end, the member states agree that specific sanctions may be imposed by the Authority to secure fulfilment by the member states of their obligations under this Treaty.
2. For the purposes of paragraph 1 of this article, the Authority may impose sanctions on a member state:
  - (a) which defaults in performing an obligation under this Treaty; or
  - (b) whose conduct, in the opinion of the Authority, is prejudicial to the existence or the attainment of the objectives of the Common Market.
3. The Authority may in any of the events stipulated in paragraph 2 of this article, impose any one or more of the sanctions set out below:
  - (a) suspend the exercise by such a member state of any of the rights and privileges of membership to the Common Market;
  - (b) impose a financial penalty on such member state;
  - (c) suspend from the Common Market a member state on such conditions and for such period as the Authority may consider appropriate; or
  - (d) expel a member state.
4. The Authority may expel a member state:
  - (a) whose rights and privileges have been suspended under sub-paragraph (a) of paragraph 3 of this article who fails to remedy the default leading to such suspension within the period specified therefore; or
  - (b) which fails to pay the financial penalty imposed under sub-paragraph (b) of paragraph 3 of this article.
5. A member state suspended under sub-paragraph (c) of paragraph 3 of this article and which fails to meet the conditions imposed within the period specified shall automatically cease to be a member state of the Common Market.
6. Where a member state is in arrears for more than two years in the payment of its contributions for reasons other than those caused by public or natural calamity or exceptional circumstance that gravely affects its economy, such member state may, by a resolution of the Authority, be suspended from taking part in the activities of the Common Market and shall cease to enjoy the benefits provided for under this Treaty.

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