



EAST AFRICAN COMMUNITY

**EAC MEETING OF THE HIGH LEVEL TASK FORCE (HLTF) TO
NEGOTIATE THE EAST AFRICAN COMMUNITY COMMON
MARKET PROTOCOL**

6th - 15th October 2008

**Imperial Royale Hotel,
Kampala, Uganda**

REPORT OF THE MEETING

REF: EAC/HLTF/CMP/05/2008

EAC SECRETARIAT
Arusha, Tanzania
October 2008



EAST AFRICAN COMMUNITY

**MEETING OF THE HIGH LEVEL TASK FORCE (HLTF) TO
NEGOTIATE THE EAST AFRICAN COMMUNITY
COMMON MARKET PROTOCOL**

Imperial Royale Hotel, Kampala, Uganda
6th – 15th October 2008

REPORT OF THE MEETING

1.0 OPENING

1.1 Introduction

The meeting was convened in accordance with the Program of Work of the High Level Task Force (HLTF) for the period July – December 2008. The meeting was attended by members of the HLTF from all the Partner States. The list of delegates is hereto attached as *Annex I*.

1.2 Bureau

Rwanda was elected Chairperson and Mr. Safari Innocent, Head of Service Delivery and Support Division, Customs, Rwanda Revenue Authority chaired the meeting. Tanzania was elected Rapporteur and Ms. Grace Naburi, Principal

Education Officer, Ministry of Education and Vocational Training acted in that capacity.

1.3 **Agenda**

The draft agenda was adopted and is hereto attached as *Annex II*.

1.4 **Statement by Deputy Secretary General (P&P)**

On behalf of the Secretary General and on his own behalf, Amb. Julius Onen, the Deputy Secretary General (Projects and Programmes) welcomed the delegates to Kampala, Uganda for the Fifth meeting of the HLTF to negotiate the EAC Common Market Protocol and wished them fruitful deliberations. Amb. Onen noted with appreciation that over the last four meetings, the HLTF had made significant progress in negotiating the EAC Common Market Protocol. The full statement of Amb. Onen is hereto attached as *Annex III*.

1.5 **Official Opening Statement by the Minister of State for Trade of the Republic of Uganda.**

The meeting of the HLTF was officially opened by Hon Nelson Gagawala, Minister of State for Trade who stood in for Hon. Eriya Kategaya, the 1st Deputy Prime Minister and Minister of EAC Affairs of the Republic of Uganda. In his statement, the Minister welcomed the members of the HLTF to Uganda and wished them warm and constructive deliberations and an enjoyable stay in Kampala. While appreciating the work so far done by the HLTF, Hon. Gagawala reiterated the Summit timeframe to conclude the EAC Common Market Protocol negotiations by December 2008. The full statement of Hon Nelson Gagawala is hereto attached as *Annex IV*.

2.0 CONSIDERATION OF OUTSTANDING ISSUES:

2.1 Tanzania's Comments.

The meeting recalled that at the last meeting of the HLTF held in Bujumbura, Burundi from 20th – 27th September 2008, the HLTF did not reach consensus on Article 7(5) of the EAC Common Market Draft Protocol.

Partner States, however, failed to reach consensus on this issue during this meeting. Burundi, Kenya, Rwanda and Uganda proposed to retain Article 7 (5&6) as the basis for allowing East African citizens to use their IDs for travel within the Community given the implications of cost and convenience in acquiring passports. Tanzania on the other hand proposed Article 7 (7&8) for the following reasons:

- (i) IDs are used for identification of nationals but are not internationally recognised as standard travel documents.
- (ii) The Treaty under Article 104 (3) b provides for Partner States to maintain common standard travel documents
- (iii) There is already an East African Passport which is accepted as a common standard travel document in East Africa
- (iv) For public security, given the size of the country and porous borders, Tanzania cannot accept Identity Card as a travel document.

Recommendations

The HLTF recommends to the Coordination Committee to give guidance on the way forward in resolving the country

positions as reflected under Articles 7(5,6,7,8 & 13) of the Draft Protocol.

2.2 The Right of Establishment and Residence.

The meeting recalled that at the last meeting referred to above, the HLTF reached consensus on a number of provisions that will govern the Right of Establishment within the EAC Common Market. However, some issues remained outstanding and the HLTF deliberated as follows:

Part V

The HLTF agreed to change the title for Part V to *Right of Establishment and Residence*.

Article 13

It was agreed that the title for Article 13 be *Right of Establishment*.

Article 14

The HLTF agreed to merge sub-paragraph 22(1) and 22(2) of Bujumbura version and the new formulation is indicated as 14(1) in the draft Protocol attached hereto as *Annex V*.

In consideration of sub-paragraphs 4(c) Kenya and Rwanda agreed on retaining the words “*acquire/access*” in the text considering that a person cannot exercise the right of establishment without access to land and buildings. Burundi proposed the use of the word “*access*”. Tanzania and Uganda, on the other hand proposed to delete the sub-paragraph from the text because this is not a Common Market issue.

Under 14(4e), the HLTF requested the EAC Secretariat to draft a better formulation to be presented in Zanzibar.

The HLTF also agreed that the Secretariat should merge Article 14(4)(a) with Article 14(4)(d).

Article 10

The HLTF recalled that it had agreed to merge Articles 10, 23 & 43 of the Bujumbura version and other similar articles so as to address holistically issues pertaining to academic and professional qualifications. The revised formulation is indicated in Article 10 in the draft Protocol attached hereto as *Annex V*.

Article 15

The HLTF agreed to develop two provisions at a later stage for each of the words “*Company*” and “*Firm*”.

Article 17

In line with the understanding reached in Bujumbura, Article 27 was re-drafted (by making a link to Articles 8 and 21 of the Bujumbura version) and the new formulation is indicated under Article 17 in the draft Protocol attached hereto as *Annex V*.

Partner States also agreed to create an omnibus clause, at a later stage, on abolishing restrictions on the four freedoms. The proposed Article to be deleted read as follows: “*For purposes of this Article, Partner States shall abolish any restrictions on the right of residence of nationals of other Partner States.*”

On Article 17 (4), Partner States agreed that all Articles that require Council directives and regulations referred to in the Protocol should be negotiated well in time to form an integral part of the protocol by the time of its ratification. Secretariat informed the meeting that work has already commenced in terms of drafting the necessary directives and regulations.

On Article 17 (5), Tanzania, Uganda and Burundi wanted it to remain as indicated in the draft Protocol such that any existing favourable treatment is not affected by the coming into force of the Common Market Protocol. Kenya and Rwanda proposed an omnibus clause that is cross cutting to cater for most favoured nation (MFN).

Article 18

Uganda and Rwanda proposed the retention of Article 18 (2) submitting that it is both a principle and policy issue concerning the people of East Africa taking up employment opportunities in a timely manner. Other Partner States submitted that this is a procedural matter which should be incorporated in the regulations.

The HLTF also agreed to delete Articles 28(2&3) of the Bujumbura version from the draft Protocol. These will form part of the regulations under Article 18. The deleted Article 28 (2) stated that *“Persons desiring to take up residence in another Partner State as provided for, in this Protocol shall be obliged to obtain a Residence Permit in accordance with the Regulations and Directives to be made by the Council.”* while Article 28 (3) stated that *“The applicant for the Residence Permit in the territory of any Partner State shall deposit with the designated agency responsible for immigration of the host Partner State an application for a Residence Permit.”*

Article 19

This section remained bracketed. Rwanda proposed that the issue of permanent residence be maintained given the fact that it is linked to other freedoms and should be therefore, provided for in the Protocol. The other Partner States were of the view that this issue should be

addressed by the committee of Chiefs of Immigration and should, therefore, be deleted from the Common Market Protocol.

The HLTF agreed that:

- (a) An omnibus clause on abolition of restrictions on the four freedoms shall be crafted at a later stage during the negotiations; and
- (b) Sub-Articles 14 (4)(a) and 14 (4)(d) be merged by the Secretariat and reviewed in Zanzibar.

Recommendations:

The HLTF recommends to the Coordination Committee to:

- (c) Consider and adopt the above amendments as indicated in the Draft Protocol attached hereto as *Annex V*.
- (d) Request the Secretariat to commence work on drafting all the necessary schedules containing directives and regulations referred to in the draft Protocol.
- (e) Give guidance on the way forward in resolving the country positions on *Articles 14 (4) c, 17 (5), 18 (2) and 19* under the draft Protocol.

2.3 Free Movement of Services

The meeting recalled that at the last meeting referred to above, the HLTF reached consensus on a number of provisions that will govern the free movement of services within the EAC Common Market but some issues remained outstanding.

During the meeting, Dr. Francis Mangeni (EAC Consultant), in response to a request made by the Partner States, made a presentation on the state of play of the services sectors within the EAC Partner States. A copy of that presentation is hereto attached as *Annex VI*.

Thereafter, the HLTF deliberated as follows with regard to the outstanding issues under this part.

Article 20

The meeting agreed on an article introducing and guaranteeing the Free Movement of Services as indicated in the draft Protocol hereto attached as *Annex V*.

Article 21

“Scope and Definitions” was amended and the new formulation is indicated under Article 21 of the Draft Protocol hereto attached as *Annex V*. However, the definition of services under Article 21 (2) will require refining and the definition of measures by Partner States under Article 21 (4)(a) will have to be agreed upon at the next meeting.

Way Forward on Free Movement of Services

Partner States agreed to immediately initiate work in terms of what needs to be done to liberalise trade in services in the Community. To complement this work, the meeting agreed on the need to engage the services of national consultants to undertake country studies. The national consultants are expected to identify restrictions to the free movement of services in the region and draw up a programme for their eventual elimination. In this regard, the HLTF requested the EAC Secretariat to draw up draft terms of reference for consultancy studies in this area, which will be considered at the forthcoming meeting in Zanzibar.

Recommendation

The HLTF recommends to the Coordination Committee to consider and adopt the above amendments as indicated in the Draft Protocol attached hereto as *Annex V*.

3.0 CONSIDERATION OF TRANSPORT POLICY.

The meeting considered and agreed on most of the provisions in the draft Protocol that will govern transport policy in the Community. However, consensus was not reached on *Articles 43(2)(f), 46 (c) and 48* indicated in brackets in the draft Protocol attached hereto as *Annex V*. On Article 46 (c), Tanzania is of the view that the agreed EAC common rules and guidelines as provided for in Article 46 (a) shall also apply to third country carriers offering transport services or transiting through the Community. The other Partner States were of the view that this Article is properly placed because treatment of third country carriers has to be uniform within the Common Market.

Tanzania was also of the view that Article 48 is misplaced and should, therefore, be deleted from the Protocol. Tanzania maintained that in case of need, this issue could be discussed under institutional reforms of the Community but cautioned about the implicit financial implications. The other Partner States were of the view that there is need for an institutional framework to handle transport policy in the Community.

The HLTF agreed that Articles 43 (2)(f), 46 (c) and 48 shall further be considered in Zanzibar after Partner States consultations.

Recommendations

The HLTF recommends to the Coordination Committee to consider and adopt the provisions that will govern transport policy within the Community as indicated in the Draft Protocol attached hereto as *Annex V*.

4.0 COMPETITION AND CONSUMER WELFARE

Having taken note of the East African Community Competition Act, 2006, the meeting considered and agreed on most of the provisions in the draft Protocol that will govern competition issues in the Community.

On Article 49 (5), the meeting agreed on the need to detail the treatment of public procurement within the provisions of the competition policy and proposed that this issue be handled by competition experts during their forthcoming meeting scheduled for 20th – 24th October 2008 in Kigali, Rwanda. The HLTF requested the Secretariat to provide a report on this issue at the next meeting.

Recommendation

The HLTF recommends to the Coordination Committee to consider and adopt the agreed provisions that will govern competition issues within the Community as indicated in Article 49 of the Draft Protocol attached hereto as *Annex V*.

5.0 ECONOMIC AND FINANCIAL SECTOR POLICY COORDINATION

The meeting considered and agreed on all the provisions in the draft Protocol that will govern economic and financial sector policy coordination in the Community. Partner States agreed to maintain the Article on transitional provisions (Article 42) but consider shifting it at a later stage to an omnibus article dealing with transitional provisions.

The meeting noted that Article 6 has been replicated under Article 41 of the draft protocol and should be deleted.

Recommendation

The HLTF recommends to the Coordination Committee to consider and adopt the provisions that will govern economic and financial sector policy coordination within the Community as indicated in the Draft Protocol attached hereto as *Annex V*.

6.0 AGENDA ITEMS FOR THE NEXT MEETING

The HLTF agreed to handle the following agenda items at its next meeting scheduled for 3rd – 8th November 2008 in Zanzibar, Tanzania:

- (i) Outstanding issues on:
 - (a) Right of Establishment and Residence;
 - (b) Free Movement of Services;
 - (c) Transport Policy; and
 - (d) Competition and Consumer Welfare.
- (ii) Consideration of the Terms of Reference for consultancy on services.
- (iii) Approximation of Laws.
- (iv) Commercial Policy.
- (v) Any other business.

7.0 ANY OTHER BUSINESS

7.1 The meeting appreciated the hospitality and facilitation extended to members of the HLTF by the

Government and the people of the Republic of Uganda.

- 7.2 The HLTF also appreciated the timely submission of documentation by the Secretariat and the logistical support provided for the meeting.
- 7.3 The HLTF recommends that the Partner States be urged to undertake further consultations on the outstanding issues indicated in the report to enable expedited progress at the next meeting of the HLTF scheduled for 3rd – 8th November 2008 in Zanzibar, Tanzania.
- 7.4 Partner States were requested to submit 13 names of experts for HLTF meeting in Zanzibar who are to be facilitated by the Secretariat including one Draftsperson, by 20th October 2008 so as to procure air tickets in good time.

SIGNED this 15th day of October 2008, by the respective Heads of delegation of Partner States as hereunder.

.....
Mr. Prudence Sebahizi
Rwanda
Regional
Integration
Committee
The Republic of RWANDA

.....
Mr. Uledi A. Mussa
Ministry of East
African Cooperation
The United Republic of TANZANIA

.....
Mr. Pascal Girukwishaka
Burundi Coffee Board
Republic of BURUNDI

.....
Ms. Edith Kateme- Kasajja
Ministry of East
African
Community
Affairs
Republic of UGANDA

.....
Mr. Barrack Ndegwa
Ministry of East African Community
Republic of
KENYA



**EAST AFRICAN COMMUNITY
FIRST DRAFT PROTOCOL ON THE ESTABLISHMENT OF THE EAST
AFRICAN COMMUNITY COMMON MARKET**

PURSUANT TO THE PROVISIONS OF ARTICLES 76 AND 104 OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY, THE PROVISIONS FOR THE PROTOCOL FOR ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY COMMON MARKET ARE HEREBY SET FORTH:

PREAMBLE:

WHEREAS the Republic of Kenya, the United Republic of Tanzania, the Republic of Uganda, the Republic of Burundi, the Republic of Rwanda (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 under the provisions of Article 2 (2) and 5(2) of the Treaty, the Partner States undertake to, *inter alia*, establish among themselves a Common Market, as a transitional stage and an integral part of the Community;

- a) Under the provisions of Article 76(1) and (2) of the Treaty, the Partner States have determined that the establishment of a Common Market shall be progressive;
- b) Under provisions of Article 76(4) of the Treaty, the Partner States shall conclude a protocol on a Common Market;
- c) Recalling the decision of the 12th 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 realization of accelerated economic growth and development through the attainment of free movement of persons, labour, goods, capital and services, and the right of establishment and residence;

NOTING the importance of the development of the social dimensions including equal treatment of men and women in East Africa and the desire to

ensure economic and social development in promoting employment, improved standards of living and working conditions within the Community;
CONSCIOUS of the individual obligations and commitments under the Treaty and under other regional and international economic partnerships;
RECALLING the vision of the Community is to widen, deepen and strengthen cooperation in economic, social and cultural fields;
AGREE AS FOLLOWS:

**PART I
ARTICLE 1
INTERPRETATION**

1. For the purposes of this Protocol:

["Common Market" means the Common Market as defined in the Treaty, including free movement of persons, the right of establishment and residence.

"Worker" means a person who performs services for and under the directions of another person in return for remuneration. For the purposes of this Protocol, worker includes persons offering voluntary services for charitable or religious organizations.

"Person" for the purposes of this Protocol, means a citizen of a Partner State.

"Self employed person" means a person engaged in an economic activity not under any contract of employment or supervision and earns a living through this activity either working alone or with members of his or her family.

"Labour" for the purposes of this Protocol, means workers and self employed persons.

"Economic activity" means any legitimate income generating activity.

"Young worker" for purposes of this Protocol, means a worker, not exceeding 35 years of age who possesses skills/profession in any field.

"Spouse" means a husband or a wife in a legally recognized marriage in accordance with the national laws of a Partner State where the marriage was celebrated.

"Dependant" means a person who, by reason of age, disability or other incapacity is unable to maintain him/herself and depends wholly upon a worker or a self employed person for his/her maintenance].

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 of this Article, 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 law of the Community enacted for that purpose.**
- 4. In accordance with the provisions of Articles 76 and 104 of the Treaty, this Protocol provides for the following: -**
 - a) Free movement of goods;**
 - b) Free movement of persons;**
 - c) Free movement of labour;**
 - d) Right of establishment;**
 - e) Right of residence;**
 - f) Free movement of services; and**
 - g) Free movement of capital;**
- 5. The establishment of the Common Market shall be progressive and in accordance with the schedules approved by Council.**

ARTICLE 3 OBJECTIVES OF THE COMMON MARKET

- 1. The overall objective of the EAC Common Market is to widen and deepen cooperation among the Partner States in economic, social and cultural fields, research and technology for their mutual benefit.**
- 2. The specific objectives are to: -**
 - (a) Accelerate economic growth and development through the attainment of free movement of goods, labour, services, capital, persons, and right of establishment and residence;**
 - (b) Strengthen, coordinate and regulate the economic and trade relations among Partner States in order to promote their accelerated harmonious and balanced development;**
 - (c) Sustain expansion and integration of economic activities, the benefit of which shall be equitably distributed.**

- (d) Promote common understanding and cooperation among its people for their economic, social, cultural and technological advancement.

**ARTICLE 4
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. Within the scope of application of this Protocol and without prejudice to any special provisions contained herein, any discrimination on grounds of nationality shall be prohibited.

**PART II
ARTICLE 5
FREE MOVEMENT OF GOODS**

1. Free movement of goods between the Partner States shall be governed by:-
 - a) the provisions of the Protocol on Establishment of the East African Community Customs Union (hereinafter referred to as the 'Customs Union Protocol') and the Customs Law;
 - b) the provisions of the EAC Protocol on Standardization, Quality Assurance, Metrology and Testing and EAC Standardization, Quality Assurance, Metrology and Testing Act, 2006; and
 - c) the provisions of this Protocol.
2. The Partner States undertake to conclude protocols on SPS, TBT and any other relevant instruments for the application of this Protocol.

**ARTICLE 6
HARMONIZATION OF TAX POLICIES AND LAWS**

The Partner States undertake to progressively harmonize their tax policies and laws on domestic taxes with a view to removing tax distortions in order to facilitate free movement of goods and investments within the Community.
(This is to be deleted because it is replicated under Article 41)

**PART III
ARTICLE 7
FREE MOVEMENT OF PERSONS**

1. The Partner States hereby guarantee the right to free movement of persons, who are citizens of the Partner States, within the Community.
2. The right to free movement of persons shall entail the abolition of any discrimination based on nationality.
3. The right to free movement of persons shall include the following:

- a. The right to enter the territory of a Partner State without a visa;
 - b. The right to move freely within the territory of a Partner State;
 - c. The right to stay in the territory of a Partner State on such terms as shall be directed by the Council;
 - d. The right to exit without restrictions; and
 - e. The right to full protection by the laws of a Partner State.
4. The enjoyment of the rights specified under Sub-Article 3 shall be subject to limitations justified on grounds of public policy, public security or public health. The Partner State imposing such limitation shall be obliged to notify the other Partner States accordingly.

The Council shall, within a period of from entry into force of this protocol issue directives and regulations to govern the application of sub-article 4 of this Article.

5. ***[Partner States shall establish a common system of issuing national identification documents.]***
6. ***[The national identification documents issued by Partner States shall be the basis for identifying Citizens of the Community and shall, among other common standard travel documents, facilitate the free movement of the holders thereof]***

OR

7. ***[The national identification documents issued by Partner States shall be the basis for identifying Citizens of the Community]***
8. ***[The Partner States shall maintain common standard travel documents for their citizens to facilitate the free movement of the holders thereof.]***

The Council shall issue directives and make the necessary regulations to provide for this protection.

9. The Partner States shall effect reciprocal opening of border posts and keep the posts opened and manned for 24 hours.
10. The right to free movement of persons does not include exemption from prosecution or extradition where a national of one Partner State commits a crime in another Partner State.
11. The movement of refugees within the Community shall be governed by the relevant international conventions.
12. For the purposes of this Article, 'person' means a citizen of a Partner State.

13. [For the purposes of this Article, ‘travel document’ may include such other documents as the Council may direct.]

**PART IV
ARTICLE 8**

FREE MOVEMENT OF WORKERS

1. The Partner States hereby guarantee the right to free movement of workers within the Community.
2. The right to free movement of workers shall entail abolition of any discrimination based on nationality between workers of Partner States as regards employment, remuneration and other conditions of work and employment.
3. Subject to limitations justified on grounds of public policy, public security or public health, the right to free movement of a worker shall entail the right to:
 - a. Apply and accept offers of employment actually made;
 - b. Move freely within the territory of the Partner States for this purpose;
 - c. Stay in the territory of a Partner State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - d. Enjoy the freedom of association and to collectively bargain for better working conditions in accordance with national laws of a Partner State;
 - e. Conclude and perform contracts of employment in accordance with the provisions in force laid down by national law, regulation or administrative action, without any discrimination resulting therefrom; and
 - f. Social security in accordance with Article 12 of this Protocol.
4. A national of a Partner State who seeks employment in the territory of another Partner State shall receive the same assistance as that afforded by the employment offices in that State to their own nationals seeking employment.
5. Partner States shall, within the framework of a joint programme, encourage the exchange of young workers.
6. Provisions laid down by law, regulation or administrative action or administrative practices of a Partner State shall not apply where the

principal aim or effect is to keep nationals of other Partner States away from the employment offered.

7. The provisions of this Article shall not apply to employment in the public service unless the relevant national laws and regulations of a host Partner State so permit.

ARTICLE 9

HARMONIZATION OF LABOUR LAWS, POLICIES AND PROGRAMMES

1. The Partner States undertake to harmonize their labour laws, policies, programmes and legislation to secure free movement of labour within the Community.
2. The Council shall issue directives or make regulations setting out the measures required to remove all restrictions to free movement of workers and in particular: -
 - a) by ensuring close co-operation between national employment services;
 - b) by abolishing those administrative procedures and practices in respect of eligibility for available employment;
 - c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under any agreement previously concluded;
 - d) by setting up appropriate mechanisms to bring offers of employment in touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market; and
 - e) by maintaining common employment policies, programmes and laws.

ARTICLE 10

HARMONISATION AND MUTUAL RECOGNITION OF ACADEMIC AND PROFESSIONAL QUALIFICATIONS

1. Partner States undertake to harmonise their curricula, examinations, standards, certification and accreditation of educational and training institutions.
2. Partner States undertake to mutually recognise academic and professional certificates of citizens of the Partner States.
3. Partner States shall mutually recognize the relevant experience obtained, requirements met, licences or certifications granted in another Partner State for the purposes of undertaking any economic activity in accordance with the provisions of this Protocol.

4. For purposes of this Article, the Council shall issue directives and make regulations on its implementation ***[as well as on the coordination of the provisions laid down by the law, regulations or administrative actions in Partner States]***

ARTICLE 11

RIGHTS OF SPOUSES AND DEPENDANTS OF A WORKER

1. Where a national of a Partner State is pursuing an activity as a worker in the territory of another Partner State, his/her spouse and dependant children who are under the age of 21 years shall have the right to accompany the worker.
2. The spouse under Sub-Article 1 of this Article, shall have a right to take up any activity as an employed person in the territory of that Partner State
3. The dependent children under sub-article 1 shall have a right to take up any activity as an employed person in the territory of that Partner State subject to the age limits under national law.
4. Partner States shall facilitate the admission of any member of the family of a worker not referred to in Sub-Article 1, if such dependent is living under the roof of the worker in the country where s/he comes from.

ARTICLE 12

SOCIAL SECURITY OF WORKERS

1. The Partner States undertake to harmonize their social security policies, laws and systems to secure social security benefits for workers and their dependants.
2. The Council shall issue directives and make regulations on:-
 - a) aggregation and portability of social security benefits; and
 - b) enjoyment of the same social and tax advantages as national workers.
3. A worker who is a national of a Partner State and who is employed in the territory of another Partner State shall enjoy all the rights and benefits accorded to national workers.

PART V

RIGHT OF ESTABLISHMENT AND RESIDENCE

ARTICLE 13

RIGHT OF ESTABLISHMENT

1. Partner States hereby guarantee the right of establishment of nationals of other Partner states in their territory.
2. The right of establishment shall entail the right to:
 - a) take up and pursue activities as self employed persons,
 - b) set up and manage economic undertakings,
 - c) set up agencies, branches and subsidiaries,;

3. The enjoyment of the rights specified under sub-Article 2 of this Article, shall be subject to limitations justified on grounds of public policy, public security or public health

The Partner State imposing such limitation shall be obliged to notify the other Partner States accordingly.

4. The Council shall, within a period of from entry into force of this protocol issue directives and regulations to govern the application of sub-article 2 of this Article.

ARTICLE 14

Abolition and non-introduction of Restrictions

1. Partner States shall abolish all restrictions on the right of establishment based on nationality of companies, firms and citizens of Partner States, and shall not introduce any restrictions on the right of establishment in their territories, save as otherwise provided in this protocol.
2. For the purpose of this article, the Council shall within a period of one year from entry into force of this Protocol, adopt a schedule for the abolition of existing restrictions on the freedom of the establishment within the Community;
3. The Schedule shall set out the general conditions under which freedom of establishment is to be attained.
4. The Partner States shall carry out the duties devolving upon them under the preceding paragraphs, in particular:
 - a) by abolishing those administrative procedures and practices, whether resulting from national legislation, or from agreements previously concluded between Partner States, the maintenance of which would form an obstacle to freedom of establishment;
 - b) by ensuring that workers of one Partner State employed in the territory of another Partner State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
 - c) ***[by enabling a national of one Partner State to acquire/access and use land and buildings situated in the territory of another Partner State for purposes of establishment].***

Rwanda, & Kenya – use “acquire/access”

Tanzania & Uganda – delete the sub-Article because it is not a Common Market issue.

Burundi-Retain the sub-article but use the word “access”

d) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Partner State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;

Sub-Articles a & d –contents- Secretariat to explore how to merge the two provisions

e) [by coordinating to the necessary extent the safeguard measures which, for the protection of the interests of the Community, are required by the Partner States of Companies or Firms with a view to making such safeguards equivalent throughout the Community];

Secretariat & Consultant to re-draft the text and present it to plenary

f) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Partner States.

If this provision is catered for under the chapter on State Aid then it should be shifted there.

5. The provisions of this chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by the law, regulation or administrative action providing for special treatment for foreign nationals accorded by individual Partner States on grounds of public policy, public security or public health.

6. The Council shall within two years from the entry into force of this Protocol, issue directives for the harmonization of the aforementioned provisions laid down by the law, regulation or administrative action.

ARTICLE 15

(Title)

[EQUAL TREATMENT OF PERSONS AND FIRMS] [Proposed Title]

1. Companies or firms formed in accordance with the law of a Partner State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Partner States.

2. ‘Companies’ or ‘firms’ means companies or firms constituted under civil or commercial law, including co-operative societies and other legal persons governed by public or private law, save for those which are non-profit making.

Tanzania position –Important to separate Companies and Firms. Proposal to use the term “Corporate Persons” instead of “Companies and Firms”.

Other Partner States - Retain the Nairobi text because firms as entities have not been catered for anywhere else. The provisions on natural persons do not always apply to firms e.g. partnerships.

ARTICLE 16

SOCIAL SECURITY FOR SELF EMPLOYED PERSONS

1. The Partner States shall endeavor to review and harmonize their social security policies, laws and systems to secure social security benefits for self-employed persons, spouse and their dependants.
2. A self-employed person who is in the territory of another Partner State may join a Social Security system of that Partner State where the laws, policies and systems of that Partner State provide for social security for self-employed persons.
3. The Council shall issue directives and make regulations on:-
 - a) aggregation and portability of social security benefits; and
 - b) enjoyment of the same social and tax advantages as national self-employed persons.
4. A self-employed person who is a national of a Partner State and who is undertaking an economic activity in the territory of another Partner State shall enjoy all the rights and benefits accorded to national self-employed persons relating to social security.

All PSs agree that for the purposes of this article a “dependant” for social security purposes will be as provided for in national laws.

ARTICLE 17

RIGHT OF RESIDENCE

1. Partner States hereby guarantee the right of residence to nationals of other Partner States who have been admitted in their territories in accordance with Articles 8 and 13 of this Protocol.
2. The right of residence guaranteed under Sub-Article (1) of this Article, shall apply to the Spouse(s) and Dependants of a worker or self-employed person entitled to freedoms provided in Articles 8 and 13 of this Protocol
3. The enjoyment of the rights specified in this Article, shall be subject to limitations justified on grounds of public policy, public security, or public health. The Partner State imposing such

limitations shall be obliged to notify other Partner States accordingly.

4. The Council shall, within a period of *(1)* years from the date of entry into force of this Protocol, issue directives and regulations to govern the application of this Article.
5. *[This Chapter shall not affect any provisions laid down by law, regulation or administrative action of one Partner State which would be more favourable to nationals of other Partner State.]*

ARTICLE 18 RESIDENCE PERMIT

1. Partner States shall grant Residence Permits to nationals of other Partner States who qualify in accordance with the provisions of Article 17.
2. *[The processing of an application for a Residence Permit may not delay the immediate execution of employment contracts concluded by applicants or hinder the reason they are in the Partner State.]*
3. The Council shall within a period of 1 year from entry into force of this Protocol issue directives on harmonization of rules and regulations relating to conditions for the issuance of Residence Permits in Partner States with a view to establishing an East African Community Residence Card.

ARTICLE 19 [PERMANENT RESIDENCE]

1. *The following shall have the right to remain permanently in the territory of another Partner State:*
 - a) *a worker who, at the time of termination of his/her activity, has reached the age laid down by the law of that Partner State for entitlement to an old-age pension and who has been employed in that State for at least the last [..... months] and has resided there continuously for more than [...(5)...10. years];*
 - b) *a worker who, having resided continuously in the territory for more than [..... years], ceases to work there as an employed person as a result of permanent incapacity to work,*

if such incapacity to work is the result of an accident at work or an occupational disease entitling him to a pension for which an institution of that State is entirely or partially responsible. In this case no conditions shall be imposed as to length of residence;

c)A worker who after three years of continuous employment and residence in the territory of that State, works as an employed person in the territory of another Partner State, while retaining his residence in the territory of the first State, to which he returns, as a rule, each day or at least once a week.

d)A self employed person who has continuously undertaken an economic activity in the territory of a Partner State where he/she resides for a period of at least (5/10) years.

- 2 The conditions as to length of residence and employment laid down in paragraph 1(a) and the conditions as to length of residence laid down in paragraph 1(b) shall not apply if the worker's spouse is a national of the Partner State concerned or has lost the nationality of that State by marriage to that worker.¹*
- 3. The spouse and dependants of a worker/self employed person who are residing with him/her in the territory of a Partner State shall be entitled to remain there permanently if the worker/self employed person has acquired the right to remain permanently in the territory of that State in accordance with the provisions of this Article and to do so even after his/her death.*
- 4. If however, the worker dies during his working life and before having acquired the right to remain in the territory of the State concerned, members of his family shall be entitled to remain there permanently on condition that:*
 - the worker, on the date of his decease, had resided continuously in the territory of that Partner State for at least [..... years]; or*
 - his death resulted from an accident at work or an occupational disease; or*
 - the surviving spouse is a national of the State of residence or has lost the nationality of that State by marriage to that worker².*

¹ Kenya, Burundi & Uganda – Agree to delete sub-Article 2.

Rwanda – the sub-Article should be maintained subject to clarification by the Consultant.

² Uganda, Kenya and Burundi – delete sub-Article 4 above.

5. ***The person entitled to the right to remain shall be allowed to exercise it upon fulfillment of the formalities provided by this Protocol].***

**PART VI
FREE MOVEMENT OF SERVICES
ARTICLE 20
FREE MOVEMENT OF SERVICES**

1. Partner States hereby guarantee the free movement of services within their territories.
2. For the purposes of paragraph 1 of this Article, Partner States shall progressively remove existing restrictions and shall not introduce any new restrictions that will impede trade in services among Partner States except as otherwise provided for in this Protocol.
3. Without prejudice to the provisions of any other Article herein, persons providing a service may, in order to do so, temporarily pursue activities in the Partner State where the service is provided, under the same conditions as are imposed by the state on its own nationals.

**ARTICLE 21
SCOPE AND DEFINITIONS**

1. This Chapter applies to measures by Partner States affecting trade in services.
2. ***[For the purposes of this Chapter, "services" means services provided against remuneration in any sector and "the provision of services" and shall include the supply of services] [to be refined]***
3. For the purposes of this Protocol, trade in services is defined as the supply of a service:
 - (a) from the territory of one Partner State into the territory of any other Partner State;
 - (b) in the territory of one Partner State to the service consumer of any other Partner State;
 - (c) by a service supplier of one Partner State, through commercial presence in the territory of any other Partner State;
 - (d) by a service supplier of one Partner State, through presence of natural persons of a Member in the territory of any other Partner State.
4. For the purposes of this Protocol:
 - (a) "measures³ by Partner States " means measures taken by:
 - (i) national or local governments and authorities; and

Rwanda – maintain the sub-Article and make provision of 5 years.

³ Kenya proposes that the definition of measures for the purpose of this chapter be interpreted as both restrictive and non restrictive measures.

- (ii) non-governmental bodies in the exercise of powers delegated by national *and/or*⁴ local governments or authorities;

In fulfilling its obligations and commitments under this Protocol, each Partner State shall take such reasonable measures as may be available to it to ensure their observance by local governments and authorities and non-governmental bodies within its territory;

- (b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers].

ARTICLE 22 PRINCIPLES NATIONAL TREATMENT

1. Each Partner State shall accord to services and service suppliers of any other Partner State, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Partner State may meet the requirement of paragraph 1 by according to services and service suppliers of any other Partner State, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
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 any other Partner State.

ARTICLE 23 MOST FAVOURED NATION TREATMENT

With respect to any measure covered by this Protocol, each Partner State shall accord immediately and unconditionally to services and service suppliers of any other Partner State treatment no less favourable than that it accords to like services and service suppliers of any other Partner State or a third country.

ARTICLE 24 TRANSPARENCY AND NOTIFICATIONS

1. Each Partner State shall promptly notify the Council of all relevant measures of general application which pertain to or affect the operation of trade in services as defined in this Protocol by the time of entry into force.
2. The Partner States shall notify the Council of existing restrictions on the provision of services in respect of nationals of other Partner States.

⁴ The legal drafters will advise on this.

3. International agreements pertaining to or affecting trade in services with third parties to which a Partner State is a signatory shall be subject to the notification requirement in paragraph 1 above.
4. Each Partner State shall promptly and at least annually inform the Council of the introduction of any new, or any changes to existing laws, regulations or administrative guidelines which affect trade in services covered by this Protocol.
5. Each Partner State shall respond promptly to all requests by any other Partner State for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1.
6. Any Partner State may notify Council of any measure taken by any other Partner State, which it considers affects the operation of this Protocol.
7. Once a notification has been made to the Council the Secretariat shall proceed to publish promptly the measures undertaken by the respective Partner State.

**ARTICLE 25
DOMESTIC REGULATION**

1. Partner States shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. ***[Each Partner State shall maintain practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services.]***

OR

3. ***[Each Partner State shall maintain procedures which allow service suppliers to appeal against administrative decisions. The procedures must provide for the prompt review of such decisions and where justified appropriate remedies.]***
4. Partner States shall have the right to regulate their services sectors in accordance with their national policy objectives provided that the measures do not constitute barriers to trade in services and are consistent with the provisions of this Protocol.

**ARTICLE 26
PROGRESSIVE LIBERALISATION**

1. **The process of liberalization shall be progressive with due respect to national policy objectives and levels of development of Partner States in both overall and individual sectors.**

2. There shall be flexibility for individual Partner States for opening sectors according to their regulatory capabilities in line with their development situation.

3. *[Partner States shall make schedules of liberalizing service sectors consistent to the objectives of this Protocol.]*

OR

4. *[Partner States shall make schedules to progressively eliminate restrictions in trade in services].*

5. The Council shall within *[one]* year from the entry into force of this Protocol *[and in accordance with Article 76(2) of the Treaty]* receive completed schedules from Partner States consistent with paragraphs 1, 2, and *[3 or 4]* above.

6. *The Council shall issue directives on the negotiations of the schedules [of commitments].*

**ARTICLE 27
EMERGENCY MEASURES**

1. *[The Council may approve measures designed to remedy any adverse effects a Partner State may experience, except in emergency situations, and such measures are applied on a non discriminatory basis.]*

**ARTICLE 28
BUSINESS PRACTICE**

1. *[Partner States recognize that certain service suppliers other than monopolies and exclusive suppliers may restrict trade in services.*

2. *Each Partner State at the request of any other Partner State enter into consultation with view to eliminate practices refer to paragraph 1 as provided for in Article 24 paragraph 4 of this Part]⁵.*

**ARTICLE 29
GENERAL EXCEPTIONS ON TRADE IN SERVICES**

1. Subject to the requirement that such 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:

⁵ Partner States did not reach a consensus on how to deal with businesses practices under this Chapter.

- (a) necessary to protect **public morals** or to maintain public order;⁶
- (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 to 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;
 - (iii) safety;
- (d) inconsistent with Article 22 of this Part, provided that the difference in treatment is aimed at ensuring the equitable or effective⁷ imposition or collection of direct taxes in respect of services or service suppliers of other Partner States;
- (e) inconsistent with Article 23, 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.

⁶The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

⁷Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- (i) 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 Member's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or
- (v) 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
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.

Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

ARTICLE 30
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; or
 - (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 as 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 Council shall be informed by the Partner States to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination⁸.

PART VII
FREE MOVEMENT OF CAPITAL
ARTICLE 31
ELIMINATION OF RESTRICTIONS

1. Upon entry into force of this Protocol:
 - a) There shall be no restrictions between the Partner States on the movement of capital belonging to persons, resident in the Community and no discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested.
 - b) Partner States shall remove 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 transfer, nor render more restrictive existing regulations.
 - c) Current payments connected with the movement of goods, persons, services or capital between Partner States within the framework of the provisions of this Protocol shall be free of all restrictions.
2. The Council shall draw up a schedule for the removal of existing restrictions on free movement of capital, other payments and transfers within the Community.

⁸ Some Partner States proposed that the Security and the General Exceptions be reviewed for the purposes of the application to the whole Protocol in the General and final provisions Chapter.

3. The schedule under article 1(2) shall set out the general conditions under which restrictions on movement of capital, other payments and transfers shall be removed.

**ARTICLE 32
NON DISCRIMINATION**

Where Partner States' laws governing the financial markets and payments systems are applied to the movement of capital, it shall be done in a non-discriminatory manner.

**ARTICLE 33
FOREIGN EXCHANGE POLICY COORDINATION**

Partner States shall take such measures as are necessary to co-ordinate their foreign exchange policies.

**ARTICLE 34
INFORMATION SHARING**

Partner States shall keep the competent authorities of other Partner States informed of significant unusual movements of capital within their knowledge to and from third countries.

**ARTICLE 35
SAFEGUARD MEASURES**

1. If movement of capital leads to disturbances in the functioning of the financial markets in any Partner State, the Partner State concerned may take safeguard measures subject to the conditions provided under article 6.
2. If the competent authority of a Partner State makes an intervention in the foreign exchange market which seriously distorts conditions of competition, the other Partner States may take, for a strictly limited period, the necessary measures in order to counter the consequences of such interventions.
3. Where a Partner State is in difficulties, or is seriously threatened with difficulties, as regards its balance of payments, the Partner State concerned can take safeguard measures.
4. The Council shall make Regulations governing matters provided for under this Article.

**ARTICLE 36
CONDITIONS FOR APPLICATION OF THE SAFEGUARD MEASURES**

1. The safeguard measures which may be adopted or maintained pursuant to the provisions of Article 5 shall:
 - a) subject to the provisions of this Protocol, not discriminate among Partner States in favour of third countries;
 - b) at all times seek to minimize damage to the commercial, economic or financial interests of other Partner States;
 - c) not exceed those necessary to deal with the circumstances described in Article 5; and
 - d) be temporary and be phased out progressively as the situation described in Article 5 improves.

2. In determining the imposition of the said safeguard measures, the Partner State concerned may accord priority to activities which are essential to its economic stability. Such safeguard measures shall not be adopted or maintained for the purpose of protecting a particular sector in contravention of the provisions of this Protocol.
3. Safeguard measures adopted or maintained pursuant to Article 5 or any changes therein shall be notified to the EAC Secretariat and other Partner States.
4. 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.
5. The consultations shall address the compliance of any safeguard measures within paragraph 1 of this Article and, in particular, the progressive phase-out of safeguard measures in accordance with paragraph 1(d) of this Article

ARTICLE 37 GENERAL EXCEPTIONS

1. The free movement of capital may be restricted upon justified reasons related to:
 - i. Prudential supervision;
 - ii. Public policy considerations;
 - iii. Money laundering; and
 - iv. Financial sanctions agreed at Community level.
2. The Partner State adopting a restriction based on the conditions mentioned in paragraph 1, shall inform the EAC Secretariat and other Partner States and shall furnish proof that the action taken was appropriate, reasonable and justified.

ARTICLE 38 CAPITAL AND RELATED PAYMENTS AND TRANSFERS

1. 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 amortization;
 - 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 VIII

ECONOMIC AND FINANCIAL SECTOR POLICY CO-ORDINATION

ARTICLE 39

ECONOMIC AND MONETARY POLICY CO-ORDINATION

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

ARTICLE 40

FINANCIAL SECTOR POLICY CO-ORDINATION

1. The Partner States shall co-ordinate and harmonize their financial sector policies and regulatory frameworks to ensure efficiency and stability of their financial systems as well as 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 41

HARMONIZATION OF TAX POLICIES AND LAWS

The Partner States undertake to progressively harmonize their tax policies and laws on domestic taxes with a view to removing tax distortions in order to facilitate free movement of goods, services and capital, and the promotion of investments within the Community.

ARTICLE 42

TRANSITIONAL PROVISIONS

The Council shall establish an appropriate framework for the transition from Common Market to the Monetary Union in line with article 5 (2) of the Treaty.

PART IX TRANSPORT POLICY

ARTICLE 43 OBJECTIVES

1. The objective of this Transport Policy shall be the provision of adequate, reliable, safe and internationally competitive transport infrastructure modes/services for the development and consolidation of the EAC Common Market, in accordance with the Treaty.
2. Pursuant to paragraph 1, Partner States shall among others:
 - a. Expedite the harmonization of their transport policies, regulations and standards;
 - b. Expand, interconnect and maintain the regional transport infrastructure within their boundaries and establish additional transport corridors for development;
 - c. Jointly develop human resources and other local/regional capacities in construction, management, financing, maintenance, upgrading and development of regional transport infrastructure and facilities;
 - d. Facilitate the development and maintenance of dedicated multimodal transport infrastructure for the landlocked countries;
 - e. Eliminate non physical barriers and reduce physical barriers that increase cost and reduce efficiency of transport within the Community;
 - f. *[Liberalize transport services in line with the provisions within this Protocol.]***
 - g. Encourage the application of Information and Communications Technology (ICT) and other modern technologies with a view to improving transport efficiency and facilitate exchange of information.

ARTICLE 44 SCOPE

The provisions of this Part shall apply to logistics and transport by road, rail, inland waterways, maritime, pipeline and air as well as facilities such as ports, airports and inland dry ports.

ARTICLE 45 APPLICABLE INSTRUMENTS

For the purposes of implementing Article 43, Partner States shall:

- a) Maintain the already ratified existing agreements entered between the Partner States;
- b) Agree to enter into any other future agreements;
- c) Honour their existing commitments and obligations emanating from international conventions and agreements; and
- d) Subject to the provisions of paragraph c, align all other agreements on transport to the provisions of this protocol.

ARTICLE 46 COMMON RULES AND GUIDELINES

The Council shall within ... years upon entry into force of this Protocol, lay down:

- a) common rules or regulations applicable to:
 - i) Railways transport;
 - ii) Maritime transport and port operations;
 - iii) Pipeline transport;
 - iv) Air transport; and
 - v) Multimodal transport and Logistics.
- b) Rules to give effect to Article 87 of the Treaty in matters of joint financing mechanisms on regional transport infrastructure development.
- c) ***[Rules for third country carriers offering transport services within the Community or transiting;]***
- d) Guidelines for the Private – Public Partnerships (PPPs) in the development of transport infrastructure and services in the region;
- e) Guidelines towards equitable distribution of regional transport infrastructure development; and
- f) Any other appropriate provisions consistent with this Protocol.

ARTICLE 47 PROHIBITION OF DISCRIMINATORY TREATMENT

Until the provisions referred to in Article 46 have been laid down:

- a) Partner States shall maintain the national regulations or rules governing the subject; and

- b) Partner States shall in applying the national regulations avoid discriminatory or less favorable treatment to carriers or operators from other Partner States.

ARTICLE 48

[INSTITUTIONAL ARRANGEMENTS/ IMPLEMENTATION MECHANISMS]

1. ***[The Council shall establish an institutional framework to coordinate policies, manage transport corridors and ensure the effective implementation of the common transport policy].***

TZ-position- The provisions of these sub-articles are not for discussions under this Section.

Kenya, Rwanda, Burundi & Uganda-The principles provided in the provision are important and need to be discussed under the section

PART X

ARTICLE 49

COMPETITION AND CONSUMER WELFARE

1. Save as otherwise provided in the Competition Law, all agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Partner States and which have as their objects to effect the prevention, restriction, or distortion of competition within the Common Market, shall be prohibited.
 2. Save as otherwise provided in the Competition Law, any subsidy granted by a Partner State through state resources in any form whatsoever which distorts or threatens to distort effective competition by favoring certain undertakings shall, in so far as it affects trade between partner states be incompatible with the function of a common market.
 3. Save as otherwise provided in the Competition Law, concentrations which create or strengthen a dominant position as a result of which effective competition would be significantly impeded within the Community or a substantial part of it, shall be declared incompatible with the Common Market.
 4. The Community shall ensure that consumers are given a high degree of protection and freedom of choice.
 5. ***[In order to achieve the benefits of free competition in the field of public procurement, Partner States shall extend non-discriminatory treatment to all suppliers and to all products or services originating from or affiliated with other Partner States.]***
 6. The implementation of the provisions of this protocol shall be in accordance with the East African Community's Competition Law.
-



**EAST AFRICAN COMMUNITY
FIRST DRAFT PROTOCOL ON THE ESTABLISHMENT OF THE EAST
AFRICAN COMMUNITY COMMON MARKET**

PURSUANT TO THE PROVISIONS OF ARTICLES 76 AND 104 OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY, THE PROVISIONS FOR THE PROTOCOL FOR ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY COMMON MARKET ARE HEREBY SET FORTH:

PREAMBLE:

WHEREAS the Republic of Kenya, the United Republic of Tanzania, the Republic of Uganda, the Republic of Burundi, the Republic of Rwanda (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 under the provisions of Article 2 (2) and 5(2) of the Treaty, the Partner States undertake to, *inter alia*, establish among themselves a Common Market, as a transitional stage and an integral part of the Community;

- d) Under the provisions of Article 76(1) and (2) of the Treaty, the Partner States have determined that the establishment of a Common Market shall be progressive;
- e) Under provisions of Article 76(4) of the Treaty, the Partner States shall conclude a protocol on a Common Market;
- f) Recalling the decision of the 12th 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 realization of accelerated economic growth and development through the attainment of free movement of persons, labour, goods, capital and services, and the right of establishment and residence;

NOTING the importance of the development of the social dimensions including equal treatment of men and women in East Africa and the desire to ensure economic and social development in promoting employment, improved standards of living and working conditions within the Community;

CONSCIOUS of the individual obligations and commitments under the Treaty and under other regional and international economic partnerships;

RECALLING the vision of the Community is to widen, deepen and strengthen cooperation in economic, social and cultural fields;

AGREE AS FOLLOWS:

**PART I
ARTICLE 1
INTERPRETATION**

1. For the purposes of this Protocol:

["Common Market" means the Common Market as defined in the Treaty, including free movement of persons, the right of establishment and residence.

"Worker" means a person who performs services for and under the directions of another person in return for remuneration. For the purposes of this Protocol, worker includes persons offering voluntary services for charitable or religious organizations.

"Person" for the purposes of this Protocol, means a citizen of a Partner State.

"Self employed person" means a person engaged in an economic activity not under any contract of employment or supervision and earns a living through this activity either working alone or with members of his or her family.

"Labour" for the purposes of this Protocol, means workers and self employed persons.

"Economic activity" means any legitimate income generating activity.

"Young worker" for purposes of this Protocol, means a worker, not exceeding 35 years of age who possesses skills/profession in any field.

"Spouse" means a husband or a wife in a legally recognized marriage in accordance with the national laws of a Partner State where the marriage was celebrated.

"Dependant" means a person who, by reason of age, disability or other incapacity is unable to maintain him/herself and depends wholly upon a worker or a self employed person for his/her maintenance].

ARTICLE 2
ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY COMMON MARKET

6. 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.
7. The Common Market established under paragraph 1 of this Article, shall be called the East African Community Common Market (hereinafter referred to as “the Common Market”).
8. The Common Market shall be managed in accordance with the law of the Community enacted for that purpose.
9. In accordance with the provisions of Articles 76 and 104 of the Treaty, this Protocol provides for the following: -
 - h) Free movement of goods;
 - i) Free movement of persons;
 - j) Free movement of labour;
 - k) Right of establishment;
 - l) Right of residence;
 - m) Free movement of services; and
 - n) Free movement of capital;
10. The establishment of the Common Market shall be progressive and in accordance with the schedules approved by Council.

ARTICLE 3
OBJECTIVES OF THE COMMON MARKET

8. The overall objective of the EAC Common Market is to widen and deepen cooperation among the Partner States in economic, social and cultural fields, research and technology for their mutual benefit.
9. The specific objectives are to: -
 - (f) Accelerate economic growth and development through the attainment of free movement of goods, labour, services, capital, persons, and right of establishment and residence;
 - (g) Strengthen, coordinate and regulate the economic and trade relations among Partner States in order to promote their accelerated harmonious and balanced development;

- (h) Sustain expansion and integration of economic activities, the benefit of which shall be equitably distributed.
- (i) Promote common understanding and cooperation among its people for their economic, social, cultural and technological advancement.

ARTICLE 4
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. Within the scope of application of this Protocol and without prejudice to any special provisions contained herein, any discrimination on grounds of nationality shall be prohibited.

PART II
ARTICLE 5
FREE MOVEMENT OF GOODS

7. Free movement of goods between the Partner States shall be governed by:-
 - d) the provisions of the Protocol on Establishment of the East African Community Customs Union (hereinafter referred to as the 'Customs Union Protocol') and the Customs Law;
 - e) the provisions of the EAC Protocol on Standardization, Quality Assurance, Metrology and Testing and EAC Standardization, Quality Assurance, Metrology and Testing Act, 2006; and
 - f) the provisions of this Protocol.
8. The Partner States undertake to conclude protocols on SPS, TBT and any other relevant instruments for the application of this Protocol.

ARTICLE 6
HARMONIZATION OF TAX POLICIES AND LAWS

The Partner States undertake to progressively harmonize their tax policies and laws on domestic taxes with a view to removing tax distortions in order to facilitate free movement of goods and investments within the Community.
(This is to be deleted because it is replicated under Article 41)

PART III
ARTICLE 7
FREE MOVEMENT OF PERSONS

14. The Partner States hereby guarantee the right to free movement of persons, who are citizens of the Partner States, within the Community.
15. The right to free movement of persons shall entail the abolition of any discrimination based on nationality.

16. The right to free movement of persons shall include the following:
- a. The right to enter the territory of a Partner State without a visa;
 - b. The right to move freely within the territory of a Partner State;
 - c. The right to stay in the territory of a Partner State on such terms as shall be directed by the Council;
 - d. The right to exit without restrictions; and
 - e. The right to full protection by the laws of a Partner State.
17. The enjoyment of the rights specified under Sub-Article 3 shall be subject to limitations justified on grounds of public policy, public security or public health. The Partner State imposing such limitation shall be obliged to notify the other Partner States accordingly.

The Council shall, within a period of from entry into force of this protocol issue directives and regulations to govern the application of sub-article 4 of this Article.

18. ***[Partner States shall establish a common system of issuing national identification documents.]***

19. ***[The national identification documents issued by Partner States shall be the basis for identifying Citizens of the Community and shall, among other common standard travel documents, facilitate the free movement of the holders thereof]***

OR

20. ***[The national identification documents issued by Partner States shall be the basis for identifying Citizens of the Community]***

21. ***[The Partner States shall maintain common standard travel documents for their citizens to facilitate the free movement of the holders thereof.]***

The Council shall issue directives and make the necessary regulations to provide for this protection.

22. The Partner States shall effect reciprocal opening of border posts and keep the posts opened and manned for 24 hours.

23. The right to free movement of persons does not include exemption from prosecution or extradition where a national of one Partner State commits a crime in another Partner State.

24. The movement of refugees within the Community shall be governed by the relevant international conventions.

25. For the purposes of this Article, 'person' means a citizen of a Partner State.

26. ***[For the purposes of this Article, 'travel document' may include such other documents as the Council may direct.]***

**PART IV
ARTICLE 8**

FREE MOVEMENT OF WORKERS

1. The Partner States hereby guarantee the right to free movement of workers within the Community.

4. The right to free movement of workers shall entail abolition of any discrimination based on nationality between workers of Partner States as regards employment, remuneration and other conditions of work and employment.

10. Subject to limitations justified on grounds of public policy, public security or public health, the right to free movement of a worker shall entail the right to:
 - a. Apply and accept offers of employment actually made;
 - b. Move freely within the territory of the Partner States for this purpose;
 - c. Stay in the territory of a Partner State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
 - d. Enjoy the freedom of association and to collectively bargain for better working conditions in accordance with national laws of a Partner State;
 - e. Conclude and perform contracts of employment in accordance with the provisions in force laid down by national law, regulation or administrative action, without any discrimination resulting therefrom; and
 - f. Social security in accordance with Article 12 of this Protocol.

11. A national of a Partner State who seeks employment in the territory of another Partner State shall receive the same assistance as that afforded by the employment offices in that State to their own nationals seeking employment.

12. Partner States shall, within the framework of a joint programme, encourage the exchange of young workers.

13. Provisions laid down by law, regulation or administrative action or administrative practices of a Partner State shall not apply where the principal aim or effect is to keep nationals of other Partner States away from the employment offered.
14. The provisions of this Article shall not apply to employment in the public service unless the relevant national laws and regulations of a host Partner State so permit.

ARTICLE 9

HARMONIZATION OF LABOUR LAWS, POLICIES AND PROGRAMMES

1. The Partner States undertake to harmonize their labour laws, policies, programmes and legislation to secure free movement of labour within the Community.
2. The Council shall issue directives or make regulations setting out the measures required to remove all restrictions to free movement of workers and in particular: -
 - g) by ensuring close co-operation between national employment services;
 - h) by abolishing those administrative procedures and practices in respect of eligibility for available employment;
 - i) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under any agreement previously concluded;
 - j) by setting up appropriate mechanisms to bring offers of employment in touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market; and
 - k) by maintaining common employment policies, programmes and laws.

ARTICLE 10

HARMONISATION AND MUTUAL RECOGNITION OF ACADEMIC AND PROFESSIONAL QUALIFICATIONS

5. Partner States undertake to harmonise their curricula, examinations, standards, certification and accreditation of educational and training institutions.
6. Partner States undertake to mutually recognise academic and professional certificates of citizens of the Partner States.
7. Partner States shall mutually recognize the relevant experience obtained, requirements met, licences or certifications granted in another Partner State for the purposes of undertaking any economic activity in accordance with the provisions of this Protocol.

8. For purposes of this Article, the Council shall issue directives and make regulations on its implementation ***[as well as on the coordination of the provisions laid down by the law, regulations or administrative actions in Partner States]***

ARTICLE 11

RIGHTS OF SPOUSES AND DEPENDANTS OF A WORKER

5. Where a national of a Partner State is pursuing an activity as a worker in the territory of another Partner State, his/her spouse and dependant children who are under the age of 21 years shall have the right to accompany the worker.
6. The spouse under Sub-Article 1 of this Article, shall have a right to take up any activity as an employed person in the territory of that Partner State
7. The dependent children under sub-article 1 shall have a right to take up any activity as an employed person in the territory of that Partner State subject to the age limits under national law.
8. Partner States shall facilitate the admission of any member of the family of a worker not referred to in Sub-Article 1, if such dependent is living under the roof of the worker in the country where s/he comes from.

ARTICLE 12

SOCIAL SECURITY OF WORKERS

4. The Partner States undertake to harmonize their social security policies, laws and systems to secure social security benefits for workers and their dependants.
5. The Council shall issue directives and make regulations on:-
 - c) aggregation and portability of social security benefits; and
 - d) enjoyment of the same social and tax advantages as national workers.
6. A worker who is a national of a Partner State and who is employed in the territory of another Partner State shall enjoy all the rights and benefits accorded to national workers.

PART V

RIGHT OF ESTABLISHMENT AND RESIDENCE

ARTICLE 13

RIGHT OF ESTABLISHMENT

1. Partner States hereby guarantee the right of establishment of nationals of other Partner states in their territory.
2. The right of establishment shall entail the right to:
 - a) take up and pursue activities as self employed persons,
 - b) set up and manage economic undertakings,

- c) set up agencies, branches and subsidiaries,;
- 5. The enjoyment of the rights specified under sub-Article 2 of this Article, shall be subject to limitations justified on grounds of public policy, public security or public health

The Partner State imposing such limitation shall be obliged to notify the other Partner States accordingly.

- 4. The Council shall, within a period of from entry into force of this protocol issue directives and regulations to govern the application of sub-article 2 of this Article.

ARTICLE 14

Abolition and non-introduction of Restrictions

- 3. Partner States shall abolish all restrictions on the right of establishment based on nationality of companies, firms and citizens of Partner States, and shall not introduce any restrictions on the right of establishment in their territories, save as otherwise provided in this protocol.
- 4. For the purpose of this article, the Council shall within a period of one year from entry into force of this Protocol, adopt a schedule for the abolition of existing restrictions on the freedom of the establishment within the Community;
- 9. The Schedule shall set out the general conditions under which freedom of establishment is to be attained.
- 10. The Partner States shall carry out the duties devolving upon them under the preceding paragraphs, in particular:
 - e) by abolishing those administrative procedures and practices, whether resulting from national legislation, or from agreements previously concluded between Partner States, the maintenance of which would form an obstacle to freedom of establishment;
 - f) by ensuring that workers of one Partner State employed in the territory of another Partner State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
 - g) [by enabling a national of one Partner State to acquire/access and use land and buildings situated in the territory of another Partner State for purposes of establishment].**

Rwanda, & Kenya – use “acquire/access”

Tanzania & Uganda – delete the sub-Article because it is not a Common Market issue.

Burundi-Retain the sub-article but use the word “access”

h) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Partner State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;

Sub-Articles a & d –contents- Secretariat to explore how to merge the two provisions

e) [by coordinating to the necessary extent the safeguard measures which, for the protection of the interests of the Community, are required by the Partner States of Companies or Firms with a view to making such safeguards equivalent throughout the Community];

Secretariat & Consultant to re-draft the text and present it to plenary

l) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Partner States.

If this provision is catered for under the chapter on State Aid then it should be shifted there.

11. The provisions of this chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by the law, regulation or administrative action providing for special treatment for foreign nationals accorded by individual Partner States on grounds of public policy, public security or public health.

12. The Council shall within two years from the entry into force of this Protocol, issue directives for the harmonization of the aforementioned provisions laid down by the law, regulation or administrative action.

ARTICLE 15

(Title)

[EQUAL TREATMENT OF PERSONS AND FIRMS] [Proposed Title]

3. Companies or firms formed in accordance with the law of a Partner State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Partner States.

4. ‘Companies’ or ‘firms’ means companies or firms constituted under civil or commercial law, including co-operative societies and other legal persons governed by public or private law, save for those which are non-profit making.

Tanzania position –Important to separate Companies and Firms. Proposal to use the term “Corporate Persons” instead of “Companies and Firms”.

Other Partner States - Retain the Nairobi text because firms as entities have not been catered for anywhere else. The provisions on natural persons do not always apply to firms e.g. partnerships.

ARTICLE 16

SOCIAL SECURITY FOR SELF EMPLOYED PERSONS

1. The Partner States shall endeavor to review and harmonize their social security policies, laws and systems to secure social security benefits for self-employed persons, spouse and their dependants.
2. A self-employed person who is in the territory of another Partner State may join a Social Security system of that Partner State where the laws, policies and systems of that Partner State provide for social security for self-employed persons.
3. The Council shall issue directives and make regulations on:-
 - c) aggregation and portability of social security benefits; and
 - d) enjoyment of the same social and tax advantages as national self-employed persons.
4. A self-employed person who is a national of a Partner State and who is undertaking an economic activity in the territory of another Partner State shall enjoy all the rights and benefits accorded to national self-employed persons relating to social security.

All PSs agree that for the purposes of this article a “dependant” for social security purposes will be as provided for in national laws.

ARTICLE 17

RIGHT OF RESIDENCE

6. Partner States hereby guarantee the right of residence to nationals of other Partner States who have been admitted in their territories in accordance with Articles 8 and 13 of this Protocol.
7. The right of residence guaranteed under Sub-Article (1) of this Article, shall apply to the Spouse(s) and Dependants of a worker or self-employed person entitled to freedoms provided in Articles 8 and 13 of this Protocol
8. The enjoyment of the rights specified in this Article, shall be subject to limitations justified on grounds of public policy, public security, or public health. The Partner State imposing such

limitations shall be obliged to notify other Partner States accordingly.

9. The Council shall, within a period of *(1)* years from the date of entry into force of this Protocol, issue directives and regulations to govern the application of this Article.
10. ***[This Chapter shall not affect any provisions laid down by law, regulation or administrative action of one Partner State which would be more favourable to nationals of other Partner State.]***

ARTICLE 18 RESIDENCE PERMIT

4. Partner States shall grant Residence Permits to nationals of other Partner States who qualify in accordance with the provisions of Article 17.
5. ***[The processing of an application for a Residence Permit may not delay the immediate execution of employment contracts concluded by applicants or hinder the reason they are in the Partner State.]***
6. The Council shall within a period of 1 year from entry into force of this Protocol issue directives on harmonization of rules and regulations relating to conditions for the issuance of Residence Permits in Partner States with a view to establishing an East African Community Residence Card.

ARTICLE 19 [PERMANENT RESIDENCE]

2. ***The following shall have the right to remain permanently in the territory of another Partner State:***
 - a) ***a worker who, at the time of termination of his/her activity, has reached the age laid down by the law of that Partner State for entitlement to an old-age pension and who has been employed in that State for at least the last [..... months] and has resided there continuously for more than [...(5)...10. years];***
 - b) ***a worker who, having resided continuously in the territory for more than [..... years], ceases to work there as an employed person as a result of permanent incapacity to work,***

if such incapacity to work is the result of an accident at work or an occupational disease entitling him to a pension for which an institution of that State is entirely or partially responsible. In this case no conditions shall be imposed as to length of residence;

c)A worker who after three years of continuous employment and residence in the territory of that State, works as an employed person in the territory of another Partner State, while retaining his residence in the territory of the first State, to which he returns, as a rule, each day or at least once a week.

d)A self employed person who has continuously undertaken an economic activity in the territory of a Partner State where he/she resides for a period of at least (5/10) years.

3 *The conditions as to length of residence and employment laid down in paragraph 1(a) and the conditions as to length of residence laid down in paragraph 1(b) shall not apply if the worker's spouse is a national of the Partner State concerned or has lost the nationality of that State by marriage to that worker.⁹*

3. *The spouse and dependants of a worker/self employed person who are residing with him/her in the territory of a Partner State shall be entitled to remain there permanently if the worker/self employed person has acquired the right to remain permanently in the territory of that State in accordance with the provisions of this Article and to do so even after his/her death.*

4. *If however, the worker dies during his working life and before having acquired the right to remain in the territory of the State concerned, members of his family shall be entitled to remain there permanently on condition that:*

- the worker, on the date of his decease, had resided continuously in the territory of that Partner State for at least [..... years]; or*
- his death resulted from an accident at work or an occupational disease; or*
- the surviving spouse is a national of the State of residence or has lost the nationality of that State by marriage to that worker¹⁰.*

⁹ Kenya, Burundi & Uganda – Agree to delete sub-Article 2.

Rwanda – the sub-Article should be maintained subject to clarification by the Consultant.

¹⁰ Uganda, Kenya and Burundi – delete sub-Article 4 above.

5. ***The person entitled to the right to remain shall be allowed to exercise it upon fulfillment of the formalities provided by this Protocol].***

**PART VI
FREE MOVEMENT OF SERVICES
ARTICLE 20
FREE MOVEMENT OF SERVICES**

4. Partner States hereby guarantee the free movement of services within their territories.
5. For the purposes of paragraph 1 of this Article, Partner States shall progressively remove existing restrictions and shall not introduce any new restrictions that will impede trade in services among Partner States except as otherwise provided for in this Protocol.
6. Without prejudice to the provisions of any other Article herein, persons providing a service may, in order to do so, temporarily pursue activities in the Partner State where the service is provided, under the same conditions as are imposed by the state on its own nationals.

**ARTICLE 21
SCOPE AND DEFINITIONS**

1. This Chapter applies to measures by Partner States affecting trade in services.
2. ***[For the purposes of this Chapter, "services" means services provided against remuneration in any sector and "the provision of services" and shall include the supply of services] [to be refined]***
3. For the purposes of this Protocol, trade in services is defined as the supply of a service:
 - (a) from the territory of one Partner State into the territory of any other Partner State;
 - (b) in the territory of one Partner State to the service consumer of any other Partner State;
 - (c) by a service supplier of one Partner State, through commercial presence in the territory of any other Partner State;
 - (d) by a service supplier of one Partner State, through presence of natural persons of a Member in the territory of any other Partner State.
4. For the purposes of this Protocol:
 - (a) "measures¹¹ by Partner States " means measures taken by:
 - (i) national or local governments and authorities; and

Rwanda – maintain the sub-Article and make provision of 5 years.

¹¹ Kenya proposes that the definition of measures for the purpose of this chapter be interpreted as both restrictive and non restrictive measures.

- (ii) non-governmental bodies in the exercise of powers delegated by national **and/or**¹² local governments or authorities;

In fulfilling its obligations and commitments under this Protocol, each Partner State shall take such reasonable measures as may be available to it to ensure their observance by local governments and authorities and non-governmental bodies within its territory;

- (b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers].

ARTICLE 22 PRINCIPLES NATIONAL TREATMENT

1. Each Partner State shall accord to services and service suppliers of any other Partner State, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Partner State may meet the requirement of paragraph 1 by according to services and service suppliers of any other Partner State, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
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 any other Partner State.

ARTICLE 23 MOST FAVOURED NATION TREATMENT

With respect to any measure covered by this Protocol, each Partner State shall accord immediately and unconditionally to services and service suppliers of any other Partner State treatment no less favourable than that it accords to like services and service suppliers of any other Partner State or a third country.

ARTICLE 24 TRANSPARENCY AND NOTIFICATIONS

8. Each Partner State shall promptly notify the Council of all relevant measures of general application which pertain to or affect the operation of trade in services as defined in this Protocol by the time of entry into force.
9. The Partner States shall notify the Council of existing restrictions on the provision of services in respect of nationals of other Partner States.

¹² The legal drafters will advise on this.

10. International agreements pertaining to or affecting trade in services with third parties to which a Partner State is a signatory shall be subject to the notification requirement in paragraph 1 above.
11. Each Partner State shall promptly and at least annually inform the Council of the introduction of any new, or any changes to existing laws, regulations or administrative guidelines which affect trade in services covered by this Protocol.
12. Each Partner State shall respond promptly to all requests by any other Partner State for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1.
13. Any Partner State may notify Council of any measure taken by any other Partner State, which it considers affects the operation of this Protocol.
14. Once a notification has been made to the Council the Secretariat shall proceed to publish promptly the measures undertaken by the respective Partner State.

**ARTICLE 25
DOMESTIC REGULATION**

5. Partner States shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
6. ***[Each Partner State shall maintain practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services.]***

OR

7. ***[Each Partner State shall maintain procedures which allow service suppliers to appeal against administrative decisions. The procedures must provide for the prompt review of such decisions and where justified appropriate remedies.]***
8. Partner States shall have the right to regulate their services sectors in accordance with their national policy objectives provided that the measures do not constitute barriers to trade in services and are consistent with the provisions of this Protocol.

**ARTICLE 26
PROGRESSIVE LIBERALISATION**

7. **The process of liberalization shall be progressive with due respect to national policy objectives and levels of development of Partner States in both overall and individual sectors.**

8. There shall be flexibility for individual Partner States for opening sectors according to their regulatory capabilities in line with their development situation.

9. *[Partner States shall make schedules of liberalizing service sectors consistent to the objectives of this Protocol.]*

OR

10. *[Partner States shall make schedules to progressively eliminate restrictions in trade in services].*

11. The Council shall within *[one]* year from the entry into force of this Protocol *[and in accordance with Article 76(2) of the Treaty]* receive completed schedules from Partner States consistent with paragraphs 1, 2, and *[3 or 4]* above.

12. *The Council shall issue directives on the negotiations of the schedules [of commitments].*

**ARTICLE 27
EMERGENCY MEASURES**

2. *[The Council may approve measures designed to remedy any adverse effects a Partner State may experience, except in emergency situations, and such measures are applied on a non discriminatory basis.]*

**ARTICLE 28
BUSINESS PRACTICE**

3. *[Partner States recognize that certain service suppliers other than monopolies and exclusive suppliers may restrict trade in services.*

4. *Each Partner State at the request of any other Partner State enter into consultation with view to eliminate practices refer to paragraph 1 as provided for in Article 24 paragraph 4 of this Part]*¹³.

**ARTICLE 29
GENERAL EXCEPTIONS ON TRADE IN SERVICES**

1. Subject to the requirement that such 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:

¹³ Partner States did not reach a consensus on how to deal with businesses practices under this Chapter.

- (a) necessary to protect **public morals** or to maintain public order;¹⁴
- (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 to 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;
 - (iii) safety;
- (d) inconsistent with Article 22 of this Part, provided that the difference in treatment is aimed at ensuring the equitable or effective¹⁵ imposition or collection of direct taxes in respect of services or service suppliers of other Partner States;
- (j) inconsistent with Article 23, 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.

¹⁴The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

¹⁵Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

- (i) 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 Member's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or
- (v) 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
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.

Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

ARTICLE 30
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; or
 - (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 as 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 Council shall be informed by the Partner States to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination¹⁶.

PART VII
FREE MOVEMENT OF CAPITAL
ARTICLE 31
ELIMINATION OF RESTRICTIONS

4. Upon entry into force of this Protocol:
 - d) There shall be no restrictions between the Partner States on the movement of capital belonging to persons, resident in the Community and no discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested.
 - e) Partner States shall remove 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 transfer, nor render more restrictive existing regulations.
 - f) Current payments connected with the movement of goods, persons, services or capital between Partner States within the framework of the provisions of this Protocol shall be free of all restrictions.
5. The Council shall draw up a schedule for the removal of existing restrictions on free movement of capital, other payments and transfers within the Community.

¹⁶ Some Partner States proposed that the Security and the General Exceptions be reviewed for the purposes of the application to the whole Protocol in the General and final provisions Chapter.

6. The schedule under article 1(2) shall set out the general conditions under which restrictions on movement of capital, other payments and transfers shall be removed.

**ARTICLE 32
NON DISCRIMINATION**

Where Partner States' laws governing the financial markets and payments systems are applied to the movement of capital, it shall be done in a non-discriminatory manner.

**ARTICLE 33
FOREIGN EXCHANGE POLICY COORDINATION**

Partner States shall take such measures as are necessary to co-ordinate their foreign exchange policies.

**ARTICLE 34
INFORMATION SHARING**

Partner States shall keep the competent authorities of other Partner States informed of significant unusual movements of capital within their knowledge to and from third countries.

**ARTICLE 35
SAFEGUARD MEASURES**

5. If movement of capital leads to disturbances in the functioning of the financial markets in any Partner State, the Partner State concerned may take safeguard measures subject to the conditions provided under article 6.
6. If the competent authority of a Partner State makes an intervention in the foreign exchange market which seriously distorts conditions of competition, the other Partner States may take, for a strictly limited period, the necessary measures in order to counter the consequences of such interventions.
7. Where a Partner State is in difficulties, or is seriously threatened with difficulties, as regards its balance of payments, the Partner State concerned can take safeguard measures.
8. The Council shall make Regulations governing matters provided for under this Article.

**ARTICLE 36
CONDITIONS FOR APPLICATION OF THE SAFEGUARD MEASURES**

6. The safeguard measures which may be adopted or maintained pursuant to the provisions of Article 5 shall:
 - a) subject to the provisions of this Protocol, not discriminate among Partner States in favour of third countries;
 - b) at all times seek to minimize damage to the commercial, economic or financial interests of other Partner States;
 - c) not exceed those necessary to deal with the circumstances described in Article 5; and
 - d) be temporary and be phased out progressively as the situation described in Article 5 improves.

7. In determining the imposition of the said safeguard measures, the Partner State concerned may accord priority to activities which are essential to its economic stability. Such safeguard measures shall not be adopted or maintained for the purpose of protecting a particular sector in contravention of the provisions of this Protocol.
8. Safeguard measures adopted or maintained pursuant to Article 5 or any changes therein shall be notified to the EAC Secretariat and other Partner States.
9. 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.
10. The consultations shall address the compliance of any safeguard measures within paragraph 1 of this Article and, in particular, the progressive phase-out of safeguard measures in accordance with paragraph 1(d) of this Article

**ARTICLE 37
GENERAL EXCEPTIONS**

1. The free movement of capital may be restricted upon justified reasons related to:
 - i. Prudential supervision;
 - ii. Public policy considerations;
 - iii. Money laundering; and
 - iv. Financial sanctions agreed at Community level.
2. The Partner State adopting a restriction based on the conditions mentioned in paragraph 1, shall inform the EAC Secretariat and other Partner States and shall furnish proof that the action taken was appropriate, reasonable and justified.

**ARTICLE 38
CAPITAL AND RELATED PAYMENTS AND TRANSFERS**

2. For the purposes of this Protocol, capital and related payments and transfers include:
 - h) Direct Investment;
 - i) equity and portfolio investments;
 - j) bank and credit transactions;
 - k) payment of interest on loans and amortization;
 - l) dividends and other income on investments;
 - m) repatriation of proceeds from the sale of assets; and
 - n) other transfers and payments relating to investment flows.

PART VIII

ECONOMIC AND FINANCIAL SECTOR POLICY CO-ORDINATION

ARTICLE 39

ECONOMIC AND MONETARY POLICY CO-ORDINATION

5. The Partner States shall co-ordinate and harmonize their economic policies to ensure macroeconomic stability, sustained economic growth and balanced development for the proper functioning of the EAC Common Market.
6. The Council shall monitor the implementation of economic policies by Partner States to ensure macro-economic stability and sustained economic development.
7. The Partner States undertake to adhere to the macroeconomic convergence criteria as determined and approved from time to time by the Council.
8. The Partner States shall submit to Council periodic progress reports on the performance of their national economies to facilitate close co-ordination of economic policies and adherence to macroeconomic convergence criteria.

ARTICLE 40

FINANCIAL SECTOR POLICY CO-ORDINATION

3. The Partner States shall co-ordinate and harmonize their financial sector policies and regulatory frameworks to ensure efficiency and stability of their financial systems as well as smooth operations of the payment systems.
4. 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 41

HARMONIZATION OF TAX POLICIES AND LAWS

The Partner States undertake to progressively harmonize their tax policies and laws on domestic taxes with a view to removing tax distortions in order to facilitate free movement of goods, services and capital, and the promotion of investments within the Community.

ARTICLE 42

TRANSITIONAL PROVISIONS

The Council shall establish an appropriate framework for the transition from Common Market to the Monetary Union in line with article 5 (2) of the Treaty.

PART IX TRANSPORT POLICY

ARTICLE 43 OBJECTIVES

3. The objective of this Transport Policy shall be the provision of adequate, reliable, safe and internationally competitive transport infrastructure modes/services for the development and consolidation of the EAC Common Market, in accordance with the Treaty.
4. Pursuant to paragraph 1, Partner States shall among others:
 - h. Expedite the harmonization of their transport policies, regulations and standards;
 - i. Expand, interconnect and maintain the regional transport infrastructure within their boundaries and establish additional transport corridors for development;
 - j. Jointly develop human resources and other local/regional capacities in construction, management, financing, maintenance, upgrading and development of regional transport infrastructure and facilities;
 - k. Facilitate the development and maintenance of dedicated multimodal transport infrastructure for the landlocked countries;
 - l. Eliminate non physical barriers and reduce physical barriers that increase cost and reduce efficiency of transport within the Community;
 - m. [Liberalize transport services in line with the provisions within this Protocol.]***
 - n. Encourage the application of Information and Communications Technology (ICT) and other modern technologies with a view to improving transport efficiency and facilitate exchange of information.

ARTICLE 44 SCOPE

The provisions of this Part shall apply to logistics and transport by road, rail, inland waterways, maritime, pipeline and air as well as facilities such as ports, airports and inland dry ports.

ARTICLE 45 APPLICABLE INSTRUMENTS

For the purposes of implementing Article 43, Partner States shall:

- e) Maintain the already ratified existing agreements entered between the Partner States;
- f) Agree to enter into any other future agreements;
- g) Honour their existing commitments and obligations emanating from international conventions and agreements; and
- h) Subject to the provisions of paragraph c, align all other agreements on transport to the provisions of this protocol.

ARTICLE 46 COMMON RULES AND GUIDELINES

The Council shall within ... years upon entry into force of this Protocol, lay down:

- g) common rules or regulations applicable to:
 - j) Railways transport;
 - ii) Maritime transport and port operations;
 - iii) Pipeline transport;
 - iv) Air transport; and;
 - v) Multimodal transport and Logistics.
- h) Rules to give effect to Article 87 of the Treaty in matters of joint financing mechanisms on regional transport infrastructure development.
- i) [Rules for third country carriers offering transport services within the Community or transiting;]***
- j) Guidelines for the Private – Public Partnerships (PPPs) in the development of transport infrastructure and services in the region;
- k) Guidelines towards equitable distribution of regional transport infrastructure development; and
- l) Any other appropriate provisions consistent with this Protocol.

ARTICLE 47 PROHIBITION OF DISCRIMINATORY TREATMENT

Until the provisions referred to in Article 46 have been laid down:

- c) Partner States shall maintain the national regulations or rules governing the subject; and

- d) Partner States shall in applying the national regulations avoid discriminatory or less favorable treatment to carriers or operators from other Partner States.

ARTICLE 48

[INSTITUTIONAL ARRANGEMENTS/ IMPLEMENTATION MECHANISMS]

1. ***[The Council shall establish an institutional framework to coordinate policies, manage transport corridors and ensure the effective implementation of the common transport policy].***

TZ-position- The provisions of these sub-articles are not for discussions under this Section.

Kenya, Rwanda, Burundi & Uganda-The principles provided in the provision are important and need to be discussed under the section

PART X

ARTICLE 49

COMPETITION AND CONSUMER WELFARE

7. Save as otherwise provided in the Competition Law, all agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Partner States and which have as their objects to effect the prevention, restriction, or distortion of competition within the Common Market, shall be prohibited.
8. Save as otherwise provided in the Competition Law, any subsidy granted by a Partner State through state resources in any form whatsoever which distorts or threatens to distort effective competition by favoring certain undertakings shall, in so far as it affects trade between partner states be incompatible with the function of a common market.
9. Save as otherwise provided in the Competition Law, concentrations which create or strengthen a dominant position as a result of which effective competition would be significantly impeded within the Community or a substantial part of it, shall be declared incompatible with the Common Market.
10. The Community shall ensure that consumers are given a high degree of protection and freedom of choice.
11. ***[In order to achieve the benefits of free competition in the field of public procurement, Partner States shall extend non-discriminatory treatment to all suppliers and to all products or services originating from or affiliated with other Partner States.]***
12. The implementation of the provisions of this protocol shall be in accordance with the East African Community's Competition Law.
-