

African Union, African Regional Bodies

Agreement Establishing the African Continental Free Trade Area

Protocol on Trade in Services

Legislation as at 21 March 2018

FRBR URI: /akn/aa-au/act/protocol/2018/trade-in-services/eng@2018-03-21

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African Union

Agreement Establishing the African Continental Free Trade Area

Protocol on Trade in Services

Commenced on 30 May 2019

[This is the version of this document at 21 March 2018.]

WE, Member States of the African Union,

DETERMINED to establish a continental framework of principles and rules for trade in services with a view to boosting intra-African trade in line with the objectives of the African Continental Free Trade Area (AfCFTA) and promoting economic growth and development within the continent;

DESIROUS to create, on the basis of progressive liberalisation of trade in services, an open, rules based, transparent, inclusive and integrated single services market which provides economic, social and welfare-enhancing opportunities across all sectors for the African people;

MINDFUL of the urgent need to consolidate and build on achievements in services liberalisation and regulatory harmonisation at the Regional Economic Community (REC) and continental levels;

DESIRING to harness the potential and capacities of African services suppliers, in particular at the micro, small and medium levels, to engage in regional and global value chains;

RECOGNISING the right of State Parties to regulate in pursuit of national policy objectives, and to introduce new regulations, on the supply of services, within their territories, in order to meet legitimate national policy objectives, including competitiveness, consumer protection and overall sustainable development with respect to the degree of the development of services regulations in different countries, the particular need for State Parties to exercise this right, without compromising consumer protection, environmental protection and overall sustainable development;

COGNISANT of the serious difficulty of the least developed, land locked, island states and vulnerable economies in view of their special economic situation and their development, trade and financial needs;

ACKNOWLEDGING the African Union Assembly Decision Assembly/AU/666 (XXX) adopted at the 30th Ordinary Session of the Assembly of Heads of State and Government of the AU, in Addis Ababa, Ethiopia on 28 January 2018 on the Establishment of a Single African Air Transport Market through the Implementation of the Yamoussoukro Decision;

FURTHER RECOGNISING the potentially significant contribution of air transport services and, in particular, the Single African Air Transport Market to boost intra-African trade and fast track the African Continental Free Trade Area (AfCFTA),

HAVE AGREED AS FOLLOWS:

Part I – Definitions

1 Definitions

For the purposes of this Protocol:

- (a) "**Commercial presence**" means any type of business or professional establishment, including through:
- i. the constitution, acquisition or maintenance of a juridical person, or

- ii. the creation or maintenance of a branch or a representative office, within the territory of a State Party for the purpose of supplying a service;
- (b) "**Direct taxes**" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (c) "**Juridical person**" means any legal entity duly constituted or otherwise organised under applicable law of State Parties, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (d) A juridical person is:
 - i. "**Affiliated**" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
 - ii. "**Controlled**" by persons of a State Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and
 - iii. "**Owned**" by persons of a State Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that State Party;
- (e) "**Juridical person of another State Party**" means a juridical person which is either:
 - i. constituted or otherwise organised under the law of that other State Party, and is engaged in substantive business operations in the territory of that State Party or any other State Party; or
 - ii. in the case of the supply of a service through commercial presence, owned or controlled by: natural persons of that State Party; or juridical persons of that other State Party identified under subparagraph (i);
- (f) "**Measure**" means any measure by a State Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (g) "**Measures by State Parties affecting trade in services**" include measures in respect of:
 - i. the purchase, payment or use of a service;
 - ii. the access to and use of, in connection with the supply of a service, services which are required by those State Parties to be offered to the public generally;
 - iii. the presence, including commercial presence, of persons of a State Party for the supply of a service in the territory of another State Party;
- (h) "**Monopoly supplier of a service**" means any person, public or private, which in the relevant market of the territory of a State Party operates as or is authorised or established formally or in effect by that State Party as the sole supplier of that service;
- (i) "**Natural person of another State Party**" means a natural person who resides in the territory of that other State Party or any other State Party and who under the law of that other State Party:
 - i. is a national; or
 - ii. has the right of permanent residence;
- (j) "**Person**" means either a natural person or a juridical person;
- (k) "**Sector**" of a service means:
 - i. with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a State Party's schedule of specific commitments;

- ii. otherwise, the whole of that service sector, including all of its subsectors;
- (l) **"Service of another State Party"** means a service which is supplied:
 - i. from or in the territory of that other State Party, or in the case of maritime transport, by a vessel registered under the laws of that other State Party, or by a person of that other State Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - ii. in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other State Party;
- (m) **"Service consumer"** means any person that receives or uses a service;
- (n) **"Service supplier"** means any person that supplies a service⁴;
- (o) **"Supply of a Service"** includes the production, distribution, marketing, sale and delivery of a service;
- (p) **"Trade in services"** means the supply of service:
 - i. from the territory of one State Party into the territory of any other State Party;
 - ii. in the territory of one State Party to the service consumer of any other State Party;
 - iii. by a service supplier of one State Party, through commercial presence in the territory of any other State Party;
 - iv. by a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party.

Part II – Scope of application

2

Scope of application

1. This Protocol applies to measures by State Parties affecting trade in services.
2. For the purposes of this Protocol, trade in services is based on the four modes of supply of a service as defined in Article 1(p) of this Protocol.
3. For the purposes of this Protocol:
 - (a) "Measures by State Parties" means measures taken by:
 - i. State Parties' central, regional or local governments and authorities; and
 - ii. Non-governmental bodies in the exercise of powers delegated by State Parties' central, regional or local governments or authorities.

In fulfilling its obligations and commitments under the Protocol, each State Party shall take such reasonable measures as may be available to it to ensure their observance by regional and 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; and

⁴ *Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside of the territory where the service is supplied.*

- (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.
4. Procurement by governmental agencies purchased for governmental purposes and not with a view to commercial re-sale are excluded from the scope of this Protocol.
 5. This Protocol shall not apply to measures affecting:
 - (a) air traffic rights, however granted; and
 - (b) services directly related to the exercise of air traffic rights;
 6. This Protocol shall apply to measures affecting:
 - (a) aircraft repair and maintenance services;
 - (b) the selling and marketing of air transport services; and
 - (c) computer reservation system (CRS) services.

Part III – Objectives

3

Objectives

1. The principal objective of this Protocol is to support the objectives of the AfCFTA, as set out in Article 3 of the Agreement particularly to create a single liberalised market for trade in services.
2. The specific objectives of this Protocol are to:
 - (a) enhance competitiveness of services through: economies of scale, reduced business costs, enhanced continental market access, and an improved allocation of resources including the development of trade-related infrastructure;
 - (b) promote sustainable development in accordance with the Sustainable Development Goals (SDGs);
 - (c) foster domestic and foreign investment;
 - (d) accelerate efforts on industrial development to promote the development of regional value chains;
 - (e) progressively liberalise trade in services across the African continent on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services;
 - (f) ensure consistency and complementarity between liberalisation of trade in services and the various Annexes in specific services sectors;
 - (g) pursue services trade liberalisation in line with Article V of the GATS by expanding the depth and scope of liberalisation and increasing, improving and developing the export of services, while fully preserving the right to regulate and to introduce new regulations;
 - (h) promote and enhance common understanding and cooperation in trade in services amongst State Parties in order to improve the capacity, efficiency and competitiveness of their services markets; and
 - (i) promote research and technological advancement in the field of services to accelerate economic and social development.

Part IV – General obligations and disciplines

4

Most-favoured-nation treatment

1. With respect to any measure covered by this Protocol, each State Party shall, upon entry into force, accord immediately and unconditionally to services and service suppliers of any other State Party treatment no less favourable than that it accords to like services and service suppliers of any Third Party.
2. Nothing in this Protocol shall prevent a State Party from entering into a new preferential agreement with a Third Party, in accordance with Article V of the GATS provided such agreements do not impede or frustrate the objectives of this Protocol. Such preferential treatment shall be extended to all State Parties on a reciprocal and nondiscriminatory basis.
3. Notwithstanding paragraph 1, two (2) or more State Parties may conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors in accordance with the objectives in this Protocol. Other State Parties shall be afforded opportunity to negotiate the preferences granted therein on a reciprocal basis.
4. Notwithstanding the provisions of paragraph 2, a State Party shall not be obliged to extend preferences agreed with any Third Party prior to the entry into force of this Protocol, of which that State Party was a member or a beneficiary. A State Party may afford opportunity to the other State Parties to negotiate the preferences granted therein on a reciprocal basis.
5. The provisions of this Protocol shall not be so construed as to prevent any State Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.
6. A State Party may maintain a measure which is inconsistent with paragraph 1, provided it is listed in the Most Favoured Nation (MFN) exemption list. The agreed list of MFN exemptions shall be annexed to this Protocol. States Parties shall regularly review MFN exemptions, with a view to determining which MFN exemptions can be eliminated.

5

Transparency

1. Each State Party shall, in a medium⁵ that is accessible, publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Protocol. International and regional agreements pertaining to or affecting trade in services to which a State Party is a signatory shall also be published.
2. Each State Party shall notify the Secretariat of any international and regional agreements pertaining to or affecting trade in services with Third Parties to which they are signatory prior to or after entry into force of this Protocol.
3. Each State Party shall promptly and at least annually notify the Secretariat of the introduction of any new, or any changes to, existing laws, regulations or administrative guidelines which significantly affect trade in services under this Protocol.
4. Where a State Party submits a notification to the Secretariat, the latter shall promptly circulate the said notification to all State Parties.
5. Each State Party shall respond promptly to all requests by any other State Party for specific information on any of its measures of general application or international and/or regional agreements within the meaning

⁵ For example through Gazette, newsletter, Hansard, or websites in one of the African Union languages.

of paragraph 1. State Parties shall also reply to any question from any other State Party relating to an actual or proposed measure that might substantially affect the operation of this Protocol.

6. Each State Party shall designate the relevant enquiry points to provide State Parties with specific information, upon request, on all such matters related to trade in services as well as those subject to the notification requirement above.

6

Disclosure of confidential information

Nothing in this Protocol shall require any State Party to disclose confidential information and data, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

7

Special and differential treatment

In order to ensure increased and beneficial participation in trade in services by all parties, State Parties shall:

- (a) provide special consideration to the progressive liberalisation of service sectors commitments and modes of supply which will promote critical sectors of growth, social and sustainable economic development;
- (b) take into account the challenges that may be encountered by State Parties and may grant flexibilities such as transitional periods, within the framework of action plans, on a case by case basis, to accommodate special economic situations and development, trade and financial needs in implementing this Protocol for the establishment of an integrated and liberalised single market for trade in services; and
- (c) accord special consideration to the provision of technical assistance and capacity-building through continental support programmes.

8

Right to regulate

Each State Party may regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, in so far as such regulations do not impair any rights and obligations arising under this Protocol.

9

Domestic regulation

1. In sectors where specific commitments are undertaken, each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, transparent and impartial manner.
2. Each State Party shall maintain or institute, as soon as 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. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the State Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. Where authorisation is required for the supply of a service liberalised under this Protocol, the competent authorities of a State Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the State Party shall provide, without undue delay, information concerning the status of the application.

10

Mutual recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of services suppliers, and subject to the requirements of paragraph 3 of this Article, a State Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another State Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the State Party concerned or may be accorded autonomously.
2. A State Party that is a party to an agreement or arrangement of the type referred to in paragraph 1 of this Article, whether existing or future, shall afford adequate opportunity for other interested State Parties to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a State Party accords recognition autonomously, it shall afford adequate opportunity for any other State Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other State Party's territory should be recognised.
3. A State Party shall not accord recognition in a manner which would constitute a means of discrimination between State Parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.
4. Each State Party shall:
 - (a) within twelve (12) months from the date on which the Agreement enters into force for it, inform the Secretariat of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1 of this Article;
 - (b) promptly inform the State Parties through the Secretariat as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 of this Article in order to provide adequate opportunity to any other State Party to indicate their interest in participating in the negotiations before they enter a substantive phase; and
 - (c) promptly inform the States Parties through the Secretariat when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1 of this Article.
5. Wherever appropriate, recognition should be based on AfCFTA agreed criteria by State Parties. In appropriate cases, State Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common continental standards and criteria for recognition and common continental standards for the practice of relevant services trades and professions.

11

Monopolies and exclusive service suppliers

1. Each State Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that State Party's obligations and specific commitments under this Protocol.
2. Where a State Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that State Party's specific commitments, the State Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. A State Party which has a reason to believe that a monopoly supplier of a service of any other State Party is acting in a manner inconsistent with paragraphs 1 and 2 of this Article, may request the State Party

- establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.
4. If, after the date of entry into force of this Protocol, a State Party grants monopoly rights regarding the supply of a service covered by its specific commitments, that State Party shall notify the Secretariat no later than three (3) months before the intended implementation of the grant of monopoly rights and the provisions concerning modification of specific commitments will apply.
 5. The provisions of this Article shall also apply to cases of exclusive service suppliers where a State Party, formally or in effect:
 - (a) authorises or establishes a small number of service suppliers; and
 - (b) substantially prevents competition among those suppliers in its territory.

12

Anti-competitive business practices

1. State Parties recognise that certain business practices of service suppliers, other than those concerning monopolies and exclusive service suppliers, may restrain competition and thereby restrict trade in services.
2. Each State Party shall, at the request of any other State Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 of this Article. The State Party addressed shall respond to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The State Party addressed shall also provide other information available to the requesting State Party, subject to its domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting State Party.

13

Payments and transfers

1. Except under the circumstances envisaged in Article 14 of this Protocol, a State Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.
2. Nothing in this Protocol shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a State Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except as provided under Article 14 of this Protocol, or at the request of the Fund.

14

Restrictions to safeguard the balance of payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a State Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a State Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1 of this Article shall:
 - (a) not discriminate among State Parties;

- (b) be consistent with the Articles of Agreement of the International Monetary Fund;
 - (c) avoid unnecessary damage to the commercial, economic and financial interests of any other State Party;
 - (d) not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article; and
 - (e) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves.
3. In determining the incidence of such restrictions, State Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the Secretariat.
5. State Parties applying the provisions of this Article shall consult promptly within the Committee on Trade in Services on restrictions adopted under this Article.
6. The Committee on Trade in Services shall establish procedures for periodic consultations with the objective of enabling such recommendations to be made to the State Party concerned as it may deem appropriate.
7. Such consultations shall assess the balance-of-payment situation of the State Party concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:
 - (a) the nature and extent of the balance-of-payments and the external financial difficulties;
 - (b) the external economic and trading environment of the consulting State Party; and
 - (c) alternative corrective measures which may be available.
8. The consultations shall address the compliance of any restrictions with paragraph 2 of this Article, in particular the progressive phase-out of restrictions in accordance with paragraph 2(e) of this Article.
9. In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting State Party.
10. If a State Party which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Council of Ministers shall establish a review procedure and any other procedures necessary.

15

General exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between State Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Protocol shall be construed to prevent the adoption or enforcement by any State Party of measures:

- (a) necessary to protect public morals or to maintain public order⁶;
- (b) necessary to protect human, animal or plant life or health;

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

- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol 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 National Treatment, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other States Parties; and^[7]
- (e) inconsistent with the Most Favoured Nation obligation provided that the difference in treatment is the result of an agreement on avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the State Party is bound.

16 Security exceptions

1. Nothing in this Protocol shall be construed:
 - (a) to require any State Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any State Party 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; and
 - iii. taken in time of war or other emergency in international relations; or
 - (c) to prevent any State Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. The Secretariat shall be informed, to the fullest extent possible, of measures taken under paragraphs 1(b) and 1(c) of this Article, and of their termination.

^[7] *Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a State Party under its taxation system which:*

a. Apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the State Party's territory; or

b. Apply to non-residents in order to ensure the imposition or collection of taxes in the State Party's territory; or

c. Apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or

d. Apply to consumers of services supplied in or from the territory of another State Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the State Party's territory; or

e. Distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

f. Determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the State Party's tax base.

Tax terms or concepts in paragraph (d) of Article 15 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 State Party taking the measure.

17 Subsidies

1. Nothing in this Protocol shall be construed to prevent State Parties from using subsidies in relation to their development programmes.
2. State Parties shall decide on mechanisms for information exchange and review of all subsidies related to trade in services that State Parties provide to their domestic service suppliers.
3. Any State Party which considers that it is adversely affected by a subsidy of another State Party may request consultations with that State Party on such matters. Such requests shall be accorded sympathetic consideration.

Part V – Progressive liberalisation

18 Progressive liberalisation

1. State Parties shall undertake successive rounds of negotiations based on the principle of progressive liberalisation accompanied by the development of regulatory cooperation, and sectoral disciplines, taking into account the objectives of the 1991 Abuja Treaty that aim to strengthen integration at the regional and continental levels in all fields of trade, and in line with the general principle of progressivity towards achievement of the ultimate goal of the African Economic Community.
2. State Parties shall negotiate sector specific obligations through the development of regulatory frameworks for each of the sectors, as necessary, taking account of the best practices and *acquis* from the RECs, as well as the negotiated agreement on sectors for regulatory cooperation. State Parties agree that negotiations for continuing the process shall commence following the establishment of the AfCFTA, based on the work programme to be agreed by the Committee on Trade in Services.
3. The liberalisation process shall focus on the progressive elimination of the adverse effects of measures on trade in services as a means of providing effective market access with a view to boosting intra-African trade in services.
4. The list of Priority Sectors and the Modalities on Trade in Services shall be annexed to this Protocol and shall form an integral part hereof.
5. The Transitional Implementation Work Programme developed by Member States shall guide the finalisation of outstanding Phase I negotiations on this Protocol, before the entry into force of the Agreement.

19 Market access

1. With respect to market access through the modes of supply identified in Article 1(p) of this Protocol, each State Party shall accord services and service suppliers of any other State Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.^[8]

^[8] *if a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply defined in Article 1(p) and if the cross-border movement of capital is an essential part of the service itself, that State Party is thereby committed to allow such movement of capital. If a State Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(p) (iii), it is thereby committed to allow related transfers of capital into its territory.*

2. In sectors where market-access commitments are undertaken, the measures which a State Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:
- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;^[9]
 - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
 - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

20

National treatment

1. In all sectors inscribed in the schedule, and subject to any conditions and qualifications set out therein, each State Party shall accord to services and service suppliers of any other State Party treatment no less favourable than that it accords to its own like services and service suppliers, subject to the conditions and qualifications agreed and specified in its Schedule of Specific Commitments.
2. A State Party may meet the requirement of paragraph 1 of this Article, by according to services and service suppliers of any other State Party 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 State Party compared to like services or service suppliers of any other State Party.

21

Additional commitments

The State Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 19 or 20 of this Protocol, including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in a State Party's Schedule of Specific Commitments.

22

Schedules of specific commitments

1. Each State Party shall set out in a schedule, the specific commitments that it undertakes under Articles 19, 20 and 21 of this Protocol.

^[9] Article 1(g) (iii) does not cover measures of a State Party which limit inputs for the supply of services.

2. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:
 - (a) terms, limitations and conditions on market access;
 - (b) conditions and qualifications on national treatment;
 - (c) undertakings relating to additional commitments; and
 - (d) where appropriate the time-frame for implementation of such commitments, including their date of entry into force.
3. Measures inconsistent with both Articles 19 and 20 of this Protocol shall be inscribed in the column relating to Article 19 of this Protocol. In this case the inscription will be considered to provide a condition or qualification to Article 20 of this Protocol as well.
4. The Schedules of Specific Commitments, the Modalities for Trade in Services and the list of Priority Sectors shall, upon adoption, form an integral part of this Protocol.
5. The Transitional Implementation Work Programme developed by Member States shall guide the finalisation of outstanding Phase I negotiations on this Protocol, before the entry into force of the Agreement.

23

Modification of schedules of specific commitments

1. A State Party (referred to in this Article as the "modifying State Party") may modify or withdraw any commitment in its schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.
2. A modifying State Party shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Secretariat no later than three (3) months before the intended date of implementation of the modification or withdrawal. The Secretariat shall promptly circulate this information to State Parties.
3. At the request of any State Party the benefits of which under this Protocol may be affected (referred to in this Article as an "affected State Party"), by a proposed modification or withdrawal notified under paragraph 2 of this Article, the modifying State Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the State Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in commitments prior to such negotiations.
4. Compensatory adjustments shall be made on a most-favoured-nation basis.
5. If agreement is not reached between the modifying State Party and any affected State Party before the end of the period provided for negotiations, such affected State Party may refer the matter to dispute settlement. Any affected State Party that wishes to enforce a right that it may have to compensation must participate in the dispute process.
6. If no affected State Party has requested dispute settlement, the modifying State Party shall be free to implement the proposed modification or withdrawal, within a reasonable period of time.
7. The modifying State Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the dispute settlement.
8. If the modifying State Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected State Party that participated in the dispute settlement may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding the obligations under Article 4 of this Protocol, such a modification or withdrawal may be implemented solely with respect to the modifying State Party.

9. The Committee on Trade in Services shall facilitate such negotiations and establish related appropriate procedures.

24

Denial of benefits

Subject to prior notification and consultation, a State Party may deny the benefits of this Protocol to service suppliers of another State Party where the service is being supplied by a juridical person of a non-State Party, without real and continuous link with the economy of the State Party or with negligible or no business operations in the territory of the other State Party or any other State Party.

Part VI – Institutional provisions

25

Consultation and dispute settlement

The provisions of the Protocol on the Rules and Procedures on the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Protocol.

26

Implementation, monitoring and evaluation

1. The Council of Ministers in accordance with Article 11 of the Agreement shall establish the Committee on Trade in Services, which shall carry out such functions as may be assigned to it by the Council of Ministers to facilitate the operation of this Protocol and further its objectives. The Committee may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.
2. The Chairman of the Committee shall be elected by the State Parties.
3. The Committee shall prepare annual reports for State Parties to facilitate the process of implementation, monitoring and evaluation of this Protocol.

27

Technical assistance, capacity building and cooperation

1. State Parties recognise the importance of technical assistance, capacity building and cooperation in order to complement the liberalisation of services, to support State Parties' efforts to strengthen their capacity in the supply of services and to facilitate implementation and attainment of the objectives of this Protocol.
2. State Parties agree, where possible, to mobilise resources, in collaboration with development partners, and implement measures, in support of the domestic efforts of State Parties, with a view to, *inter alia*:
 - (a) building capacity and training for trade in services;
 - (b) improving the ability of service suppliers to gather information on and to meet regulations and standards at international, continental, regional and national levels;
 - (c) supporting the collection and management of statistical data on trade in services;
 - (d) improving the export capacity of both formal and informal service suppliers, with particular attention to micro, small and medium size; women and youth service suppliers;
 - (e) supporting the negotiation of mutual recognition agreements;

- (f) facilitating interaction and dialogue between service suppliers of State Parties with a view to promotion of information sharing with respect to market access opportunities, peer learning and the sharing of best practices;
 - (g) addressing quality and standards needs in those sectors where State Parties have undertaken commitments under this Protocol with a view to supporting the development and adoption of standards; and
 - (h) developing and implementing regulatory regimes for specific services sectors at continental, regional and national levels, in particular in those sectors in which State Parties have undertaken specific commitments.
3. The Secretariat, working with State Parties, RECs and partners, shall coordinate the provision of technical assistance.

28

Annexes to this Protocol

1. Member States may develop annexes for the implementation of this Protocol relating, inter alia, to:
- (a) Schedules of Specific Commitments;
 - (b) MFN Exemption(s);
 - (c) Air Transport Services;
 - (d) List of Priority Sectors; and
 - (e) A framework document on Regulatory Cooperation.
2. Upon adoption by the Assembly, such annexes shall form an integral part of this Protocol.
3. State Parties may develop additional annexes for the implementation of this Protocol for adoption by the Assembly. Upon adoption by the Assembly, such annexes shall form an integral part of this Protocol.

29

Amendment

This Protocol shall be amended in accordance with the provisions of Article 29 of the Agreement.