

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 402 final

Brussels, 21.09.1994

94/ 0216(CNS)

Proposal for a

COUNCIL DECISION

**concerning the conclusion of the Agreement between the European Community
and the Republic of South Africa**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On 19 April 1994, the Council adopted a framework for the European Union's future relations with South Africa. The Council decided that the Union's future relations with South Africa should fall into two distinct phases : firstly, a "package of immediate measures" to be presented and discussed with the South African government and secondly, an offer to negotiate a comprehensive and long-term relationship with South Africa.

The aim of the package of initial measures was to address the immediate needs of the new South African Government granting GSP benefits to South Africa was the first measure taken in this context.

The initial measures also included an offer to conclude an agreement with South Africa quickly, which is the substance of this proposal. The Council's conclusions were precise on the shape and contents of this agreement : it should have a simplified structure with only a few articles including a strong human rights clause, a comprehensive co-operation clause and provisions, wherever necessary, to enable the Parties to engage in specific co-operation activities.

2. In accordance with this, the Commission has discussed the contents of this agreement with the South African authorities during the month of August and the first days of September. Following these talks, an ad referendum agreement has now been reached on the enclosed draft which fully respects both the Council conclusions as well as the spirit of the recent Berlin EU-SADC Conference held in early September.
3. As indicated in the draft text, this agreement will not in any way prejudice the content of the longer term relationship nor its legal basis. The present simplified agreement was in fact seen by the Council as a means of bridging the time gap between the establishment of a democratic government in South Africa and the definition of a more comprehensive and long-term framework to be agreed with the new South African authorities. Negotiating directives to conclude a long-term relationship with South Africa will be requested by the Commission at the appropriate moment.
4. Taking account of the complex realities which define the South African economic and social environment, it was foreseeable (and experience seems to confirm this view) that defining the elements of the long-term relationship will be a complex exercise. Indeed the South African Government itself has not yet decided on the structure of the relations it wants with the EU. On the other hand, it is urgent to institutionalise the bilateral relationship, not only for evident political reasons but also, as the Council said in its Decision of 19 April, "...to provide the legal basis for the development of future co-operation with the new South African government and the allocation, as appropriate, of the corresponding funds from the Community budget...". It is important to note that the EIB normally limits its operations to countries which are linked to the Community by a co-operation agreement.

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5. This is the specific context which explains the simplified structure of the Agreement, as specified by the Council in its Decision. Whilst the "Human Rights" Article is an essential element of this agreement, Articles 2 and 4 are the provisions whereby the Contracting Parties agree to step-up co-operation in all areas within their respective spheres of competence and within the limits of their available financial means make funds available to facilitate the achievement of the aims set out in this agreement. The other elements conform to the Council Decision of 19 April. The relationship between bilateral co-operation and the global interests of the Southern African region is also given due attention in Article 6 following the guidelines provided by the EU-SADC Declaration adopted by the Berlin Conference early in September.
6. The Council conclusions specify that such an agreement should be concluded quickly. The first priority after the elections for South Africa was to ensure the effective application of GSP. It is now urgent to conclude this agreement as soon as possible in order to provide the legal basis for our co-operation with the new South African Government to begin.
7. The Council's Decision of 19 April 1994 also included the establishment of a political dialogue, both at the bilateral and regional level. While the provisions for the political dialogue between the SADC (which include South Africa) and EU were discussed at the Berlin Conference in September 1994, preparation is also underway to make provision for the bilateral EU-South Africa political dialogue which will be subject to an exchange of letters between the two parties in the near future.

of

**concerning the conclusion of the Agreement between the European Community
and the Republic of South Africa**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 113 and 130y, in conjunction with the first sentence of Article 228 (2) and the first subparagraph of paragraph 3 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the general guidelines issued by the European Council on 29 October 1993 which take up as an area for joint action support for the transition towards multiracial democracy in South Africa through the creation of an appropriate co-operation framework to consolidate the economic and social foundations of this transition,

Having regard to the decision of the Council of 18 and 19 April 1994 to adopt a package of measures for South Africa, including an offer to conclude an agreement quickly,

Whereas the Community should approve, for the attainment of its aims in the sphere of external relations, the Agreement referred to in this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Republic of South Africa is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall, on behalf of the Community, give the notification provided for in Article 8 of the Agreement.

Article 3

The Decision shall be published in the Official Journal of the European Communities.

Done at Brussels,

For the Council
The President

THE COUNCIL OF THE EUROPEAN COMMUNITIES
on the one part,

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
on the other part

CONSIDERING the links of friendship between the Member States of the European Community and the Republic of South Africa.

MINDFUL of the common will of the European Community, hereinafter referred to as the "Community" and the Republic of South Africa, hereinafter referred to as "South Africa" to step up cooperation in all the fields which are within the bounds of their respective powers.

NOTING with satisfaction the successful transition towards a democratic and multiracial society in the South Africa.

TAKING ACCOUNT of the need to promote economic cooperation in the Southern African region to contribute to its harmonious and sustainable economic and social development and to encourage the smooth and gradual integration of South Africa into the world economy.

RECOGNIZING that relations between the Community and South Africa may further be enhanced by future arrangements and without prejudging the contents of those possible contractual arrangements.

HAVE DECIDED to conclude this Agreement and to this end have designated as their plenipotentiaries:

.....

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

**DRAFT AGREEMENT
BETWEEN EUROPEAN COMMUNITY AND SOUTH AFRICA**

Article 1

Relations between the Community and its Member States on the one part, and the Republic of South Africa on the other part, as well as this Agreement itself, shall be based on respect of human rights and democratic principles which guides the internal and international policy of the Contracting Parties and constitutes an essential element of the Agreement.

Article 2

The Contracting Parties desire to strengthen their relations with a view to promoting harmonious, balanced and sustainable social and economic development and, to this end, they hereby agree to step up co-operation in all areas within their respective spheres of competence, including trade.

Article 3

The Contracting Parties do not intend that this Agreement will in any way prejudice discussions or negotiations between them regarding other possible contractual arrangements.

Article 4

The Contracting Parties will, within the limits of their available financial means and within the framework of their respective procedures and instruments, make available funds to facilitate the achievement of the aims set out in this Agreement.

Article 5

This Agreement shall apply, on the one hand, to the territory of the Republic of South Africa, and, on the other, to the territories in which the Treaties establishing the European Communities are applied, under the conditions laid down in those Treaties.

Article 6

The Contracting Parties concur that this Agreement should not conflict with any other agreements which exist between either of them and the countries of the Southern African region. The Contracting Parties furthermore agree that they shall seek ways in which their co-operation could harmonise with, and enhance the interests of, the Southern African region and intra-regional co-operation.

Article 7

(1) The Contracting Parties shall take any general or specific measures required to fulfil their obligations under the Agreement. They shall see to it that the objectives set out in the Agreement are attained.

(2) If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures. Before doing so, except in circumstances of special urgency, it shall supply the other Party with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of measures, priority must be given to those which least disturb the functioning of the Agreement. These measures shall be notified immediately to the other Party and shall be the subject of consultations if the other Party so requests.

Article 8

This Agreement shall enter into force on the first day of the month following that during which the Contracting parties have notified each other of the completion of the necessary procedures. It shall be valid for an indefinite period and may be denounced by either of the Contracting Parties if a new agreement enters into force or if one year's notice is given following the entry into force of a new agreement or with prior notification of one year.

Article 9

This Agreement is drawn up in duplicate in the ... languages, each text being equally authentic.

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DOCUMENTS

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11

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