COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.07.1999
COM(1999) 351 final

Proposal for a

COUNCIL DECISION

concerning the provisional application of the Trade, Development and Co-operation Agreement between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On 11 May 1999 the Commission submitted a double proposal (COM(1999) 245 final) for the conclusion and signing of the Trade, Development and Co-operation Agreement between the European Community and South Africa.

2. The proposal has been discussed in Council. The majority of Member States have indicated a preference for a mixed agreement, rather than a Community Agreement as proposed by the Commission. A unanimous Council decision to amend the Commission proposal to this effect can be expected soon.

   In anticipation of this situation the Commission hereby presents a proposal for the provisional application of such a mixed agreement with South Africa.

3. The Commission considers that the change of the legal nature of the agreement does not affect the substance of it. The necessary textual amendments are minor, and will also be acceptable for South Africa.

4. The Commission however insists that the choice for a mixed agreement should not delay the implementation of the provisions negotiated with South Africa. The agreement is a coherent and balanced package, which should, for both policy and practical reasons, enter into effect as soon as possible and without differentiation between its respective sections.

5. The Commission therefore proposes to provisionally apply all provisions of the Trade, Development and Co-operation Agreement, on the understanding that in its actual implementation the respective competencies of the European Community and the Member States will be fully respected.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular its Article 310 in connection with Article 300 (2), first paragraph, first and second phrase,

Having regard to the proposal from the Commission,

(1) Whereas the Community and South Africa have undertaken to adopt procedures for the early application of the Trade, Development and Co-operation Agreement between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part,

(2) Whereas the provisional application of the Trade, Development and Co-operation Agreement is necessary to provide a comprehensive framework of co-operation between the Community and South Africa, pending the completion of the procedures required to bring the Agreement into force,

HAS ADOPTED THIS DECISION:

Article 1

The exchange of letters between the Community and South Africa, which provides for the provisional application of that portion of the Trade, Development and Co-operation Agreement between the European Community and its Member States, on the one part, and the Republic of South Africa, on the other part, which falls within the competence of the European Community, is hereby approved on behalf of the European Community.

The text of the exchange of letters is attached to this Decision.

Article 2

For the purposes of the implementation of Article 97 of the Agreement, a representative of the Commission shall preside over the Co-operation Council and present the position of the Community.

Article 3

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

Done at Brussels,

For the Council
The President

ANNEX

EXCHANGE OF LETTERS

concerning the provisional application of the
Trade, Development and Co-operation Agreement between the European Community
and its Member States, of the one part,
and the Republic of South Africa, of the other part,

(letter from the Community)

Dear Sir,

I have the honour to refer to the Trade, Development and Co-operation Agreement between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, signed today.

Pending the entry into force of the said Agreement, I have the honour to propose to you that the European Community and South Africa apply the Agreement provisionally as from 1st January 2000, with regard to that portion of it which falls within the competence of the European Community.

If the above is acceptable to South Africa, this letter and your confirmation shall together constitute an agreement between the European Community and South Africa.

Please accept, Sir, the assurance of our highest appreciation,

On behalf of the European Community

(letter from South Africa)

Dear Sir,

I have the honour to acknowledge receipt of your letter of today's date which, reads as follows:

> I have the honour to refer to the Trade, Development and Co-operation Agreement between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part, signed today.
>
> Pending the entry into force of the said Agreement, I have the honour to propose to you that the European Community and South Africa apply the Agreement provisionally as from 1st January 2000, with regard to that portion of it which falls within the competence of the European Community.
>
> If the above is acceptable to South Africa, this letter and your confirmation shall together constitute an agreement between the European Community and South Africa.

I am able to confirm that South Africa is in agreement with the contents of your letter.

Please accept, Sir, the assurance of my highest appreciation,

On behalf of South Africa

FINANCIAL STATEMENT

This proposal has no other financial implications than those already identified in document COM (1999) 245 final.