



**An Information Note on the COMESA Protocol on  
Free Movement of Persons, Labour, Services, Right of  
Establishment and Residence**



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## Background

The COMESA Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence Was Adopted by the COMESA Heads of State and Government, commonly known as the "COMESA Free Movement Protocol" was adopted on 29<sup>th</sup> June 1998 at the Kinshasa in the Democratic Republic of Congo (DRC).

The Free Movement Protocol was developed with the vision towards the operationalization of the COMESA Common Market and its main objective is to remove all restrictions to the free movement of persons, labour and services and ultimately down the years provide for the rights of establishment and residence respectively.

According to the preamble of the Protocol, the protocol was developed on the recognition of the fact that a "genuine Common Market shall only be achieved only when the citizens of COMESA Member States can move freely within the Common Market; are free to take up offers of employment in any of the COMESA Member States; are free to render services in any of the COMESA Member States; are free to pursue activities of self-employment, set up and manage undertakings in any of the Member States; in particular, companies and firms under conditions similar to those applicable to citizens of the country of establishment." Furthermore, it is enshrined in the preamble that COMESA Member States shall adopt measures that shall gradually and on a step-by-step basis remove restrictions to the free movement of persons, labour, services, right of establishment and right of establishment.

## Legal Basis of the Protocol

The protocol derives its legal basis from Article 164(2) of the COMESA Treaty, where COMESA Member States agreed to conclude a protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence Was Adopted. This legal basis stems from a specific undertaking that COMESA Member States undertook in Article 4(6)(e) of the COMESA Treaty. In this provision, COMESA Member States made a specific undertaking in the field of economic and and social development to remove obstacles to the free movement of persons, labour, services, right of establishment for investors and right of residence within the Common Market. Another specific commitment was also made under Article 4(4) (c) of the COMESA Treaty in the field of monetary affairs and finance to remove all obstacles to the movement of services and capital within the Common Market.

## Overview of the Progressive Implementation Phases of the Protocol

The implementation of the Protocol was adopted to follow the below listed five staged phased implementation and timelines:

### **Stage 1: Part Two – Part II - Articles 3 to 8**

#### ***Area of Focus: Gradual Removal of Visa Requirements and cooperation in the prevention and fight against transnational crime***

Under this phase COMESA Member States agreed on the following:

#### **Article 3 – Relaxation of Visa Requirements:**

- Member States agreed that as first step towards visa relaxation and gradual elimination of visa requirements within the Common Market, citizens of the Member States holding valid travel documents, shall upon entry of the protocol not be required to obtain visas before travelling to the territory of other Member States and may be granted visas to enter into such territory upon the presentation of valid travel documents at official entry points of such Member State.
- Two or more Member States may agree to grant each other's citizens one-year multiple entry visas.

#### **Article 4- Entry Without Visa Requirement for up to Ninety Days:**

- Member States agreed that within two years of entry into force of the protocol, citizens of a Member States holding valid travel documents shall be free to enter the territory of another Member State through an official entry point without the requirement of a visa for up to ninety days.
- Council may upon the recommendation of the Intergovernmental Committee, reduce the period of two years.
- The extension of the period of stay of ninety days shall be subject to the permission of the appropriate authorities in a Member State.
- Citizens of a Member State in the territory of another Member State shall comply with laws and regulations of such a Member State provided that no such laws and regulations shall discriminate citizens of a Member State on the grounds of nationality, gender or religion nor infringe the rights provided in the protocol.
- Each Member State shall ensure that all its citizens who travel to the territory of another Member State Have valid travel documents.
- In order to facilitate the movement of persons, private vehicles registered in the territory of a Member

State may enter the territory of another Member State and remain there for a period of ninety days upon presentation of valid driving licenses

Ownership cards or log books and appropriate insurance policies.

- Extension of the period of ninety days for private registered vehicles facilitating movement of persons shall be granted appropriate authorities of the Member State.

#### **Article 5- Elimination of Visa Requirements:**

Member States agreed that within a period of six years of entry into force of the protocol and on the basis of the experience gained and progress made in the implementation of articles 3 and 4 of the protocol, to remove all restrictions to the movement of persons and in particular remove the need for visa requirement for their citizens within the Common Market (council may reduce the period of six years).

#### **Article 6 - Refusal of Entry and Expulsion:**

- Each Member State reserves the right of refusal of permission to enter or remain in its territory to any citizen or citizens of another Member State where it considers the entry or presence of such citizen or citizens detrimental to its national security or public health.
- The entry or presence of a citizen or citizens is detrimental to public health if a person carries a disease that is categorized as contagious in the Member State concerned and for which the laws of such Member State require that such citizen be quarantined.
- A Member State expelling a citizen or citizens of another Member State under Article 6 of the protocol shall take measures to safeguard the property and interests of such a citizen or citizens.
- A citizen or citizens expelled from the territory of another Member State under Article 6 of the protocol shall be entitled to his or her or their property assets or interests and where such property assets or interests are confiscated by the appropriate authorities be entitled to prompt, effective and adequate compensation in accordance with international law.

## **SAFEGUARD MEASURES**

#### **Article 7- Temporary Suspension of the Implementation of Articles 3 and 4 of the Protocol**

- A Member State may on the grounds of public security or an influx of persons as refugees arising from disturbances in the territory of another Member State suspend temporarily the implementation of Articles 3 and 4 of the Protocol and such suspension shall be notified to the Secretary General of

COMESA who shall notify other Member States.

- Such temporary suspension shall remain in force for the temporary period considered necessary by the Member State but shall in the case of suspension on the grounds of national security does not exceed one year unless extended by the COMESA Council of Ministers and provided that the Member State concerned shall provide to Council proof that the grounds on which the suspension was made still exist.
- Member States undertake to cooperate among themselves and with relevant non-governmental and international organizations on assistance and management of refugees in their territories.

## **Stage 2: Part III - Article 9**

### ***Area of Focus: Enhancing movement of skilled labour***

- Member States agreed to remove progressively within six years of entry into force of the Protocol all restrictions to the movement of labour within the Common Market which shall entail the abolition of any discrimination based on the nationality of workers of the Member States as regards employment, remuneration and other conditions of work employment.
- The free movement of labour shall entail the right to , subject to limitations justified on the grounds of public policy, public security or public health :accept offers of employment made; move freely within the territories of Member States for the purpose of employment and stay in the territories of Member States for the purpose of such employment in accordance with the provisions governing the employment of nationals of such Member States laid down by laws, regulations or administrative action.
- The provisions of Article 9 of the Protocol do not apply to employment in the public service of a Member State.
- Council shall, a year after entry into force of the Protocol adopt such measures to be implemented progressively and in stages in the field of social security, labour laws including laws on collective bargaining and pension and other working conditions as are necessary to provide for the free movement of labour.

## **Stage 3: Part IV - Article 10**

### ***Area of Focus: Movement of Services***

- Member States agreed that in accordance with a programme to be adopted by Council to remove restrictions on the freedom to provide services within the Common Market by 2004.

- The programme was to set general conditions under which and the stages by which each type of service was to be liberalized. (**Note: Council has already taken action by adopting Regulations on Trade in Services and also agreed on priority service sectors to be liberalized**).
- The Persons to provide services may in order to do so, temporarily move into the territory of another Member State to provide the required services under the same conditions imposed by that Member State on its own citizens.
- After the entry into force of the Protocol, Member States shall not be allowed to impose any restrictions on the freedom to provide services.

#### **Stage 4: Part V – Article 11**

##### ***Area of Focus: Right of Establishment***

- Member States agreed to abolish, by progressive stages, within a period to be determined by Council and in accordance with a programme to be adopted by Council all restrictions on the freedom of establishment of citizens of a Member State in the territories of other Member States.
- Council was required to, within two years on the adoption of the protocol, draw up a programme for the abolition of restrictions to freedom of establishment within the Common Market within the programme setting out general conditions under which the right of establishment was to be attained in the case of each type of activity and, in particular, the stages by which it was to be attained.
- Council shall issue directives for the implementation of the general programme in relation to defining the extent of right of establishment, measures necessary to ensure the effective implementation of the right of establishment, activities to be exempted in the grant of right of establishment by Member State, mutual recognition of certain qualifications and coordination of provisions regulating certain specific establishments and the categorization of companies or firms and the treatment of companies or firms formed in accordance with laws of Member States.

#### **Stage 5. – Part VI – Article 12**

##### ***Area of Focus: Right of Residence***

- Member States shall, within a period to be determined by Council, grant to Common Market citizens the right of residence in their territories in accordance with conditions adopted by Council

## General

### Bilateral Agreements or Multilateral Agreements-

- Article 13 of the Protocol provides that nothing in the protocol shall prevent two or more Member States from entering into an arrangement by which implementation of the provisions of the protocol is accelerated. This is in line with the provisions of Article 164(1) of the Treaty.
- Member States agreed that Council shall adopt guidelines for the exchange of information on suspected criminals and for extradition arrangements among the Member States in line with international practice.

### Implementation of the COMESA Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements (COMESA Visa Protocol)

Article 164(3) of the COMESA Treaty provides that Member States agree that the Protocol on Gradual Relaxation and Eventual Elimination of Visas (Visa Protocol) shall remain in force until such a time that the COMESA Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence shall enter into force.

All implementation of COMESA Programmes, including the COMESA Protocol on Free Movement, by a COMESA Member State are based on reciprocity.

### *Cooperation in The Prevention and the Fight Against Crime*

Realizing that free movement of persons programmes come with threats of transnational crime, Member States agreed to co-operate among themselves in the prevention and fight against crime and to prevent criminals from abusing the freedom to move freely within the Common Market by taking refuge in any Member State.

### Status of Signature and Ratification of the Protocol

The Protocol is presently open for signature and ratification. So far, the Protocol has been signed by four COMESA Member States namely: Burundi, Kenya, Rwanda and Zimbabwe. Two Members States, namely Burundi and Rwanda have already deposited their instruments of ratification of the Protocol with the Secretary General of COMESA.



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