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COM(2023) 313 final

2023/0181 (NLE)

Proposal for a

COUNCIL DECISION

**on the conclusion of the Sustainable Investment Facilitation Agreement between the
European Union and the Republic of Angola**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

In 2020, a proposal to “*develop more ambitious arrangements to facilitate, attract and support investment in Africa*” was included in the comprehensive strategy of the European Union (EU) with Africa.¹

The Republic of Angola (hereinafter, “Angola”) is the 7th largest investment destination for investors from the EU on the African continent, covering 5.4% of the EU’s stock of foreign direct investment (EUR 9.9 billion of FDI in 2020). While Angola’s economy is currently based on its abundant raw materials and energy resources, the country is seeking to diversify its economic model, and made significant efforts in recent years to improve the investment climate for foreign and local investors. Angola is in the process of starting the negotiations to join the Economic Partnership Agreement (EPA) between the EU and the South African Development Community (“SADC”) EPA group. However, the EPA does not contain specific provisions on investment.

On 8 September 2020, Executive Vice-President of the European Commission, Mr. Valdis Dombrovskis and Minister of Trade and Industry of Angola, Mr. Victor Fernandes, issued a joint statement confirming “*their intention to start exploratory discussions on an EU-Angola investment agreement, on top of the EPA, focusing on investment facilitation.*”²

On 23 March 2021, the Commission adopted a recommendation for a Council Decision³ authorising the opening of negotiations with Angola on an agreement on investment facilitation. On 26 May 2021, the Council of the European Union authorised the opening of negotiations⁴ and adopted negotiating directives.

On 22 June 2021, the EU and Angola launched negotiations on a Sustainable Investment Facilitation Agreement (referred to as “the Agreement”). After four rounds of negotiations, the EU and Angola concluded the negotiations on 18 November 2022.

The overall objective of the Agreement is to improve the investment climate and facilitate the mobilisation and retention of investment between the EU and Angola on the basis of modern and simplified rules, measures and procedures relating to foreign direct investment. In doing so, the agreement promotes sustainable development, economic growth and job creation, and strengthens the bilateral investment relationship. It also provides a solid platform for contributing to the diversification of Angola’s economy and its integration into the global economy.

This Agreement is the first agreement on investment facilitation that the EU ever negotiated and the attached proposal for a Council Decision constitutes the legal instrument for the conclusion of the Sustainable Investment Facilitation Agreement between the European Union and Angola.

¹ 2020 Joint Communication Towards a comprehensive Strategy with Africa, JOIN(2020) 4 final
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020JC0004>

² https://eeas.europa.eu/headquarters/headquarters-homepage/84859/5th-angola-eu-ministerial-meeting-joint-way-forward_en

³ Recommendation for a Council Decision authorising the opening of negotiations with Angola for an agreement on investment facilitation, COM(2021) 138 final

⁴ Council Decision authorising the opening of negotiations with the Republic of Angola for an agreement on investment facilitation, 8441/21, 20 May 2021

- **Consistency with existing policy provisions in the policy area**

The above objectives are consistent with the Treaty on the European Union (TEU) that provides that the EU should “*encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade*”.⁵

The objectives are also fully in line with the objectives of the Cotonou Agreement⁶, and the general principles promoted therein.

This Agreement corresponds to Headline Action 12 (“pursuing sustainable investment agreements with Africa and the Southern Neighbourhood”) of the Commission’s Trade Policy Review⁷, whereby the Commission announced its intention to “*propose a new sustainable investment initiative to partners or regions in Africa and the Southern Neighbourhood interested in doing so [...] in the form of stand-alone investment agreements or as part of the modernisation of existing trade agreements.*”

This Agreement will also complement the future “Investment Facilitation for Development Agreement” currently being negotiated in the World Trade Organisation.

- **Consistency with other Union policies**

The objectives are consistent with other EU policies, notably the EU’s development policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

In accordance with Opinion 2/15 on the EU-Singapore FTA of the Court of Justice of 16 May 2017, all the areas covered by the Agreement would fall within the exclusive competence of the EU and, more particularly, within the scope of Article 207(1) TFEU (foreign direct investment).

As a result, this Agreement is to be signed by the Union pursuant to a decision of the Council based on Article 218(5) TFEU and concluded by the Union pursuant to a decision of the Council based on Article 218(6) TFEU, following the European Parliament’s consent.

- **Subsidiarity (for non-exclusive competence)**

This Agreement does not cover any matters that fall outside the EU’s exclusive competence.

- **Proportionality**

This Agreement is in line with the principle of proportionality, as the conclusion of an international agreement is the appropriate instrument for assuming reciprocal rights and obligations with a subject of international law such as a foreign country.

⁵ Article 21(2)(e) TEU

⁶ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part, signed in Cotonou on 23 June 2000

⁷ Communication from the Commission on a Trade Policy Review - An Open, Sustainable and Assertive Trade Policy, COM(2021) 66 final

This Agreement pursues directly the EU's objective in external action and contributes to the political priority of the 'EU as a stronger global actor'. It is in line with the EU Global Strategy's orientations to engage with other partners and revamp its external partnerships in a responsible way, in order to attain the EU's external priorities. It contributes to the EU's objective to create secure, diversified and resilient supply chains⁸, and to the EU's trade and development objectives.

- **Choice of the instrument**

This proposal is in accordance with Article 218(6) TFEU, which envisages the adoption by the Council of decisions on the conclusion of international agreements. No other legal instrument exists that could be used in order to achieve the objective expressed in this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

From June to November 2020, the Commission carried out a public consultation⁹ seeking input from the European Parliament, Member States, stakeholders and civil society on the review of the European Union's trade policy, including on ways to strengthen the EU's trade and investment relationships with the neighbouring countries and Africa.

The Commission regularly consults stakeholders *inter alia* in the Expert Group on Trade Agreements¹⁰ and the Civil Society Dialogue.¹¹ In particular, the negotiations of this Agreement were presented and discussed during Civil Society Dialogues on 24 November 2021 and 17 March 2023.

Prior to and during the negotiations, the EU Member States were regularly informed and consulted orally and in writing on the different aspects of the negotiation via the Council's African, Caribbean and Pacific (ACP) Working Party and the Trade Policy Committee on Services and Investment. The European Parliament was informed via its Committee on International Trade (INTA), notably in the context of a specific Workshop¹² on 26 October 2022. The texts progressively resulting from the negotiations were circulated to both institutions.

Furthermore, during the negotiations the Commission has published on its website¹³, and regularly updated, the reports of the negotiating rounds, the text proposals, press releases, factsheets and other background information materials.

⁸ Communication from the Commission on *A secure and sustainable supply of critical raw materials in support of the twin transition*, COM(2023) 165 final

⁹ https://policy.trade.ec.europa.eu/consultations/consultation-trade-policy-review_en

¹⁰ <http://ec.europa.eu/trade/trade-policy-and-you/expert-groups/>

¹¹ <http://trade.ec.europa.eu/civilsoc/meetdetails.cfm?meet=11531>

¹² Workshop "Ways forward for EU-Africa trade and investment relations", 26 October 2022

¹³ https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/southern-african-development-community-sadc/eu-angola-negotiations_en

- **Collection and use of expertise**

When initiating the negotiations, the Commission relied on external expertise gathered in the context the Investment Policy Review of Angola¹⁴, carried out by UNCTAD (United Nations Conference on Trade and Development) and a study¹⁵ carried out by the World Bank. Both reports were produced with the financial support of the EU. The report by UNCTAD provided information on Angola’s investment framework and the bottlenecks in the investment climate. They relate to the system for entry and establishment of investment, the operational regulations and the capacity and coordination in the administration. Those problems constrain Angola’s ability to fully tap its huge potential to attract investors in various sectors. The report by the World Bank identified that investors put forward, as critical factors affecting their investment decisions in developing countries, the lack of transparency and predictability in dealing with public agencies, the sudden changes in the laws and regulations, and the delays in obtaining government permits and approvals. Those are the areas covered by the Agreement.

- **Impact assessment**

In parallel to the negotiations, a Sustainability Impact Assessment (SIA)¹⁶ was conducted by an external contractor covering both Angola’s accession to the EU-SADC EPA and the Agreement. The objective of the study is to identify the potential economic, social, human rights and environmental impacts stemming from the provisions in the EPA and the Agreement. In the framework of the SIA, the contractor consulted internal and external experts and carried out consultations with stakeholders both in the EU and in Angola.

The SIA confirms the positive impact of the Agreement for Angola’s economy, also highlighting the complementarity between the Agreement, the accession to the EU-SADC EPA, and the technical assistance to support both processes. The SIA does not identify negative impacts of the Agreement on employment, labour rights, human rights or the environment.

The SIA covering both Angola’s accession to the EU-SADC EPA and the Agreement was carried out by the external contractor “BKP Economic Advisors”.

- **Regulatory fitness and simplification**

Not applicable.

¹⁴ See UNCTAD, *Investment Policy Review of Angola* https://unctad.org/system/files/official-document/diaepcb2019d4_en.pdf

¹⁵ See World Bank, *Retention and Expansion of Foreign Direct Investment, Political Risk and Policy Responses* <http://documents1.worldbank.org/curated/en/387801576142339003/pdf/Political-Risk-and-Policy-Responses.pdf>

¹⁶ See *Sustainability Impact assessment (SIA) in support of trade negotiations with Angola for EU-SADC EPA accession*, Final Report, December 2021, https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/f9babf9b-6d05-475f-a322-1bfc4e5c9982?p=1&n=10&sort=modified_DESC

- **Fundamental rights**

The proposal does not affect the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

This Agreement does not have budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Agreement includes institutional provisions that lay down the structure for the implementing bodies to continuously monitor its implementation, operation and impact.

The institutional chapter of the Agreement establishes a “Committee on Investment Facilitation” that has as its main task to ensure the Agreement operates properly and effectively. The Agreement also establishes a Dialogue with civil society, which shall take place on an annual basis in conjunction with the meeting of the Committee on Investment facilitation.

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

The overall objective of this Agreement is to facilitate the attraction and expansion of investment between the EU and Angola for the purpose of economic diversification and sustainable development.

The Agreement has four substantive chapters:

- Predictability and transparency of investment-related measures, for example by requiring the publication of all investment laws and conditions and promoting the use of single information portals for investors;
- Streamlining of authorisation procedures, through swift processing of applications and fostering e-government;
- Focal points and involvement of stakeholders, in order to facilitate interactions between investors and the administration;
- Investment and sustainable development, by incorporating the EU’s latest approach on “trade and sustainable development” commitments and responsible business conduct.

The chapter on “Dispute avoidance and settlement” is based on cooperation between the Parties and seeking a mutually-agreed solution, but also includes the possibility of State-to-State arbitration as a last resort, in addition to mediation rules.

Overall, it is expected that the Agreement will lead to improvements in the business climate in Angola, benefitting foreign and domestic firms alike. Consequently, foreign investors will be encouraged to stay longer, making a longer-term contribution to the local economy. Besides existing investors, the Agreement also aims at attracting new investors to Angola, notably

small and medium size enterprises, which have more difficulties in navigating through lengthy and complex procedures to invest abroad.

The fact that the Agreement improves legal certainty for investment in all sectors is expected to contribute to Angola's economic diversification to new sectors such as food exports, manufacturing, or services. The Agreement also includes provisions aimed at enhancing linkages between foreign investors and domestic suppliers.

Finally, the Agreement also integrates an important sustainable development dimension in the EU-Angola investment relationship, including commitments not to weaken environmental or labour laws and standards for the sake of attracting investment, and not to waive or derogate from those laws. The Agreement also includes commitments to effectively implement international labour and environmental agreements, including the Paris Agreement. The Agreement requires the Parties to promote responsible business practices by investors and strengthens bilateral cooperation on investment-related aspects of climate change policies and gender equality policies.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(6), point (a)(v),

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

- (1) In accordance with Council Decision No [XX]², the Sustainable Investment Facilitation Agreement between the European Union and the Republic of Angola ('the Agreement') was signed on [XX XXX 2023], subject to its conclusion at a later date.
- (2) The Agreement should be approved on behalf of the Union.
- (3) The Agreement, in accordance with its Article 55, does not, within the Union, confer rights or impose obligations on persons, other than those created between the Parties under public international law,

HAS ADOPTED THIS DECISION:

Article 1

The Sustainable Investment Facilitation Agreement between the European Union and the Republic of Angola ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to the notification provided for in Article 57.2 of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

¹ OJ C , , p. .

² [Reference to be inserted]

Article 3

This Decision shall enter into force on the day of its adoption³.

Done at Brussels,

*For the Council
The President*

³ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.