



**PROTOCOL ON THE FREE MOVEMENT OF PERSONS,
LABOUR, SERVICES, RIGHT OF ESTABLISHMENT
AND RESIDENCE**

**Adopted at Kinshasa, the Democratic Republic of the Congo
on 29th June 1998**

THE HIGH CONTRACTING PARTIES:

HAVING REGARD to the provisions of paragraph 1 and 2 of Article 164 of the Treaty;

CONVINCED that a genuine Common Market shall be achieved only when the citizens of the member States can move freely within the Common Market; are free to take up offers of employment in any of the member States; are free to render services in any of the 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;

DETERMINED to 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 residence;

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

PREAMBLE

PART I

GENERAL

Article 1

Interpretation

In this Protocol:

“Authority” means the Authority of the Common Market established by Article 7 of the Treaty;

“citizen” means a citizen of a member State;

“Common Market” means the Common Market for Eastern and Southern Africa;

“Companies” or “firms” means companies or firms constituted or registered under the laws of member States regulating such companies or firms;

“Council” means the Council of the Common Market established by Article 7 of the Treaty;

“employment” means business, calling, craft, art, employ, job, line, occupation, profession, pursuit, services, trade, vocation or work;

“IC” means the Intergovernmental Committee of the Common Market established by Article 7 of the treaty;

“labour” until otherwise as amended by the Council of Ministers, labour shall mean and include only skilled labour of persons with specialised skills that are not available in a member State;

“Member State” means a Member State of the Common Market;

“Protocol” means the Protocol on the Free Movement of People, Labour, Services, Right of Establishment and Residence;

“right of establishment” means the right of establishment for citizens of member States as shall be provided for in accordance with Article 11 of this Protocol;

“right of residence” means the right of residence for citizens of Member States provided for in Article 15 of this Protocol;

“services” includes any services provided for remuneration, in so far as they are governed by the provisions relating to freedom of movement of goods, capital and persons;

“staff member” means a person employed by the Common Market including a person employed under a project under the Common Market Staff Rules and Regulations;

“Treaty” means the Treaty Establishing the Common Market for Eastern and Southern Africa;

“valid travel document” means a passport or any other valid travel document establishing the identity of the holder issued by or on behalf of the Member State of which a person is a citizen and shall include a Laissez Passer issued by the Common Market for a staff member including a certificate issued to a Common Market expert on mission establishing the identity of the holder.

Article 2

Scope of Co-operation

1. Member States agree that the Common Market shall establish mechanisms within which their citizens can move freely, are free to take up offer of employment in any member State under similar conditions as national workers, pursue activities as self-employed persons in any member State, manage undertakings, in particular, companies and firms on similar conditions as nationals or provide services encompassing the self-employed activities for which only a temporary stay in another member State is necessary, or free to reside in any member State.
2. In this regard, member States agree to gradually and, in accordance with the provisions of this Protocol, remove all restrictions to the free movement of person's, labour, and services and right of establishment and residence.

PART II

FREE MOVEMENT OF PERSONS

Article 3

Relaxation of Visa Requirement

1. Member States agree that, as a first step towards the gradual relaxation and eventual elimination of visa requirements within the Common Market, citizens of the member States holding valid travel documents shall, upon entry into force of this Protocol, not be required to obtain visas before travelling to the territory of other member States and may be granted visas to enter such territory upon the presentation of valid travel documents at official entry points of such member States.
2. 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

1. Member States agree that, within two years from the entry into force of this Protocol, citizens of a member State holding valid travel documents shall be free to enter into the territory of another Member state through an official entry point without the requirement of a visa for up to ninety days at a time:

provided that the Council may upon recommendation from the IC, reduce the period of two years.
2. The extension of the period of stay provided for in paragraph 1 of this Article shall be subject to permission obtained from the appropriate authorities.
3. Citizens of a member State in the territory of another member State shall comply with the laws and regulations of such a member State provided that no such laws and regulations shall discriminate against citizens of a member State in the territory of another Member State on the grounds of nationality, gender or religion nor infringe the rights provided for in this Protocol.
4. Each member State shall ensure that its citizens who travel to the territory of another member State possess valid travel documents.

5. 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 up to ninety days upon presentation of valid driving licenses, ownership cards or log books and insurance policies.

6. Extension of the period prescribed in paragraph 5 of this Article shall be subject to permission granted by the appropriate authorities.

Article 5

Elimination of Visa Requirement

Member States agree, within six years from the entry into force of this Protocol and on the basis of experience gained and progress made in the implementation of Articles 3 and 4 of this 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:

Provided that the Council may reduce the period of six years.

Article 6

Refusal of Entry and Expulsion

1. 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 to be detrimental to its national security or public health. For the purposes of this paragraph the entry of a person is detrimental to public health if the person carried a disease that is categorised as contagious in the State concerned and for which the laws of that State require that such person to be quarantined.

2. A member State expelling a citizen or citizens of another member State in pursuance of the provisions of paragraph 1 of this Article shall take measures to safeguard the property and interests of such citizen or citizens.

3. A citizen or citizens of a member State expelled from the territory of another member State under the provisions of this Article shall be entitled to his/her or their property assets and other interests and shall, where such property assets and other interests are confiscated by the appropriate authorities, be entitled to prompt, effective and adequate compensation in accordance with international law.

Article 7

Temporary Suspension

1. A member State may, on the grounds of public security or influx of persons as refugees arising from disturbances in the territory of another member State suspend, temporarily, the provisions of Articles 3 and 4 of this Protocol and such suspension shall be immediately notified to the Secretary-General who shall forthwith inform the other member States.
2. Temporary suspension under the provisions of paragraph 1 of this Article shall remain in force for the temporary period considered necessary by the member State but shall, in the case of suspension on grounds of public security, not exceed one year unless extended by Council provided that the member State concerned shall furnish to Council proof that the grounds on which the temporary suspension was made still exist.
3. Member States undertake to co-operate among themselves and with relevant non-governmental and intergovernmental organisations on assistance and management of refugees in their territories.

Article 8

Co-operation in the Prevention and the Fight against Crime

1. Member States agree 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.
2. The 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.

PART III

FREE MOVEMENT OF LABOUR

Article 9

Free movement of Labour

1. The member States agree to progressively remove, within six years, all restrictions to the movement of labour within the Common Market which shall entail the abolition of any discrimination based on the nationality between workers of the member States as regards employment, remuneration and other conditions of work employment.
2. The freedom of movement of labour shall entail the right to, subject to limitations justified on grounds of public policy, public security or public health:

- (a) accept offers of employment actually made;
 - (b) move freely within the territories of member States for this purpose; and
 - (c) stay in the territories of member State for the purpose of such employment in accordance with the provisions governing the employment of nationals of such member States laid down by law, regulations or administrative action.
3. The provisions of this Article shall not apply to employment in the public service.
4. The Council shall, one year after the entry into force of this 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 freedom of movement of labour.

PART IV

FREE MOVEMENT OF SERVICES

Article 10

Free Movement of Services

1. Member States agree, in accordance with a programme to be adopted by the Council, to remove restrictions on the freedom to provide services within the Common Market by the year 2004.
2. The programme shall set out the general conditions under which and the stages by which each type of service is to be liberalised. As regards the programme, the conditions and stages referred to in this paragraph, priority shall be given to those services which directly affect production costs or the liberalisation of which promotes trade in goods.
3. Without prejudice to the provisions of this Protocol, the person providing services may, in order to do so, temporarily pursue his/her activity in the member State where the service is provided under the same conditions as are imposed by that member States on its own citizens.
4. Save as otherwise provided in the Treaty, member States shall not, from the date of the entry into force of this Protocol, introduce any new restrictions on the freedom to provide services.

PART V

RIGHT OF ESTABLISHMENT

Article 11

Gradual Removal of Restrictions

1. Member States agree 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.
2. The Council shall, within two years after the adoption of this Protocol, draw up a general programme for the abolition of existing restrictions on freedom of establishment within the Common Market. The programme shall set out the general conditions under which the right of establishment is to be attained in the case of each type of activity and, in particular, the stages by which it is to be attained.
3. The Council shall issue directives for the implementation of the general programme referred to in paragraph 5 of this Article and, in particular:
 - (a) by defining the extent of the right of establishment;
 - (b) by defining the measures necessary to ensure the effective implementation of the right of establishment;
 - (c) by defining the activities to be exempted in the grant of the right of the establishment by a member State;
 - (d) by providing for the mutual recognition of certain qualifications and co-ordination of provisions regulating certain specific establishments and the categorisation of companies or firms; and
 - (e) by providing for the treatment of companies or firms formed in accordance with the laws of member States.

PART VI

RIGHT OF RESIDENCE

Article 12

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 to be adopted by Council.

PART VII

FINAL PROVISIONS

Article 13

Accelerated Implementation

Nothing in this Protocol shall prevent two or more Member States from entering into an arrangement by which the implementation of the provisions of this Protocol are accelerated.

Article 14

Status of Protocol and its Entry into Force

1. In terms of the provisions of Article 193 of the Treaty, this Protocol shall be an integral part of the Treaty.
2. This Protocol shall enter into force on the date it shall be adopted by the Authority and signed by the Chairman of the Authority.

Adopted by the Authority of Heads of State and Government at Kinshasa in the Democratic Republic of Congo on the twenty-ninth day of June in the year one thousand nine hundred and ninety-eight in the English, French and Portuguese languages, the three texts being equally authentic.