

IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction

CCJ Advisory Opinion No AOOJ2019/001

In the matter of a request for an Advisory Opinion by the Caribbean Community pursuant to Article 212 of the Revised Treaty of Chaguaramas and Rule 11.3(1) of the Caribbean Court of Justice (Original Jurisdiction) Rules 2019

SUMMARY OF ADVISORY OPINION

This summary is not intended to be a substitute for the advice of the Caribbean Court of Justice as set out in the corresponding Advisory Opinion or to be used in any later consideration of the Court’s reasoning in delivering that advice.

RTC Articles 46 and 27 - Agricultural Workers – Derogation – Enlargement Decision – Freedom of Movement – Fundamental Objective – Fundamental Principle – Interpretation – Less Developed Countries – Movement of Community Nationals – Movement of Skilled Community Nationals – Opt out – Organ – Principle of Reciprocity – Principle of Non-Reciprocity – Reservation – Security Guards – Waiver

[1] Article 212 of the Revised Treaty of Chaguaramas¹ (“the RTC” or “the treaty”) grants ‘exclusive jurisdiction’ to the Court ‘to deliver Advisory Opinions concerning the interpretation and application of the Treaty.’ On 6 March 2019, the Caribbean Community (“the Community” or “CARICOM”) requested the Court’s advice on two specific questions relating to Article 46 of the RTC. Under that Article, Member States may agree a list of categories of Community nationals who enjoy the right to move freely and seek employment throughout the Community

¹ Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (adopted 5 July 2001, entered into force 4 February 2002) 2259 UNTS 293 (RTC).

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(“the list”). At the time of the signing of the treaty, the list included university graduates, media workers, sportspersons, artistes and musicians. Since then, the Conference of Heads of Government of the Community (“the Conference”) has from time to time expanded the list in accordance with Article 46(4)(a) of the RTC.

- [2] At its 18th Special Meeting on the CARICOM Single Market and Economy (“the CSME”), held in Port of Spain from the 3rd to 4th December 2018 (“the 18th Special Meeting”), the Conference decided to enlarge the list to include Agricultural Workers and Security Guards (“the enlargement decision”). It was further agreed by the Conference that the administrative modalities to facilitate the enlargement decision were to be achieved by 28 February 2019 and that legislative implementation should be completed by 31 July 2019.
- [3] The Conference held its 30th Inter-Sessional Meeting (the “30th Inter-Sessional Meeting”) from 26th to 27th February 2019 in Basseterre, St Kitts and Nevis. In acknowledgment of the socio-economic concerns of Antigua and Barbuda and St Kitts and Nevis as well as the possible impact on those States of the enlargement decision, the Conference agreed that –
- (i) for a period of five years, a special dispensation would be given to Antigua & Barbuda and St Kitts & Nevis, pursuant to Article 27(4) of the RTC, to opt out of the implementation of the decision of the Conference taken at its 18th Special Meeting; and
 - (ii) the Community would request an Advisory Opinion from the Court on two legal questions, namely –
 - a. whether a Member State can, pursuant to Article 27(4) of the Revised Treaty, lawfully opt out of a decision of the Conference taken under Article 46 concerning the enlargement of the classes of persons entitled to move and work freely in the Community (“the first question”); and

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- b. whether the principle of non-reciprocity would enable nationals of those Member States which opt out of a decision under Article 27(4) of the Treaty to nevertheless derive the benefits of the decision (“the second question”).

[4] The Court duly convened a hearing on 22 October 2019 and 23 October 2019 to receive submissions on the two questions. Four Member States, and two friends of the Court (or *amicus curiae*) made written submissions. The Community’s oral submissions were received from its General Counsel, Dr Corlita Babb-Schaefer. The four Member States making submissions were: the State of Grenada; the State of Antigua and Barbuda; the State of Barbados and the Federation of St. Kitts and Nevis. The *amici curiae* were The University of the West Indies, Mona Campus (“UWI Mona Campus and The University of the West Indies, Cave Hill Campus (“UWI Cave Hill Campus”).

The first question

Whether a Member State could, in keeping with Article 27(4) of the RTC, lawfully opt out of the decision of the Conference taken under Article 46 concerning the particular enlargement of the classes of persons entitled to move and work freely in the Community.

[5] The Court noted that opt outs are not restricted to decisions on enlargement decisions. Opt outs, as envisaged by Article 27(4), are in principle permissible in relation to *any* decision of any competent Organ of the Community. Five conditions are prescribed for the effective implementation of an opt out as contemplated by Article 27(4).

[6] Firstly, one or more of the Member States must make a request to opt out of a decision. In this particular case, opt out requests were made by the States of St Kitts and Nevis and Antigua and Barbuda, respectively.

[7] Secondly, the decision maker must be a competent Organ of the Community and here, there can be no dispute that the Conference was a competent Organ.

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- [8] Thirdly, the Conference must agree to the request of the Member State(s) to opt out of the relevant decision, even if that decision was taken by another Community Organ. It is also clear here that such an agreement was made and that the two Member States were permitted to opt out of the enlargement decision. The Court observed that, in agreeing to grant an opt out, the Conference must act in a manner that is reasonable in the circumstances.
- [9] Fourthly, the opting out Member State is entitled only to opt out of *the obligations* arising from the decision. This is specifically stated in Article 27(4).
- [10] Fifthly, an opt out is permissible only if the fundamental objectives of the Community, as laid down in the treaty, are not prejudiced by the opt out. The Court considered that the question whether this last condition was fulfilled in relation to the enlargement decision was pivotal to its Opinion. A determination of this question required the Court first to assess whether freedom of movement of Community nationals is a *fundamental objective* of the Community.
- [11] The Court noted that the RTC does not explicitly lay down any fundamental objectives of the Community. What is properly to be regarded as “a fundamental objective of the Community” that is “laid down in the treaty” must ultimately be culled from the treaty by the Court.
- [12] The adjective “fundamental” placed before “objective” conveys the sense that the objective in issue is of central importance; that it lies at the core of the spirit, nature and aspirations of the Community. The nine objectives included in Article 6 indicate what the establishment of CARICOM aims to achieve in general terms. It would be a mistake automatically to assume, however, that each of these nine objectives is “fundamental”, or that a “fundamental objective” of the Community is necessarily to be extracted only from among them. The treaty also specifically references a variety of “goals” that should also be considered when interpreting the meaning of Article 27(4). The Court considered that there may also be an unstated

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objective or goal that is so inextricably central to and indispensable for the full attainment of one or more of the objectives or goals specified in the treaty that it can itself properly be described as being both fundamental and an objective in its own right.

[13] The Court's view was that to determine whether the movement of Community nationals, and in particular skilled Community nationals, is a fundamental objective of the Community, one may have regard to its role in the experience of other communities. In this regard, the Court made reference to the role of freedom of movement of workers in the European Community. The free movement of people - alongside free movement of goods, services and capital - was one of the four founding principles of the European Union. The Court also referenced the Revised Treaty of Basseterre² ("RTB") which secures freedom of movement of nationals of Member States within the relevant Economic Union Area comprising the States of Antigua and Barbuda; Grenada; Montserrat; Saint Lucia; and Saint Vincent and the Grenadines; The Commonwealth of Dominica and The Federation of St Kitts and Nevis.

[14] The Court concluded that freedom of movement of skilled nationals is properly categorised as a fundamental objective of the Community. The more important issue to be considered was whether the decision to grant the two opt outs of the enlargement decision prejudiced this fundamental objective. The Court took the view that when the Conference considers whether an application for an opt will prejudice one or more of the fundamental objectives of the Community, as laid down in the treaty, the Conference must weigh all the surrounding circumstances. While finding that minimal prejudice will not suffice, the Court considered it unwise, in the abstract, to lay down a precise marker to denote the extent of the detriment that is sufficient. It will be for the Conference, and if necessary the Court, on a case by case basis, ultimately to determine whether the proper balance has been struck. It may, however, be said that, for a proposed opt out to be denied on

² Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union (adopted 18 June 2010, entered into force 20 January 2011).

this basis, the prejudice to the fundamental objectives of the Community should be grave and irremediable.

[15] The Court took into account the following circumstances:

- (i) the opt out was made available to two Member States each of which is categorised under Article 4 of the RTC as a less developed country;
- (ii) the duration of the opt out was temporary, lasting for a five-year period; and
- (iii) the opt out related only to two categories of skilled nationals.

[16] Having regard to these factors the Court considered that the requisite threshold of detriment to the Community was not met here and that the fundamental objectives of the Community were not prejudiced by the decision of the Conference to grant the two Member States an opt out of the obligations arising from the enlargement decision.

The second question

Whether the principle of non-reciprocity would enable nationals of the opting out Member States nevertheless to derive the benefits of the enlargement decision.

[17] In answering this question, the Court began with an explanation of the principle of reciprocity. The principle means simply that privileges, favours, or benefits that are granted by one State to the citizens or legal entities of another, should be returned in kind. It also means that behaviour of one State to the detriment of another may in principle and without more be reciprocated or counter-balanced by measures adopted by the latter State. To allude to a principle of non-reciprocity is therefore to suggest a departure from these norms.

[18] The Court again alluded to the uniqueness of the Caribbean Community. Although parallels may be drawn with the European Union, the differences between the two organisations are stark. The text of Article 27(4) reflects some of the difference. Opt outs under Article 27(4) are largely governed by a process that is consensual

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and political, constrained only by adherence to the fundamental objectives of the Community and the rule of law. Instead of voting against a decision, a Member State may decide to vote in favour of it with the assurance that it may obtain an opt out.

[19] Significantly, under Article 28 of the RTC, the Conference may take decisions only by an affirmative vote of all its Members although an abstention will not impair the validity of decisions if three-quarters of the membership of the Community vote in favour of such decisions. This formula for voting in the Conference effectively accords to each Member State the power to veto a proposal that might otherwise have become a decision of the Conference. The principled request for and grant of an opt out further the interests of the Community because they allow decisions of the Conference to be taken and implemented in circumstances where those decisions might otherwise have been vetoed by a Member State that was not, at the time, in a position to bear the obligations inherent in the proposal for the decision.

[20] Treaties generally embrace the principle of reciprocity. Indeed, two examples of RTC provisions, in a very limited context, specifically mention the principle: Articles 14(2)(d) and 75(2)(b). There is also a small number of RTC provisions that expressly allow Member States to react reciprocally to the acts of other Member States that are detrimental to them, although almost always after approval or authorisation by a Community Organ (usually the Council for Trade and Economic Development (“COTED”)). The text of the RTC, however, is replete with specific derogations from the principle of reciprocity. The derogations emphasise the integrity of the Community’s legal order through solidarity, consent-oriented consultation and Community-driven processes in lieu of allowing a mosaic and looser legal playing field characterised by automatic and unrestrained reciprocal interaction between the States. The RTC requires as a starting point, therefore, the universal application of the rights and obligations arising out of it.

[21] The treaty also openly acknowledges that some Member States were entering the CSME at a disadvantage by reason of the size, structure and vulnerability of their

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economies. To this end, the Member States considered it necessary to establish ‘a special regime for the Less Developed Countries in order to enhance their prospects for successful competition within the Community, and redress, to the extent possible, any negative impact of the establishment of the CSME.’³

- [22] Article 27(4) contains a further example of a derogation from the principle of reciprocity. It specifies that a Member State may opt out of *the obligations* arising from a decision made by a competent Organ. The Article could easily have mandated the principle of reciprocity by providing that the opt out extended to foregoing the rights to be enjoyed from the decision and not alluding merely to the obligations that must be borne by the opting out State.
- [23] The Court also noted that Article 8 requires each CARICOM Member State to accord to another CARICOM Member State treatment no less favourable than that accorded to, *inter alia*, a third CARICOM Member State. Subject to the provisions of the RTC, there is therefore an onus on the Member States to extend to the agricultural workers and security guards of Antigua and Barbuda and St Kitts and Nevis the right to seek employment in their respective States.
- [24] These observations led the Court to the conclusion that an opt out is to be treated as being non-reciprocal in character and that there is nothing to prevent nationals of a State that opts out of a decision from enjoying the benefit of that decision even as their own State, for a period of time, is permitted not to be bound by the obligations of the decision.

The Court’s answers to the questions posed

- [25] *In response to the first question*, the Court advises that it was lawful for the Member States of Antigua and Barbuda and St Kitts and Nevis to request an opt out of the obligations arising from the enlargement decision of the Conference. It was also

³ See: RTC (n 1), art 142(1).

lawful for the Conference to grant the opt outs in all the circumstances. The said opt outs did not prejudice the fundamental objective of freedom of movement of skilled nationals.

[26] *In response to the second question*, the Court advises that the principle of non-reciprocity applies to enlargement decisions so that nationals of the States of Antigua and Barbuda and St Kitts and Nevis who are Security Guards and Agricultural Workers are entitled to enjoy the benefits of the enlargement decision.

The Hon Mr Justice A Saunders (President)

The Hon Mr Justice J Wit

The Hon Mr Justice W Anderson

The Hon Mme Justice M Rajnauth-Lee

The Hon Mr Justice D Barrow

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ANNEX

Provisions of the RTC referred to in the Advisory Opinion

PREAMBLE

The States Parties to the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas on 4 July 1973,

Recalling *the Declaration of Grand Anse and other decisions of the Conference of Heads of Government, in particular the commitment to deepening regional economic integration through the establishment of the CARICOM Single Market and Economy (CSME) in order to achieve sustained economic development based on international competitiveness, co-ordinated economic and foreign policies, functional co-operation and enhanced trade and economic relations with third States;*

Recognising *that globalisation and liberalisation have important implications for international competitiveness;*

Determined *to enhance the effectiveness of the decision-making and implementation processes of the Community;*

Desirous *of restructuring the Organs and Institutions of the Caribbean Community and Common Market and redefining their functional relationships so as to enhance the participation of their peoples, and in particular the social partners, in the integration movement;*

Conscious *of the need to promote in the Community the highest level of efficiency in the production of goods and services especially with a view to maximising foreign exchange earnings on the basis of international competitiveness, attaining food security, achieving structural diversification and improving the standard of living of their peoples;*

Aware *that optimal production by economic enterprises in the Community requires the structured integration of production in the Region, and particularly, the unrestricted movement of capital, labour and technology;*

Resolved *to establish conditions which would facilitate access by their nationals to the collective resources of the Region on a non-discriminatory basis;*

Convinced *that market-driven industrial development in the production of goods and services is essential for the economic and social development of the peoples of the Community;*

Cognisant *that a fully integrated and liberalised internal market will create favourable conditions for sustained, market-led production of goods and services on an internationally competitive basis;*

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Desirous further of establishing and maintaining a sound and stable macro-economic environment that is conducive to investment, including cross-border investments, and the competitive production of goods and services in the Community;

Believing that differences in resource endowment and in the levels of economic development of Member States, may affect the implementation of the Community Industrial Policy;

Recognising also the potential of micro, small, and medium enterprise development to contribute to the expansion and viability of national economies of the Community and the importance of large enterprises for achieving economies of scale in the production process;

Mindful that co-operation and joint action in developing trade relations with third States and in establishing appropriate regulatory and administrative procedures and services are essential for the development of the international and intraregional trade of Member States;

Determined further to effect a fundamental transformation of the agricultural sector of the Community by diversifying agricultural production, intensifying agro-industrial development, expanding agri-business, strengthening the linkages between the agricultural sector and other sectors of the CSME and generally conducting agricultural production on a market-oriented, internationally competitive and environmentally sound basis;

Acknowledging the vital importance of land, air and maritime transportation for maintaining economic, social and cultural linkages as well as facilitating emergency assistance among the Member States of the Community;

Recognising further the importance of the establishment and structured development of transport links with third States for the accelerated and sustained development of the CSME;

Conscious also of the importance of promoting adequate air and maritime transport services for the continued viability of the tourism industry and of reducing the vulnerability of the CARICOM Region resulting from its reliance on extra-regional carriers;

Convinced also that a viable transport policy for the Community will make a significant contribution in satisfying the demands for the intra-regional movement of people and products in the CSME;

Acknowledging further that some Member States, particularly the Less Developed Countries, are entering the CSME at a disadvantage by reason of the size, structure and vulnerability of their economies; and

Believing further that the persistence of disadvantage, however arising, may impact adversely on the economic and social cohesion in the Community;

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Conscious further that disadvantaged countries, regions and sectors will require a transitional period to facilitate adjustment to competition in the CSME;

Committed to establish effective measures, programmes and mechanisms to assist disadvantaged countries, regions and sectors of the Community;

Mindful further that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct whose object or effect is to prevent, restrict, or distort competition;

Convinced further that the application and convergence of national competition policies and the cooperation of competition authorities in the Community will promote the objectives of the CSME;

Affirming that the employment of internationally accepted modes of disputes settlement in the Community will facilitate achievement of the objectives of the Treaty;

Considering that an efficient, transparent, and authoritative system of disputes settlement in the Community will enhance the economic, social and other forms of activity in the CSME leading to confidence in the investment climate and further economic growth and development in the CSME;

Affirming also that the original jurisdiction of the Caribbean Court of Justice is essential for the successful operation of the CSME;

Recalling further the Charter of Civil Society adopted by the Conference of Heads of Government on 19 February 1997 reaffirming the human rights of their peoples,

ARTICLE 4

Less Developed Countries and More Developed Countries

For the purpose of this Treaty the States specified in sub-paragraphs 1(b), (c), (g), (h), (m) and (n) of Article 3 shall be more developed countries and the remainder listed in the said paragraph shall be less developed countries.

ARTICLE 6

Objectives of the Community

The Community shall have the following objectives:

- (a) improved standards of living and work;
- (b) full employment of labour and other factors of production;
- (c) accelerated, co-ordinated and sustained economic development and convergence;

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- (d) *expansion of trade and economic relations with third States;*
- (e) *enhanced levels of international competitiveness;*
- (f) *organisation for increased production and productivity;*
- (g) *the achievement of a greater measure of economic leverage and effectiveness of Member States in dealing with third States, groups of States and entities of any description;*
- (h) *enhanced co-ordination of Member States' foreign and [foreign] economic policies; and*
- (i) *enhanced functional co-operation, including –*
 - (i) *more efficient operation of common services and activities for the benefit of its peoples;*
 - (ii) *accelerated promotion of greater understanding among its peoples and the advancement of their social, cultural and technological development;*
 - (iii) *intensified activities in areas such as health, education, transportation, telecommunications.*

ARTICLE 7
Non-Discrimination

1. *Within the scope of application of this Treaty and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality only shall be prohibited.*
2. *The Community Council shall, after consultation with the competent Organs, establish rules to prohibit any such discrimination.*

ARTICLE 8
Most Favoured Nation Treatment

Subject to the provisions of this Treaty, each Member State shall, with respect to any rights covered by this Treaty, accord to another Member State treatment no less favourable than that accorded to:

- (a) *a third Member State; or*
- (b) *third States.*

ARTICLE 9
General Undertaking on Implementation

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Member States shall take all appropriate measures, whether general or particular, to ensure the carrying out of obligations arising out of this Treaty or resulting from decisions taken by the Organs and Bodies of the Community. They shall facilitate the achievement of the objectives of the Community. They shall abstain from any measures which could jeopardise the attainment of the objectives of this Treaty.

ARTICLE 14

The Council for Finance and Planning

1. *The Council for Finance and Planning shall consist of Ministers designated by the Member States. Each Member State shall be entitled to designate alternates to represent it on COFAP.*
2. *Subject to the relevant provisions of Article 12, COFAP shall have primary responsibility for economic policy co-ordination and financial and monetary integration of Member States and, without prejudice to the generality of the foregoing, shall:*
 - (a) establish and promote measures for the co-ordination and convergence of national macro-economic policies of the Member States and for the execution of a harmonised policy on foreign investment;*
 - (b) promote and facilitate the adoption of measures for fiscal and monetary cooperation among the Member States, including the establishment of mechanisms for payment arrangements;*
 - (c) recommend measures to achieve and maintain fiscal discipline by the Governments of the Member States;*
 - (d) pending the establishment of a monetary union in the Community, recommend arrangements for the free convertibility of the currencies of the Member States on a reciprocal basis;*
 - (e) promote the establishment and integration of capital markets in the Community, and*
 - (f) undertake any additional functions remitted to it by the Conference arising under this Treaty.*
3. *Under the direction of COFAP, the Committee of Central Bank Governors shall assist in the performance of the functions mentioned in paragraph 2 of this Article.*

ARTICLE 27

Common Voting Procedures in Community Organs and Bodies

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1. *Subject to paragraph 2 of this Article, each Member State represented on Community Organs and Bodies shall have one vote. A simple majority of Member States shall constitute a quorum.*

2. *Member States, whose contributions to the regular budget of the Community are in arrears for more than two years, shall not have the right to vote except on matters relating to the CSME, but may otherwise participate in the deliberations of Community Organs and Bodies. The Conference may, nevertheless, permit such Member States to vote if it is satisfied that the failure to contribute is due to conditions beyond their control.*

3. *Decisions on procedural issues in Community Organs shall be reached by a simple majority of Member States.*

4. *Subject to the agreement of the Conference, a Member State may opt out of obligations arising from the decisions of competent Organs provided that the fundamental objectives of the Community, as laid down in the Treaty, are not prejudiced thereby.*

5. *Prior to taking decisions on any issue falling to be determined by Community Organs, the Secretariat shall bring to the attention of the meeting the financial implications of such decisions and any other matters which may be relevant.*

6. *Recommendations of Community Organs shall be made by a two-thirds majority of Member States and shall not be legally binding. Member States omitting to comply with recommendations shall inform the Secretariat in writing within six months stating the reasons for their non-compliance.*

7. *Subject to the relevant provisions of this Treaty, Community Organs and Bodies shall establish their rules of procedure.*

ARTICLE 30

Scope of Application

1. *Save as otherwise provided in this Article and Article 31, the provisions of this Chapter shall apply to the right of establishment, the right to provide services and the right to move capital in the Community.*

2. *Activities in a Member State involving the exercise of governmental authority shall, in so far as that Member State is concerned, be excluded from the operation of this Chapter.*

3. *For the purposes of this Chapter, “activities involving the exercise of governmental authority” means activities conducted neither on a commercial basis nor in competition with one or more economic enterprises, and includes:*

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- (a) activities conducted by a central bank or monetary authority or any other public entity, in pursuit of monetary or exchange rate policies;
- (b) activities forming part of a statutory system of social security or public retirement plans;
- (c) activities forming part of a system of national security or for the establishment or maintenance of public order; and
- (d) other activities conducted by a public entity for the account of or with the guarantee or using financial resources of the government.

ARTICLE 45
Movement of Community Nationals

Member States commit themselves to the goal of free movement of their nationals within the Community.

ARTICLE 46
Movement of Skilled Community Nationals

1. *Without prejudice to the rights recognised and agreed to be accorded by Member States in Articles 32, 33, 37, 38 and 40 among themselves and to Community nationals, Member States have agreed, and undertake as a first step towards achieving the goal set out in Article 45, to accord to the following categories of Community nationals the right to seek employment in their jurisdictions:*

- (a) *University graduates;*
- (b) *media workers;*
- (c) *sportspersons;*
- (d) *artistes; and*
- (e) *musicians,*

recognised as such by the competent authorities of the receiving Member States.

2. *Member States shall establish appropriate legislative, administrative and procedural arrangements to:*

- (a) *facilitate the movement of skills within the contemplation of this Article;*
- (b) *provide for movement of Community nationals into and within their jurisdictions without harassment or the imposition of impediments,*

including:

- (i) *the elimination of the requirement for passports for Community nationals travelling to their jurisdictions;*

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- (ii) *the elimination of the requirement for work permits for Community nationals seeking approved employment in their jurisdictions;*
- (iii) *establishment of mechanisms for certifying and establishing equivalency of degrees and for accrediting institutions;*
- (iv) *harmonisation and transferability of social security benefits.*

3. *Nothing in this Treaty shall be construed as inhibiting Member States from according Community nationals unrestricted access to, and movement within, their jurisdictions subject to such conditions as the public interest may require.*

4. *The Conference shall keep the provisions of this Article under review in order to:*

- (a) *enlarge, as appropriate, the classes of persons entitled to move and work freely in the Community; and*
- (b) *monitor and secure compliance therewith.*

ARTICLE 47

Restrictions to Resolve Difficulties or Hardships Arising from the Exercise of Rights

1. *Where the exercise of rights granted under this Chapter creates serious difficulties in any sector of the economy of a Member State or occasions economic hardships in a region of the Community, a Member State adversely affected thereby may, subject to the provisions of this Article, apply such restrictions on the exercise of the rights as it considers appropriate in order to resolve the difficulties or alleviate the hardships.*

2. *Where a Member State:*

- (a) *intends to apply restrictions in accordance with paragraph 1 of this Article, it shall, prior to applying those restrictions, notify the competent Organ of that intention and the nature of the restrictions;*
- (b) *is unable to comply with sub-paragraph (a) of this paragraph, it shall, upon applying the restrictions in accordance with paragraph 1, immediately notify the competent Organ of the application and nature of the restrictions.*

3. *The Member State shall, at the time of application of the restrictions mentioned in paragraph 1, submit to COTED or COFAP, as the case may require, a programme setting out the measures to be taken by that Member State to resolve the difficulties or to alleviate the hardships.*

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4. *The competent Organ shall give its earliest consideration to the programme, and:*

- (a) make a determination in respect of the appropriateness of the restrictions and whether they shall be continued; and*
- (b) where it decides that the restrictions shall be continued, determine:*
 - (i) the adequacy of the programme; and*
 - (ii) the period for which the restrictions should continue.*

The competent Organ, in making a determination under sub-paragraph (b) of this paragraph, may impose such conditions as it considers necessary.

5. *Restrictions applied by a Member State pursuant to paragraph 1 of this Article shall be confined to those necessary:*

- (a) to resolve the difficulties in the affected sectors;*
- (b) to alleviate economic hardships in a particular region.*

6. *In applying restrictions mentioned in paragraph 5, Member States shall:*

- (a) minimise damage to the commercial or economic interests of any other Member State; or*
- (b) prevent the unreasonable exercise of rights granted under this Chapter, the exclusion of which could impair the development of the CSME.*

7. *The Member States, in applying restrictions pursuant to paragraph 1 of this Article, shall not discriminate and:*

- (a) shall progressively relax them as relevant conditions improve;*
- (b) may maintain them only to the extent that conditions mentioned in paragraph 1 of this Article continue to justify their application.*

8. *If COTED or COFAP, as the case may require, is not satisfied that Member States applying restrictions are acting in accordance with the provisions of paragraph 6 of this Article, it may recommend to the Member States adversely affected thereby alternative arrangements to the same end.*

ARTICLE 48

Waiver of Obligations to Grant Rights

1. *Notwithstanding any provision in this Chapter, a Member State may apply to the Community Council for a waiver of the requirement to grant any of the rights mentioned in paragraph 1 of Article 30 in respect of any industry, sector or enterprise.*

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2. *An application for a waiver within the meaning of paragraph 1 of this Article shall:*

- (a) be made prior to the establishment of the relevant programme for the removal of restrictions on the rights mentioned in paragraph 1;*
- (b) identify the rights in respect of which the waiver is required;*
- (c) set out the circumstances justifying the grant of the waiver; and*
- (d) indicate the period for which the waiver is required.*

3. *The Community Council may require the applicant to furnish such additional information as the Council may specify.*

4. *Where the Community Council is satisfied that the waiver should be granted, it shall grant a waiver for a period not exceeding five years, subject to such terms and conditions as the Community Council may determine.*

5. *A Member State which has been granted a waiver within the meaning of paragraph 1 of this Article:*

- (a) shall not, while the waiver is in force, be entitled to espouse a claim on behalf of its nationals against another Member State in respect of the rights for which the waiver was granted;*
- (b) shall:*
 - (i) at the termination of the period of the waiver, remove the restrictions and notify the Community Council; or*
 - (ii) where the Member State removes the restrictions before the end of the period of the waiver, notify the Community Council accordingly.*

ARTICLE 51

Objectives of the Community Industrial Policy

1. *The goal of the Community Industrial Policy shall be market-led, internationally competitive and sustainable production of goods and services for the promotion of the Region's economic and social development.*

2. *In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:*

- (a) cross-border employment of natural resources, human resources, capital, technology and management capabilities for the production of goods and services on a sustainable basis;*

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- (b) *linkages among economic sectors and enterprises within and among the Member States of the CSME;*
- (c) *promotion of regional economic enterprises capable of achieving scales of production to facilitate successful competition in domestic and extra-regional markets;*
- (d) *establishment of a viable micro and small economic enterprise sector;*
- (e) *enhanced and diversified production of goods and services for both export and domestic markets;*
- (f) *sustained public and private sector collaboration in order to secure market-led production of goods and services;*
- (g) *enhanced industrial production on an environmentally sustainable basis;*
- (h) *balanced economic and social development in the CSME bearing in mind the special needs of disadvantaged countries, regions and sectors within the meaning of Article I; and*
- (i) *stable industrial relations.*

ARTICLE 56

The Community Agricultural Policy

1. *The goal of the Community Agricultural Policy shall be:*
 - (a) *the fundamental transformation of the agricultural sector towards market-oriented, internationally competitive and environmentally sound production of agricultural products;*
 - (b) *improved income and employment opportunities, food and nutrition security, and poverty alleviation in the Community;*
 - (c) *the efficient cultivation and production of traditional and non-traditional primary agricultural products;*
 - (d) *increased production and diversification of processed agricultural products;*
 - (e) *an enlarged share of world markets for primary and processed agricultural products; and*

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- (f) *the efficient management and sustainable exploitation of the Region's natural resources, including its forests and the living resources of the exclusive economic zone,*

bearing in mind the differences in resource endowment and economic development of the Member States.

ARTICLE 57

Implementation of the Community Agricultural Policy

1. *For the achievement of the goal set out in Article 56, the Community shall, through competent Community Organs and Bodies, promote and support:*

- (a) *the production, diversification, processing and marketing of agricultural products;*
- (b) *the establishment of effective agricultural financing systems, including insurance, bearing in mind the special needs of artisanal fishers, small farmers, foresters and agro-processors;*
- (c) *the establishment of linkages among the Member States with complementary natural resources, industries, agricultural skills and technical abilities;*
- (d) *the development of human resources and delivery systems responsive to the requirements of the agricultural sector;*
- (e) *the development of appropriate policies for the use of land and marine space with a view to increased agricultural production;*
- (f) *appropriate land tenure systems to provide the farmer with security of tenure;*
- (g) *the establishment of effective information and market intelligence services;*
- (h) *research and development with a view to the adaptation, dissemination and application of appropriate technologies at all levels of the sector and all stages of production;*
- (i) *the adoption of effective measures for rural enterprise development;*
- (j) *public education to enhance the economic and social profiles of agriculture, particularly among the youth;*

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- (k) the establishment of an effective regime of sanitary and phytosanitary measures;*
- (l) the establishment of a policy environment designed to attract investment to the agricultural sector; and*
- (m) technical co-operation and the dissemination of knowledge in agriculture.*

2. For the purpose of assisting the Member States to implement the agricultural policy set out in paragraph 1, COTED shall establish effective support measures including:

- (a) strengthening the relevant administrative and institutional framework to modernise and enhance the competitiveness of agriculture by:
 - (i) improving the capability of the Member States to undertake policy analysis, formulation, planning, execution and resource mobilisation for the development of the sector;*
 - (ii) investigating and analysing developments in the agri-food sector; and*
 - (iii) improvement of the collection, analysis and dissemination of empirical data and other relevant information;**
- (b) upgrading of national and regional capabilities in the areas of sustainable natural resources management;*
- (c) enhancement of the capabilities of the Member States in the areas of agricultural trade analysis and negotiations; and*
- (d) promotion of a mechanism for the collaboration of farmers, fishers, foresters and the social partners in agricultural development.*

3. The Community shall:

- (a) promote collaboration among the Member States and competent regional organisations in the areas of policy formulation and implementation of regional agricultural policies; and*
- (b) establish an effective regime to protect regional agricultural production from dumping, subsidisation and other unfair trading practices.*

4. The Community shall, as a matter of priority, and in collaboration with national, regional and international agencies and organisations, promote and adopt measures relating, *inter alia*, to:

- (a) the provision of appropriate inputs; and*

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(b) the development of infrastructure, such as port facilities, drainage, irrigation, access roads, post-harvest handling and marketing facilities.

ARTICLE 75

Development of Social Infrastructure

1. In establishing its industrial policy, the Community shall promote appropriate measures for the establishment of adequate social infrastructure, the alleviation of poverty, and securing social stability in the Member States.

2. Without prejudice to the generality of the foregoing, the Community shall promote in the Member States:

(a) the establishment and improvement of health, education, sports and social security institutions and facilities;

(b) conclusion of reciprocal social security agreements among Member States in order to facilitate the movement of skills; and

(c) training and retraining of workers, mobility of instructors and trainees, cooperation among educational and training institutions, and the development of distance education.

3. The Member States shall engender an understanding and appreciation of the Community through effective public relations, educational, cultural and youth exchange programmes.

ARTICLE 78

Objectives of the Community Trade Policy

1. The goal of the Community Trade Policy shall be the sustained growth of intra-Community and international trade and mutually beneficial exchange of goods and services among the Member States and between the Community and third States.

2. In fulfilment of the goal set out in paragraph 1 of this Article the Community shall pursue the following objectives:

(a) full integration of the national markets of all Member States of the Community into a single unified and open market area;

(b) the widening of the market area of the Community;

(c) the active promotion of export of internationally competitive goods and services originating within the Community;

(d) the securing of the most favourable terms of trade for Community goods and services exported to third States and groups of States.

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3. *In order to achieve the objectives of its Trade Policy, the Community shall:*
 - (a) *undertake:*
 - (i) *the establishment of common instruments, common services and the joint regulation, operation and efficient administration of the internal and external commerce of the CSME;*
 - (ii) *where possible, the employment of common negotiating strategies in the development of mutually beneficial trade agreements with third States and groups of States;*
 - (iii) *participation and joint representation as appropriate in international and regional organisations which negotiate, establish and apply disciplines governing international and regional trade;*
 - (b) *prohibit the imposition by the Member States of new restrictions on imports and exports of products of Community origin.*
4. *Member States shall eliminate existing restrictions on imports and exports of goods of Community origin, other than those authorised by this Treaty.*

ARTICLE 134

Objectives of the Community Transport Policy

1. *The goal of the Community Transport Policy shall be the provision of adequate, safe and internationally competitive transport services for the development and consolidation of the CSME.*
2. *In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:*
 - (a) *the organisation of efficient, reliable, affordable transport services throughout the Community;*
 - (b) *the development and expansion of air and maritime transport capabilities in the Community;*
 - (c) *the promotion of co-operative arrangements for the provision of transport services;*
 - (d) *the development of efficient internationally competitive ancillary transport services;*
 - (e) *the development of human resources for employment in all areas and at all levels of the transport sector;*

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- (f) *the implementation of standards for the development of safe road, riverine, sea and air transport services.*

ARTICLE 142
Scope of Application

1. *The provisions of this Chapter shall have effect for the purpose of establishing a regime for disadvantaged countries, regions or sectors within the framework of the Treaty as well as a special regime for the Less Developed Countries in order to enhance their prospects for successful competition within the Community, and redress, to the extent possible, any negative impact of the establishment of the CSME.*
2. *As soon as practicable after the entry into force of this Treaty, the Conference shall, on the recommendation of the Community Council and in accordance with Article 1, designate disadvantaged countries, regions and sectors and may, from time to time, make such further designations or terminate such designations as circumstances warrant.*
3. *Wherever in this Treaty reference is made to disadvantaged countries, regions and sectors or to the Less Developed Countries, the Organs of the Community shall take the measures required to give effect to the spirit and intent of this Chapter.*

ARTICLE 169
Objectives of Community Competition Policy

1. *The goal of the Community Competition Policy shall be to ensure that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct.*
2. *In fulfilment of the goal set out in paragraph 1 of this Article, the Community shall pursue the following objectives:*
 - (a) *the promotion and maintenance of competition and enhancement of economic efficiency in production, trade and commerce;*
 - (b) *subject to this Treaty, the prohibition of anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market; and*
 - (c) *the promotion of consumer welfare and protection of consumer interests.*

ARTICLE 211
Jurisdiction of the Court in Contentious Proceedings

This summary is not intended to be a substitute for the advice of the Caribbean Court of Justice as set out in the corresponding Advisory Opinion or to be used in any later consideration of the Court's reasoning in delivering that advice.

1. *Subject to this Treaty, the Court shall have compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Treaty, including:*

- (a) disputes between the Member States parties to the Agreement;*
- (b) disputes between the Member States parties to the Agreement and the Community;*
- (c) referrals from national courts of the Member States parties to the Agreement;*
- (d) applications by persons in accordance with Article 222,*

concerning the interpretation and application of this Treaty.

2. *For the purpose of this Chapter, “national courts” includes the Eastern Caribbean Supreme Court.*

ARTICLE 212 **Advisory Opinions of the Court**

1. *The Court shall have exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the Treaty.*

2. *Advisory opinions shall be delivered only at the request of the Member States parties to a dispute or the Community.*

ARTICLE 237 **Reservations**

Reservations may be entered to this Treaty with the consent of the signatory States.

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