

*This **document** is the European Union's (EU) proposal for a legal text on Capital movements, payments and transfers and temporary safeguard measures, in the EU-ESA5 deepening of the interim agreement. It will be tabled for discussion with ESA5. The actual text in the final agreement will be a result of negotiations between the EU and ESA5.*

**DISCLAIMER:** *The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.*

## **EU-ESA Economic Partnership Agreement**

### **Title [ ]**

#### **Capital movements, payments and transfers and temporary safeguard measures**

##### Article x.1

#### **Current Account**

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency and in accordance with the Articles of the Agreement of the International Monetary Fund, any payments and transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

##### Article x.2

#### **Capital Movements**

1. Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital for the purpose of liberalisation of investment and other transactions as provided for in Title XX [Investment Liberalisation, Trade in Services, and Digital Trade].

2. The Parties shall consult each other in the [EPA Committee] to facilitate the movement of capital between them in order to promote trade and investment.

##### Article x.3

#### **Measures affecting capital movements, payments or transfers**

1. Articles X.1 and X.2 of this Chapter shall not be construed as preventing a Party from applying its laws and regulations relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, or futures, options and other financial instruments;
- (c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offenses, deceptive or fraudulent practices;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
- (f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall not be applied in an arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

#### Article x.4

### **Temporary safeguard measures**

1. In exceptional circumstances of serious difficulties for the operation of the Union's economic and monetary union, or threat thereof, the Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months.

2. The measures referred to in paragraph 1 shall be limited to the extent that is strictly necessary.

#### Article x.5

### **Restrictions in case of balance of payments and external financial difficulties**

1. Where a Party experiences serious balance of payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers<sup>1</sup>.

2. The measures referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (c) be temporary and phased out progressively as the situation specified in paragraph 1 improves;
- (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

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<sup>1</sup> For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

(e) be non-discriminatory compared to third countries in like situations.

3. In the case of trade in goods, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with the General Agreement on Trade and Tariffs and the Understanding on the Balance of Payments provisions of the General Agreement on Trade and Tariffs 1994.

4. In the case of trade in services, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of the General Agreement on Trade in Services.

5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Party.

6. If a Party adopts or maintains restrictions under this Article, the Parties shall promptly hold consultations in the [EPA Committee] unless consultations are held in other fora. The Committee shall assess the balance of payments or external financial difficulties that led to the respective measures, taking into account such factors as:

- (a) the nature and extent of the difficulties;
- (b) the external economic and trading environment; and
- (c) alternative corrective measures which may be available.

7. The consultations under paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of statistical or factual nature presented by the International Monetary Fund, where available, shall be accepted and conclusions shall take into account the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the Party concerned.