



CARIFORUM-EC EPA: INVESTMENT¹

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The **objective** of the investment provisions of the Cariforum EPA² is to **facilitate and promote investment** (especially in the Cariforum region) by ensuring **fair access** of the Cariforum and EU investors to each other's market. The focus is not on the protection of investors on these markets (the latter being usually the focus of specific bilateral investment treaties).

Scope

"Investment" under the Cariforum EPA is understood as **Foreign Direct Investment** ("FDI"). This means real economic activity through the setting up of a commercial presence in a country, either by acquiring an existing business or by creating a new branch or representative office.

The **sectoral coverage** of the investment chapter extends to **industrial, agricultural and services sectors**. Supply of **services** through a "commercial presence" in a third country is in fact a form of FDI. This is why services and investment are treated in a single chapter of the Cariforum EPA. Several sectors, such as processing of nuclear materials, trade in arms, audiovisual services, national maritime cabotage and air traffic rights are expressly excluded.

The opening to foreign investment is **asymmetric**: the EU opens up for investment to a much wider extent than Cariforum countries do towards the EU. Cariforum applies many more conditions and limitations to a more limited sectoral coverage.

The right to regulate and maintenance of standards

The investment provisions of the Cariforum EPA are about facilitating foreign direct investment and treating foreign investors on equal footing with domestic investors. It is not about curtailing the Cariforum countries' or the EU's right to regulate investment on their territory or to regulate competition. Therefore, the EPA expressly provides that:

- nothing in the investment/services chapter of the EPA shall be construed to require the privatisation of public undertakings or to impose any obligation with respect to government procurement. (Art. 60.2).

¹ This fact sheet describes the content of part of the CARIFORUM-EC EPA but it does not in any way replace or interpret the provisions of this Agreement.

² Chapter 2, entitled "Commercial Presence" of the Title on Investment, Trade and Services and e-commerce.

- the **right to regulate economic activities**, including those of foreign investors, is left untouched. The signatories retain the right to regulate services and to introduce new regulations to meet legitimate policy objectives (Art. 60.4).
- **subsidies are excluded from the scope** of the Title on investment. Cariforum countries maintain the right to subsidise exclusively their domestic producers or service providers.

Of course, the EC and Cariforum countries maintain the right to regulate **competition** on their territory (see the fact sheet on "Competition").

The agreement also makes it very clear that there should be **no "race to the bottom"**. It is expressly stipulated that Cariforum and the EU must ensure that foreign investment is not encouraged by lowering domestic environmental, labour or occupational health and safety legislation and standards or by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity (Art. 73).

Moreover, the Cariforum EPA has the unique feature of containing provisions related to the **behaviour of investors** (Art. 72, see below).

Commitments taken by the parties

➤ **Market access** (Art. 76)

The EU and Cariforum commit to grant each other's investors **access to their markets**, in those sectors which are identified in an annex to the Agreement and grant them treatment that is **not less favourable than that provided for in the specific commitments** contained in such an annex. Those specific commitments indicate precisely what sectors or sub-sectors are open to foreign investors and to what extent.

The EU and Cariforum have therefore indicated in their schedules of commitments to what extent they shall, or not, maintain or adopt towards foreign service providers the following limitations:

- limitations on the number of investors;
- limitations on the total value of transactions or assets;
- limitations on the total number of operations or on the total quantity of output;
- limitations on the participation of foreign capital in terms of maximum percentage limit on foreign share holding;
- measures which restrict or require specific types of commercial presence or joint ventures through which an investor may perform an economic activity.

By lodging limitations, a country retains the right to impose such restrictions on the opening towards foreign investment. One example of the kind of limitation that a country may impose is Jamaica's requirement that an EU company establishes a joint venture for establishment in the sector of manufacturing of chemicals and painting.

It is important to note that these commitments only apply towards the other parties to the EPA, not to the rest of the world.

➤ **National treatment** (Art. 77)

In those sectors where the EU and Cariforum have adopted national treatment commitments, they must grant the investors and establishment of the other parties **"treatment no less favourable" than that they accord to their own investors and establishments in that particular sector.**

However, each party is entitled to subject such treatment to specific conditions and qualifications, such as, for example restriction on foreign land ownership. Both Parties have done so by inscribing these limitations in the schedule of commitments.

Behaviour of investors

A unique feature of the Cariforum EPA is that it contains **provisions related to the behaviour of investors** (Art. 72). In order to **prevent abuses** by investors, and to guarantee that investment liberalisation does not result in social or environmental costs, the EPA provides that the parties cooperate to ensure that:

- **Corruption** by investors is forbidden and investors are **held liable** in case of corruption;
- Investors act in accordance with **core labour standards** as required by the International Labour Organisation;
- Investors do not operate their investments in a manner that circumvents **international environmental or labour obligations** arising from agreements to which the parties have adhered;
- Investors establish and maintain, where appropriate, **local community liaison processes**, especially in projects involving extensive natural resource-based activities.