

THE REVISED COTONOU PARTNERSHIP AGREEMENT AND THE REASONS FOR SOUTH AFRICA'S NON-RATIFICATION OF THE AGREEMENT.

The Cotonou Partnership Agreement (CPA) was signed by South Africa on 23 June 2000, at which point South Africa became a qualified member of the Africa, Caribbean and Pacific (ACP) Group of states. This meant that South Africa was not a party to the trade chapters of the Cotonou Agreement as these were already covered in the Trade, Development and Cooperation Agreement (TDCA) between the Republic of South Africa on the one part and the European Union on the other part.

During the negotiations for the revision of the CPA, South Africa raised objections to the European Union's proposed texts on some of these issues particularly on the Weapons of Mass Destruction (Article 11 b). The South African experts on disarmament matters had expressed reservations about this article as it did not fully make the link between non-proliferation and weapons of mass destruction and introduced a new oversight body in this field. The EU's response was that South Africa's concerns would be addressed within the context of the TDCA Review, which also began in 2005. The ratification of the Revised CPA was thus linked to the outcome of the TDCA Review and held back until completion of the TDCA Review.

As a result, when the Revised CPA was signed on 25 June 2005 in Luxembourg South Africa did so conditionally, with the possibility of entering a reservation at the time of ratification.

This issue was one of the most difficult and last to be resolved issues of the TDCA Review. Again the EU insisted on non-proliferation commitments by South Africa as an essential element of the agreement while being silent on their disarmament obligations under international law and relevant agreements. South Africa insisted that non-proliferation and disarmament were two sides of the same coin and could not be de-linked to place one-sided obligations on her without recognising the disarmament obligations of the EU countries. Once this issue was resolved to South Africa's satisfaction the TDCA was initialled by South Africa and the EU on 10 October 2007, after which the Revised CPA could be forwarded to all 23 Government Departments for their inputs. Only after these inputs were received could the Revised CPA be referred to the Department of Justice and Constitutional Development to determine its compatibility with South African law and the Constitution, after which it was forwarded to the Office of the State Law Advisor to confirm its adherence to South Africa's international legal obligations. Only after receiving the clearance from the Office of the State Law Advisor the process of preparation of the instruments of ratification could commence during the second semester of 2008. Upon enquiring from our Parliamentary Liaison Office as to the possible timing of tabling the instruments to Parliament, the Department was informed that due to the full schedule of Parliament in their preparations to complete their work before the National Elections in April 2009 that Parliament would not be accepting any new submissions until after the National Elections were held and the new National Assembly appointed.

Since a new Parliament also implied a new Cabinet, a Cabinet Memorandum could not be submitted to one that would no longer be in office when the new Parliament would consider its decision to ratify the Revised CPA, the process of submitting a Cabinet Memorandum was initiated in March 2009 in order to be in time to be submitted to the new Cabinet as soon as it convened. Despite efforts to meet the deadline it was not possible to complete the ratification by the set date.

In accordance with Article 93 of the Revised CPA a deadline of 30 June 2009 for those ACP signatory States that had not completed their procedures for ratification was set. This deadline being 12 months following the date on which the Agreement entered into force, which was 1 July 2008.

As a result, Parliament had not yet seen the Agreement before the 30 June 2009 deadline as set out in Article 93 of the Revised CPA and was therefore advised by the office of the State Law Advisor, in consultation with Deputy Minister van der Merwe, that the desk should not request additional time from the ACP or the EU as there is no legal basis for such action under the CPA. In this regard, the office of the State Law Advisor advised that the desk should instead follow the procedures for accession to the Agreement as stipulated in Article 94 of the Revised CPA.