

**COUNCIL DECISION NO 1/2004 OF THE EU-MOROCCO  
ASSOCIATION COUNCIL OF 19 APRIL 2004  
ADOPTING THE NECESSARY RULES FOR THE IMPLEMENTATION  
OF THE COMPETITION RULES<sup>138</sup> (2005/466/EC)**

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THE EU-MOROCCO ASSOCIATION COUNCIL,

Having regard to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part<sup>139</sup> (the Agreement),

Whereas:

(1) A free trade area is to be established between the EU and Morocco by 28 February 2012 at the latest.

(2) Article 36(3) of the Agreement provides for the existence of administrative cooperation arrangements between the Parties to facilitate the implementation of paragraphs 1 and 2 of the said Article, and for the possibility of adopting technical cooperation measures.

(3) Article 36(3) of the Agreement provides that the Association Council may adopt the necessary rules for the implementation of the competition rules within five years of the entry into force of the Agreement,

HAS DECIDED AS FOLLOWS:

*Sole Article*

1. A mechanism of cooperation between the Parties' authorities responsible for the implementation of competition rules is established in the Annex.
2. The Parties' competition authorities shall inform the Association Committee's Internal Market Subcommittee on the implementation of the cooperation established under the mechanism referred to above.
3. This Decision shall enter into force on the day of its adoption.

Done at Brussels, 19 April 2004.

For the Association Council

B. Cowen

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138 OJ L 165, 25.6.2005, p. 10

139 OJ L 70, 18.3.2000, p. 2. Agreement as last amended by Exchange of Letters of 30 December 2003 (OJ L 345, 31.12.2003, p. 119).

**ANNEX**  
**EU-MOROCCO ASSOCIATION AGREEMENT**  
**MECHANISM OF COOPERATION BETWEEN THE PARTIES' COMPETITION**  
**AUTHORITIES RESPONSIBLE FOR THE IMPLEMENTATION OF COMPETITION**  
**RULES**

**CHAPTER I**  
**GENERAL PROVISIONS**

**1. Objectives**

1.1. Cases relating to practices contrary to Article 36(1)(a) or (b) of the Agreement shall be dealt with by applying the appropriate legislation, in order to avoid adverse effects on trade and economic development and the possible negative impact that such practices may have on the other Party's important interests.

1.2. The competences of the Parties' competition authorities to deal with these cases shall flow from the existing rules of their respective competition laws, including where these rules are applied to undertakings located outside their respective territories.

1.3. The purpose of these rules is to promote cooperation and coordination between the Parties in the application of their competition laws in order to ensure that restrictions on competition do not block or cancel out the benefits which should be ensured following the progressive liberalisation of trade between the European Community and Morocco.

**2. Definitions**

For the purposes of these rules:

(a) "competition law" shall mean:

(i) for the European Community (the Community), Articles 81 and 82 of the EC Treaty, Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings<sup>140</sup> and related secondary legislation adopted by the Community;

(ii) for Morocco, the Price Liberalisation and Free Competition Act (No 6/99) of 2 rabii I 1421 ( 5 June 2000), and related secondary legislation;

(b) "competition authority" shall mean:

(i) for the Community, the Commission of the European Community as to its responsibilities pursuant to the competition law of the Community;

(ii) for Morocco, the Deputy Ministry for Economic and General Affairs and the Upgrading of the Economy;

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140 OJ L 395, 30.12.1989, p. 1. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).

- (c) “enforcement activity” shall mean any application of competition law by way of investigation or proceeding conducted by the competition authority of a Party, which may result in penalties or remedies.
- (d) “anti-competitive activity” and “conduct and practices which restrict competition” shall mean any conduct or transaction that is impermissible under the competition laws of a Party and may be subject to penalties or remedies.

## **CHAPTER II COOPERATION AND COORDINATION**

### ***3. Notification***

3.1. Each Party’s competition authority shall notify the other of its enforcement activities where:

- (a) the notifying Party considers them relevant to enforcement activities of the other Party;
- (b) they may significantly affect important interests of the other Party;
- (c) they relate to restrictions on competition which may directly and substantially affect the territory of the other Party;
- (d) they involve anti-competitive activities carried out mainly in the territory of the other Party;
- (e) they condition or prohibit action in the territory of the other Party.

3.2. As far as possible, and provided that this is not contrary to the Parties’ competition laws and does not adversely affect any investigation being carried out, notification shall take place during the initial phase of the procedure, to enable the notified competition authority to express its opinion. The notified authority shall give due consideration to the opinions received when taking decisions.

3.3. The notifications provided for in Article 3.1. shall be detailed enough to permit an evaluation in the light of the interests of the other Party.

3.4. The Parties undertake to give the above notification wherever possible, depending on available administrative resources.

### ***4. Exchange of information and confidentiality***

4.1. The Parties shall exchange information which will facilitate the effective application of their respective competition laws and promote a better understanding of their respective legal frameworks.

4.2. The exchange of information shall be subject to the standards of confidentiality applicable under the law of each Party. Confidential information whose dissemination is expressly prohibited or which, if disseminated, could adversely affect the Parties, shall not be provided without the express consent of the source of the information. Each

competition authority shall maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other competition authority under the rules and shall oppose, to the same extent, any application for disclosure of such information by a third party that is not authorised by the competition authority that supplied the information.

### **5. Coordination of enforcement activities**

5.1. Each competition authority may notify the other of its willingness to coordinate enforcement activities with respect to a specific case. This coordination shall not prevent the Parties from taking autonomous decisions.

5.2. In determining the extent of coordination, the competition authorities shall consider:

- (a) the effective results which coordination could produce;
- (b) the additional information to be obtained;
- (c) the reduction in costs for the competition authorities and the economic agents involved; and
- (d) the applicable deadlines under their respective legislation.

### **6. Consultation when important interests of one Party are adversely affected in the territory of the other Party**

6.1. Each Party shall, wherever possible and in accordance with its own legislation, take into consideration the important interests of the other Party in the course of its enforcement activities. A competition authority which considers that an enforcement activity being conducted by the competition authority of the other Party under its competition law may affect the important interests of the Party it represents should transmit its views on the matter to, or request consultations with, the other competition authority. Without prejudice to the continuation of its action under its competition laws or to its full freedom of ultimate decision, the competition authority so addressed should give full and sympathetic consideration to the views expressed by the requesting competition authority, and in particular to any suggestions as to alternative means of fulfilling the needs and objectives of the enforcement activity.

6.2. A competition authority which considers that one or more undertakings situated in one Party's territory are or have been engaged in anti-competitive activities of whatever origin that are substantially and adversely affecting the interests of the Party it represents may request consultations with the other competition authority, recognising that entering into such consultations is without prejudice to any action under its competition laws and to the full freedom of ultimate decision of the competition authority concerned. The requested competition authority may take the appropriate remedial action, in the light of the legislation in force.

### ***7. Technical cooperation***

7.1. The Parties shall be open to technical cooperation in order to enable them to take advantage of their respective experience and to strengthen the implementation of their competition law and policies, according to the resources available to them.

7.2. The following cooperation activities may be included in the programme to back up the implementation of the Agreement:

- (a) training for officials, to enable them to gain practical experience;
- (b) seminars, in particular for civil servants;
- (c) studies of competition law and policies, with a view to supporting their development.

### ***8. Management of implementing rules***

Cooperation will be monitored and evaluated by the Internal Market Subcommittee established in the Agreement by the Association Council Decision of 24 February 2003.

### ***9. Amendment and update of the rules***

The Association Council may amend these rules after consultation of the competition authorities.