



THE LONDON SCHOOL
OF ECONOMICS AND
POLITICAL SCIENCE ■

Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement

SIA Report on Dispute Avoidance and Settlement and Institutional Structure • May 2021



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Abbreviations

ESA	Eastern and Southern Africa
EPA	Economic Partnership Agreement
EU	European Union
ESA5	Five ESA Countries
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GDP	Gross Domestic Product
iEPA	Interim Economic Partnership Agreement
ILO	International Labour Organisation
ITC	International Trade Centre
LDC	Least Developed Country
LSE	London School of Economics and Political Science
ORs	EU's Outermost Regions
RoO	Rules of Origin
SME	Small and Medium Size Enterprise
SIA	Sustainability Impact Assessment
TSD	Trade and Sustainable Development
UK	United Kingdom
UN	United Nations

Executive Summary

It would be beneficial for the European Union (EU) and the five Eastern and Southern African (ESA5) countries to agree on clear and effective rules for conflict avoidance and dispute settlement. Only the implementation and effective enforcement of provisions on goods trade, services trade, investment liberalisation, public procurement and the protection of intellectual property would be supportive to economic activity and structural economic change. This would positively impact the state of the rule of law in ESA5 countries, and the overall investment climate respectively.

Clear provisions on dispute avoidance and settlement would safeguard the positive economic impacts from sectoral and other horizontal regulations. Provisions on the domestication of international treaties (set out in the Agreement's chapter on Trade and Sustainable Development) would improve the enforcement of these treaties and increase public awareness of commitments related to the environment as well as human rights, social and gender issues. **Private sector and civil society stakeholders should be consulted during the negotiations. Increased stakeholder participation would raise the awareness of these groups, which could also be invited to join domestic advisory groups on implementation and enforcement after the implementation of the Agreement.** Private sector and civil society participation in advisory groups would have a disciplining effect on future government to maintain or adjust governance structures in a way that makes the enforcement of other commitments more effective, e.g. effective access to legal remedies, if these groups can bring issues to the attention of dispute settlement mechanisms, for example via amicus curiae briefs.

Development cooperation initiatives that focus on institution and capacity building are crucial for the success of the Agreement. Areas for development cooperation should include the training of lawyers on trade and investment liberalisation as well as capacity building for government offices and civil society organisations. Specific trainings on the Economic Partnership Agreement (EPA) should include the interaction of dispute settlement provision and other provisions enshrined in international law and other chapters of the EPA, including or provisions on environment, social and gender conditions and human rights, as referred to in its Trade and Sustainable Development (TSD) Chapter.

Capacity building initiatives should generally focus on provisions which are expected to generate high economic impacts in ESA countries and at the same time known to be challenging because of vested economic interests and positive economy considerations. These include investments in network industries, investment and trade in financial services as well as unreasonable foreign investment requirements and discriminatory joint venture requirements across industries.

1. Introduction

1.1 The study

This report is part of the project to prepare a *Sustainability Impact Assessment (SIA) in support of negotiations with partner countries in the ESA in view of deepening the existing interim EPA*. Under this project, a brief evaluation of the existing interim EPA has been prepared. The study is also developing a series of SIA reports for the deepening of the EPA. In particular, **this report presents an assessment of potential provisions for Dispute Avoidance and Settlement and Institutional Structure**. The report builds on the analysis in the (draft) ex-post evaluation, which included an assessment of economic and environmental, social, gender and human rights impacts of the interim EPA.¹

This thematic report analyses potential economic, social, human rights and environmental impacts of the EU-ESA5 EPA deepening negotiations. The assessment of this report lays a focus on the following topics:

- Dispute Avoidance and Settlement
- Institutional Structure

The SIA for the deepening of the EPA includes this report as well as five other thematic reports, covering the following topics:

- Trade in Goods, Agriculture and Fisheries
- TSD
- Trade in Services, Digital Trade and Investment
- Public procurement and competition
- Intellectual Property Rights

Each of these reports will also include an assessment of environmental, social, gender and human rights impacts, proportionate to the expected importance of the impacts for each area of negotiation.

1.2 Context

In 2007, six countries of the ESA region – Comoros, Madagascar, Mauritius, Seychelles, Zambia and Zimbabwe – concluded an interim EPA with the EU. In 2009, four of these countries (Madagascar, Mauritius, Seychelles and Zimbabwe) signed the agreement which has been provisionally applied in these countries since May 2012. Comoros signed the agreement in July 2017 and ratified it in January 2019. The interim EPA includes a ‘Rendez-vous clause’ (Article 53), by which the Parties ‘agree to continue negotiations... with a view to concluding a full and comprehensive EPA’. The Article includes trade, environment and sustainable development among the areas for further negotiation.

The EU and ESA5 partners launched negotiations for the deepening of the currently implemented EPA in October 2019.² The parties clarified horizontal issues regarding the negotiations and exchanged views on several negotiation areas. Up to now, four rounds of negotiations took place in January 2020, July 2020,

¹ See: https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc_159467.pdf

² See: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_5951

November 2020 and April 2021. During the fourth negotiation round, a first discussion regarding dispute settlement issues was held based on a joint bracketed text in the context of the ongoing negotiations on TSD.³

For a brief overview of the five ESA countries, please see Appendix I and the Ex-Post Evaluation within this SIA of January 18, 2021.

1.3 Methodology

The analytical work for this report involves, as a first step, a screening of potential provisions set out in the EU textual proposals presented by the European Commission based on an assessment of publicly available reports on the progress of the negotiations. The results of this screening are provided in Section 2 below.

As a second step, information on **relevant institutional frameworks as well as stakeholder feedback are compiled and analysed for all five countries**. The analysis of these issues aims to identify existing barriers to trade and development in ESA5 countries and identify applicable specific sectors most affected by them. The findings of this analysis are presented in Section 3.

Based on this detailed assessment, a scoping and deeper analysis of the issue areas with potential economic impacts is undertaken. This analysis of the specific issue areas aims to identify areas where the economic impact is likely to be significant and areas where the economic impact is considered minor. The assessment also includes, to the extent possible, a screening of the sector-specific economic impacts.

For each topic covered in this economic analysis, the relevant baseline is briefly presented. Actions needed for implementation are also accounted for. Potential impacts of each provision are then described. For each topic, a brief analysis presents the key strengths and weaknesses of the proposed provisions together with indications of external opportunities and threats that might affect implementation and the achievement of results. Finally, the analysis provides an assessment of relevant horizontal issues (e.g. least developed countries (LDCs), outermost regions (OR), consumer impacts) where relevant. The findings of this analysis are provided in Section 4.

Subsequently, the analysis in Section 4 is used as a basis for an impact assessment of environmental, social, gender and human rights impacts that are likely to emanate from the economic impacts. This social analysis follows the same methodological steps as the economic analysis described above, including an analysis of horizontal issues (e.g. gender) where relevant and outlined in Section 5.

The findings of the economic and social impact assessments in Sections 4 and 5 are then used to develop a set of proposals for policy recommendations and flanking measures presented in Section 6.

Desk research and analysis as well as stakeholder consultation has provided the main sources of information for this report.

³See: https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159537.pdf

2. Screening of the potential provisions for dispute avoidance and settlement, and institutional structure

2.1 Introduction

The existing interim EPA contains specific provisions on dispute avoidance and settlement as well as institutional provisions. The comprehensive EPA is expected to contain further provisions on such measures, as also outlined in Article 53, calling for an elaborated dispute settlement mechanism and institutional arrangements as areas for future negotiation.⁴ Overview of ongoing negotiations

So far four negotiations rounds took place based on negotiating texts. The fourth round of negotiations on deepening the agreement took place in April 2021.⁵ As noted in section 1, the European Commission has started negotiating dispute settlement issues based on a joint bracketed text in the context of the ongoing negotiations on TSD.⁶

The Parties will continue their work in order to produce an updated text based on the identified points of convergence. The issue of dispute settlement, as a part of the TSD negotiations, is also scheduled for discussion in the next negotiation round which will take place in July 2021. Note that this report provides an overall analysis of both general dispute settlement provisions as well as dispute settlement provisions related to TSD. Whenever specific elements of analysis refer to dispute settlement provisions related to TSD in particular, this is indicated. Based on the further development of negotiations, the analysis will be expanded on both issue areas.

During the stakeholder consultations conducted for our analysis, respondents from the governments of Madagascar, Mauritius, Seychelles and Zimbabwe gave their views on what should be key issues for the negotiations for the comprehensive EPA. All respondents except Mauritius agreed that dispute avoidance and settlement should be considered a high priority for the negotiations. In contrast, respondents from Mauritius indicated that dispute avoidance and settlement should only be given low priority for the negotiations.

Regarding the issue of institutional structure, all respondents from ESA governments agreed that it should be a high priority. The table below outlines the choices of the ESA countries in preferences of these selected issues in the comprehensive EPA negotiations.

Table 1: Selected key issues in the negotiations

	High priority				Low priority				No need to be negotiated				I don't know			
	M	ZW	S	MD	M	ZW	S	MD	M	ZW	S	MD	M	ZW	S	MD
Dispute avoidance and settlement;																
Institutional Structure																

Source: Own compilation from fieldwork data; Note: M = Mauritius; ZW = Zimbabwe; S = Seychelles & MD = Madagascar

⁴ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2012:111:FULL&from=EN>

⁵ See: https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159537.pdf

⁶ See: https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159537.pdf

The provisions of dispute avoidance and settlement as well as institutional structure will be analysed more closely in the detailed assessment (Sections 4 and 5, below), while taking into account potential ramifications that could relate to other issue areas.

3. Assessment of relevant institutional frameworks and stakeholder feedback

3.1 Introduction to the institutional framework

To give an overview of the overall institutional framework in ESA countries, we use the Economic Freedom Index published by the Fraser Institute.⁷ It is based on a range of relevant measures on legal systems and property rights and the freedom to trade internationally. Note that the results include scores that often synthesise complex national situations and are thus open to discussion and interpretation. Annex II provides an overview of the latest scores from 2013 to 2018 for four ESA5 countries, as the index is not calculated for Comoros. All scores shown are out of 10, with a higher score indicating a higher degree of freedom and openness. On the overall legal framework, the index includes measures of judicial independence, impartial courts, protection of property rights, the integrity of the legal system and legal enforcement of contracts as sub-measures.

Regarding the overall legal system and property rights score, all countries increased their scores from 2013 to 2018, except for Madagascar. Overall, Mauritius scored highest, followed by Seychelles, Zimbabwe and then Madagascar. The economic freedom index also includes a measure of government size. Here, Mauritius has been increasing its score, while the score of the other countries has been decreasing since 2013. Mauritius also had the highest score in absolute terms in 2018 (8.15), followed by Madagascar (7.51), Seychelles (6.71) and Zimbabwe (4.51).

Due to their complexity, behind-the-border measures are often relevant for disputes in trade issues. The Economic Freedom index provides measures of regulatory trade barriers, including non-tariff trade barriers and compliance costs of importing and exporting. **Mauritius has been increasing its score regarding regulatory trade barriers slightly, leading to 7.52 in 2018. The scores of Seychelles, Madagascar and Zimbabwe have decreased significantly since 2013.** In terms of absolute score in 2018, Mauritius was followed by Seychelles (5.60), Madagascar (4.96) and Zimbabwe with a low score of 3.26. The overall sub-index of freedom to trade internationally also includes measures of controls of the movement of capital and people. **Mauritius had the highest overall score in the overall sub-index in 2018, followed closely by Seychelles, then Madagascar and Zimbabwe.**

3.2 Feedback from government respondents and stakeholders

As concerns stakeholder feedback regarding the negotiations about the deepening of the interim EPA, there has been little feedback on dispute avoidance and settlement in the consultation that was carried out. The lack of feedback may be related to the impression that there is low awareness of the current interim EPA.

3.2.1 Feedback from government

The division of Customs of the government of Seychelles highlights the need for development support on strengthening key trade institutions such as Competition and Tariff Commission. The respondents highlight that there is need for targeted support to key divisions of public sector that will facilitate the expediting of trade under EPA, which may also be helpful in conflict avoidance and settlement. They also note that ESA5 countries

⁷ See: <https://www.fraserinstitute.org/economic-freedom/dataset?geozone=world&page=dataset&min-year=2&max-year=0&filter=0>

appropriate coordination and technical support to the five ESA countries so that they can engage effectively in the negotiation process.

3.2.2 *Feedback from the private sector and SMEs*

An EU private stakeholder stated that financing instruments to support implementation of the EPA are important. This should be complementary to development cooperation, but it is important that the EU ensures that there is proper implementation of the agreement to improve the investment climate.

ESA 5 stakeholders raised concerns about the complex nature of which can form a challenge for the ESA5 countries. In addition, some of the ESA5 private sector companies, including small and medium sized enterprises (SMEs), find it difficult to take advantage of the existing EPA. This is an important lesson for the potentially even more complex negotiation issues.

ESA stakeholders also pointed out the importance of the proposed EPA negotiation between the United Kingdom (UK) and ESA5 and its implications on the comprehensive EPA negotiations. It was pointed out that in line with the Trade Bill 2017-19, the UK government is in the process of delivering continuity in the UK's trade relationship with the ESA countries of Madagascar, Mauritius, Seychelles and Zimbabwe. In the proposed text, there are provisions like bilateral safeguards (especially the "trigger price mechanism" on sugar), RoO and provisions on dispute settlement, among others, which are likely to circumscribe the likely positions in the EU-ESA5 comprehensive EPA Negotiations. The EU-ESA5 comprehensive EPA should therefore consider provisions of negotiating free trade areas (FTAs) with third parties by ESA5.

4. The economic impact analysis

ESA5 countries vary significantly in terms of their economic development, domestic economic freedoms, and barriers to international trade. The ex-post evaluation report provided an overview of key indicators across several dimensions, which should be taken into account to assess the comprehensive agreement's potential impacts on individual countries' trade in goods (and services) and existing barriers to trade and investment liberalisation.

4.1 Introduction

This section provides a scoping and analysis of the issue areas with potential economic impacts. For each issue area, we provide an assessment of the main economic sector that could be affected, if applicable, and the possible economic impacts. The analysis also identifies issue areas where the economic impact is likely to be significant and those areas where the economic impacts are considered to be relatively minor.

Based on the screening of potential provisions and stakeholder feedback, this section focuses on assessing the economic impacts of potential dispute avoidance and settlement as well as institutional structure provisions in more detail. Finally, the analysis also provides an assessment of relevant horizontal issues (e.g. LDCs, ORs), consumer impacts, where relevant, and concludes with an overall assessment of strengths and weaknesses of the provisions, including an overview of relevant stakeholder feedback.

4.2 The economic impact of potential dispute avoidance and settlement provisions

4.2.1 *Baseline*

The interim agreement contains specific provisions on dispute avoidance and settlement.

4.2.2 Screening of dispute avoidance and settlement provisions

Table 2: Detailed screening table of potential dispute avoidance and settlement provisions

Provision	Main economic sectors that could be affected	Possible economic impacts	Potential importance
Possible measures concerning dispute avoidance and settlement			
Establishment/strengthening of arbitration institutions and safeguard mechanisms.	All economic sectors.	Improvement in rule of law may have positive impacts on business and investment climate in ESA countries.	Major
Training and capacity building for trade lawyers to interpret and enforce trade laws, settle disputes arising thereof.		Clearer and more effective dispute settlement can create increased certainty for businesses, lead to increased trade activities, and support economic development in ESA countries.	Major
Domestication of international agreements/conventions /treaties to facilitate international obligations and recognition of arbitration decisions.		Major	
Support to create awareness to stakeholders on dispute settlement mechanisms.		Major	

Source: Own analysis

4.3 The economic impact of potential provisions on institutional structure

4.3.1 Baseline

The interim agreement contains specific institutional provisions.

4.3.2 Screening of institutional structure provisions

Table 3: Detailed screening table of potential institutional structure provisions

Provision	Main economic sectors that could be affected	Possible economic impacts	Potential importance
Possible measures concerning institutional structure			
Support for capacity building for the development of legal frameworks responsive to Agreements on trade	All economic sectors.	Generally positive impact on investment climate and quality of supply of goods and services.	Major

Provision	Main economic sectors that could be affected	Possible economic impacts	Potential importance
and investment liberalisation and support for modernisation and development of commercial laws and for creating awareness of legal and regulatory frameworks.		Domestic advisory groups could bring participation of independent voices and strengthen transparency related to discrimination for foreign businesses, market access restrictions, and the economic impacts of barriers to trade and investment liberalisation.	
Domestication of international agreements/conventions /treaties to strengthen judicial security and foreign investment liberalisation.			Major
Development cooperation to support training and capacity in ESA countries			Major
Domestic advisory groups on the implementation of the agreement, bringing in civil society			Major

Source: Own analysis

4.4 Feedback from government respondents and stakeholders on development cooperation

While there were few comments specifically on dispute resolution and institutional structure, comments on development cooperation may generally be relevant. Stakeholders from government, private sector and civil society organisations all also noted the need for ESA5 countries to update their respective EPA implementation strategies and frameworks. Stakeholders particularly stressed the need to mobilise resources domestically to finance the implementation, which implicitly includes institutional arrangements for conflict avoidance and resolution.

Civil society organisations in ESA countries also pointed to institutional challenges across ESA5 countries. It was noted that in the past the development dimension has been limited to mainly technical assistance.

Government respondents pointed to a clear need for a development dimension in the comprehensive EPA. According to their views, there is a need for an explicit development cooperation chapter and that the negotiations should also focus on aid and development needs, without special reference to institutions responsible for dispute avoidance and settlement though.

4.4.1 Feedback from the private sector and SMEs

Private sector stakeholders in Zimbabwe pointed to a lack of understanding of the technical issues involved in the negotiations, not only by the industry but also in the relevant ministries. This is because most sector players

are not participating in the negotiations, which makes it very difficult for them to appreciate, understand and benefit from the final agreements. Stakeholders from Zimbabwe’s private sector noted that there had been no meaningful impact from EPAs as the government delayed implementing the agreement provisions due to structural challenges.

In Comoros, the private sector stated that they had feeble knowledge about the EPA, while civil society respondents stated to have none. Non-state actors suggested that the dissemination of information was insufficient. The also suggested that the Comorian authorities did not maximise their capabilities by failing to be inclusive regarding their negotiating teams.

Besides problems related to ownership and governance in ESA5 countries, there is also a perceived deficit in the targeting of development measures on the side of the EU.

4.5 Key economic impacts

It is evident that a clear and effective set of rules for conflict avoidance and settlement has the potential to enhance economic development as it creates clarity and transparency and at the same time increases the mutual commitment of parties to adhere to other commitments enshrined in the agreements, such as rules for government procurement or the protection of intellectual property rights. A clear and effective set of rules for conflict avoidance and settlement help to enforce good policies and good governance and thereby enables the partners to reap the utmost economic benefits.

5. Environmental, social, gender and human rights impacts

5.1 Screening of possible impacts

The following tables present a screening of the possible environmental, social, gender and human rights impacts arising from the potential measures related to dispute avoidance and settlement as well as institutional structure. This screening is linked to the screening of economic impacts in section 4, as the changes in economic impact will play a key role in determining impacts in the other dimensions of sustainable development. The screening mentions institutional measures under the TSD chapter, as these could influence the treatment of environmental, social, gender and human rights issues under dispute resolution mechanisms.

Section 5.2 then reviews key impacts that are identified in these tables. EU development cooperation can play a key role in addressing possible negative impacts and ensuring that positive impacts occur. Key areas for development cooperation are summarised in section 5.3.

Table 4: Detailed screening table of potential dispute avoidance and settlement provisions

Provision	Possible environmental impacts	Possible social, gender and human rights impacts	Potential importance
Possible dispute avoidance and settlement provisions			
Establishment/ strengthening of arbitration institutions and safeguard mechanisms.	If civil society can bring potential issues to the attention of arbitration institutions, including via amicus curiae submissions, this would help to support	If civil society can bring potential issues to the attention of arbitration institutions, including via amicus curiae submissions, this would help to support implementation of the TSD provisions.	Major
Training and capacity building for trade lawyers to interpret and			

Provision	Possible environmental impacts	Possible social, gender and human rights impacts	Potential importance
enforce trade laws, settle disputes arising thereof.	implementation of the TSD provisions.	Parties to the EPA could also bring social, gender and human rights concerns related to the implementation of the TSD chapter to the attention of arbitration institutions.	
Domestication of international agreements/conventions /treaties to facilitate international obligations and recognition of arbitration decisions.	Parties to the EPA could also bring environmental concerns related to the implementation of the TSD chapter to the attention of arbitration institutions. ESA countries have ratified key multilateral environmental agreements (see the SIA report on the TSD chapter). Provisions on their domestication, set out in the TSD chapter, along with dispute settlement mechanisms, could strengthen their implementation and thus improve environmental protection in ESA countries, including in the context of EU trade and investment liberalisation.	ESA countries have ratified key International Labour Organisation (ILO) Treaties and United Nations (UN) human rights conventions (see the SIA report on the TSD chapter). Provisions on their domestication, set out in the TSD chapter, along with dispute settlement mechanisms, could strengthen their implementation and thus improve social, gender and human rights conditions in ESA countries, including in the context of EU trade and investment liberalisation.	
Support to create awareness to stakeholders on dispute settlement mechanisms.			

Source: Own analysis

Table 5: Detailed screening table of potential provisions on institutional structure

Provision	Possible environmental impacts	Possible social, gender and human rights impacts	Potential importance
Possible institutional structure measures			
Support for capacity building for the development of legal frameworks responsive to Agreements on trade and investment liberalisation and support for modernisation and development of commercial laws and for creating awareness of legal and regulatory frameworks.	Development cooperation, including legal capacity building, can also support environmental protection, if it includes environmental issues set out in the TSD Chapter of the agreement. Domestic advisory groups, set out in the TSD chapter, could bring participation of independent voices and strengthen transparency related to environmental protection.	Development cooperation, including legal capacity building, can also support environmental protection, if it includes environmental issues set out in the TSD Chapter of the agreement. Domestic advisory groups, set out in the TSD chapter, could bring participation of independent voices and strengthen transparency related to environmental protection.	Major
Domestication of international			

Provision	Possible environmental impacts	Possible social, gender and human rights impacts	Potential importance
agreements/conventions /treaties to strengthen judicial security and foreign investment liberalisation.	Provisions on the domestication of international agreements, set out in the TSD chapter, can strengthen environmental protection.	Provisions on the domestication of international agreements, set out in the TSD chapter, can strengthen environmental protection.	
Development cooperation to support training and capacity in ESA countries			
Domestic advisory groups on the implementation of the agreement, bringing in civil society			

Source: Own analysis

5.2 Overview of key impacts and issues

The provisions on institutional structure and on dispute avoidance and settlement – together with related provisions in the TSD chapter – could play an important role in supporting the environmental, social, gender and human rights goals of the Agreement under negotiation.

The TSD chapter includes provisions for the domestication (ratification and implementation) of international treaties on the environment, labour rights, social and gender conditions and human rights. ESA countries have ratified many of these treaties, and they have also introduced a range of national actions to apply to many of them. However, full implementation remains a challenge for some topics and some countries including, as examples, labour inspection in some ESA countries and illegal wildlife trade in Madagascar and Zimbabwe, ESA countries that are biodiversity hotspots.⁸

Provisions on dispute resolution, institutional structure and transparency could play an important role in supporting implementation of the TSD Chapter. This will be the case in particular if domestic advisory bodies in each ESA country (proposed under the TSD chapter) can bring issues to the attention of dispute resolution mechanisms. These bodies could support the role of civil society in the implementation of the Agreement and also provide a mechanism for transparency.

The effectiveness of domestic participation rests on the presence of a well-developed civil society. According to the *Voice and Accountability* component of the Worldwide Governance Index elaborated by the World Bank,⁹ the extent to which the citizens of the five ESA countries can participate in selecting their government, the freedom of expression, the freedom of association, and the freedom of the media have improved since 2010, though large variations across countries remain, correlated in part with income levels (see Table 6 below). In Mauritius, which received the highest score of the five countries in 2018, many civil society organisations are active. In Madagascar, Zimbabwe, Seychelles and Comoros various civil society organisations and social movements have emerged over the last years, though in many cases their actions have been limited in terms

⁸ For further information, please see the SIA report on the TSD chapter, including its detailed annex on national conditions and policy actions.

⁹ The *Voice and Accountability* component of the WBI captures perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media. The *Worldwide Governance Indicators, 2020 Update*, <http://info.worldbank.org/governance/wgi/>

of impact¹⁰. The EU has supported capacity building for civil society in the region, as described in the evaluation report for this study; to ensure effective civil society participation in the implementation of the Agreement, this work should continue, in particular in Comoros, Madagascar and Zimbabwe¹¹.

Table 6: Voice and accountability indicator

Country	Score
Comoros	28.08
Madagascar	37.93
Mauritius	73.40
Seychelles	58.13
Zimbabwe	16.75

Source: World Bank Government Index

It will be valuable, as noted in the SIA report on the TSD chapter, to ensure monitoring of the Agreement's provisions for environment, social and gender conditions, and human rights, including the impacts of trade and investment liberalisation provisions in these areas. This monitoring, drawing on among other sources work in these areas by UN agencies, can support the work of domestic advisory bodies established under the TSD chapter and help them identify potential issues in implementation. If the Agreement includes provisions allowing civil society, for example as represented in the advisory bodies, to bring issues to the attention of arbitration institutions, such as via *amicus curiae* submissions, this will help to strengthen their role in ensuring the implementation of provisions of the TSD chapter. In addition, stakeholders contacted for this study have reported a low awareness in ESA countries of the current, interim EPA: the work of domestic advisory bodies, including to monitor the Agreement's implementation, could help to strengthen awareness, supporting transparency and attention to environmental, social, gender or human rights issues that may need to be addressed via dispute resolution.

5.3 Development cooperation

Development cooperation initiatives that focus on institutional capacity building are crucial for the success of the EPA. Areas for development cooperation can include training for lawyers on trade law and capacity building for government offices and civil society organisations. These development cooperation initiatives could include the interaction of trade law, and of the Agreement itself, with international law on environment, social and gender conditions and human rights, as cited in the TSD Chapter. Development cooperation initiatives could also include support and capacity building for civil society organisations to participate in advisory bodies established under the TSD chapter, to analyse trade issues and to monitor provisions of the Agreement's TSD chapter for the environment, social and gender conditions and human rights.

6. Policy recommendations

It would be beneficial for the EU and all ESA5 countries to agree on clear and effective rules for conflict avoidance and dispute settlement. As outlined in the accompanying thematic reports of the SIA, only the implementation and effective enforcement of provisions on goods trade, services trade, investment liberalisation, public procurement and the protection of intellectual property would be supportive to economic

¹⁰ For further information, please see the SIA report on the TSD chapter.

¹¹ For further information, please see the ex-post evaluation.

activity and structural economic change, and positively impact on the state of the rule of law in ESA5 countries, and the overall investment climate respectively.

Clear provisions on dispute avoidance and settlement would safeguard the positive economic impacts from sectoral and other horizontal regulations. Provisions on the domestication of international treaties, such as those set out in the TSD chapter, would improve the enforcement of these treaties and increase public awareness of commitments related to the environment as well as human rights, social and gender issues.

Private sector and civil society stakeholders should be consulted during the negotiations. Increased stakeholder participation would raise the awareness of these groups, which could also be invited to join domestic advisory groups established under the TSD Chapter of the Agreement. As concerns the organisational setup, these domestic advisory groups could bring participation of independent voices and strengthen transparency related to discrimination for foreign businesses, market access restrictions, and the economic impacts of barriers to trade and investment. Private sector and civil society participation in advisory groups would have a disciplining effect on the future government to maintain or adjust governance structures in a way that makes the enforcement of other commitments more effective, e.g. effective access to legal remedies. Respective provisions should specify that members are chosen transparently and based on impartial criteria. Moreover, provisions on advisory groups and dispute resolution could allow these bodies, and potentially civil society more generally, to raise issues for dispute settlement institutions under the Agreement, for example via *amicus curiae* briefs.

Development cooperation initiatives that focus on institutional capacity building are crucial for the success of the Agreement. Areas for development cooperation should include the training of lawyers on trade and investment liberalisation. Development assistance initiatives should also include capacity building for government offices and civil society organisations. Specific training on the EPA should include the interaction of dispute settlement provision and other provisions enshrined in international law and other chapters of the EPA, including international treaties and agreements on environment, social and gender conditions and human rights cited in the TSD Chapter. Development cooperation initiatives could also include support and capacity building for civil society organisations to participate in advisory bodies set up under the TSD chapter, to better analyse trade issues and monitor provisions of the Agreement.

Capacity building initiative should focus on provisions which are expected to generate high economic impacts in ESA countries and at the same time known to be challenging because of vested economic interests and positive economy considerations. These include investments in network industries, e.g. telecommunications and postal and courier services, but also financial services. Targeted capacity building should also be envisaged for barriers to investment and discriminatory treatment, e.g. unreasonable foreign investment requirements and discriminatory joint venture requirements.

Appendix I. Overview of the five ESA countries

The five ESA countries vary greatly in terms of their economic and human development and their environmental context. The table below provides an overview of key indicators across these dimensions.

Table 7: Key economic, environmental, social, gender and human rights indicators (2019 or latest year available)

	Comoros	Madagascar	Mauritius	Seychelles	Zimbabwe
GDP/Capita in US\$ (2019) ¹²	1,370	523	11,099	17,448	1,464
Surface area (km ²) ¹³	1,861	587,295	2,040	460	390,760
Total Population (2019) ¹⁴	850,886	26,969,307	1,265,711	97,625	14,645,468
Human Development Index (2018) ¹⁵	0.538	0.521	0.796	0.801	0.563
Poverty rate (dates vary) ¹⁶	18.1%	77.6%	0.1%	..	34%
Female employment (2019) ¹⁷	34.9%	81.8%	40.6%	61.6%	73.8%
Yale EPI (Env. Perf. Index, 2020) ¹⁸	32.1	26.5	45.1	58.2	37
ND-GAIN score (2017) ¹⁹	39.2	32.9	55.6	48.4	33.1

Source: World Bank, UNDP, ILO, Yale University, University of Notre Dame

The data for these indicators predate the Covid-19 pandemic, whose impact on the region and individual countries is not yet clear, but it is expected to have far-reaching health and economic consequences. Nonetheless, these indicators show that the five ESA countries vary greatly in terms of economic, environmental, social and human rights conditions.

Comoros is a small lower-middle-income island economy with a comparatively low level of human development. Poverty affects nearly one-fifth of the population. It faces multiple challenges in terms of adequate health, housing and food. Biodiversity is severely degraded, and its islands are prone to natural disasters and vulnerable to climate change impacts. Comoros faces challenges in providing adequate drinking water and sanitation.

¹² GDP per capita (current US\$) – 2019 data for Comoros, Madagascar, Mauritius, Seychelles, Zimbabwe. World Bank Data: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=KM-MG-MU-SC-ZW>

¹³ Surface area in square kilometres – 2018 data for Comoros, Madagascar, Mauritius, Seychelles, Zimbabwe. World Bank Data: <https://data.worldbank.org/indicator/AG.SRF.TOTL.K2?locations=KM-MG-MU-SC-ZW>

¹⁴ Population, total – 2019 data for Comoros, Madagascar, Mauritius, Seychelles, Zimbabwe. World Bank Data: <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=KM-MG-MU-SC-ZW>

¹⁵ A summary measure of average achievement in key dimensions of human development on a scale of 0 (low) to 1 (high). UNDP data: <http://hdr.undp.org/en/data>

¹⁶ Share of population below international poverty line. 2019 data for Mauritius and Zimbabwe, 2012 for Comoros, 2013 for Madagascar. World Bank data from <https://sdg-tracker.org/no-poverty#targets>

¹⁷ Employment of female population, 15+. ILO Data: https://www.ilo.org/shinyapps/bulkexplorer54/?lang=en&segment=indicator&id=EMP_2WAP_SEX_AGE_RT_A

¹⁸ The Environmental Performance Index (EPI) provides a quantified summary of the environmental performance of countries around the world. It uses 32 performance indicators across 11 issue categories. The EPI uses a score of 0 to 100 (the maximum value). 2020 EPI Results: <https://epi.envirocenter.yale.edu/epi-topline>

¹⁹ The Notre Dame Global Adaptation Initiative (ND-GAIN) score is an index assessing a country's vulnerability to climate change and its resilience and readiness vis-à-vis climate impacts. Overall, 45 indicators contribute to developing the country index, with 36 indicators assessing vulnerability and 9 assessing readiness. Scores range from 0 to 100. Notre Dame Global Adaptation Initiative: <https://gain.nd.edu/our-work/country-index/rankings/>

Madagascar is a low-income economy. It is a large island and has the highest population of the five ESA countries. Poverty levels are extremely high despite an abundance of natural resources. Poverty negatively affects its social conditions, with limited rights to health, food, education, and housing. Biodiversity is severely degraded, and deforestation is a significant challenge. Moreover, Madagascar is highly vulnerable to climate change impacts.

Mauritius is a small upper-middle-income country whose service industry has grown considerably in the past ten years. Rights to food, housing and health care are at comparatively high levels, as is human development. The country's biodiversity is highly threatened, and despite high readiness, Mauritius remains vulnerable to climate impacts.

Seychelles is a small high-income country island with comparatively high-level human development,²⁰ including a high literacy level²¹ and a well-developed housing market. The right to health and food has improved in recent years. Though it has a relatively high readiness level, Seychelles is highly vulnerable to climate change impacts.

Zimbabwe is a lower-middle-income, landlocked country whose economy, social conditions and environment have suffered from political crisis. Rights to food, housing and health are extremely poor. Although about one-quarter of the country has been protected, biodiversity is threatened, and deforestation continues. The country is highly vulnerable to climate change and has a low readiness score.

²⁰ Central Bank of Seychelles, *Annual Report 2018*, available at: <https://www.cbs.sc/Downloads/publications/Annual%20Report%202018.pdf>.

²¹ World Bank, 'Literacy rate, youth total (% of people ages 15-24) - Comoros, Madagascar, Mauritius, Seychelles, Zimbabwe, World', available at <https://data.worldbank.org/indicator/SE.ADT.1524.LT.ZS?end=2019&locations=KM-MG-MU-SC-ZW-1W&start=2013&view=chart>

Appendix II. Indicators on legal system, trade barriers and regulations in ESA countries

1. Madagascar

Table 8: Overview

Year	2013	2014	2015	2016	2017	2018
Economic freedom summary index	6,64	6,43	6,40	6,25	6,14	6,20
Rank	100	111	111	118	126	125
Quartile	3	3	3	3	4	4

Source: Fraser Institute

Table 9: Size of government, legal system and property rights

Year	2013	2014	2015	2016	2017	2018
Size of government	8,74	8,14	8,31	7,90	7,63	7,51
Judicial independence	3,35	3,47	3,68	3,59	3,52	3,48
Impartial courts	3,33	3,32	3,36	3,31	3,69	3,49
Protection of property rights	4,28	4,28	4,35	4,33	4,48	4,70
Integrity of the legal system	4,50	4,63	4,65	4,65	4,67	4,57
Legal enforcement of contracts	2,42	2,96	2,96	2,96	2,96	2,96
Legal system & property rights	2,99	3,05	3,09	3,06	3,21	2,92

Source: Fraser Institute

Table 10: Sound money and freedom to trade internationally

Year	2013	2014	2015	2016	2017	2018
Sound money	8,06	8,04	8,05	7,90	7,63	7,65
Non-tariff trade barriers	5,02	5,42	3,52	4,12	1,95	4,83
Compliance costs of importing and exporting	7,01	4,62	5,07	5,07	5,07	5,09
Regulatory trade barriers	6,02	5,02	4,29	4,59	3,51	4,96
Financial Openness	4,16	4,16	4,16	1,66	1,66	1,66
Capital controls	0,00	0,77	0,77	0,77	0,77	0,77

Freedom of foreigners to visit	10,00	10,00	10,00	10,00	10,00	10,00
Controls of the movement of capital and people	4,72	4,98	4,98	4,14	4,14	4,14
Freedom to trade internationally	7,16	6,97	6,76	6,62	6,36	6,71

Source: Fraser Institute

Table 11: Regulation

Year	2013	2014	2015	2016	2017	2018
Credit market regulations	8,07	7,71	7,51	7,39	7,39	8,14
Labour market regulations	4,94	4,74	4,49	4,50	4,36	4,64
Administrative requirements	4,16	3,74	3,60	3,57	3,41	3,13
Regulatory Burden	2,44	2,44	2,44	2,44	3,33	3,56
Starting a business	9,60	9,12	9,22	9,37	9,40	9,43
Impartial Public Administration	1,11	1,11	1,35	1,35	3,07	3,07
Licensing restrictions	8,88	7,85	7,85	7,80	7,84	7,69
Tax compliance	7,95	7,95	7,95	7,95	7,95	7,95
Business regulations	5,69	5,37	5,40	5,41	5,83	5,80
Regulation	6,23	5,94	5,80	5,77	5,86	6,19

Source: Fraser Institute

2. Mauritius

Table 12: Overview

Year	2013	2014	2015	2016	2017	2018
Economic freedom summary index	7,88	7,82	7,99	7,98	7,99	8,21
Rank	16	24	14	16	13	7
Quartile	1	1	1	1	1	1

Source: Fraser Institute

Table 13: Size of government, legal system and property rights

Year	2013	2014	2015	2016	2017	2018
Size of government	7,81	7,68	7,98	7,88	8,15	8,15
Judicial independence	5,70	5,67	5,69	5,67	6,04	5,95

Impartial courts	5,67	5,70	5,56	5,43	5,54	5,47
Protection of property rights	6,34	6,33	6,26	6,18	6,22	6,74
Integrity of the legal system	4,69	4,69	6,95	6,96	6,79	6,77
Legal enforcement of contracts	4,64	4,64	5,03	5,03	5,25	5,25
Legal system & property rights	5,45	5,45	5,92	6,31	6,40	6,46

Source: Fraser Institute

Table 14: Sound money and freedom to trade internationally

Year	2013	2014	2015	2016	2017	2018
Sound money	9,67	9,58	9,59	9,59	9,30	9,52
Non-tariff trade barriers	6,08	6,83	6,14	6,26	6,20	6,50
Compliance costs of importing and exporting	8,76	7,91	7,86	8,23	8,54	8,54
Regulatory trade barriers	7,42	7,37	7,00	7,25	7,37	7,52
Financial Openness	6,99	6,99	6,99	6,99	6,99	6,99
Capital controls	4,62	4,62	4,62	4,62	4,62	4,62
Freedom of foreigners to visit	10,00	10,00	10,00	10,00	10,00	10,00
Controls of the movement of capital and people	7,20	7,20	7,20	7,20	7,20	7,20
Freedom to trade internationally	8,50	8,50	8,42	8,47	8,52	8,53

Source: Fraser Institute

Table 15: Regulation

Year	2013	2014	2015	2016	2017	2018
Credit market regulations	8,50	8,55	8,78	8,63	8,51	8,95
Labour market regulations	7,60	7,16	7,38	6,36	6,41	7,90
Administrative requirements	4,83	4,90	4,67	4,38	4,42	5,02
Regulatory Burden	9,78	9,78	9,78	8,89	8,89	8,44
Starting a business	9,79	9,79	9,77	9,81	9,83	9,85

Impartial Public Administration	7,00	6,94	7,10	7,10	6,89	8,36
Licensing restrictions	6,92	8,37	8,37	9,32	9,32	9,36
Tax compliance	8,30	8,30	8,30	8,30	8,30	8,43
Business regulations	7,77	8,01	8,00	7,97	7,94	8,25
Regulation	7,96	7,91	8,05	7,65	7,62	8,36

Source: Fraser Institute

3. Seychelles

Table 16: Overview

Year	2013	2014	2015	2016	2017	2018
Economic Freedom Summary Index	7,29	7,48	7,43	7,44	7,37	7,49
Rank	57	49	52	52	57	52
Quartile	2	2	2	2	2	2

Source: Fraser Institute

Table 17: Size of government, legal system and property rights

Year	2013	2014	2015	2016	2017	2018
Size of government	6,86	7,16	6,87	7,00	7,01	6,71
Judicial independence	5,03	5,04	4,98	4,93	5,09	5,27
Impartial courts	5,03	5,06	5,11	5,06	5,15	5,46
Protection of property rights	4,86	4,86	5,12	5,35	5,35	5,53
Integrity of the legal system	6,33	6,33	6,86	6,97	6,93	6,98
Legal enforcement of contracts	4,06	4,06	4,06	4,06	4,06	4,06
Legal system & property rights	5,16	5,16	5,42	5,54	5,59	5,54

Source: Fraser Institute

Table 18: Sound money and freedom to trade internationally.

Year	2013	2014	2015	2016	2017	2018
Sound Money	8,26	9,10	9,33	9,00	9,07	9,26
Non-tariff trade barriers	5,70	5,70	5,70	6,05	6,04	5,87
Compliance costs of importing and exporting	7,76	5,24	5,32	5,32	5,32	5,33

Regulatory trade barriers	6,73	5,47	5,51	5,68	5,68	5,60
Financial Openness	10,00	10,00	10,00	10,00	10,00	10,00
Capital controls	8,46	8,46	8,46	8,46	8,46	8,46
Freedom of foreigners to visit	10,00	10,00	10,00	10,00	10,00	10,00
Controls of the movement of capital and people	9,49	9,49	9,49	9,49	9,49	9,49
Freedom to trade internationally	8,82	8,55	8,06	8,10	7,65	8,27

Source: Fraser Institute

Table 19: Regulation

Year	2013	2014	2015	2016	2017	2018
Credit market regulations	7,67	8,00	8,00	8,00	7,88	7,88
Labour market regulations	6,99	6,99	7,17	7,36	7,40	7,56
Administrative requirements	5,33	5,33	5,33	5,04	5,03	5,17
Regulatory Burden	6,00	6,00	6,00	6,00	6,00	5,78
Starting a business	8,67	8,83	8,83	8,84	8,83	8,84
Impartial Public Administration	6,22	6,22	6,22	6,64	6,64	7,89
Licensing restrictions	8,98	8,46	8,46	8,46	8,67	9,08
Tax compliance	9,01	9,05	9,05	9,05	9,05	9,05
Business regulations	7,37	7,31	7,31	7,34	7,37	7,63
Regulation	7,34	7,43	7,50	7,56	7,55	7,69

Source: Fraser Institute

4. Zimbabwe

Table 20: Overview

Year	2013	2014	2015	2016	2017	2018
Economic freedom summary index	5,46	5,80	6,24	5,72	5,16	5,12
Rank	144	138	118	144	152	155
Quartile	4	4	3	4	4	4

Source: Fraser Institute

Table 21: Size of government, legal system and property rights

Year	2013	2014	2015	2016	2017	2018
Size of government	6,51	6,58	6,78	5,14	4,29	4,51
Judicial independence	3,42	3,60	3,85	3,91	3,94	3,79
Impartial courts	3,40	3,50	3,61	3,49	3,48	3,36
Protection of property rights	3,08	3,30	3,41	3,37	3,67	3,86
Integrity of the legal system	5,15	5,16	5,16	5,05	5,23	4,94
Legal enforcement of contracts	2,37	2,37	2,37	2,37	2,37	2,37
Legal System & Property Rights	3,54	3,60	3,78	3,74	4,11	4,07

Source: Fraser Institute

Table 22: Sound money and freedom to trade internationally

Year	2013	2014	2015	2016	2017	2018
Sound money	6,90	7,97	8,18	7,38	6,72	5,03
Non-tariff trade barriers	6,48	4,74	5,63	4,99	4,85	5,20
Compliance costs of importing and exporting	1,29	4,17	1,69	1,64	1,33	1,33
Regulatory trade barriers	3,89	4,45	3,66	3,32	3,09	3,26
Financial Openness	1,66	1,66	4,16	4,16	4,16	4,16
Capital controls	0,00	0,00	0,00	0,00	0,00	0,00
Freedom of foreigners to visit	8,85	8,85	8,85	8,85	8,85	8,85
Controls of the movement of capital and people	3,50	3,50	4,34	4,34	4,34	4,34
Freedom to trade internationally	5,46	5,78	5,88	5,79	3,97	5,73

Source: Fraser Institute

Table 23: Regulation

Year	2013	2014	2015	2016	2017	2018
Credit market regulations	6,00	6,00	9,33	9,10	9,10	7,44
Labour market regulations	4,55	5,09	6,05	6,12	6,12	6,24

Administrative requirements	3,07	2,63	2,26	1,82	1,92	2,41
Regulatory Burden	0,67	0,67	0,67	0,89	2,67	2,67
Starting a business	5,91	5,94	5,83	6,89	7,81	8,33
Impartial Public Administration	2,61	2,78	2,78	2,17	1,97	2,21
Licensing restrictions	4,99	4,95	6,99	7,00	7,49	7,99
Tax compliance	7,29	7,29	7,29	7,29	7,29	7,29
Business regulations	4,09	4,04	4,30	4,34	4,86	5,15
Regulation	4,88	5,04	6,56	6,52	6,69	6,28

Source: Fraser Institute