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# EPA Brief

## **The Cariforum-EC Economic Partnership Agreement (EPA)**

### Provisions on the Cultural Sector in the EPA

#### **1. Background to the EPA**

The recently concluded negotiations on an Economic Partnership Agreement (EPA) will result in a treaty that covers trade in goods and services, investment and trade related issues (competition, innovation, sustainable development, etc.) between the 27 members of the European Union on the one hand and the 15 members of the CARIFORUM group (CARICOM and the Dominican Republic) on the other. It is expected to come into effect later this year. The EPA was negotiated to replace the trade provisions of the Cotonou Agreement which currently governs trade and economic and development relations between the EU and African, Caribbean and Pacific (ACP) countries. The EPA will liberalize trade in goods and investment between the two regions on a reciprocal basis, and the EC will provide special development support to build the capacity of firms and other entities to take advantage of the market access and other provisions in the EPA. Since the CA was signed, the EU has been enlarged with the addition of 10 new members as well as Bulgaria and Romania more recently.

#### **2. Culture in the Cotonou Agreement**

In the Cotonou Agreement (CA) culture was treated in a traditional sense of merely cooperation between nations and did not really address market access for cultural products and services. The CA contains very limited provisions most of which are largely general or hortatory.

Article 27 of the Cotonou Agreement addresses cultural development and states that Cooperation in the area of culture shall aim at:

- a) integrating the cultural dimension at all levels of development cooperation;

- b) recognising, preserving and promoting cultural values and identities to enable inter-cultural dialogue;
- c) recognising, preserving and promoting the value of cultural heritage;
- d) supporting the development of capacity in this sector; and
- e) developing cultural industries and enhancing market access opportunities for cultural goods and services.

Similarly, Article 41 of the CA states that: “The Community shall support the ACP (African Caribbean and Pacific) States' efforts to strengthen their capacity in the supply of services. Particular attention shall be paid to services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services with a view to enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services.”

Not surprisingly, little activity of benefit to the Caribbean took place on the cultural front under the CA so far, except for some ACP-wide cultural forums.

## 2. Treatment of Cultural Industries and the Entertainment Sector in the EPA

The cultural sector and entertainment services in particular are addressed through two instruments in the EPA. These are as follows:

- (i) Market access commitments by 26 European states for entertainment services from CARIFORUM states that are governed by the rules of the Services and Investment chapter and the general provisions of the EPA.
- (ii) A special Protocol on Cultural Cooperation.

In the case of the EPA's market access provisions, it is important to note that in addition to allowing Caribbean firms to invest in entertainment activities in Europe<sup>1</sup>, for the first time, the EC and its Member States granted **legally binding** and significant market access for the supply of entertainment services through the temporary entry of natural persons for up to six months. This is categorized as Contractual Service Suppliers (CSS) under the EPA for the following activities:

### **CPC 9619 Entertainment services (other than audio-visual)**

- 96191 Theatrical producer, singer group, band and orchestra entertainment services
- 96192 Services provided by authors, composers, sculptors, entertainers and other individual artists
- 96193 Ancillary theatrical services n.e.c.
- 96194 Circus, amusement park and similar attraction services
- 96195 Ballroom, discotheque and dance instructor services
- 96199 Other entertainment services n.e.c.

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<sup>1</sup> All of the EU, except nine of the new members mainly from Eastern Europe.

Under the EPA chapter on Services, Contractual Service Suppliers (CSS) are defined as follows:

Natural persons (individuals) of the EC Party or of the Signatory CARIFORUM States employed by a juridical person (company or firm) of that EC Party or Signatory CARIFORUM State which has no commercial presence in the territory of the other Party and which has concluded a bona fide contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services.

All EU Member States except Belgium undertook commitments in the entertainment sector for CSS. It is hoped that eventually Belgium will do so as well. The commitments of the EC-15 come into effect once the EPA is provisionally applied in 2008, but those of the newer states (EC 10)<sup>2</sup> will come into effect in three years, and Bulgaria and Romania in five years.

Access granted to Caribbean entertainers, artists and other cultural practitioners may be subject to qualification requirements and are subject to economic needs tests.<sup>3</sup> But when CARIFORUM states get their artists and cultural practitioners registered and/or certified across the region, a case can be made for the EU states to accept that as qualification. The economic needs tests (ENTs) condition was in exchange for a full commitment to market opening by the EU **without quotas**. But the ENTs are not new; this has been in practice in several states for a long time.<sup>4</sup> The EPA grants legally binding access to practically all of the EU and in significant markets such as France where the culture-trade interface is a contentious and very sensitive issue. Furthermore, this level of market access in the entertainment sector by so many EU states has never been granted before to any other country or regional grouping.

This commitment offers those in the creative sector the same basis for entry as Caribbean business professionals. Caribbean artists, musicians, and other cultural practitioners and their crews who are registered as businesses will also be able to send their members or employees and they will benefit from the same conditions as traditional professionals to supply entertainment services under the category of contractual service suppliers (CSS). Artists (or bands) who are self-employed artists who create a company which they own or not, and which has only one employee (themselves), are to be considered contractual service suppliers, and are therefore covered by EC commitments on Entertainment in the EPA, once they are considered employees of this company (if they receive a salary from the band).

It should be noted that the EU commitments in the EPA did not add any new requirements for Caribbean musicians or other entertainers who previously benefited from discretionary access to certain European countries such as the United Kingdom. Such access may still be granted to those persons; but to take

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<sup>2</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia.

<sup>3</sup> The main criteria for economic needs tests will be the assessment of the relevant market situation in the Member State or the region where the service is to be provided, including with respect to the number of, and the impact on, existing services suppliers.

<sup>4</sup> For instance, in the case of the United Kingdom see, *Work Permits Sports and Entertainment: Guidance for Employers*, 19 November 2007 – 30 March 2008.

[www.bia.homeoffice.gov.uk/workingintheuk/workpermits/workpermitarrangements/sportsandentertainments/](http://www.bia.homeoffice.gov.uk/workingintheuk/workpermits/workpermitarrangements/sportsandentertainments/)

advantage of the legally guaranteed market access that was granted under the EPA by 26 EU states, persons supplying any of the entertainment services indicated above are expected to meet the stipulated conditions in the EPA.

In order to take advantage of market access under the EPA, the following conditions that were agreed by both sides for contractual service suppliers will apply to any natural person (entertainer or artist):

- a) The natural persons (individuals) are engaged in the supply of a service on a temporary basis as employees of a juridical person (firm or company), which has obtained a service contract for a period not exceeding 12 months.
- b) The natural persons entering the other Party should be offering such services as an employee of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience<sup>5</sup> in the sector of activity which is the subject of the contract.
- c) The natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during its stay in the other Party.
- d) The temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, 25 weeks, in any twelve month period or for the duration of the contract, whatever is less.
- e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided.
- f) The number of persons covered by the service contract shall not be larger than necessary to fulfill the contract, as it may be decided by the laws, regulations and requirements of the European Community and the Member State where the service is supplied. (In other words, if a music band consists of 8 persons, it cannot expect work permits for 20 persons on a tour).

While most developing countries can supply services competitively through the temporary entry of natural persons, all developed countries are very reluctant to allow this. Temporary entry is a very contentious and politically charged issue and authorities all want to maintain discretion in terms of access. Governments are willing to allow the supply of entertainment services through other means (especially investment or commercial presence) but due to immigration and other concerns they restrict temporary entry (or Mode 4 in trade jargon). For instance, while the United States signed far-reaching trade agreements with Central America, the Dominican Republic and several Andean countries, none of these FTAs have provisions on temporary entry of service suppliers.

In the case of the European Union, it is the first time that a comprehensive offer was made in entertainment services because this is usually considered part of the cultural sector which is a very

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<sup>5</sup> Obtained after having reached the age of majority.

sensitive sector in many EU states. Some CARIFORUM states did not undertake commitments for contractual service suppliers from the EU. But Caribbean artists, musicians, and other cultural practitioners and their crews who are registered as businesses will have a legal right to send their members or employees to almost all EU states to supply entertainment services once they get a contract from clients in those EU states and they meet the normal immigration requirements.

#### 4. The Protocol on Cultural Cooperation

The Services chapter and market access commitments in the EPA provide access for cultural practitioners who are selling their services in Europe. The **Protocol on Cultural Cooperation** facilitates those who are not in commercial transactions but who wish to enter Europe for other cultural activities including collaborating with Europeans. (See Annex)

The market access granted by the EU in Entertainment is complemented with a historic and innovative Protocol, which provides for bilateral cooperation on all cultural fronts and with special provisions on the audiovisual sector. In terms of objectives, the Protocol aims to improve the conditions governing the exchanges of cultural activities, goods and services and redressing the structural imbalances and asymmetrical patterns which may exist in trade in these between CARIFORUM states and the EU. The Protocol's starting point is the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

While the historical tradition and EU-wide policy in Europe does not allow market access commitments in the audio-visual sector in any trade agreement whatsoever, the EPA Protocol on Cultural Cooperation provides ample room for collaboration in order to allow access for Caribbean audio-visual material through special mechanisms. In particular, co-produced audiovisual products and services involving European and Caribbean creative teams (in a generous 80-20 percent formula for the production budget) will qualify as domestic productions and meet the audiovisual content rules in all EU states and in the Caribbean. When co-production treaties are completed between individual EU states and Caribbean states or regions, it will also make it possible for Caribbean audiovisual producers to access funding for creative projects.

Furthermore, through the Protocol, artists and other cultural practitioners (who are not involved in commercial activities in the EU) will be able to enter the EU space to collaborate on projects, get training, learn new techniques, engage in production, etc. And they will be allowed to stay in the EU for periods up to 90 days in any 12-month period. Previous EU trade agreements had almost nothing on cultural cooperation. The CARIFORUM-EU EPA is the first to have comprehensive provisions on culture that allow for movement of artists, musicians, in this manner. This Protocol mechanism will be useful for the smaller artists and entertainers and any cultural practitioners who do not yet operate as a firm; they can enter EU states under the cooperation element and over time, develop contacts that can lead to commercial contracts.

The Protocol also provides for technical assistance through different measures, inter alia, training, exchange of information, expertise and experiences, and counselling in elaboration of policies and legislation as well as in usage and transfer of technologies and know-how. This support will include cooperation between private companies, non-governmental organisations as well as public-private partnerships.

## **5. Differences between Cotonou and the EPA**

The new instruments regarding cultural activities under the EPA provide significant new market access as well as a more developed and defined basis for cooperation and joint activities as well as development support for cultural initiatives. But it does not mean that well-known artists or musicians who previously were granted access in some EU states will now be prevented from doing so. The main difference is that while previously access to the EU market was purely on a discretionary basis, the EPA commitments now give legal certainty to suppliers of entertainment services from the Caribbean region. And the big change is that there is a commitment by almost the entire EU to market access and to cultural cooperation in a wide range of areas.

It is also important to note that the market access commitments on entertainment services and the provisions of the Protocol on Cultural Cooperation in the EPA are subject to the wider goals of the Agreement and the general provisions which include dispute settlement; so if our artists or cultural practitioners find authorities in individual EU states renegeing on their commitments or making it too difficult for them to enter to supply services or do other activities, this can be formally challenged through the dispute resolution process.

## Annex 1

### **Protocol III to the Economic Partnership Agreement**

#### **On Cultural Cooperation**

The Parties and the Signatory CARIFORUM States,

*Having* ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in Paris on 20 October 2005, which entered into force on 18 March 2007, or intending to do so promptly;

*Intending* to effectively implement the UNESCO Convention and to cooperate within the framework of its implementation, building upon the principles of the Convention and developing actions in line with its provisions, notably its Articles 14, 15 and 16;

*Recognizing* the importance of the cultural industries and the multi-faceted nature of cultural goods and services as activities of cultural, economic and social value;

*Recognizing* that the regional integration process supported by this Agreement forms part of a global strategy aimed at promoting equitable growth and the reinforcement of economic, trade and cultural cooperation between the Parties;

*Recalling* that the objectives of this Protocol are complemented and supported by existing and future policy instruments managed in other frameworks, with a view to:

- a) integrating the cultural dimension at all levels of development cooperation and, in particular, in the field of education;
- b) reinforcing the capacities and independence of the Parties' cultural industries;
- c) promoting local and regional cultural content;

*Recognising* that protecting and promoting cultural diversity is a condition for a successful dialogue between cultures;

*Recognising*, protecting and promoting cultural heritage, as well as promoting its recognition by local populations and recognising its value as a means for expressing cultural identities;

*Stressing* the importance of facilitating cultural cooperation between the Parties and for that purpose to take into account, on a case by case basis, inter alia, the degree of development of their cultural industries, the level and structural imbalances of cultural exchanges and the existence of preferential schemes for the promotion of local and regional cultural content, agree as follows:

**Article 1**  
**Scope, objectives and definitions**

1. Without prejudice to the other provisions of this Agreement, this Protocol sets up the framework within which the Parties shall cooperate for facilitating exchanges of cultural activities, goods and services, including inter alia, in the audiovisual sector.
2. While preserving and further developing their capacity to elaborate and implement their cultural policies, with a view to protecting and promoting cultural diversity, the Parties shall collaborate with the aim of improving the conditions governing their exchanges of cultural activities, goods and services and redressing the structural imbalances and asymmetrical patterns which may exist in such exchanges .
3. The definitions and concepts used in this Protocol are those of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in Paris on 20 October 2005.
4. In addition, for the purpose of this Protocol, “artists and other cultural professionals and practitioners” mean natural persons that perform cultural activities, produce cultural goods or participate in the direct supply of cultural services.

*Section 1- Horizontal provisions*

**Article 2**  
**Cultural exchanges and dialogue**

1. The Parties shall aim at fostering their capacities to determine and develop their cultural policies, developing their cultural industries and enhancing exchange opportunities for cultural goods and services of the Parties, including through preferential treatment.
2. The Parties shall co-operate to foster the development of a common understanding and enhanced exchange of information on cultural and audiovisual matters through an EC-CARIFORUM dialogue, as well as on good practices in the field of Intellectual Property Rights protection. This dialogue will take place within the mechanisms established in this Agreement as well as in other relevant fora as and when appropriate.



### **Article 3**

#### **Artists and other cultural professionals and practitioners**

1. The Parties and the Signatory CARIFORUM States shall endeavour to facilitate, in conformity with their respective legislation, the entry into and temporary stay in their territories of artists and other cultural professionals and practitioners from the other Party, or, as the case may be, the Signatory CARIFORUM States, who cannot avail themselves of commitments undertaken on the basis of Title II of the Agreement and who are either:

- (a) artists, actors, technicians and other cultural professionals and practitioners from the other Party involved in the shooting of cinematographic films or television programmes, or
- (b) artists and other cultural professionals and practitioners such as visual, plastic and performing artists and instructors, composers, authors, providers of entertainment services and other similar professionals and practitioners from the other Party involved in cultural activities such as, for example, the recording of music or contributing an active part to cultural events such as literary fairs, festivals, among other activities,

provided that they are not engaged in selling their services to the general public or in supplying their services themselves, do not on their own behalf receive any remuneration from a source located within the Party where they are staying temporarily, and are not engaged in the supply of a service in the framework of a contract concluded between a legal person who has no commercial presence in the Party where the artist or other cultural professional or practitioner is staying temporarily and a consumer in this Party.

2. This entry into and temporary stay in the territories of the EC Party or of the Signatory CARIFORUM States, when allowed, shall be for a period of up to 90 days in any twelve month period.
3. The Parties and the Signatory CARIFORUM States shall endeavour to facilitate, in conformity with their respective legislation, the training of, and increased contacts between artists and other cultural professionals and practitioners such as:
- (a) Theatrical producers, singer groups, band and orchestra members;
  - (b) Authors, poets, composers, sculptors, entertainers and other individual artists;
  - (c) Artists and other cultural professionals and practitioners participating in the direct supply of circus, amusement park and similar attraction services, as well as in festivals and carnivals;

- (d) Artists and other cultural professionals and practitioners participating in the direct supply of ballroom, discotheque services and dance instructors;
- (e) Mas performers and designers.

#### **Article 4** **Technical assistance**

1. The Parties shall endeavour to provide technical assistance to Signatory CARIFORUM States with the aim of assisting in the development of their cultural industries, development and implementation of cultural policies, and in promoting the production and exchange of cultural goods and services.
2. Subject to the provisions of Article 7 of the Agreement, the Parties agree to cooperate, including by facilitating support, through different measures, inter alia, training, exchange of information, expertise and experiences, and counselling in elaboration of policies and legislation as well as in usage and transfer of technologies and know-how. Technical assistance may also facilitate the cooperation between private companies, non-governmental organisations as well as public-private partnerships.

#### *Section 2 – Sectoral provisions*

#### **Article 5** **Audio-visual, including cinematographic, cooperation**

1. The Parties shall encourage the negotiation of new and implementation of existing co-production agreements between one or several Member States of the European Union and one or several Signatory CARIFORUM States.
2. The Parties and the Signatory CARIFORUM States, in conformity with their respective legislation, shall facilitate the access of co-productions between one or several producers of the EC Party and one or several producers of Signatory CARIFORUM States to their respective markets, including through the granting of preferential treatment, and subject to the provisions of Article 7 of this Agreement, including by facilitating support through the organisation of festivals, seminars and similar initiatives.

- (a) Co-produced audiovisual works shall benefit from the preferential market access referred to in paragraph 2 within the EC Party in the form of qualification as European works in accordance with Article 1 n) (i) of Directive 89/552/EEC<sup>6</sup> for the purposes of the requirements for the promotion of audiovisual works as provided for by Articles 4(1) and 3i(1) of that Directive. Such preferential treatment shall be granted on the following conditions:
- (i) *the co-produced audiovisual works are realised between undertakings which are owned and continue to be owned, whether directly or by majority participation, by a Member State of the European Union or a Signatory CARIFORUM State and/or by nationals of a Member State of the European Union or nationals of a Signatory CARIFORUM State;*
  - (ii) *the representative director(s) or manager(s) of the co-producing undertakings have the nationality of a Member State of the European Union and/or of a Signatory CARIFORUM State;*
  - (iii) *both (a) the total financial contributions of one or several producers of the EC Party (taken together), and (b) the total financial contributions of one or several producers of Signatory CARIFORUM States (taken together) shall not be less than 20 percent and not more than 80 percent of the total production cost.*
- (b) The Parties will regularly monitor the implementation of paragraph (a) and report any problem that may arise in this respect to the CARIFORUM-EC Trade and Development Committee established under this Agreement.
- (c) Where preferential schemes for the promotion of local or regional cultural content are established by one or more Signatory CARIFORUM States, the Signatory CARIFORUM States concerned will extend to the works co-produced between producers of the EC party and of Signatory CARIFORUM States the preferential market access benefits of such schemes under the conditions laid down in paragraph (a).
3. The Parties and the Signatory CARIFORUM States reaffirm their commitment to the use of international and regional standards in order to ensure compatibility and interoperability of audio-visual technologies, contributing therefore to strengthen cultural exchanges. They shall cooperate towards this objective.

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<sup>6</sup> Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Official Journal of the European Communities L 298, 17.10.1989, p. 23). Directive as last amended by Directive 2007/65/EC (Official Journal of the European Communities L 332, 18.12.2007, p. 27).

4. The Parties and the Signatory CARIFORUM States shall endeavour to facilitate rental and leasing of the technical material and equipment necessary such as radio and television equipment, musical instruments and studio recording equipment to create and record audio-visual works.
5. The Parties and the Signatory CARIFORUM States shall endeavour to facilitate the digitalisation of audio-visual archives in Signatory CARIFORUM States.

#### **Article 6**

#### **Temporary importation of material and equipment for the purpose of shooting cinematographic films and television programmes**

1. Each Party shall encourage as appropriate the promotion of its territory as a location for the purpose of shooting cinematographic films and television programmes.
2. Notwithstanding the provisions contained in Title I of the Agreement, the Parties and the Signatory CARIFORUM States shall, in conformity with their respective legislation, consider and allow the temporary importation, from the territory of one Party into the territory of the other Party, of the technical material and equipment necessary to carry out the shooting of cinematographic films and television programmes by cultural professionals and practitioners.

#### **Article 7**

#### **Performing arts**

1. Subject to the provisions of Article 7 of this Agreement, the Parties agree to cooperate, in conformity with their respective legislation, including by facilitating increased contacts between practitioners of performing arts in areas such as professional exchanges and training, inter alia participation in auditions, development of networks and promotion of networking.
2. The Parties and the Signatory CARIFORUM States shall encourage joint productions in the fields of performing arts between producers of one or several Member States of the European Union and one or several Signatory CARIFORUM States.
3. The Parties and the Signatory CARIFORUM States shall encourage the development of international theatre technology standards and the use of theatre stage signs, including through appropriate standardisation bodies. They shall facilitate cooperation towards this objective.

## Article 8 Publications

Subject to the provisions of Article 7 of this Agreement, the Parties agree to cooperate, in conformity with their respective legislation, including by facilitating exchange with and dissemination of publications of the other Party in areas such as:

- (a) organisation of fairs, seminars, literary events and other similar events related to publications, including public reading mobile structures;
- (b) facilitating co-publishing and translations;
- (c) facilitating professional exchanges and training for librarians, writers, translators, booksellers and publishers.

## Article 9 Protection of sites and historic monuments

Subject to the provisions of Article 7 of this Agreement, the Parties agree to cooperate, including by facilitating support to encourage exchanges of expertise and best practices regarding the protection of sites and historic monuments, bearing in mind the UNESCO World Heritage mission, including through facilitating the exchange of experts, collaboration on professional training, increasing awareness of the local public and counselling on the protection of the historic monuments, protected spaces, as well as on the legislation and implementation of measures related to heritage, in particular its integration into local life. Such cooperation shall conform with the respective legislation of the Parties and the Signatory CARIFORUM States and is without prejudice to the reservations included in their commitments contained in Annex IV of this Agreement.

