

The Vice-President of Zambia, Dr Guy Scott, has urged the Member States to ensure that the legal instruments that are agreed upon enter into force, by having the requisite signatures and ratifications.

“I urge you to ensure that the decisions taken by the Council of Ministers are implemented. During this meeting, consider the establishment of a mechanism within your structures to oversee the domestication and transposition of legal instruments of decisions taken at the regional level,” he said.

He was officiating at the opening of the 16th Meeting of Ministers of Justice and Attorneys-General of COMESA, which took place at Mulungushi Conference Centre, Lusaka on 18 October 2012.

He added that the Treaty establishing COMESA is a strong legal foundation, which was drafted by our founding forefathers as the constitution of the people of the region, and it is key to achieving regional economic integration.

“As custodians of the law, the Ministers of Justice and Attorneys-General have to come up with sound legal instruments, which will help us in our quest to emancipate over 450 million people out of poverty by delivering effective and comprehensive legal instruments for our economic development.”

“Any society that is not based on the rule of law creates a recipe for anarchy as seen in many African states. We are privileged to have the Court of Justice whose responsibility it is to ensure that the organisation’s operations are in accordance with the Treaty,” Dr Scott said.

He added that COMESA has to come up with modalities of addressing the challenges that the Court of Justice is facing so that we can have an effective and credible judicial system of dispute regulation that will assure potential investors of the safety of our regional market.

“We should also take time to continuously examine and develop legal instruments that will ensure that intra- COMESA trade contributes to poverty alleviation and wealth creation for our people. We can only do this when we have a free and fair trading regime where anti-competitive practices and behaviour are not tolerated. The operational rules of the COMESA Competition Commission will hopefully enhance fair competition in our trade regime,” Dr Scott concluded. The Vice-President welcomed the delegates to Zambia which he referred to as “the home to the mighty Victoria Falls, and the champions of the African football, the Chipolopolo boys”

Speaking at the same meeting, the Secretary-General, Mr Sindiso Ngwenya said that institutional mechanisms are required if the Member States are to implement the decisions taken by COMESA’s Policy Organs, in a timely manner.

“It is assumed that once decisions have been taken they will be implemented yet this is unlikely to happen by accident as it requires that these legal instruments are mainstreamed into national programmes,” Mr Ngwenya said.

“A survey of national development plans and annual programmes by Member States reveals that these instruments are not even mentioned hence the implementation does not take place.”

He added that the Secretariat has observed that there is no common understanding of how the provisions of the Treaty should be implemented.

“As envisaged by Article 10 of Chapter IV of the Treaty, it is our considered view that harmonization involves the adoption of legislation by the Common Market Institutions (Council and Authority) that should bring about changes in the internal legal systems of the Member States so as to contribute to a well functioning common market. I should emphasize that the aim is not simply to eliminate disparities between the national legal systems. For example, the existence of wide disparities in some legal fields such as that of criminal offences against the person or against property, are unlikely to affect the operations of COMESA. Harmonization may be justifiable even in cases where all Member States have the same rule on a certain matter. The case in point is that efficient intra-COMESA trade may be impeded if the importing Member State insists on imposing its own health controls although equivalent standards of animal hygiene are observed in the exporting Member State.”

Mr Ngwenya said that the measures for harmonization in COMESA are normally adopted in the form of directives, which means that although the directive is binding, it is left to each national authority to take whatever legislative steps may be necessary in order to bring the situation about.

“It is against this background that I urge the Ministries of Justice and Attorneys- General to expeditiously put in place measures to implement all directives that have been adopted.”

On the jurisdiction of the COMESA Court of Justice, the Secretary-General said that the institution can adjudicate upon all matters which may be referred to it pursuant to the Treaty. He, however, said that regarding references to the Court there are two contradictory provisions: the references by Member States and also references by legal and natural persons, which are handled differently.

He urged the Ministers of Justice to review the provisions of the Treaty to ensure that they are consistent with the provisions of Article 23.

The meeting also considered the draft legal instruments on the development of Harmonized Consumer Price Indices to facilitate the capturing of trade data and statistics, the regulations on trade in seed, the progress report of the COMESA Court of Justice and the COMESA Competition Commission regulations.