

Proposal for a Council Regulation amending Council Regulation (EC) No 2248/2001 of 19 November 2001 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, and for applying the Interim Agreement between the European Community and the Republic of Croatia

(2003/C 45 E/13)

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(Submitted by the Commission on 24 October 2002)

EXPLANATORY MEMORANDUM

A Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part was signed at Luxembourg on 29 October 2001. It will be concluded once the Parliaments of the Member States have completed the ratification process.

Meanwhile on 29 October 2001 the Council concluded an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Croatia, of the other part, which provides for the early entry into force of the trade and trade-related provisions of the Stabilisation and Association Agreement. This agreement applied provisionally from 1 January 2002 and it entered into force on 1 March 2002.

Council Regulation (EC) No 2248/2001 of 19 November 2001 lays down the procedures for applying certain provisions of these agreements. However, the Regulation does not contain specific procedures for applying the following articles of the Agreements: Article 18 of the Interim Agreement (safeguard clause for agricultural and fisheries products; — Article 31 of the Stabilisation and Association Agreement), Article 24 of the Interim Agreement (dumping; — Article 37 of the Stabilisation and Association Agreement), Articles 25 and 26 of the Interim Agreement (general safeguard clause and shortage clause; — Articles 38 and 39 of the Stabilisation and Association Agreement), Article 30 of the Interim Agreement (anti-fraud clause; — Article 43 of the Stabilisation and Association Agreement), and Article 35 of the Interim Agreement (competition; — Article 70 of the Stabilisation and Association Agreement).

Therefore an amendment to Council Regulation (EC) No 2248/2001 of 19 November 2001 is proposed. This amendment is necessary to provide for quick and efficient procedures, especially in situations when the Community has to react quickly to urgent situations requiring actions such as safeguard or anti-fraud measures.

The matter is urgent because of a specific case pending (sugar imports from Croatia), which necessitates the quick establishment of the necessary implementing procedures.

It is therefore proposed that the Council approve the attached proposal.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council is in the process of concluding a Stabilisation and Association Agreement between the European Communities and their Member States, of the one part,

and the Republic of Croatia, of the other part,⁽¹⁾ which was signed at Luxembourg on 29 October 2001 (hereinafter referred to as 'Stabilisation and Association Agreement — SAA').

(2) Meanwhile on 29 October 2001 the Council has concluded an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Croatia, of the other part (hereinafter referred to as 'Interim Agreement — IA')⁽²⁾. The Interim Agreement entered into force on 1 March 2002 but applied provisionally from 1 January 2002.

⁽¹⁾ OJ C 332 E, 27.11.2001, p. 2.

⁽²⁾ OJ L 330, 14.12.2001, p. 3.

- (3) Council Regulation (EC) No 2248/2001 of 19 November 2001⁽¹⁾ lays down procedures for applying some provisions of these agreements. It is, however, necessary to lay down procedures for applying certain additional provisions of these agreements.
- (4) With regard to trade defence measures, it is appropriate to lay down specific provisions concerning the general rules provided for in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽²⁾.
- (5) This Regulation should continue to apply after entry into force of the Stabilisation and Association Agreement.

HAS ADOPTED THIS REGULATION:

Article 1

In Council Regulation (EC) No 2248/2001 of 19 November 2001 the following Articles 7a to 7g are inserted:

'Article 7a

General safeguard clause and shortage clause

1. Where a Member State requests the Commission to take measures as provided for in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement, it shall provide the Commission, in support of its request, with the information needed to justify it.

2. The Commission shall be assisted by the Advisory Committee established by Article 4 of Council Regulation (EC) No 3285/94^(*) (hereinafter referred to as "the Committee"). When reference is made to this Committee, Article 3 of Council Decision 1999/468/EC^(**) shall apply.

3. Where the Commission, at the request of a Member State or on its own initiative, finds that the conditions laid down in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement are fulfilled, it shall:

- inform the Member States forthwith if acting on its own initiative or, if it is responding to a Member States request, within five working days of the date of receipt of that request,
- consult the Committee on the proposed measures,
- at the same time inform Croatia and shall notify it of the opening of the consultations within the Interim Committee, and thereafter the Stabilisation and

Association Council as provided for in Article 25 (4) and Article 26 (3) of the Interim Agreement, and thereafter Articles 38 (4) and 39 (3) of the Stabilisation and Association Agreement,

- at the same time provide the Interim Committee, and thereafter the Stabilisation and Association Council, with all the information necessary for these consultations as provided for in Article 25 (3) and Article 26 (3) of the Interim Agreement, and thereafter Articles 38 (3) and 39 (3) of the Stabilisation and Association Agreement.

4. On the completion of the consultations, and if no other arrangement proves possible, the Commission, after consulting the Committee, may decide on appropriate measures provided for in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement.

This decision shall be notified forthwith to the Council; it shall also be notified to the Interim Committee, and thereafter the Stabilisation and Association Council.

The decision shall be applicable immediately.

5. Any Member State may refer the Commission's decision referred to in paragraph 4 to the Council within ten working days of receiving notification of the decision.

The Council, acting by a qualified majority, may take a different decision within two months.

6. If the Commission decides not to take measures as provided for in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement, it shall inform the Council accordingly within five working days of receipt of the request from the Member State.

Any Member State may refer this decision of the Commission to the Council within ten working days of its notification.

If the Council, acting by qualified majority, indicates its intention to adopt a different decision, the Commission shall inform Croatia thereof forthwith and shall notify it of the opening of the consultations within the Interim Committee, and thereafter the Stabilisation and Association Council, as provided for in Article 25 (3) and (4) and Article 26 (3) of the Interim Agreement, and thereafter Articles 38 (3) and (4) and 39 (3) of the Stabilisation and Association Agreement.

⁽¹⁾ OJ L 304, 21.11.2001, p. 1.

⁽²⁾ OJ L 56, 6.3.1996, p. 1, as last amended by Council Regulation (EC) 2238/2000 of 9 October 2000 (OJ L 257, 11.10.2000, p. 2).

7. The Council, acting by qualified majority, may take a different decision within two months of the conclusion of the consultations with Croatia within the Interim Committee, and thereafter the Stabilisation and Association Council.

8. The consultations within the Interim Committee, and thereafter the Stabilisation and Association Council, shall be deemed to be completed 30 days after the notification referred to in paragraphs 3 and 6.

(*) OJ L 349, 31.12.1994, p. 53, as last amended by Council Regulation (EC) No 2474/2000 of 9 November 2000 (OJ L 286, 11.11.2000, p. 1).
 (**) OJ L 184, 17.7.1999, p. 23.

Article 7b

Exceptional and critical circumstances

1. Where exceptional and critical circumstances arise within the meaning of Articles 25 (4) (b) and 26 (4) of the Interim Agreement, and thereafter Articles 38 (4) (b) and 39 (4) of the Stabilisation and Association Agreement, the Commission may take immediate measures as provided for in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement.

If the Commission receives a request from a Member State, it shall take a decision thereon within five working days of receipt of the request.

2. The Commission shall notify the Council of its decision.

3. Any Member State may refer the Commission's decision to the Council within ten working days of receiving notification of the decision. The Council, acting by a qualified majority, may take a different decision within two months.

Article 7c

Safeguard clause for agricultural and fisheries products

Notwithstanding the procedures set out in Articles 7a and 7b, necessary measures concerning agricultural and fisheries products on the basis of Articles 18 or 25 of the Interim Agreement, and thereafter Articles 31 or 38 of the Stabilisation and Association Agreement or on the basis of provisions in the annexes covering these products as well as of protocol 3, can be taken according to procedures provided for by the relevant rules establishing the common organisation of the agricultural markets or markets in fishery and aquaculture products, or in specific provisions

adopted pursuant to Article 308 of the Treaty and applicable to products resulting from the processing of agricultural and fisheries products, provided that the conditions established pursuant to Article 18 of the Interim Agreement, and thereafter Article 31 of the Stabilisation and Association Agreement and Article 25 (3), (4) and (5) of the Interim Agreement, and thereafter Article 38 (3), (4) and (5) of the Stabilisation and Association Agreement are met.

Article 7d

Dumping

In the case of a practice which is liable to warrant application by the Community of the measures provided for in Article 24 (1) of the Interim Agreement, and thereafter Article 37 (1) of the Stabilisation and Association Agreement, the introduction of anti-dumping measures shall be decided upon in accordance with the provisions laid down in Council Regulation (EC) No 384/96 and the procedure provided for in Article 24 (2) of the Interim Agreement, and thereafter Article 37 (2) of the Stabilisation and Association Agreement.

Article 7e

Competition

1. In the case of a practice that may justify application by the Community of the measures provided for in Article 35 of the Interim Agreement, and thereafter Article 70 of the Stabilisation and Association Agreement, the Commission after examining the case, on its own initiative or on the request of a Member State, shall decide whether such practice is compatible with the Agreement. Where necessary it shall propose the adoption of safeguard measures to the Council, which shall act in accordance with the procedures laid down in Article 133 of the Treaty, except in the cases of aid to which Council Regulation (EC) No 2026/97 (*) applies, when measures shall be taken according to the procedures laid down in that Regulation. Measures shall be taken only under the conditions set out in Article 35 (9) of the Interim Agreement, and thereafter Article 70 (9) of the Stabilisation and Association Agreement.

2. In the case of a practice that may cause measures to be applied to the Community by Croatia on the basis of Article 35 of the Interim Agreement, and thereafter Article 70 of the Stabilisation and Association Agreement, the Commission, after examining the case, shall decide whether the practice is compatible with the principle set out in the Interim Agreement, and thereafter the Stabilisation and Association Agreement. Where necessary, it shall take appropriate decisions on the basis of criteria which result from the application of Articles 81, 82 and 87 of the Treaty.

(*) OJ L 288, 21.10.1997, p. 1.

*Article 7f***Fraud or failure to provide administrative co-operation**

1. For the purpose of interpreting Article 30 of the Interim Agreement, and thereafter Article 43 of the Stabilisation and Association Agreement, failure to provide administrative co-operation as required for the verification of evidence of origin shall mean *inter alia*:

- the absence of administrative co-operation, such as the failure to provide names and addresses of customs or government authorities responsible for issuing and checking certificates of origin, or specimens of stamps used to authenticate the certificates, or the failure to update that information where appropriate;
- a systematic lack or inadequacy of action in verifying the originating status of products and the fulfilment of the other requirements of Protocol 4 of the Agreements and identifying or preventing contravention of the rules of origin;
- a systematic refusal or undue delay to carry out, at the request of the Commission, subsequent verification of the proof of origin and to communicate its results in time;
- a systematic refusal or undue delay to obtain the authorisation to conduct administrative and investigative co-operation missions in Croatia, in order to verify the authenticity of documents or the accuracy of information relevant for granting the preferential treatment granted under the Agreements, or to carry out or arrange for appropriate inquiries to identify or prevent contravention of the rules of origin.

2. Where the Commission finds that the conditions laid down in Article 30 of the Interim Agreement, and thereafter Article 43 of the Stabilisation and Association Agreement, are fulfilled it shall:

- inform the Council;
- enter immediately into consultations with Croatia, to find an appropriate solution as provided for in those provisions.

In addition, it may:

- call on the Member States to take such precautionary measures as are necessary in order to safeguard the Community's financial interests;
- publish a notice in the *Official Journal of the European Communities* stating that there are grounds for reasonable doubts about the application of the provisions relevant to the application of Article 30 of the Interim Agreement, and thereafter of Article 43 of the Stabilisation and Association Agreement.

3. Pending a mutually satisfactory solution having been reached in the consultations referred to in paragraph 2 above, the Commission may decide on other appropriate measures it deems necessary in accordance with Article 30 of the Interim Agreement, and thereafter Article 43 of the Stabilisation and Association Agreement, as well as with the procedure provided for in paragraph 4.

4. The Commission shall be assisted by the Customs Code Committee set up by Article 248a of Regulation (EEC) No 2913/92 (*). Where reference to this paragraph is made, Article 3 of Decision 1999/468/EC shall apply.

(*) OJ L 302, 19.10.1992, p. 1, as last amended by Regulation (EC) No 2700/2000 of 16 November 2000 (OJ L 311, 12.12.2000, p. 17).

*Article 7g***Notification**

Notification to the Interim Committee and thereafter the Stabilisation and Association Council, as required by the Interim Agreement, and thereafter the Stabilisation and Association Agreement shall be the responsibility of the Commission, acting on behalf of the Community.'

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.