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2013/0201 (CNS)

Proposal for a

COUNCIL DECISION

**laying down rules and procedures to enable the participation of Greenland in the
Kimberley Process certification scheme**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

This proposal aims at enabling Greenland to participate in the Kimberley Process certification scheme on rough diamonds through its cooperation with the European Union. The scheme set out in the proposal would allow for the export of rough diamonds from Greenland to the Union as well as to other participants of the certification scheme, provided that all imports and exports of rough diamonds are verified and, for exports, certified by Union authorities pursuant to the rules set out in Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds.

This association would strengthen economic relations between the European Union and Greenland in the diamond industry, and in particular it would enable Greenland to export rough diamonds accompanied by the European Union Certificate issued for the purposes of the certification scheme, with a view of promoting the economic development of Greenland.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Greenland and Denmark have agreed to the approach taken by the proposal and will undertake to transpose and implement in the legislation applicable to Greenland the relevant provisions of Regulation (EC) No 2368/2002 as regards the conditions and formalities for importing and exporting rough diamonds, their transit via the Union and to a participant other than the Union, the participation of the Union, including Greenland, in the Kimberley Process certification scheme, obligations relating to due diligence, anti-circumvention, exchange of information, and ensuring compliance with such provisions.

3. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis of the Council Decision is Article 203 TFEU. The proposal for this Council Decision is closely connected to an amendment of Regulation (EC) No 2368/2002 which extends the territory of the Union to also cover the territory of Greenland for the purposes of the Kimberley Process certification scheme. Accordingly, Greenland will be prohibited to accept imports or exports of rough diamonds without a valid Kimberley Process certificate. This will allow for the export of rough diamonds from Greenland to third countries as long as they are accompanied by a European Union Kimberley Process certificate. For imports into Greenland from third countries the rough diamonds and the accompanying certificate will first have to be submitted for verification to one of the six authorities of the Union who deal with issuing EU Kimberley Process Certificates.

The proposal for the Council Decision sets out specific rules for circulation of rough diamonds between the Union and Greenland, either with the Union or Greenland as destination, or with the view that rough diamonds would be then exported to a third country from the Union. In either case, the main requirements for rough diamonds to enter or leave the territory of Greenland or the Union is to (1) be accompanied by (a) either a document (or a copy thereof validated by a Union authority) attesting that they were mined in Greenland, or (b) a copy of a Kimberley Process certificate as validated by a Union authority, and (2) be in sealed tamper-resistant containers.

Rough diamonds mined or extracted in Greenland, provided that they have not been exported previously to a third country, may enter the Union's customs territory by the use of an attesting document issued by authorities in Greenland. These shipments upon entry to the

Union's customs territory will have to be verified by a Union authority, and the copy issued by this authority will have to accompany shipments between the Union customs territory and Greenland for any subsequent circulation.

As for export of rough diamonds to and from third countries, Greenland will only be able to import or export if the diamonds are first shipped to one of the authorities of the Union to issue an EU Kimberley Process certificate or to verify the Kimberley Process certificate of another Kimberley Process participant.

Once rough diamonds mined or extracted in Greenland had been exported to a third country, upon their return they may circulate between the Union and Greenland according to the same rules that apply to all other rough diamonds imported into the Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 203 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament¹,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The European Union is a participant in the Kimberley Process Certification Scheme for the international trade in rough diamonds. As a participant it has to ensure that a Kimberley Process Certificate accompanies each shipment of rough diamonds imported in or exported from the territory of the Union.
- (2) Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds² sets up a Union system of certification and import and export controls for rough diamonds for the purposes of implementing the Kimberley Process certification scheme.
- (3) Greenland is not part of the Union territory but it is included in the list of overseas countries and territories set out in Annex II to the Treaty. In accordance with Article 198 of the Treaty, the purpose of the association of the overseas countries and territories with the Union is to promote the economic and social development of the overseas countries and territories and to establish close economic relations between them and the Union as a whole.
- (4) Denmark and Greenland have requested to enable the participation of Greenland in the Kimberley Process Certification Scheme on rough diamonds through its cooperation with the European Union. This association would strengthen economic relations between the European Union and Greenland in the diamond industry, and in particular it would enable Greenland to export rough diamonds accompanied by the European Union Certificate issued for the purposes of the certification scheme, with a view of promoting the economic development of Greenland.
- (5) Trade in rough diamonds in Greenland should, therefore, be conducted in compliance with Union rules implementing the Kimberley Process Certification Scheme for the international trade in rough diamonds. Accordingly, the scope of application of

¹ OJ C , , p. .

² OJ L 358, 31.12.2002, p. 28.

Regulation (EC) No 2368/2002 will be extended to the territory of Greenland for the purpose of the certification scheme.

- (6) In particular, Greenland should only export rough diamonds to other participants in the Kimberley Process Certification Scheme after they have been certified by a Union authority listed in Annex III to Regulation (EC) No 2368/2002. The imports of rough diamonds into Greenland should also be verified by the Union authorities.
- (7) In order to permit the international trade in rough diamonds in Greenland, in accordance with the rules on trade within the Union, Greenland should undertake to transpose and implement the relevant provisions of Regulation (EC) No 2368/2002 into the national law of Greenland so as to allow the application of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

This Decision sets out the general rules and conditions for the participation of Greenland in the system of certification and import and export controls for rough diamonds as set out in Regulation (EC) No 2368/2002. To that end his Decision lays down rules and procedures for the application of the Kimberley Process certification scheme for rough diamonds imported into or exported from Greenland, either to the Union or to other participants in the certification scheme.

Article 2

Definitions

For the purposes of this Decision, the following definitions shall apply:

- (a) 'Participant' means 'Participant' as defined in Article 2(c) of Regulation (EC) No 2368/2002;
- (b) 'Union Authority' means the 'Community authority' as defined in Article 2(f) of Regulation (EC) No 2368/2002;
- (c) 'Union certificate' means the 'Community certificate' as defined in Article 2 point (g) of Regulation (EC) No 2368/2002.

Article 3

General rules

1. Greenland shall ensure that Regulation (EC) No 2368/2002 is transposed and implemented in the legislative provisions applicable to Greenland as regards the conditions and formalities for importing and exporting rough diamonds, their transit through the Union from and to a participant other than the Union, the participation of the Union, including Greenland, in the Kimberley Process certification scheme, obligations relating to due diligence, anti-circumvention, exchange of information, and ensuring compliance with such provisions.
2. Greenland shall designate the authorities responsible for the implementation of the relevant provisions of Regulation (EC) No 2368/2002 within their respective territories and communicate to the Commission the designation and the contact details of such authorities.

Article 4

Import of rough diamonds mined or extracted in Greenland into the Union

1. Rough diamonds mined or extracted in Greenland may only be imported into the Union where:
 - (a) they are accompanied by the attesting document referred to in paragraph 2;
 - (b) they are contained in tamper-resistant containers and the seals applied at export are not broken;
 - (c) the attesting document clearly identifies the consignment to which it refers;
 - (d) the rough diamonds have not been previously exported to a participant other than the Union.
2. To allow rough diamonds mined or extracted in Greenland to be imported into the Union, the competent authority for Greenland listed in Annex II ('Greenland authority') shall upon request issue an attesting document conforming to the requirements set out in Annex I.
3. The Greenland authority shall deliver the attesting document to the applicant and shall keep a copy for three years for record-keeping purposes.
4. Acceptance of a customs declaration for release for free circulation pursuant to Council Regulation (EEC) No 2913/92³ of rough diamonds referred to in paragraph 1 shall be subject to the verification by a Union authority listed in Annex III to Regulation (EC) No 2368/2002 ('Union authority') of the attesting document issued in accordance with paragraph 2 of this Article. To this effect, containers of rough diamonds mined or extracted in Greenland on import to the Union shall without delay be submitted for verification together to an appropriate Union authority.
5. If a Union authority establishes that the conditions in paragraph 1 are fulfilled, it shall confirm this on the original attesting document and provide the importer with an authenticated and forgery-resistant copy of that attesting document. This confirmation procedure shall take place within 10 working days of the submission of the attesting document.
6. The Member State where rough diamonds are imported from Greenland shall ensure their submission to the appropriate Union authority. The exporter shall be responsible for the proper movement of the rough diamonds and the costs thereof.
7. In case of doubts relating to the authenticity or correctness of an attesting document issued in accordance with paragraph 2 as well as when further advice is required, the customs authorities shall contact the Greenland authority.
8. The Union authority shall keep the originals of attesting documents provided for under paragraph 2 submitted for verification for at least three years. It shall provide the Commission or persons or bodies designated by the Commission with access to these original attesting documents in particular with a view to answering questions raised within the framework of the Kimberley Process certification scheme.

³ OJ L 302, 19.10.1992, p. 1.

Article 5

Any subsequent imports of rough diamonds mined or extracted in Greenland into the Union

Notwithstanding the provisions of Article 4, rough diamonds mined or extracted in Greenland may be imported into the Union where:

- (a) they were previously lawfully re-exported from the Union to Greenland;
- (b) they are accompanied by an authenticated and forgery-resistant copy of the attesting document referred to in Article 4(2) as validated by a Union authority pursuant to Article 4(5).
- (c) they are contained in tamper-resistant containers and the seals applied at export are not broken;
- (d) the attesting document clearly identifies the consignment to which it refers;
- (e) the rough diamonds have not been previously exported to a participant other than the Union.

Article 6

Other imports of rough diamonds from Greenland into the Union

Notwithstanding the provisions of Article 4 and 5, rough diamonds from Greenland may be imported into the Union where:

- (a) they were previously lawfully exported from the Union to Greenland;
- (b) they are accompanied by the certificate set out in Article 9(b);
- (c) they are contained in tamper-resistant containers, and the seals applied at export by that participant are not broken;
- (d) the certificate clearly identifies the consignment to which it refers.

Article 7

Export of rough diamonds from Greenland to other participants

1. Rough diamonds may only be exported from Greenland to a participant other than the Union where:

- (a) they were first lawfully imported from Greenland into the Union in accordance with Articles 4(1), 5 or 6;
- (b) on importation into the Union, they were submitted for verification to a Union authority;
- (c) they are accompanied by a corresponding Union certificate issued and validated by a Union authority;
- (d) they are contained in tamper-resistant containers sealed in accordance with Article 12 of Regulation (EC) No 2368/2002.

2. The Union authority where the rough diamonds imported from Greenland into the Union are submitted for verification shall issue a Union certificate to the exporter of such diamonds in accordance with Article 12 of Regulation (EC) No 2368/2002.
3. The Member State where rough diamonds are imported from Greenland shall ensure their submission to the appropriate Union authority.
4. The exporter shall be responsible for the proper movement of the rough diamonds and the costs thereof.

Article 8

Re-export of rough diamonds mined or extracted in Greenland from the Union into Greenland

Rough diamonds mined or extracted in Greenland, may be re-exported to Greenland from the Union where:

- (a) they were first lawfully imported from Greenland into the Union in accordance with Articles 4(1), 5 or 6;
- (b) they are accompanied by an authenticated and forgery-resistant copy of the attesting document referred to in Article 4(2) as validated by a Union authority pursuant to Article 4(5);
- (c) they are contained in tamper-resistant containers, and the seals applied at export are not broken;
- (d) the document referred to in point (b) clearly identifies the consignment to which it refers,
- (e) the rough diamonds have not been previously exported to a participant other than the Union.

Article 9

Other import of rough diamonds from other participants into Greenland

Notwithstanding the provisions of Article 8, rough diamonds may be exported into Greenland from the Union where:

- (a) they were first lawfully imported into the Union from a participant other than the Union in accordance with the provisions of Chapter II of Regulation (EC) No 2368/2002;
- (b) they are accompanied by an authenticated and forgery-resistant copy of the confirmed certificate in accordance with Article 5(1)(a) of Regulation (EC) No 2368/2002;
- (c) they are contained in tamper-resistant containers and the seals applied at export are not broken;
- (d) the document referred to in point (b) clearly identifies the consignment to which it refers.

Article 10

Reporting

1. The Greenland authority shall provide the Commission with a monthly report on all attesting documents issued under Article 4(2).
2. For each attesting document this report shall list at least:
 - (a) the unique serial number of the attesting document,
 - (b) the name of the issuing authority, as listed in Annex II,
 - (c) the date of issue,
 - (d) the date of expiry of validity,
 - (e) the country of origin,
 - (f) the HS code(s),
 - (g) the carat weight,
 - (h) the value (estimated).

Article 11

This Decision shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the day Greenland notifies the Commission that it has implemented in national law the relevant provisions of Regulation (EC) No 2368/2002 as amended to allow the inclusion of Greenland in the Kimberley Process certification scheme.

Done at Brussels,

For the Council
The President

ANNEX I

Attesting document as referred to in Articles 4, 5, 8 and 10

The attesting document referred to in Articles 4, 5, 8 and 10 shall have at least the following features:

- (a) unique serial number,
- (b) the date of issue,
- (c) the date of expiry of validity,
- (d) the name, signature and stamp of the issuing authority identified in Annex II,
- (e) the country of origin (Greenland),
- (f) the HS code(s),
- (g) the carat weight,
- (h) the value (estimated),
- (i) identification of the exporter and the recipient.

ANNEX II

Competent authority for Greenland as referred to in Articles 3(2), 4 and 10

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