Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds

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implementing the Kimberley Process certification scheme for the international trade in rough diamonds

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 sanctions adopted by the United Nations Security Council against the rebel movements in Sierra Leone and Angola and against the Liberian government, prohibiting under certain conditions imports of rough diamonds from Liberia, Angola and Sierra Leone have not been able to stop the flow of conflict diamonds into the legitimate trade or to bring the conflicts to a halt.

(2) The Göteborg European Council of June 2001 endorsed a programme for the prevention of violent conflicts, which states, *inter alia*, that the Member States and the Commission will tackle the illicit trade in high-value commodities, including by identifying ways of breaking the link between rough diamonds and violent conflicts and supporting the Kimberley Process.

(3) Council Regulation (EC) No 303/2002 of 18 February 2002 concerning the importation into the Community of rough diamonds from Sierra Leone[(1)] prohibits, under certain conditions, the importation of rough diamonds into the Community.

(4) There is a need to complement the existing measures with effective controls over the international trade in rough diamonds in order to prevent the trade in conflict diamonds from financing the efforts of rebel movements and their allies to undermine legitimate governments. Effective control will help maintain international peace and security and will also protect the revenue from exports of rough diamonds, which is essential for the development of producer countries in Africa.

(5) The Kimberley Process negotiations, bringing together the Community and producer and trading countries representing practically all international trade in rough diamonds, as well as the diamond industry and representatives of civil society, were initiated with a view to developing such an effective control system. They led to the development of a certification scheme.

(6) All participants accepted the outcome of the negotiations as the basis for implementing measures within their own jurisdiction.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 2368/2002. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(7) In its resolution 56/263 the UN General Assembly welcomed the certification scheme developed in the Kimberley Process and called on all interested parties to participate in that scheme.

(8) Implementation of the certification scheme requires that the imports and exports of rough diamonds into or from the territory of the Community be made subject to the certification scheme, including the issue of the relevant certificates by participants in the scheme.

(9) Each Member State may designate the authority or authorities responsible for the implementation of the relevant provisions of this Regulation within its territory and may limit the number of authorities.

(10) The validity of certificates for imported rough diamonds should be properly verified by the competent authorities of the Community.

(11) Compliance with this Regulation should not be construed as equivalent or as an alternative to compliance with any other requirements under Community legislation.

(12) In order to increase the effectiveness of the certification scheme, circumvention or attempts to circumvent should be prevented. Likewise, providers of ancillary or directly related services should exercise due diligence in establishing that the provisions of this Regulation are duly applied.

(13) Export certificates for rough diamonds should only be issued and validated where there is conclusive evidence that those diamonds have been imported under a certificate.

(14) Circumstances may justify that the competent authority of the importing participant should send the competent authority of the exporting participant confirmation of import of shipments of rough diamonds.

(15) A system of warranties and industry self-regulation of the kind proposed by the representatives of the rough diamond industry in the Kimberley Process could facilitate the provision of such conclusive evidence.

(16) Provisions should be made to allow the export of rough diamonds imported before the applicability of specific import controls provided for by this Regulation.

(17) Each Member State should determine the sanctions applicable in the event of a breach of this Regulation.

(18) The provisions of this Regulation concerning the import and export of rough diamonds should not apply to rough diamonds transiting the Community in the course of export to another Participant.

(19) For the purposes of implementing the certification scheme, the Community should be a participant in the Kimberley Process certification scheme. It should be represented by the Commission at meetings of participants in the Kimberley Process certification scheme.

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(20) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(2)].

(21) A forum should be created to enable the Commission and the Member States to examine questions concerning the application of this Regulation.

(22) This Regulation should enter into force on the day of its publication, but the provisions on import and export control should be suspended until a date has been agreed in the Kimberley Process for the simultaneous implementation of the import and export controls by all participants,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

[F1 Article 1

This Regulation 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.

For the purposes of the certification scheme, the territory of the Union and that of Greenland shall be considered as one entity without internal borders.

This Regulation does not prejudice or substitute any provisions in force relating to customs formalities and controls.**]**

Textual Amendments

F1 Substituted by Regulation (EU) No 257/2014 of the European Parliament and of the Council of 26 February 2014 amending Council Regulation (EC) No 2368/2002 as regards the inclusion of Greenland in implementing the Kimberley Process certification scheme.

Article 2

For the purposes of this Regulation the following definitions shall apply:

(a) ‘Kimberley Process’ means the forum in which the participants have designed an international certification scheme for rough diamonds;

(b) ‘Kimberley Process certification scheme’ (hereinafter ‘KP certification scheme’) means the international certification scheme negotiated by the Kimberley Process as set out in Annex I;

(c) **[**F2‘Participant’ means any State, regional economic integration organisation, WTO-member or separate customs territory that fulfils the requirements of the KP certification scheme, has notified that fact to the Chair of the KP certification scheme and is listed in Annex II;**]**

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(d) 'certificate' means a document duly issued and validated by a participant's competent authority identifying a shipment of rough diamonds as being in compliance with the requirements of the KP certification scheme;

(e) 'competent authority' means the authority designated by a participant to issue, validate or verify certificates;

(f) 'Community authority' means a competent authority designated by a Member State and listed in Annex III;

(g) 'Community certificate' means a certificate corresponding to the specimen in Annex IV and issued by a Community authority;

(h) 'conflict diamonds' means rough diamonds as defined under the KP Certification Scheme;

(i) 'rough diamond' means a diamond that is unworked or simply sawn, cleaved or bruted and falls under the Harmonised Commodity Description and Coding System 7102 10, 7102 21 and 7102 31 (hereinafter 'HS code');

(j) 'imports' means the physical entering or bringing into any part of the geographical territory of a participant;

(k) 'export' means the physical leaving or taking out of any part of the geographical territory of a participant;

(l) 'shipment' means one or more parcels;

(m) 'parcel' means one or more diamonds that are packed together;

(n) 'parcel of mixed origin' means a parcel that contains rough diamonds from two or more countries of origin;

(o) 'Community territory' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty;

(p) 'Certified stock' means a stock of rough diamonds to which this Regulation applies, and whose location, volume and value, and changes therein, have been submitted to effective supervision of a Member State;

(q) 'Customs transit' means transit as provided for by Articles 91 to 97 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[3].

Textual Amendments

F2 Substituted by Council Regulation (EC) No 254/2003 of 11 February 2003 amending Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds.

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CHAPTER II

IMPORT REGIME

Article 3

[[F1]The import of rough diamonds into the Community[(4)] territory or Greenland shall be prohibited unless all of the following conditions are fulfilled:**]**

(a) the rough diamonds are accompanied by a certificate validated by the competent authority of a participant;

(b) the rough diamonds are contained in tamper-resistant containers, and the seals applied at export by that participant are not broken;

(c) the certificate clearly identifies the consignment to which it refers.

Textual Amendments

F1 Substituted by Regulation (EU) No 257/2014 of the European Parliament and of the Council of 26 February 2014 amending Council Regulation (EC) No 2368/2002 as regards the inclusion of Greenland in implementing the Kimberley Process certification scheme.

Article 4

[[F1]1 Containers and the corresponding certificates shall without delay be submitted for verification together, to a Community authority either in the Member State where they are imported or in the Member State for which they are destined, as indicated in accompanying documents. Containers destined for Greenland shall be submitted for verification to one of the Community authorities, either in the Member State where they are imported, or in one of the other Member States where a Community authority is established.**]**

2 In cases where rough diamonds are imported into a Member State where there is no Community authority, they shall be submitted to the appropriate Community authority in the Member State for which they are destined. If a Community authority exists neither in the importing Member State nor in the Member State of destination they shall be submitted to an appropriate Community authority in another Member State.

3 The Member State where the rough diamonds are imported shall ensure their submission to the appropriate Community authority provided for in paragraphs 1 and 2. Customs transit may be granted to that effect. If such customs transit is granted, the verification provided for by this Article shall be suspended until arrival at the appropriate Community authority.

4 The importer shall be responsible for the proper movement of the rough diamonds and the costs thereof.

5 A Community authority shall opt for either of the following methods to verify that the content of a container matches the particulars on the corresponding certificate:

a it will open each container with a view to such verification; or

b it will identify the containers to be opened with a view to such verification on the basis of a risk analysis or equivalent system that gives due consideration to rough diamond shipments.

6 A Community authority shall complete the verification without delay.