



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 November 2002

13741/02

LIMITE

UD 108

PUBLIC

OUTCOME OF PROCEEDINGS

of : Working Party on Customs Union (Customs legislation and policy)

on : 29 October 2002

No. Cion prop. : doc. 11764/02 RELEX 161 PESC 338 WTO 98

Subject : Proposal for a Council Regulation implementing the Kimberley Process certification scheme for the international trade in rough diamonds

At its meeting on 29 October 2002, the Working Party on Customs Union (Customs legislation and policy) continued its examination of the abovementioned proposal. The discussion was based primarily on a Presidency proposal¹, as well as on proposals forwarded by the Commission Services² and the Belgian and the United Kingdom delegations³.

Discussions focused on Articles concerning the import, export and transit regime, stocks and self-regulation. Delegations will find at Annex, the text of the Articles examined at the meeting, on which broad agreement was reached.

¹ Revised Presidency proposal (MD 91/02 Revised version).

² Commission proposal (MD 95/02)

³ Proposal by the Belgian and U.K. delegations (MD 93/02)

The Working Party agreed to revert to the proposal at its next meeting in order to discuss the main outstanding issues, namely the extraterritorial application of the Regulation, sanctions to be imposed for the infringement of its provisions, as well as the date of its entry into force. The discussion will also be held in the light of the results achieved in Interlaken on 5 November 2002.

**Articles on which the Working Party reached agreement
at its meeting on 29 October 2002⁴**

**CHAPTER I
Subject matter and definitions**

Article 1⁵

This Regulation sets up a Community 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 Community will be considered as one entity without internal borders.⁶

This regulation does not prejudice or substitute any provisions in force relating to customs formalities and controls.⁷

Article 2

For the purposes of this Regulation the following definitions apply:

- (a) “Kimberley Process” refers to the forum in which the participants have designed an international certification scheme for rough diamonds;
- (b) “Kimberley Process certification scheme” (hereinafter “KP certification scheme”) refers to the international certification scheme negotiated by the Kimberley Process;
- (c) “Participants” refers to participants in the KP certification scheme listed in Annex I;

⁴ The numbering of the articles is in accordance with the revised Presidency proposal (MD 91/02 revised version) unless otherwise indicated.

⁵ A large majority of delegations supported the Presidency proposal.

⁶ One delegation questioned the relevance of the words "without internal borders" in para. 2.

⁷ Two delegations would like the wording of para. 3 to be amended.

- (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 II;⁸
- (g) “Community certificate” means a certificate corresponding to the specimen in Annex IV and issued by a Community authority;
- (h) (deleted)
- (i) “conflict diamonds” means rough diamonds as defined under the KP Certification Scheme;
- (j) “rough diamond” means a diamond that is unworked or simply sawn, cleaved or bruted and falls under the Harmonised Commodity Description and Coding System ex 7102.10, 7102.21 and 7102.31 (hereinafter HS code);
- (k) “imports” means the physical entering or bringing into any part of the geographical territory of a participant;
- (l) “export” means the physical leaving or taking out of any part of the geographical territory of a participant;
- (m) “shipment” means one or more parcels;
- (n) “parcel” means one or more diamonds that are packed together;

⁸ Two delegations wanted to specify that "a Customs authority can be appointed as Community authority." One delegation opposed this suggestion.

- (o) “parcel of mixed origin” means a parcel that contains rough diamonds from two or more countries of origin.
- (p) “Community territory” means the territories of the Member States as defined in Article 299 of the Treaty establishing the European Community.
- (q) “Certified stock” means a stock of rough diamonds to which this Regulation applies, and whose volume and value have been certified by a Member State.
- (r) “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.

CHAPTER II **Import regime**

Article 3

1. The import of rough diamonds into the Community 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.
2. Containers and the corresponding certificates shall be submitted together at the earliest opportunity for verification to a Community authority at the choice and liability of the importer.
3. A Member State will ensure that rough diamonds entering its territory from outside the Community territory, which are not submitted to verification by a Community authority in

that same Member State, will be submitted to a Community authority in another Member State at the choice and liability of the importer, for example under a customs transit procedure.⁹

4.¹⁰

Article 4

Without prejudice to the controls provided for by customs legislation in force, 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 system¹¹ that gives due consideration to rough diamonds shipments.

Article 5

1. If a Community authority establishes that the conditions in Article 3(1) are:

- (a) fulfilled, it shall confirm this on the original certificate and provide the importer with an authenticated and forgery resistant copy of that confirmed certificate. This confirmation procedure shall take place within 10 working days of the submission of the certificate.
- (b) not fulfilled, it shall detain the shipment until it has established the reasons for failure to fulfil these conditions.

2. If a Community authority establishes that the failure to fulfil the conditions is not done knowingly or intentionally or is the result of an action by another authority in the exercise of its proper duties, it may proceed with the confirmation and release the shipment, after the necessary remedial measures have been taken to ensure that the conditions are met.

⁹ Further work is required on this paragraph.

¹⁰ Paragraph 4 was included in Article 5(1) (a).

¹¹ One delegation considered that reference to risk analysis methods would be sufficient.

3.¹² If a Community authority establishes that the failure to fulfil the conditions was done knowingly or intentionally or was not the result of an action by another authority in the exercise of its proper duties, it shall detain the shipment immediately.

4. A Community authority shall inform the Commission and the competent authority of the participant that purportedly issued or validated the certificate for the shipment of any failure to fulfil the conditions within one month.

Article 6¹³

- 1) Till the date of applicability of Articles referred to in Article 27(3) a Member State may certify rough diamonds that have been imported or are present in the Community territory before that date. As off that date, certified rough diamonds shall be considered to have fulfilled the conditions laid down in Article 3.
- 2) In all other cases, a Community authority may issue a confirmation that it considers rough diamonds to have fulfilled the conditions of Article 3, if it has established that those diamonds were legally present in the Community at and since the latter date.

Article 7¹⁴

Notwithstanding the provisions of Articles 3, 4 and 5, a Community authority may allow the import of rough diamonds if the importer provides conclusive evidence that those diamonds were destined for import into the Community and were exported 5 days¹⁵ or less before the date of applicability of Articles referred to in Article 27(3).

In such cases, the Community authority concerned shall issue a confirmation of legal import to the importer, that those diamonds shall be considered to have fulfilled the conditions of Article 3.

¹² The Presidency and the Commission undertook to work out a new text bilaterally.

¹³ This article has been inserted as set out in the Commission Services text (MD 95/02)

¹⁴ This article has been inserted as set out in the Commission Services text (MD 95/02)

¹⁵ One delegation asked for a longer period of time.

Article 6¹⁶

1. The Commission shall consult participants on the practical arrangements for providing confirmation of imports into the Community territory to the competent authority of the exporting participant that has validated a certificate.
2. On the basis of these consultations the Commission shall, in accordance with the procedure referred to in Article 21(1), lay down guidelines for such confirmation.

Article 7

The Commission shall provide all Community authorities with authenticated specimens of the participants' certificates, the names and other relevant details of the participants issuing and/or validating authorities, authenticated specimens of stamps and signatures attesting that a certificate has been legally issued or validated and any other relevant information received in respect of certificates.

Article 8

1. A Community authority shall provide the Commission with a monthly report on all certificates submitted for verification under Article 3.

For each certificate this report shall list at least:

- (a) the unique certificate number,
- (b) the name of the issuing and validating authorities,
- (c) the date of issue and validation,
- (d) the date of expiry of validity,
- (e) the country of provenance,
- (f) the country of origin, where known,
- (g) the HS code(s),
- (h) the carat weight,
- (i) the value,
- (j) the verifying Community authority,
- (k) the date of verification.

¹⁶ The article numbering reverts to the numbering of the Presidency's proposal (MD 91/02 revised version)

The Commission may, in accordance with the procedure referred to in Article 21(1), determine the format of this report in order to facilitate monitoring of the certification scheme's working.

2. A Community authority shall keep the originals of certificates provided for under Article 3(2) a) submitted for verification for at least three years. It shall provide access to these original certificates to the Commission or to persons or bodies designated by the Commission, in particular with a view to answering questions raised within the framework of the KP certification scheme.

CHAPTER III

Export regime

Article 9

4. The export from the Community of rough diamonds shall be prohibited unless both of the following conditions are fulfilled:
 - (a) the rough diamonds are accompanied by a corresponding Community certificate issued and validated by a Community authority;
 - (b) the rough diamonds are contained in tamper-resistant containers sealed in accordance with Article 10.

Article 10¹⁷

1. A Community authority may issue a Community certificate to an exporter when it has established that:
 - (a) the exporter has provided conclusive evidence that the rough diamonds for which a certificate is being requested were lawfully imported in accordance with the provisions of Article 3;
 - (b) the other information requested on the certificate is correct;
 - (c) the rough diamonds are effectively destined to arrive in the territory of a participant, and
 - (d) the rough diamonds are to be transported in a tamper resistant container.

¹⁷ One delegation expressed its preference for the text of Article 12 of the Commission proposal.

2. A Community authority shall not validate a Community certificate until it has verified that the content of the container matches the particulars on the corresponding certificate and that the tamper-resistant container containing the rough diamonds, for which it has issued a Community certificate¹⁸, has subsequently been sealed at the responsibility of that authority.
3. A Community authority shall opt for either of the following methods to verify that the content of a container matches the particulars thereon on the certificate:
 - a) It will verify the content of each container; or
 - b) It will identify the containers, the content of which shall be verified, on the basis of a risk analysis system that gives due consideration to rough diamonds shipments.
4. A Community authority shall provide the exporter with an authenticated forgery resistant copy of the Community certificate it has validated. The exporter shall keep any copy accessible for at least three years.
5. Community Certificate shall be valid for export for no more than two months from the date of issue. If the rough diamonds are not exported within this period, the Community certificate shall be returned to the issuing Community authority.

Article 12¹⁹

Article 13

1. If a Community authority establishes that a shipment of rough diamonds, for which a Community certificate is requested, does not fulfil the conditions of Articles 10, 11 or 12, that authority shall detain the shipment.
2. If a Community authority establishes that the failure to fulfil the conditions is not done knowingly or intentionally or is the result of an action by another authority in the exercise of its

¹⁸ One delegation asked for the deletion of the phrase "for which it has issued a Community certificate".

¹⁹ Article 12 of the Presidency proposal was replaced by Articles 6 and 7 of the Commission proposal (MD 95/02), included in Chapter II "Import Regime".

proper duties, it may release the shipment and proceed with the issuing and validation of a Community Certificate, after the necessary remedial measures have been taken to ensure that the conditions are met.

3. (deleted)²⁰
4. A Community authority shall inform the Commission and the competent authority of the participant that purportedly issued or validated the certificate for the shipment of any failure to fulfil the conditions within one month.

Article 14

1. Community authorities shall provide the Commission with a monthly report on all Community certificates issued and validated by them.

For each certificate this report shall list at least the following:

- a) the unique certificate number,
- b) the name of the issuing and validating authorities,
- c) the date of issue and validation,
- d) the date of expiry of validity,
- e) the country of provenance,
- f) the country of origin, where known,
- g) the HS code(s),
- h) the carat weight and value.

In accordance with the procedure referred to in Article 21(1), the Commission may determine the format of the report in order to facilitate monitoring of the certification scheme's working.

2. The Community authorities shall keep for at least three years the authenticated copies provided for under Article 9 (4) as well as all information received from an exporter to justify the issue and validation of a Community certificate.

²⁰ Paragraph 3 of the Presidency proposal was deleted.

They shall provide access to those authenticated copies and this information to the Commission or to persons or bodies designated by the Commission, in particular with a view to answering questions raised within the framework of the KP certification scheme.

Article 15

1. The Commission shall consult participants on the practical arrangements for obtaining confirmation of imports of rough diamonds exported from the Community covered by a certificate validated by Community authority.
2. On the basis of these consultations the Commission shall, in accordance with the procedure referred to in Article 22(1), lay down guidelines for such confirmation.

CHAPTER IV **Industry Self-Regulation**

Article 16²¹

1. Organisations representing traders in rough diamonds, which have established a system of warranties and industry self-regulation for the purposes of implementing the KP Certification Scheme, may apply to the Commission for listing in Annex IV directly or through the Community authority of a Member State, in which they are resident or established.
2. When applying for listing an organisation shall:
 - (a) provide conclusive evidence that it has adopted rules and regulations whereby its members dealing in rough diamonds, whether natural or legal persons, undertake that they will, at the latest from the date of applicability of Articles 3, 4, 5, 9, 10, 11, 13, and 18 of this Regulation:

²¹ Article 16 of the Presidency proposal was replaced by the proposal for Article 16 submitted by the Belgian and the United Kingdom delegations (MD 93/02).

- i) sell only rough diamonds purchased from legitimate sources in compliance with the provisions of relevant United Nations Security Council resolutions and of the Kimberley Process agreement and guarantee in writing on the invoice accompanying each sale of rough diamonds that, on the basis of their personal knowledge and/or written warranties provided by the supplier of such rough diamonds, the rough diamonds sold are therefore not conflict diamonds;
- ii) accompany each sale of rough diamonds with an invoice containing the said signed guarantee unequivocally identifying the seller and buyer and their registered offices, containing the VAT identification number of the seller, where applicable, the quantity/weight and qualification of the goods sold, the value of the transaction and the date of delivery;
- iii) not buy rough diamonds from suspect or unknown sources of supply and/or rough diamonds originating in non-participants in the KP certification scheme;
- iv) not buy rough diamonds from any source found, after legally binding due process, to have violated government laws and regulations concerning the trade in conflict diamonds;
- v) not buy rough diamonds in or from any region that is the subject of an advisory notice from a governmental or KP certification scheme authority to the effect that conflict diamonds are emanating from or are available for sale in that region;
- vi) not knowingly to buy, sell or assist others in buying or selling conflict diamonds;
- vii) ensure that all employees buying or selling rough diamonds within the diamond trade are fully informed of trade resolutions and government regulations restricting the trade in conflict diamonds;
- viii) create and maintain for at least three years records of invoices received from suppliers and issued to customers;
- ix) instruct an independent auditor to certify that these records have been created and maintained accurately and either that it has identified no transactions which failed to comply with the above-mentioned undertakings or that any transaction which failed to comply with the above-mentioned undertakings has been duly reported to the Commission and the competent authorities of the Member State in which that transaction took place;

(b) provide conclusive evidence that it has adopted rules and regulations which oblige the organisation:

- i) to ensure effective, proportionate, and dissuasive sanctions against any member found, after a due process investigation by the organisation itself, or by the Community authority of a Member State in which it is resident or established, to have violated the above-mentioned undertakings; and
- ii) when serious sanctions are applied, for example the expulsion of a member, to publicise the application of the sanction and notify the Commission and the Community authority of the Member State in which this member is resident or established;
- iii) to make known to all its members all governmental and KP certification scheme laws, regulations and guidelines regarding conflict diamonds and the names of any natural or legal person found guilty, after legally binding due process, of violating these laws and regulations.

(c) provide to the Commission and the Community authority of a Member State in which it is resident or established a complete list of all its members dealing in rough diamonds, including full names, addresses, location and other information which will contribute to avoiding mistaken identities.

3. In accordance with the procedure referred to in Article 22(1), The Commission shall list in Annex IV each organisation that fulfils the requirements of this Article. It shall notify all Community authorities of the names and other relevant particulars of the members of listed organisations.
4. Organisations covered by this Article shall immediately notify the Commission, and the Community authority of a Member State in which they are resident or established, of all changes in their membership subsequent to the application for listing.
5. A listed organisation or a member thereof shall provide the Community authority of a Member State, in which either of them is resident or established, with access to any information that may be needed to assess the proper functioning of the system of warranties and industry self-regulation.

6. If a Community authority in a Member State has credible information that an organisation covered by this Article and established or resident in that Member State, or a member of such organisation established or resident in that Member State, is breaching the provisions of this Article, it shall inquire into the matter to verify whether the provisions of this article have effectively been breached.
7. If the Commission has credible information that an organisation or one of its members is breaching the provisions of this article, it may request an assessment of the situation by the Community authority of a Member State in which the organisation or its member is resident or established.
8. If an assessment leads to the conclusion that an organisation is breaching the provisions of this Article, the Community authority of a Member State in which that organisation is resident or established will notify this without delay to the Commission. In turn, the Commission, in accordance with the procedure referred to in Article 22(1), may remove that organisation from the list in Annex IV.
9. If a Member State decides not to designate a Community authority entrusted with the tasks outlined in this article or pending the designation of such a Community authority, the Commission may substitute itself in the place of such a Community authority for the fulfilment of relevant provisions in this Article.

CHAPTER V

Transit

Article 17²²

Articles 3, 9 and 14 shall not apply to rough diamonds, which enter the Community territory solely for the purposes of transit to another participant than the Community, on condition that neither the container in which rough diamonds are being transported nor the accompanying certificate issued by a competent authority of a participant have been tampered with at entry into and exit from the Community territory and the transit purpose is clearly attested by the accompanying certificate.

²² One delegation entered a scrutiny reservation.

CHAPTER VI

General Provisions

Article 19

1. Member States may designate one or more authorities in their territory as Community authority and may attribute different tasks to them.
2. Member States may provide that customs formalities for the import and export of rough diamonds may be completed only at customs offices empowered to that end.
3. Member States availing themselves of the option set out in paragraph 2 shall inform the Commission of the duly empowered customs offices.
4. Member States designating a Community authority shall provide to the Commission information showing that their designated Community authorities can reliably, timely, effectively and adequately fulfil the tasks required by this Regulation.
5. The Commission shall maintain a list of Community authorities and the tasks entrusted to them in Annex II.
6. Member States shall notify to the Commission the option they shall choose under Articles 3(3) and 10(3) or subsequent changes thereto.
7. The Commission shall publish information provided under paragraph 4, 6, and 7 above in the C series of the Official Journal.²³

Article 25²⁴

1. Any natural or legal person providing services directly or indirectly related to the activities covered by Articles 3, 6, 7, 11, 12, 13, 17 or 18 of this Regulation shall exercise due diligence for establishing that the activities for which it provides services comply with the provisions of this Regulation.

²³ Two delegations entered a reservation because they do not agree this information should be published.

²⁴ Article 22 in the Presidency proposal has been replaced by Article 25 in the Commission proposal.

2. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent the provisions of this Regulation shall be prohibited.

3. The Commission shall be notified of any information suggesting that the provisions of this Regulation are being, or have been, circumvented.

Article 24

Compliance with this Regulation does not discharge any natural or legal person from compliance, fully or partially, with any other obligation under other EC or national legislation.

=====