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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	12 March 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 115 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL implementing the Kimberley Process certification scheme for the international trade in rough diamonds (recast)

Delegations will find attached document COM(2021) 115 final.

Encl.: COM(2021) 115 final

EUROPEAN
COMMISSION

Brussels, 12.3.2021
COM(2021) 115 final

2021/0060 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

   This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

   For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided[1] to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this[2], stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

   Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds[3]. The new Regulation will supersede the various acts incorporated in it[4], fully preserving the content of the acts being codified. At the same time, it is also necessary to make a substantive amendment to Article 22 of that Regulation. Therefore, the proposal is being presented in the form of a recast.

5. The recast proposal was drawn up on the basis of a preliminary consolidation, in 24 official languages, of Regulation (EC) No 2368/2002 and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex VII to the recast Regulation.

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1 COM(87) 868 PV.
2 See Annex 3 to Part A of the Conclusions.
3 Entered in the legislative programme for 2020.
4 See Annex VI to this proposal.

↓ 2368/2002 (adapted)

2021/0060 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

⌦ THE EUROPEAN PARLIAMENT AND ⌫ THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ⌦ on the Functioning of the European Union ⌫, and in particular Article ⌦ 207 ⌫ 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 Economic and Social Committee[5],

Acting in accordance with the ordinary legislative procedure,

Whereas:

⇩ new

(1) Council Regulation (EC) No 2368/2002[6] has been substantially amended several times[7]. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

↓ 257/2014 recital 1 (adapted)

(2) ⌦ This ⌫ Regulation ⌦ provides for ⌫ a ⌦ Union ⌫ System of certification and import and export controls for rough diamonds for the purposes of implementing the Kimberley Process certification scheme.

↓ 2368/2002 recital 2

(3) 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.

[5] OJ C […], […], p. […].

[6] Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds (OJ L 358, 31.12.2002, p. 28).

[7] See Annex VI.

↓ 2368/2002 recital 4 (adapted)

(4) There is a need ⌦ for ⌫ effective controls ⌦ on ⌫ 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 ⌦ controls ⌫ 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.

↓ 2368/2002 recital 5 (adapted)

(5) The Kimberley Process negotiations, bringing together the ⌦ Union ⌫ 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.

↓ 2368/2002 recital 6

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

↓ 2368/2002 recital 7

(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.

↓ 2368/2002 recital 8 (adapted)

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

↓ 2368/2002 recital 9

(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.

↓ 2368/2002 recital 10 (adapted)

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

↓ 2368/2002 recital 11 (adapted)

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

↓ 2368/2002 recital 12

(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.

↓ 2368/2002 recital 13

(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.

↓ 2368/2002 recital 14 (adapted)

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

↓ 2368/2002 recital 15

(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.

↓ 2368/2002 recital 17

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

↓ 2368/2002 recital 18 (adapted)

(17) The provisions of this Regulation concerning the import and export of rough diamonds should not apply to rough diamonds transiting the ⌦ Union ⌫ in the course of export to another participant.

↓ 2368/2002 recital 19 (adapted)

(18) For the purposes of implementing the certification scheme, the ⌦ Union ⌫ 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.

↓ 2368/2002 recital 20
⇨ new

(19) ⇨ In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[8].⇦ ~~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[9].~~

↓ 2368/2002 recital 21

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

↓ 2368/2002 (adapted)

⌦ HAVE ⌫ ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

↓ 257/2014 Art. 1.1 (adapted)

Article 1

This Regulation ⌦ provides for ⌫ 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 ⌦ shall ⌫ not prejudice or substitute any provisions in force relating to customs formalities and controls.

↓ 2368/2002

Article 2

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

[8] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011 p. 13).

[9] ~~OJ L 184, 17.7.1999, p. 23.~~

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

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

↓ 254/2003 Art. 1.1 (adapted)

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

↓ 2368/2002 (adapted)

(d) ‘certificate’ means a document duly issued and validated by a participant's competent authority identifying a shipment of rough diamonds as ⌦ complying ⌫ 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) ‘⌦ Union ⌫ authority’ means a competent authority designated by a Member State and listed in Annex III;

(g) ‘⌦ Union ⌫ certificate’ means a certificate corresponding to the specimen in Annex IV and issued by a ⌦ Union ⌫ 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 710210, 710221 and 710231 (‘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) ‘⌦ Union ⌫ territory’ means the territories of the Member States to which the ⌦ Treaties are ⌫ applicable, under the conditions laid down in ⌦ those Treaties ⌫;

(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 ⌦ the ⌫ effective supervision of a Member State;

(q) 'Customs transit' means transit as provided for by Articles ⌦ 226 and 227 ⌫ of Regulation (EU) No 952/2013 of the European Parliament and of the Council[10] .

CHAPTER II

IMPORT REGIME

Article 3

↓ 257/2014 Art. 1.2 (adapted)

The import of rough diamonds into the ⌦ Union ⌫ territory or Greenland shall be prohibited unless all of the following conditions are fulfilled:

↓ 2368/2002

(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.

Article 4

↓ 257/2014 Art. 1.3 (adapted)

1. Containers and the corresponding certificates shall without delay be submitted for verification together, to a ⌦ Union ⌫ 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 ⌦ Union ⌫ authorities, either in the Member State where they are imported, or in one of the other Member States where a ⌦ Union ⌫ authority is established.

↓ 2368/2002 (adapted)

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

3. The Member State where the rough diamonds are imported shall ensure their submission to the appropriate ⌦ Union ⌫ 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 ⌦ Union ⌫ authority.

[10] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

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

5. A ⌦ Union ⌫ 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 ⌦ Union ⌫ authority shall complete the verification without delay.

Article 5

1. If a ⌦ Union ⌫ authority establishes that the conditions ⌦ laid down ⌫ in Article 3 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.

2. If a ⌦ Union ⌫ authority finds that the failure to fulfil the conditions is not made 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.

3. A ⌦ Union ⌫ authority shall, within one month, 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.

Article 6

↓ 257/2014 Art. 1.4 (adapted)

1. The Commission shall consult participants on the practical arrangements for providing the competent authority of the exporting participant that has validated a certificate with confirmation of imports into the ⌦ Union ⌫ territory or Greenland.

↓ 2368/2002 (adapted)

2. On the basis of ⌦ those ⌫ consultations, the Commission shall, in accordance with the procedure referred to in Article 20(2), lay down guidelines for such confirmation.

Article 7

The Commission shall provide all ⌦ Union ⌫ 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. ⌦ Union ⌫ authorities shall provide the Commission with a monthly report on all certificates submitted for verification under Article 4.

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 ⌦ Union ⌫ authority;

(k) the date of verification.

The Commission may, in accordance with the procedure referred to in Article 20(2), determine the format of this report in order to facilitate monitoring ⌦ the working ⌫ of the certification scheme.

2. The ⌦ Union ⌫ authority shall keep the originals of ⌦ the ⌫ certificates provided for under point (a) of Article 3 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 certificates in particular with a view to answering questions raised within the framework of the KP certification scheme.

CHAPTER III

EXPORT REGIME

Article 9

↓ 257/2014 Art. 1.5 (adapted)

The export from the ⌦ Union ⌫ territory or Greenland of rough diamonds shall be prohibited unless both of the following conditions are fulfilled:

↓ 2368/2002 (adapted)

(a) the rough diamonds are accompanied by a corresponding ⌦ Union ⌫ certificate issued and validated by a ⌦ Union ⌫ authority;

(b) the rough diamonds are contained in tamper-resistant containers sealed in accordance with Article 10.

Article 10

1. The ⌦ Union ⌫ authority may issue a ⌦ Union ⌫ certificate to an exporter when it has established that:

↓ 257/2014 Art. 1.6 (adapted)

(a) the exporter has provided conclusive evidence that:

(i) the rough diamonds for which a certificate is being requested were lawfully imported in accordance with Article 3; or

(ii) the rough diamonds for which a certificate is being requested were mined or extracted in Greenland ⌦ where ⌫ the rough diamonds have not been previously exported to a participant other than the Union;

↓ 2368/2002 (adapted)

(b) the other information requested on the certificate is correct;

(c) the rough diamonds are effectively destined for arrival in the territory of a participant, and

(d) the rough diamonds are to be transported in a tamper-resistant container.

2. A ⌦ Union ⌫ authority shall not validate a ⌦ Union ⌫ 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 has subsequently been sealed ⌦ under ⌫ the responsibility of that authority.

3. A ⌦ Union ⌫ 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 or equivalent system that gives due consideration to rough diamond shipments.

4. The ⌦ Union ⌫ authority shall provide the exporter with an authenticated forgery-resistant copy of the ⌦ Union ⌫ certificate it has validated. The exporter shall keep any copy accessible for at least three years.

5. The ⌦ Union ⌫ 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~~ ⌦ that ⌫ period, the ⌦ Union ⌫ certificate shall be returned to the issuing ⌦ Union ⌫ authority.

Article 11

If an exporter is a member of a diamond organisation listed in Annex V, the ⌦ Union ⌫ authority may accept as conclusive evidence of lawful import into the ⌦ Union ⌫ a signed declaration by the exporter to that effect. Such a declaration shall contain at least the information to be given in an invoice under Article 15(2)(a)(ii).

Article 12

1. If a ⌦ Union ⌫ authority establishes that a shipment of rough diamonds, for which a ⌦ Union ⌫ certificate is requested, does not fulfil the conditions of Articles 9, 10 or 11, that authority shall detain the shipment.

2. If a ⌦ Union ⌫ authority finds that the failure to fulfil the conditions is not made knowingly or intentionally or is the result of an action by another authority in the exercise of its proper duties, it may release the shipment and proceed with the issuing and validation of a ⌦ Union ⌫ certificate, after the necessary remedial measures have been taken to ensure that the conditions are met.

3. The ⌦ Union ⌫ ~~Community~~ authority shall, within one month, 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.

Article 13

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

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 and value.

In accordance with the procedure referred to in Article 20(2), the Commission may determine the format of the report in order to facilitate monitoring ⌦ the working ⌫ of the certification scheme.

2. ⌦ Union ⌫ authorities shall keep for at least three years the authenticated copies provided for under Article 10(4) as well as all information received from an exporter to justify the issue and validation of a ⌦ Union ⌫ certificate.

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

Article 14

1. The Commission shall consult participants on the practical arrangements for obtaining confirmation of imports of rough diamonds exported from the ⌦ Union ⌫ covered by a certificate validated by the ⌦ Union ⌫ authority.

2. On the basis of ⌦ those ⌫ consultations, the Commission shall, in accordance with the procedure referred to in Article 20(2), lay down guidelines for such confirmation.

CHAPTER IV

INDUSTRY SELF-REGULATION

Article 15

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 V directly or through the appropriate ⌦ Union ⌫ authority.

2. When applying for listing, an organisation shall:

(a) provide conclusive evidence that adopted rules and regulations whereby its members dealing in rough diamonds, whether natural or legal persons, undertake that they will:

(i) sell only diamonds purchased from legitimate sources in compliance with the provisions of relevant United Nations Security Council Resolutions and of the ⌦ KP ⌫ Certification Scheme 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) see that each sale of rough diamonds is accompanied by 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 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 ⌦ those ⌫ records have been created and maintained accurately and either that it has identified no transactions which failed to comply with the undertakings referred to in (i) to (viii) or that any transaction which failed to comply with such undertakings has been duly reported to the appropriate ⌦ Union ⌫ authority;

and

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

(i) to expel any member found, after a due process inquiry by the organisation itself, to have seriously violated the abovementioned undertakings; and

(ii) to publicise that member's expulsion and notify the Commission thereof;

(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;

and

(c) provide the Commission and the appropriate ⌦ Union ⌫ authority with 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. Organisations covered by this Article shall immediately notify the Commission and the ⌦ Union ⌫ authority of a Member State ⌦ where ⌫ they are resident or established of all changes in their membership subsequent to the application for listing.

4. In accordance with the procedure referred to in Article 20(2), the Commission shall list in Annex V each organisation that fulfils the requirements of this Article. It shall notify all ⌦ Union ⌫ authorities of the names and other relevant particulars of the members of listed organisations and any changes therein.

5. A listed organisation or a member thereof shall provide the relevant ⌦ Union ⌫ authority with access to any information that may be needed to assess the proper functioning of the system of warranties and industry self-regulation. Where circumstances justify, that ⌦ Union ⌫ authority may require additional guarantees that an organisation is able to maintain a credible system.

The appropriate ⌦ Union ⌫ authority shall report its assessment to the Commission on an annual basis.

6. If, in the course of monitoring the proper functioning of the system, a ⌦ Union ⌫ authority in a Member State obtains credible information that a listed organisation covered by this Article and established or resident in that Member State, or a member thereof established or resident in that Member State, is infringing the provisions of this Article, it shall inquire into the matter to verify whether the provisions of this Article have effectively been infringed.

7. If the Commission has credible information that a listed organisation or a member thereof is infringing the provisions of this Article, it shall request an assessment of the situation by the ⌦ Union ⌫ authority of a Member State ⌦ where ⌫ the organisation or its member is resident or established. Upon such request, the relevant ⌦ Union ⌫ authority shall promptly inquire into the matter and duly inform the Commission of its findings.

If the Commission, on the basis of reports, assessments or other pertinent information, comes to the conclusion that a system of warranties and industry self-regulation does not function properly, and the issue has not been addressed adequately, the Commission shall take the necessary measures in accordance with the procedure referred to in Article 20(2).

8. If an inquiry leads to the conclusion that an organisation is infringing the provisions of this Article, the ⌦ Union ⌫ authority of a Member State ⌦ where ⌫ that organisation is

resident or established will notify the Commission thereof without delay. In turn, the Commission, in accordance with the procedure referred to in Article 20(2), shall take the appropriate measures with a view to removing that organisation from the list in Annex V.

9. If a listed organisation or one or more of its members are established or resident in a Member State that has not designated a ⌦ Union ⌫ authority for the purposes of this Article, the Commission shall be the ⌦ Union ⌫ authority for that organisation or those members.

10. Organisations or their members covered by this Article acting in the territory of a participant other than the ⌦ Union ⌫ shall be considered to have complied with the provisions of this Article if they comply with the rules and regulations that this participant has laid down for the purpose of implementing the ⌦ KP ⌫ Certification Scheme.

CHAPTER V

TRANSIT

↓ 257/2014 Art. 1.7 (adapted)

Article 16

Articles 4, 9, 10, and 12 shall not apply to rough diamonds which enter the ⌦ Union ⌫ territory or Greenland solely for the purposes of transit to a participant outside those territories, on condition that neither the original container in which rough diamonds are being transported nor the original accompanying certificate issued by a competent authority of a participant has been tampered with at entry into or exit from the ⌦ Union ⌫ territory or Greenland, and the transit purpose is clearly attested by the accompanying certificate.

↓ 2368/2002 (adapted)

CHAPTER VI

GENERAL PROVISIONS

Article 17

1. Member States may designate one or more authorities in their territory as ⌦ a Union ⌫ authority and may attribute different tasks to them.

2. Member States designating a ⌦ Union ⌫ authority shall provide the Commission with the information showing that their designated ⌦ Union ⌫ authorities can reliably, timely, effectively and adequately fulfil the tasks required by this Regulation.

3. Member States may limit the number of points where the formalities provided for in this Regulation can be completed. They shall notify the Commission thereof. Based on the information provided under paragraphs 1 and 2 ⌦ of this Article ⌫ and in accordance with the procedure referred to in Article 20(2), the Commission shall maintain in Annex III a list of ⌦ Union ⌫ authorities, their location and the tasks entrusted to them.

4. ⌦ Union ⌫ authorities may ask an economic operator to pay a fee for the production, issue and/or validation of a certificate and for a physical inspection in accordance with Articles 4 and 12. Under no circumstances shall the amount of that fee exceed the costs incurred by that competent authority for the operation concerned. No levies or similar duties shall be charged in relation to such operations.

5. Member States shall notify the Commission of the option they choose under Articles 4(5) and 10(3) or of subsequent changes.

6. The Commission may amend the specifications of the ⌦ Union ⌫ certificate with a view to improving its security, processing and functionality for the purposes of the KP certification scheme.

↓ 254/2003 Art. 1.2 (adapted)

Article 18

On the basis of relevant Information provided ⌦ by ⌫ the Chair of the KP certification scheme and/or by participants, the Commission may amend the list of participants and their competent authorities.

↓ 257/2014 Art. 1.8

Article 19

1. The Union, including Greenland, shall be a participant in the KP certification scheme.

2. The Commission, which represents the Union, including Greenland, in the KP certification scheme, shall aim to ensure optimal implementation of the KP certification scheme, in particular through cooperation with participants. To this end, the Commission shall, in particular, exchange information with participants on international trade in rough diamonds and, where appropriate, cooperate in monitoring activities and in the settlement of any disputes that may arise.

↓ 2368/2002
⇨ new

Article 20

1. ~~In the performance of its duties under Articles 8, 10, 15, 16, 17 and 19,~~ The Commission shall be assisted by a Committee ~~(hereinafter referred to as 'the Committee')~~. ⇨ That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ⇦

2. Where reference is made to this paragraph, Article~~s~~ 5 ~~and 7~~ of Regulation (EU) No 182/2011 shall apply.

~~The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at ten working days.~~

~~3. The Committee shall establish its rules of procedure.~~

↓ 257/2014 Art. 1.9 (adapted)

Article 21

The Committee referred to in Article 20 may examine any question concerning the application of this Regulation. Such questions may be raised either by the ⌦ Chair ⌫ or by a representative of a Member State or Greenland.

↓ 2368/2002 (adapted)

Article 22

1. Any natural or legal person providing services directly or indirectly related to the activities covered by Articles 3, 4, 9, 10, 11, 15 or 16 shall exercise due diligence for establishing that the activities for which it provides services comply with the provisions of this Regulation.

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 23

Information supplied in accordance with this Regulation shall be used only for the purposes for which it was provided.

Information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the Commission without the express permission of the person providing it.

Communication of such information shall, however, be permitted where the Commission is obliged or authorised to do so, in particular in connection with legal proceedings. Such communication must take into account the legitimate interests of the person concerned that his or her business secrets should not be divulged.

This Article shall not preclude the disclosure of general information by the Commission. Such disclosure shall not be permitted if this is incompatible with the original purpose of such information.

In the event of a breach of confidentiality, the originator of the information shall be entitled to obtain that it be deleted, disregarded or rectified, as the case may be.

Article 24

Compliance with this Regulation ⌦ shall ⌫ not discharge any natural or legal person from compliance, fully or partially, with any other obligation under other ⌦ Union ⌫ or national legislation.

Article 25

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive and

shall be capable of preventing those responsible for the infringement from obtaining any economic benefit from their action.

Pending the adoption, where necessary, of any legislation to this end, the sanctions to be imposed where the provisions of this Regulation are infringed shall, where relevant, be those determined by the Member States in order to give effect to Article 5 of Council Regulation (EC) No 303/2002[11].

Article 26

This Regulation shall apply:

(a) within the ⌦ Union ⌫ territory, including its airspace, or on board any aircraft or any vessel under the jurisdiction of a Member State;

(b) to any national of a Member State, and to any legal person, entity, or body which is incorporated or constituted under the law of a Member State.

↓

Article 27

Regulation (EC) No 2368/2002 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VII.

↓ 2368/2002 (adapted)

Article 28

1. This Regulation shall enter into force on the ⌦ twentieth ⌫ day ⌦ following that ⌫ of its publication in the *Official Journal of the European* ⌦ *Union* ⌫.

2. The Commission shall report annually or at any other time as necessary ⌦ to the European Parliament and ⌫ to the Council on the implementation of this Regulation and the need for a review or repeal of ⌦ this ⌫ Regulation.

↓ 2368/2002

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

[11] Council Regulation (EC) No 303/2002 of 18 February 2002 concerning the importation into the Community of rough diamonds from Sierra Leone (OJ L 47, 19.2.2002, p. 8).