

MONTENEGRO



Decision of 29.03.2010 <i>OJ L 108/1 of 29.04.2010</i>
Agreement : Art. 99 <i>OJ L 108/26 of 29.04.2010</i>
Protocol No 6 <i>OJ L 108/337 of 29.04.2010</i>

COUNCIL AND COMMISSION DECISION

of 29 March 2010

on the conclusion of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part

(2010/224/EU, Euratom)

THE COUNCIL OF THE EUROPEAN UNION AND THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 217 in conjunction with Article 218(6)(a) and (8) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 101 thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Having regard to the approval of the Council granted pursuant to Article 101 of the Treaty establishing the European Atomic Energy Community,

Whereas:

- (1) The Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, (hereinafter referred to as 'the Agreement'), was signed on 15 October 2007, subject to its conclusion at a later date.
- (2) The commercial provisions contained in the Agreement are of an exceptional nature, connected with the policy implemented within the framework of the stabilisation and association process and will not constitute, for the European Union, a precedent in the commercial policy of the Union with regard to third countries other than those of the Western Balkans.
- (3) As a consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community.
- (4) The Agreement should be approved,

HAVE ADOPTED THIS DECISION:

Article 1

The Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, the Annexes and Protocols annexed thereto, as well as the joint declarations and the declaration by the Community attached to the Final Act, are hereby approved on behalf of the European Union and the European Atomic Energy Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall, on behalf of the Union, make the following notification:

‘As a consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community and from that date exercises all rights and assumes all obligations of the European Community. Therefore, references to “the European Community” in the text of the Agreement are, where appropriate, to be read as “the European Union.”’

Article 3

1. The position to be taken by the Union or by the European Atomic Energy Community within the Stabilisation and Association Council and within the Stabilisation and Association Committee when the latter is empowered to act by the Stabilisation and Association Council shall be determined by the Council, on a proposal from the Commission, or, where appropriate, by the Commission, each in accordance with the corresponding provisions of the Treaties.
2. The President of the Council shall, in accordance with Article 120 of the Agreement, preside over the Stabilisation and Association Council. A representative of the Commission shall preside over the Stabilisation and Association Committee, in accordance with the Rules of Procedure thereof.
3. The decision to publish the decisions of the Stabilisation and Association Council and the Stabilisation and Association Committee in the *Official Journal of the European Union* shall be taken on a case-by-case basis by the Council or the Commission, each in accordance with the corresponding provisions of the Treaties.

Article 4

The President of the Council is hereby authorised to designate the person(s) empowered, on behalf of the European Union, to deposit the act of approval provided for in Article 138 of the Agreement. The President of the Commission shall deposit the said act of approval on behalf of the European Atomic Energy Community.

Article 5

This Decision shall enter into force on the date of its adoption.
Done at Brussels, 29 March 2010.

For the Council

The President

E. ESPINOSA

For the Commission

The President

O. REHN

STABILISATION AND ASSOCIATION AGREEMENT

between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part

(...)

THE EUROPEAN COMMUNITY and THE EUROPEAN ATOMIC ENERGY COMMUNITY,

hereinafter referred to as the 'Community',

of the one part, and

THE REPUBLIC OF MONTENEGRO, hereinafter referred to as 'Montenegro',

of the other part,

together referred to as 'the Parties',

CONSIDERING the strong links between the Parties and the values that they share, their desire to strengthen those links and establish a close and lasting relationship based on reciprocity and mutual interest, which should allow Montenegro to further strengthen and extend the relations with the Community and its Member States;

CONSIDERING the importance of this Agreement, in the framework of the Stabilisation and Association process (SAP) with the countries of south-eastern Europe, in the establishment and consolidation of a stable European order based on cooperation, of which the European Union is a mainstay, as well as in the framework of the Stability Pact;

CONSIDERING the European Union's readiness to integrate Montenegro to the fullest possible extent into the political and economic mainstream of Europe and its status as a potential candidate for EU membership on the basis of the Treaty on European Union (hereinafter referred to as 'the EU Treaty') and fulfilment of the criteria defined by the European Council in June 1993 as well as the SAP conditionalities, subject to the successful implementation of this Agreement, notably regarding regional cooperation;

CONSIDERING the European Partnership, which identifies priorities for action in order to support the country's efforts to move closer to the European Union;

CONSIDERING the commitment of the Parties to contribute by all means to the political, economic and institutional stabilisation in Montenegro as well as in the region, through the development of civil society and democratisation, institution building and public administration reform, regional trade integration and enhanced economic cooperation, as well as through cooperation in a wide range of areas, particularly in justice, freedom and security, and the strengthening of national and regional security;

CONSIDERING the commitment of the Parties to increasing political and economic freedoms as the very basis of this Agreement, as well as their commitment to respect human rights and the rule of law, including the rights of persons belonging to national minorities, and democratic principles through a multi-party system with free and fair elections;

CONSIDERING the commitment of the Parties to the full implementation of all principles and provisions of the UN Charter, of the OSCE, notably those of the Final Act of the Conference on Security and Cooperation in Europe (hereinafter referred to as 'the Helsinki Final Act'), the concluding documents of the Madrid and Vienna Conferences, the Charter of Paris for a New Europe, and of the Stability Pact for south-eastern Europe, so as to contribute to regional stability and cooperation among the countries of the region;

REAFFIRMING the right of return for all refugees and internally displaced persons and to the protection of their property and other related human rights;

CONSIDERING the commitment of the Parties to the principles of free market economy and to sustainable development as well as the readiness of the Community to contribute to the economic reforms in Montenegro;

CONSIDERING the commitment of the Parties to free trade, in compliance with the rights and obligations arising out of the membership of the WTO;

CONSIDERING the wish of the Parties to further develop regular political dialogue on bilateral and international issues of mutual interest, including regional aspects, taking into account the Common Foreign and Security Policy (CFSP) of the European Union;

CONSIDERING the commitment of the Parties to combat organised crime and to strengthen cooperation in the fight against terrorism on the basis of the declaration issued by the European Conference on 20 October 2001;

CONVINCED that the Stabilisation and Association Agreement (hereinafter referred as 'this Agreement') will create a new climate for economic relations between them and, above all, for the development of trade and investment, factors crucial to economic restructuring and modernisation;

BEARING in mind the commitment by Montenegro to approximate its legislation in the relevant sectors to that of the Community, and to effectively implement it;

TAKING ACCOUNT of the Community's willingness to provide decisive support for the implementation of reform and to use all available instruments of cooperation and technical, financial and economic assistance on a comprehensive indicative multiannual basis to this endeavour;

CONFIRMING that the provisions of this Agreement that fall within the scope of Part III, Title IV of the Treaty establishing the European Community (hereinafter referred to as 'the EC Treaty') bind the United Kingdom and Ireland as separate Contracting Parties, and not as a part of the Community, until the United Kingdom or Ireland (as the case may be) notifies Montenegro that it has become bound as part of the Community in accordance with the Protocol on the position of the United Kingdom and Ireland annexed to the EU Treaty and the EC Treaty. The same applies to Denmark, in accordance with the Protocol annexed to those Treaties on the position of Denmark;

RECALLING the Zagreb Summit, which called for further consolidation of relations between the countries of the Stabilisation and Association process and the European Union as well as enhanced regional cooperation;

RECALLING that the Thessaloniki Summit reinforced the Stabilisation and Association process as the policy framework for the European Union's relations with the Western Balkan countries and underlined the prospect of their integration with the European Union on the basis of their individual reform progress and merit;

RECALLING the signature of the Central European Free Trade Agreement in Bucharest on 19 December 2006 as a means of enhancing the region's ability to attract investments and the prospects of its integration into the global economy;

DESIROUS of establishing closer cultural cooperation and developing exchanges of information,

HAVE AGREED AS FOLLOWS:

(...)

Article 99

Customs

The Parties shall establish cooperation in this area with a view to guarantee compliance with the provisions to be adopted in the area of trade and to achieve the approximation of the customs systems of Montenegro to that of the Community, thereby helping to pave the way for the liberalisation measures planned under this Agreement and for the gradual approximation of the Montenegrin customs legislation to the *acquis*.

Cooperation shall take due account of priority areas related to the Community *acquis* in the field of customs.

The rules on mutual administrative assistance between the Parties in the customs field are laid down in Protocol 6.

PROTOCOL 6

protocol on mutual administrative assistance in customs matters Montenegro

Article 1

Definitions

For the purposes of this Protocol:

- (a) 'customs legislation' shall mean any legal or regulatory provisions applicable in the territories of the Contracting Parties, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (b) 'applicant authority' shall mean a competent administrative authority which has been designated by a Contracting Party for this purpose and which makes a request for assistance on the basis of this Protocol;
- (c) 'requested authority' shall mean a competent administrative authority which has been designated by a Contracting Party for this purpose and which receives a request for assistance on the basis of this Protocol;
- (d) 'personal data' shall mean all information relating to an identified or identifiable individual;
- (e) 'operation in breach of customs legislation' shall mean any violation or attempted violation of customs legislation.

Article 2

Scope

1. The Contracting Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, shall apply to any administrative authority of the Contracting Parties which is competent for the application of this Protocol. It shall not prejudice the rules governing mutual assistance in criminal matters. Nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.
3. Assistance to recover duties, taxes or fines is not covered by this Protocol.

Article 3

Assistance on request

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information regarding activities noted or planned which are or could be operations in breach of customs legislation.
2. At the request of the applicant authority, the requested authority shall inform it:
 - (a) whether goods exported from the territory of one of the Contracting Parties have been

properly imported into the territory of the other Contracting Party, specifying, where appropriate, the customs procedure applied to the goods;

(b) whether goods imported into the territory of one of the Contracting Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of:

- (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
- (b) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods are intended to be used in operations in breach of customs legislation;
- (c) goods that are or may be transported in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation;
- (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

Article 4

Spontaneous assistance

The Contracting Parties shall assist each other, at their own initiative and in accordance with their legal or regulatory provisions, if they consider that to be necessary for the correct application of customs legislation, particularly by providing information obtained pertaining to:

- (a) activities which are or appear to be operations in breach of customs legislation and which may be of interest to the other Contracting Party;
- (b) new means or methods employed in carrying out operations in breach of customs legislation;
- (c) goods known to be subject to operations in breach of customs legislation;
- (d) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
- (e) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation.

Article 5

Delivery, Notification

At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to the latter, take all necessary measures in order:

- (a) to deliver any documents or
- (b) to notify any decisions,

emanating from the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

Requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

Article 6

Form and substance of requests for assistance

1. Requests pursuant to this Protocol shall be made in writing. They shall be accompanied by the documents necessary to enable compliance with the request. When required because of the urgency of the situation, oral requests may be accepted, but must be confirmed in writing immediately.
2. Requests pursuant to paragraph 1 shall include the following information:
 - (a) the applicant authority;
 - (b) the measure requested;
 - (c) the object of and the reason for the request;
 - (d) the legal or regulatory provisions and other legal elements involved;
 - (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;
 - (f) a summary of the relevant facts and of the enquiries already carried out.
3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority. This requirement shall not apply to any documents that accompany the request under paragraph 1.
4. If a request does not meet the formal requirements set out above, its correction or completion may be requested; in the meantime precautionary measures may be ordered.

Article 7

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence and available resources, as though it were acting on its own account or at the request of other authorities of that same Contracting Party, by supplying information already possessed, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.
2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Contracting Party.
3. Duly authorised officials of a Contracting Party may, with the agreement of the other Contracting Party involved and subject to the conditions laid down by the latter, be present to obtain in the offices of the requested authority or any other concerned authority in accordance with paragraph 1, information relating to activities that are or may be operations in breach of customs legislation which the applicant authority needs for the purposes of this Protocol.

4. Duly authorised officials of a Contracting Party involved may, with the agreement of the other Contracting Party involved and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

Article 8

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified copies or other items.
2. This information may be in computerised form.
3. Original documents shall be transmitted only upon request in cases where certified copies would be insufficient. These originals shall be returned at the earliest opportunity.

Article 9

Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements, in cases where a Party is of the opinion that assistance under this Protocol would:
 - (a) be likely to prejudice the sovereignty of Montenegro or that of a Member State which has been requested to provide assistance under this Protocol; or
 - (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to under Article 10(2); or
 - (c) violate an industrial, commercial or professional secret.
2. Assistance may be postponed by the requested authority on the ground that it will interfere with an ongoing investigation, prosecution or proceeding. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.
3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.
4. For the cases referred to in paragraphs 1 and 2, the decision of the requested authority and the reasons therefor must be communicated to the applicant authority without delay.

Article 10

Information exchange and confidentiality

1. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, depending on the rules applicable in each of the Contracting Parties. It shall be covered by the obligation of official secrecy and shall enjoy the protection extended to similar information under the relevant laws of the Contracting Party that received it and the corresponding provisions applying to the Community authorities.
2. Personal data may be exchanged only where the Contracting Party which may receive them undertakes to protect such data in at least an equivalent way to the one applicable to that particular case in the Contracting Party that may supply them. To that end, contracting parties

shall communicate to each other information on their applicable rules, including, where appropriate, legal provisions in force in the Member States of the Community.

3. The use, in judicial or administrative proceedings instituted in respect of operations in breach of customs legislation, of information obtained under this Protocol, is considered to be for the purposes of this Protocol. Therefore, the Contracting Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The competent authority which supplied that information or gave access to those documents shall be notified of such use.

4. Information obtained shall be used solely for the purposes of this Protocol. Where one of the Contracting Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

Article 11

Experts and witnesses

An official of a requested authority may be authorised to appear, within the limitations of the authorisation granted, as an expert or witness in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

Article 12

Assistance expenses

The Contracting Parties shall waive all claims on each other for the reimbursement of expenses incurred pursuant to this Protocol, except, as appropriate, for expenses to experts and witnesses, and those to interpreters and translators who are not public service employees.

Article 13

Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of Montenegro and on the other hand to the competent services of the European Commission and the customs authorities of the Member States as appropriate. They shall decide on all practical measures and arrangements necessary for its application, taking into consideration the rules in force in particular in the field of data protection. They may recommend to the competent bodies amendments which they consider should be made to this Protocol.

2. The Contracting Parties shall consult each other and subsequently keep each other informed of the detailed rules of implementation which are adopted in accordance with the provisions of this Protocol.

Article 14

Other Agreements

1. Taking into account the respective competencies of the Community and the Member States, the provisions of this Protocol shall:

- (a) not affect the obligations of the Contracting Parties under any other international Agreement or Convention;
- (b) be deemed complementary to Agreements on mutual assistance which have been or may be concluded between individual Member States and Montenegro; and shall
- (c) not affect the Community provisions governing the communication between the competent services of the European Commission and the customs authorities of the Member States of any information obtained under this Protocol which could be of interest to the Community.

2. Notwithstanding the provisions of paragraph 1, the provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual assistance which has been or may be concluded between individual Member States and Montenegro insofar as the provisions of the latter are incompatible with those of this Protocol.

3. In respect of questions relating to the applicability of this Protocol, the Contracting Parties shall consult each other to resolve the matter in the framework of the Stabilisation and Association Committee set up under Article 119 of this Agreement