



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.2.2003  
COM(2003) 53 final

2003/0018(ACC)

Proposal for a

**COUNCIL REGULATION**

**amending for the second time Regulation (EC) No 2368/2002 implementing the  
Kimberley Process certification scheme for the international trade in rough diamonds**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

1. The Council adopted on 20 December 2002 Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds. Article 29 (3) of this Regulation reads “The application of Articles 3, 4, 5, 10, 11, 12, 13, 14, 15 and 18 shall be suspended until the Council decides to apply these Articles on the basis of a proposal of the Commission.”
2. The suspension of said Articles was motivated, inter alia, by the uncertainty concerning the fulfilment of all requirements of the Kimberley Process certification scheme by a number of participants, among them the European Community itself. In particular the availability of the required secure Kimberley Process Certificates was not guaranteed at the time of the adoption of the Regulation. (The Regulation provides that interested Member States shall be responsible for the printing and issuing of the EC certificates).

Since then, the Commission has obtained sufficient evidence that those requirements will be fulfilled by 1 February 2003. Therefore, the suspension of the applicability of said Articles could be lifted by that date.

3. There is also a need to amend the Regulation in respect of the definition of participants in the Kimberley Process certification scheme. The current definition does not allow the participation in the scheme of all states, regional economic integration organisations, WTO-members or separate customs territories that fulfil the requirements of the scheme. While consultations are ongoing under the aegis of the chair of the Kimberley Process certification scheme, participants have accepted that the trade ban contained in paragraph C of Section III of the document contained in Annex I of Regulation 2368/2002 shall not apply in respect of shipments to and from rough diamonds trading entities that have been found by participants to fulfil all requirements of the Kimberley Process certification scheme and that have notified participants, through the chair of the Kimberley Process, accordingly. This acceptance has been laid down in a Notice from the chair that forms part of the official record of the Kimberley Process negotiations. It is a step in the right direction of a definitive agreement ensuring the possibility for each WTO member that fulfils the requirements of the Kimberley Process certification scheme to participate in the scheme. This possibility should be properly reflected in the definition of participant in the Regulation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Whereas:

- (1) It is appropriate to ensure that the provisions established by Council Regulation (EC) No 2368/2002 of 20 December 2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds<sup>2</sup> enable all WTO-members fulfilling the requirements of the Kimberley Process certification scheme to participate in the scheme. Therefore, the definition of participant set out in Article 2 of that Regulation and the conditions governing the insertion into the list of participants contained in Annex II to that Regulation should be amended.
- (2) The Community and all other participants listed in Annex II to Regulation (EC) No 2368/2002 have fulfilled the requirements of the Kimberley Process Certification Scheme in such a manner that the full application of all provisions of that Regulation will not lead to a serious disturbance of international trade in rough diamonds.
- (3) Sufficient evidence has been submitted that those requirements will be fulfilled by 1 February 2003. The suspension of the applicability of those provisions should, therefore, be lifted from that date,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ L 358, 31.12.2002, p.28, as amended by Commission Regulation (EC) No .../2003.

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 2368/2002 is amended as follows:

(1) Point (c) of Article 2 is replaced by the following:

" 'Participant' means any State, regional economic integration organisation, WTO-member or separate customs territory that fulfils the requirements of the KP certification scheme, has notified that fact to the Chair of the KP certification scheme and is listed in Annex II;"

(2) Article 20 is replaced by the following:

"Article 20. On the basis of relevant Information provided to the Chair of the KP certification scheme and/or by participants, the Commission may amend the list of participants and their competent authorities.";

(3) In Article 29, paragraph 3 is replaced by the following:

"3. Articles 3, 4, 5, 10, 11, 12, 13, 14, 15 and 18 shall apply from 1 February 2003."

*Article 2*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels,

*For the Council*  
*The President*