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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Regulation (EC) No 2368/2002 as regards the inclusion of Greenland
in implementing the Kimberley Process certification scheme**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

This proposal aims at enabling Greenland to participate in the Kimberley Process certification scheme on rough diamonds through its cooperation with the European Union. The scheme set out in the proposal would allow for the import and export of rough diamonds from Greenland to the Union as well as to other participants of the certification scheme, provided that all imports and exports of rough diamonds are verified and, for exports, certified by Union authorities pursuant to the rules set out in Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds.

This association would strengthen economic relations between the European Union and Greenland in the diamond industry, and in particular it would enable Greenland to export rough diamonds accompanied by the European Union Certificate issued for the purposes of the certification scheme, with a view of promoting the economic development of Greenland.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Greenland and Denmark has agreed to the approach taken by the proposal and will undertake to transpose and implement in the legislation applicable to Greenland the relevant provisions of Regulation (EC) No 2368/2002 as regards the conditions and formalities for importing and exporting rough diamonds, their transit to a participant other than the Union, the participation of the Union, including Greenland, in the Kimberley Process certification scheme, obligations relating to due diligence, anti-circumvention, exchange of information, and ensuring compliance with such provisions.

3. LEGAL ELEMENTS OF THE PROPOSAL

The legal basis of the proposal is Article 207. The proposal extends the territory of the Union to also cover the territory of Greenland for the purposes of the Kimberley Process certification scheme. Accordingly, Greenland will be prohibited to accept imports or exports of rough diamonds to or from outside of the territory of the Union without a valid Kimberley Process (KP) certificate. The amendments will allow for the export of rough diamonds from Greenland to third countries as long as they are accompanied by an EU KP certificate. The conditions for certification previously required evidence that the rough diamonds were lawfully imported into the Union. For diamonds mined and extracted in Greenland that have never been exported before, an alternative condition is introduced by this proposal, notably to demonstrate proof in this regard.

In addition, the proposal sets out the modalities of submitting rough diamonds to Union authorities for verification, extends the special rules for transit to Greenland, enables Greenland's participation in the Committee for the implementation of the Regulation and enables Greenland's representation in the Kimberley Process and cooperation with other Member States through the Commission.

The proposal is closely connected to a proposal for a Council Decision setting out specific rules for the circulation of rough diamonds between the Union and Greenland. As proposed in this Decision, the main requirements for rough diamonds to enter or leave the territory of Greenland or the Union would be to (i) be accompanied by some form of an official document, either a document attesting that they were mined in Greenland, or a copy of a

Kimberley Process certificate as validated by a Union authority, and (ii) be in sealed tamper-resistant containers.

As proposed in this Decision, rough diamonds mined or extracted in Greenland, provided that they have not been exported previously to a third country, may enter the Union's customs territory by the use of an attesting document issued by authorities in Greenland. Once rough diamonds mined or extracted in Greenland had been exported to a third country, upon their return they may circulate between the Union and Greenland according to the same rules that apply to all other rough diamonds imported into the Union.

The application of the Decision is proposed to align with the entry into force of this amendment.

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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,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds¹ 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.
- (2) Greenland is not part of the Union territory but it is included in the list of overseas countries and territories set out in Annex II to the Treaties. In accordance with Article 198 of the Treaty on the Functioning of the European Union, the purpose of the association of the overseas countries and territories with the Union is to promote the economic and social development of the overseas countries and territories and to establish close economic relations between them and the Union as a whole.
- (3) Council Decision [...] sets out the rules and procedures enabling Greenland's participation in the Kimberley Process certification scheme on rough diamonds through its cooperation with the European Union. This association would strengthen economic relations between the European Union and Greenland in the diamond industry, and in particular it would enable Greenland to export rough diamonds accompanied by the European Union Certificate issued for the purposes of the certification scheme, with a view to promoting the economic development of Greenland.
- (4) Regulation (EC) No 2368/2002 should be amended in order to enable this Decision to enter into force and in particular to provide for the inclusion of Greenland in the certification scheme.
- (5) Accordingly, Greenland will be prohibited to accept imports or exports of rough diamonds to or from a participant other than the Union without a valid Kimberley Process certificate. The amendments will allow for the export of rough diamonds from Greenland to third countries as long as they are accompanied by a European Union Kimberley Process certificate.

¹ OJ L 358, 31.12.2002, p. 28.

- (6) To the existing condition for certification requiring evidence that the rough diamonds were lawfully imported into the Union, an alternative condition should be introduced for diamonds mined and extracted in Greenland that have never been exported before, notably to demonstrate proof in this regard.
- (7) In addition, amendments should be made to the modalities of submitting rough diamonds to Union authorities for verification, extending the special rules for transit to Greenland, enabling Greenland's participation in the Committee for the implementation of the Regulation and providing for Greenland's representation in the Kimberley Process and cooperation with other Member States through the Commission.
- (8) Regulation (EC) No 2368/2002 should therefore be amended accordingly,
- HAVE ADOPTED THIS REGULATION:

Article 1

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

- (1) Article 1 is replaced by the following:

"Article 1

This Regulation sets up a Union system of certification and import and export controls for rough diamonds for the purposes of implementing the Kimberley Process certification scheme.

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

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

- (2) In Article 3, the introductory phrase is replaced by the following:

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

- (3) In Article 4, paragraph 1 is replaced by the following:

"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."

- (4) In Article 8, paragraph 1 is replaced by the following:

"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."

- (5) In Article 11, the introductory phrase is replaced by the following:

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

- (6) In Article 12(1), point (a) is replaced by the following:
- "(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 the provisions of Article 3; or
 - (ii) the rough diamonds for which a certificate is being requested were mined or extracted in Greenland in case the rough diamonds have not been previously exported to a participant other than the Union."
- (7) Article 18 is replaced by the following:
- "Article 18
- Articles 4, 11, 12, and 14 shall not apply to rough diamonds which enter the territories of the Union 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 have been tampered with at entry into and exit from the territories of the Union or Greenland and the transit purpose is clearly attested by the accompanying certificate."
- (8) Article 21 is replaced by the following:
- "Article 21
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."
- (9) Article 23 is replaced by the following:
- "Article 23
- The Committee referred to in Article 22 may examine any question concerning the application of this Regulation. Such questions may be raised either by the chairman or by a representative of a Member State or Greenland."

Article 2

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President