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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.7.2009  
COM(2009) 367 final

Proposal for a

**COUNCIL DECISION**

**relating to the position to be taken in the Cooperation Committee established by the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino in order to adopt the "omnibus" decision**

## EXPLANATORY MEMORANDUM

On 1 April 2002 the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino<sup>1</sup> entered into force.

The EC-San Marino Cooperation Committee, established by Article 23 of the Agreement, met in Brussels on 12 July 2004. It decided to deal with several issues of various natures at a later stage in a single comprehensive, or "omnibus", decision. As all the elements are now available, such a decision can be prepared. In order to avoid convening another Committee meeting, a written exchange has been suggested.

This decision should also provide the legal basis for some practices already being applied. It will also update certain provisions of the agreement.

The elements referred to above are the following:

- As part of the implementation of the interim agreement, twelve decisions and one declaration were adopted. By virtue of its Article 19, the interim agreement of 1992 ceased to apply once the Agreement on Cooperation and Customs Union entered into force in April 2002. However, all the decisions refer to the interim agreement and there is no provision or declaration which stipulates explicitly that they apply also to the current Agreement. Therefore, for legal clarity, the omnibus decision should contain a reference to these decisions. Decision No 1/92 on the rules of procedure of the Cooperation Committee and Decisions Nos 1/95 and 2/2000 on the list of customs offices are exempted as these subjects are dealt with in the omnibus decision.
- At the last meeting of the Cooperation Committee it was decided to adopt the rules of procedure under the interim agreement. The rules reflect the general standard.
- San Marino is already connected to the NCTS (computer network).
- Following Council Decision No 2000/597/EC, Euratom on the system of the European Communities' own resources, the figure of 10 % for collection costs was increased to 25 % from 1 January 2001.
- The list of Italian customs offices annexed to the decision has been approved by Italy and San Marino.
- The CITES item has been introduced at the request of San Marino.

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<sup>1</sup> OJ L 84, 28.3.2002, p. 43

Proposal for a

## COUNCIL DECISION

**relating to the position to be taken in the Cooperation Committee established by the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino in order to adopt the "omnibus" decision**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 300(2), second subparagraph, thereof,

Having regard to the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino,

Having regard to the proposal from the Commission,

HAS DECIDED AS FOLLOWS:

### *Article 1*

The position of the European Community in the Cooperation Committee created under Article 23 of the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino shall be based on the draft decision of the Cooperation Committee attached hereto.

### *Article 2*

The decision of the Cooperation Committee shall be published in the Official Journal.

*For the Council*

*The President*

Draft

**"OMNIBUS" DECISION No 1/2009 OF THE EC-SAN MARINO COOPERATION  
COMMITTEE**

**of**

**establishing various implementing measures  
for the Agreement on Cooperation and Customs Union**

THE EC-SAN MARINO COOPERATION COMMITTEE,

Having regard to the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino<sup>2</sup>, and in particular Articles 7(2), 8(3), 13(2) and 23(3) thereof,

Whereas:

- (1) The Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino ("the Agreement") entered into force on 1 April 2002.
- (2) As a result, the interim agreement on trade and customs union between the European Economic Community and the Republic of San Marino<sup>3</sup> ceased to apply.
- (3) The EC-San Marino Cooperation Committee ("the Committee") is required by the Agreement to take a number of decisions for the proper implementation of the Agreement.
- (4) Article 7(2) of the Agreement provides that the Committee must determine in greater detail the Community provisions relating to the operation of the customs union. Given the existence of a Community Customs Code, and that, for the moment, customs clearance is carried out through Community customs offices, it is not necessary to establish a detailed list of the applicable provisions.
- (5) The Republic of San Marino is a party to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES); the application of Community legislation in this area by the Republic of San Marino will aid the proper functioning of the customs union established by the Agreement.
- (6) In order to comply with Article 6(4) and Article 7(1) of the Agreement, the Republic of San Marino must take all necessary measures to apply in its territory Community legislation in the fields of food safety and veterinary and phytosanitary matters, to the extent necessary to ensure the proper functioning of the Agreement. Administrative cooperation should be established in order to assist the San Marino authorities in this regard.

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<sup>2</sup> OJ L 84, 28.2.2002, p. 43.

<sup>3</sup> OJ L 359, 9.12.1992, p. 14.

- (7) Annex II to the Agreement lists the customs offices which may carry out customs clearance formalities in the name and on behalf of the Republic of San Marino; since Italy and the Republic of San Marino have agreed to increase the number of offices with a view to promoting economic development by assisting commercial exchanges between the Republic of San Marino and third countries, this list should be updated.
- (8) The decisions of the Cooperation Committee concerning customs cooperation and adopted under the interim agreement remain valid. It is therefore appropriate for them to remain in force.
- (9) The Cooperation Committee must decide, in accordance with Article 8(3)(b) of the Agreement, on the arrangements for making available to the Republic of San Marino the import duties collected for its account; it is necessary to align the percentage deducted for administration costs on the percentage provided for in Article 2(3) of the Council Decision of 29 September 2000 on the system of the European Communities' own resources (2000/597/EC, Euratom)<sup>4</sup>,

HAS DECIDED AS FOLLOWS:

*Article 1*

The rules of procedure of the Cooperation Committee set out in Annex I are hereby adopted.

*Article 2*

A Customs Cooperation Committee, tasked in particular with ensuring the correct and uniform application of the Agreement's customs provisions and operating under the authority of the Cooperation Committee, is hereby set up.

The Customs Cooperation Committee shall be composed of customs experts from the Community and from the Republic of San Marino. The Committee shall meet alternately under the chairmanship of a Commission representative and a representative of the Republic of San Marino. The rules of procedure of the Cooperation Committee shall apply, *mutatis mutandis*, to the Customs Cooperation Committee.

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<sup>4</sup> OJ L 253, 7.10.2000, p. 42.

The Customs Cooperation Committee shall report regularly on its work to the Cooperation Committee. The flow of information shall take place through the secretariat of the Cooperation Committee. The Customs Cooperation Committee shall refer to the Cooperation Committee any instances raising a question of principle or the interpretation of the Agreement.

### *Article 3*

The Republic of San Marino shall apply Community customs legislation as it applies in the Community, and in particular the Community Customs Code<sup>5</sup> and its implementing provisions. The Republic of San Marino shall apply Community legislation relating to international trade in endangered species of wild flora and fauna.

In order to apply particular customs regimes, and to apply the legislation relating to international trade in endangered species of wild flora and fauna, the customs territory of the Community and the territory of the Republic of San Marino shall be considered a single customs territory.

### *Article 4*

The practical arrangements for applying Community legislation on food safety and veterinary and phytosanitary matters shall be agreed by the Commission departments and the authorities of the Republic of San Marino.

### *Article 5*

In cases where a Community provision which the Republic of San Marino is required to apply by virtue of Article 7(1) of the Agreement in the areas of customs, common commercial policy, international trade in endangered species of wild flora and fauna, agriculture, or food safety or veterinary or phytosanitary matters provides that a decision must be taken by the Commission of the European Communities to resolve certain issues, such decision shall be taken by the authorities of the Republic of San Marino following agreement by the Commission. Where such a provision provides that a decision must be taken or a communication must be made by a Member State, such decision shall be taken or such communication shall be made by the authorities of the Republic of San Marino. Those authorities shall take into account the opinions of the Community's scientific committees and use as a basis for its decisions the case law of the Court of Justice and the practices followed by the Commission.

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<sup>5</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, which has been amended several times. Regulation (EEC) No 2913/92 has been replaced by Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), in the manner provided for in Article 188 of Regulation (EC) No 450/2008.

### Article 6

1. The list of Community customs offices authorised to carry out customs clearance of goods destined for the Republic of San Marino annexed to the Agreement shall be replaced by the list in Annex II.

2. Customs clearance operations relating to exports may be carried out at all Italian customs offices, with the exception of formalities:

- which are carried out in customs procedures with economic impact;
- which concern the export of arms, works of art, precursors and dual-use products,

which must be carried out at the offices and sub-offices listed in Annex II.

### Article 7

The procedures for making available to the San Marino Exchequer import duties collected by the Community on behalf of the Republic of San Marino are laid down in Annex III.

### Article 8

1. Decision No 3/92 of the EC-San Marino Cooperation Committee of 22 December 1992 on the arrangements for the provision of mutual assistance pursuant to Article 13 of the interim agreement between the Community and San Marino<sup>6</sup> shall remain in force and shall constitute implementation of Article 23(8) of the Agreement.

2. Decision No 4/92 of the EC-San Marino Cooperation Committee of 22 December 1992 on methods of administrative cooperation for the implementation of the interim agreement and the procedure for forwarding goods to the Republic of San Marino<sup>7</sup>, as amended by Decision No 1/2002 of the EC-San Marino Cooperation Committee of 22 March 2002<sup>8</sup>, shall remain in force and shall constitute implementation of Articles 8(3)(a) and (c) and Article 23(8) of the Agreement.

This Decision shall enter into force on .....

Done at ....., .....

*For the Cooperation Committee*

*The Chairman*

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<sup>6</sup> OJ L 42, 19.2.1993, p. 29.

<sup>7</sup> OJ L 42, 19.2.1993, p. 34.

<sup>8</sup> OJ L 9, 16.4.2002, p. 23.

## ANNEX I

### **Rules of procedure of the EC-San Marino Cooperation Committee**

#### Article 1

The chairmanship of the Cooperation Committee shall be held alternately for a period of six months as follows:

- from 1 January to 30 June by a representative of the Commission;
- from 1 July to 31 December by a representative of the Republic of San Marino.

#### Article 2

The Chairman of the Cooperation Committee shall determine, following the agreement of the two delegations, the date and place of meetings. These shall take be held alternately in Brussels and in San Marino.

#### Article 3

Before each meeting the Chairman shall be informed of the expected composition of each delegation.

#### Article 4

The Chairman shall draw up a provisional agenda for each meeting. This shall be sent to the two delegations no later than fifteen days before the start of the meeting.

The provisional agenda shall include items for which documentation has been sent to the two delegations no later than the date on which the provisional agenda is sent.

The Chairman may, with the agreement of both delegations, shorten the deadlines provided for in the previous paragraphs to take account of particular circumstances.

The agenda shall be adopted by the Cooperation Committee at the beginning of each meeting. The inclusion in the agenda of any item other than those in the provisional agenda shall be done with the agreement of the Community and the Republic of San Marino.

#### Article 5

Unless otherwise decided, the meetings of the Cooperation Committee shall not be public.

Without prejudice to other applicable provisions, the deliberations of the Cooperation Committee shall be covered by the obligation of professional secrecy, except in so far as the Committee decides otherwise.

#### Article 6

The deliberations of the Cooperation Committee may take place by written procedure if the Community and the Republic of San Marino so agree.

#### Article 7

Acts adopted by the Cooperation Committee shall be signed by the Chairman.

#### Article 8

Recommendations and decisions of the Cooperation Committee under Article 23 of the Agreement shall be entitled "Recommendation" or "Decision" followed by a serial number and a reference to their subject matter.

Recommendations and decisions of the Cooperation Committee shall be forwarded to the addressees referred to in Article 10 below.

#### Article 9

A record of the conclusions adopted by the Cooperation Committee shall be established by mutual agreement.

Secretariat services shall be provided jointly by a representative of the Commission and a representative of the Republic of San Marino.

#### Article 10

All communications from the Chairman that are provided for in these rules of procedure shall be forwarded to the Commission and to the Republic of San Marino.

#### Article 11

The Contracting Parties shall each defray the expenses they incur by reason of their participation in the meetings of the Cooperation Committee, both with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.

Expenses related to the practical organisation of meetings (premises, requisites, etc.) shall be borne either by the Community or by the Republic of San Marino depending on where the meeting is held.

#### Article 12

The official languages of the Cooperation Committee shall be the official languages of the European Community.

#### Article 13

Correspondence intended for the Cooperation Committee shall be addressed to its Chairman at the Secretariat of the Cooperation Committee, using the address of the Commission of the European Communities.

## **ANNEX II**

### **List of Community customs offices authorised to carry out the customs clearance of goods**

- ANCONA Circostrizione Doganale di Ancona, Ufficio Stazione Marittima, Sezione Aeroporto di Falconara,
- BOLOGNA Dogana aeroporto Guglielmo Marconi, Borgo Panigale, e sezione pacchi postali
- FORLI Centrale, sezione aeroporto Ridolfi e sezione di Cesena,
- GENOVA Centrale, sezione arrivi mare e arrivi terra, sezione molo vecchio porto di Voltri, sezione porto Passo Nuovo, sezione magazzini generali Rivarolo e Genova aeroporto,
- GIOIA TAURO Ufficio delle Dogane di Gioia Tauro,
- LA SPEZIA Ufficio delle Dogane di La Spezia,
- LIVORNO Centrale e sezione porto industriale,
- MILANO II Dogana principale Somma Lombardo, Aeroporto Malpensa,
- ORIO AL SERIO Aeroporto,
- RAVENNA Centrale, sezione San Vitale e sezione Setramar,
- RIMINI Centrale e sezione aeroporto Miramare,
- ROMA II Centrale, sezione pacchi postali, sezione aerostazione merci Alitalia e sezione aeroporti di Roma,
- TARANTO Ufficio delle Dogane di Taranto,
- TRIESTE Centrale, sezioni di Punto Franco Nuovo, sezione Punto Franco Vecchio, sezione porto industriale e sezione pacchi postali,
- VENEZIA Circostrizione doganale di Venezia, Sezione Interporto di Venezia, Sezione di Portogruaro.

### **ANNEX III**

#### **Procedures for making available to the San Marino Exchequer import duties collected by the Community on behalf of the Republic of San Marino**

##### **Article 1**

With regard to the establishment, monitoring and making available of import duties collected on goods destined for San Marino, Article 3, Article 6(1), (3)(a) and (b) and (4), first subparagraph, Article 10(1) and Article 17(2) of Regulation (EC, Euratom) No 1150/2000<sup>9</sup> shall apply mutatis mutandis. In particular, the following provisions shall apply:

(a) the Member States and the Community shall maintain separate accounts for import duties collected on goods destined for San Marino, identical to those provided for as regards the Community's own resources in Article 6(1) and 6(3)(a) and (b) of the Regulation;

(b) the import duties relating to T2 SM or T2L SM documents shall be established by the customs offices referred to in Annex III to this Decision at the moment they are entered in the accounts and shall be entered in the accounts referred to in point (a).

Where copy No 5 of the T2 SM document or the copy of the T2L SM document, duly stamped by the customs authorities of the Republic of San Marino and proving that the goods have arrived in San Marino, is not presented within three months to the customs office of issue, a correction shall be made to the initial entry in the accounts.

In this case, the import duties shall be established as Community own resources and entered in the accounts pursuant to Article 6(3)(a) of Regulation (EC, Euratom) No 1150/2000 or, as appropriate, in the separate accounts pursuant to point (b) of that paragraph.

The procedure referred to above shall apply mutatis mutandis for compensating products or for goods in their unaltered state sold within the territory of San Marino under inward processing arrangements or for goods under temporary importation arrangements for which a customs debt has arisen;

(c) the Member States affected shall, pursuant to the first subparagraph of Article 6(4) of Regulation (EC, Euratom) No 1150/2000, submit to the Commission records of their accounts jointly with those relating to own resources. The records, established in the same way as for own resources, shall also indicate the total amount of import duties collected at each customs office;

(d) the supporting documents shall be kept in accordance with the first and second subparagraphs of Article 3 of Regulation (EC, Euratom) No 1150/2000. These documents and the documents relating to own resources shall be filed separately;

(e) corrections to established entitlements or to the accounts made after 31 December of the third year following the year of the initial establishment shall not be entered in the accounts, except on points notified later than this date either by the Commission or by a Member State or by the Republic of San Marino;

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<sup>9</sup> Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2000/597/EC, Euratom on the system of the Communities' own resources (OJ L 130, 31.5.2000, p. 1).

(f) Article 18 of Regulation (EC, Euratom) No 1150/2000 shall apply. The inspection measures in question shall also apply to the documents referred to in point (b) of this Article proving that the goods have arrived in San Marino. Officials authorised by the Republic of San Marino may participate in these inspection measures;

(g) the Member States in question shall credit to the Commission's account provided for in Article 9 of Regulation (EC, Euratom) No 1150/2000, within the time limits indicated in Article 10(1) and after deduction of collection costs, the entitlements entered in the accounts provided for in Article 6(3)(a) and (b).

The percentage which the Community may deduct, as collection costs, from the import duties collected by the Community on behalf of the Republic of San Marino is set at 25 %;

(h) Member States shall be released from the obligation to place at the disposal of the Commission the amounts corresponding to the duties recorded for San Marino only once the conditions set down in Article 17(2) of Regulation (EC, Euratom) No 1152/2000 have been fulfilled.

## Article 2

The Commission shall transfer the amounts credited to an account opened by the Republic of San Marino with thirty days of notification by the Member States that an amount has been credited. The Republic of San Marino shall inform the Commission of the details of the account to be credited and shall bear any charges on this account.

## Article 3

In the implementation of points (a) and (b) of Article 1, the provisions in the Appendix shall apply.

## APPENDIX

### Administrative procedure applicable in the implementation of points (a) and (b) of Article 1

#### 1. Completion of formalities at authorised customs offices to release goods for free circulation

When goods bound for San Marino are released for free circulation, a T2 SM or T2L SM document shall be issued as appropriate. The import duties shall be entered in the accounts within the time limits laid down by the relevant Community legislation.

For control purposes, duties entered in the accounts shall also be recorded in a register, specifically kept for this purpose by the customs office concerned, containing details of all imports bound for San Marino, including reference to the goods imported, the date of acceptance of the import declaration, the items of charge, the amount of duty involved and the document issued (T2 SM or T2L SM).

The customs office shall indicate on document T2 SM or T2L SM the deadline of three months from the date of issue of the said document for the return of copy No 5 of document T2 SM or the copy of document T2L SM, duly stamped by the San Marino authorities, to the customs office of issue.

#### 2. Completion of accounting formalities at authorised customs offices

The import duties shall be entered in the "San Marino" accounts (procedure analogous to that detailed in Article 6(3)(a) of Regulation (EC, Euratom) No 1150/2000) in accordance with the provisions of that Article.

However, the Italian authorities may decide not to make an entry in the "San Marino" accounts if the established duties for which security has been provided have been challenged and might upon settlement of the disputes which have arisen be subject to change. In this case, pending the outcome of the ensuing national administrative and/or legal procedures by the competent authorities, the amount of import duties shall be recorded in separate "San Marino" accounts.

For the purposes of this paragraph, the following shall be considered to be "competent authorities":

- for any question relating to implementation of the laws, regulations or administrative provisions applicable to customs matters, the administrative or judicial authorities of the Member State which carried out the customs clearance or, where appropriate, those of the European Communities;
- for any question relating to procedural provisions (notifications, deadlines, etc.), the administrative or judicial authorities of the Member State which carried out the customs clearance;
- for any question relating to implementation of an implementing measure concerning the forced recovery of debts in the territory of San Marino, the judicial authorities of that Republic.

#### 3. Return of supporting documents

The transit operation may be discharged when the supporting documents, duly stamped by the San Marino authorities, are returned within the three-month time limit referred to in the third subparagraph of paragraph 1 to the customs office of issue.

Where copy No 5 of document T2 SM or the copy of document T2L SM is not returned to the office of issue within the designated time limit, an entry shall be made in the register referred to above and a correction made to the initial entry in the accounts. In this case, the import duties shall be established as Community own resources and entered in the accounts detailed in Article 6(3)(a) of Regulation (EC, Euratom) No 1150/2000 or, where appropriate, in the separate accounts referred to in Article 6(3)(b) of that Regulation.

This entry shall be without prejudice to any corrections which might prove necessary in the light of investigation conducted in the context of the Community transit arrangements or as a result of action undertaken in the context of mutual assistance as laid down in Decision No 3/92 of the EC-San Marino Cooperation Committee.

#### 4. Application of the specific procedure in the context of inward processing and temporary importation arrangements

The procedure referred to above shall apply *mutatis mutandis* for compensating products or for goods in their unaltered state sold within the territory of San Marino under inward processing arrangements or for goods under temporary importation arrangements for which a customs debt has arisen.