



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.01.1997

COM(97) 8 final

97/0022 (CNS)

Proposal for a

COUNCIL DECISION

**on the conclusion of the Agreement on customs union and cooperation between
the European Economic Community and the Republic of San Marino**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On 16 December 1991 the European Economic Community and San Marino signed an Agreement in Brussels on customs union and cooperation.
2. Pending that Agreement's entry into force, an interim Agreement on trade and customs union was signed in Brussels on 27 November 1992, entering into force on 1 December 1992.
3. The process for the ratification of the Agreement took a particularly long time, the last Member State (of the Twelve) completing the relevant procedures on 26 March this year.
4. Ratification was still under way when Austria, Finland and Sweden joined the Union. In accordance with the Act of Accession, they too must accede to the cooperation Agreement.
5. The Council should therefore approve the cooperation Agreement on behalf of the Twelve as quickly as possible, approving at the same time, on behalf of the Community, a protocol for the accession of Austria, Finland and Sweden to the cooperation Agreement.
6. In the case of Austria, Finland and Sweden, the Agreement and the Protocol - and in that of the other twelve Member States the Protocol - would enter into force once notification had been given that the relevant procedures had been completed.
7. The Commission therefore proposes that the Council:
 - adopt the draft Decision on the conclusion of the Agreement on customs union and cooperation between the European Economic Community and the Republic of San Marino;
 - approve the Protocol to the Agreement on customs union and cooperation between the European Economic Community and the Republic of San Marino consequent on the accession to the European Union of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

Proposal for a Council Decision

on the conclusion of the Agreement on customs union and cooperation between the European Economic Community and the Republic of San Marino

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 113 and 235 in conjunction with the second sentence of Article 228(2) and the first indent of Article 228(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Agreement on customs union and cooperation between the European Economic Community and the Republic of San Marino (hereinafter referred to as 'the Agreement') signed in Brussels on 16 December 1991 has been ratified by the twelve signatory Member States;

Whereas an interim Agreement on trade and customs union was concluded pending the Agreement's entry into force;¹

Whereas Austria, Finland and Sweden have joined the European Union and must, in accordance with the Act of Accession, accede to the Agreement;

Whereas their accession requires no amendment to the Agreement other than the preparation of authentic texts in the Finnish and Swedish languages;

Whereas in furtherance of the Community's external economic objectives and taking account of the special situation of San Marino, the Agreement should enter into force in so far as it concerns the Community and the twelve signatory Member States;

Whereas the Council, acting on behalf of the Community, should at the same time approve a Protocol to the Agreement to take account of the accession of Austria, Finland and Sweden;

Whereas, in the case of Austria, Finland and Sweden, the Agreement and the Protocol - and in that of the other twelve Member States the Protocol - would enter into force after notification has been given that the relevant procedures had been completed,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement on customs union and cooperation signed in Brussels on 16 December 1991 between the European Economic Community and the Republic

¹ OJ No L 359, 9.12.1992, p. 13.

of San Marino, including the declarations annexed thereto, is hereby approved on behalf of the Community. The texts of the Agreement and the declarations are to be found in Annex 1 to this Decision.

The President of the Council shall, on behalf of the Community, give the notification provided for in Article 30 of the Agreement.²

Article 2

The Protocol to the Agreement consequent on the accession to the European Union of Austria, Finland and Sweden is hereby approved on behalf of the Community. The text of the Protocol is to be found in Annex 2.

The President of the Council shall give the notification provided for in Article 3 of the Protocol on behalf of the Community.

Done at Brussels,

For the Council

The President

² The date of entry into force of the Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

AGREEMENT
ON CUSTOMS UNION AND COOPERATION
BETWEEN THE EUROPEAN ECONOMIC COMMUNITY
AND THE REPUBLIC OF SAN MARINO

AGREEMENT

on customs union and cooperation between the European Economic Community and the Republic of San Marino

THE REPUBLIC OF SAN MARINO,

and

THE EUROPEAN ECONOMIC COMMUNITY,

RESOLVED to consolidate and extend the existing close relations between the European Economic Community and the Republic of San Marino,

CONSIDERING THAT existing links between the two Parties, particularly in commercial, economic, social and cultural sectors, should be strengthened by establishing cooperation between San Marino and the European Economic Community in respect of all matters of common interest,

CONSIDERING THAT, owing to the situation of San Marino and its present status within the customs territory of the Community, a customs union should be established between San Marino and the European Economic Community,

HAVE AGREED AS FOLLOWS:

Article 1

The purpose of this Agreement between the European Economic Community and the Republic of San Marino is to establish a customs union between the two Parties and promote comprehensive cooperation between them with the aim of contributing to the social and economic development of San Marino and strengthening relations between the Parties.

(b) goods which come from third countries and are in free circulation in the Community or in San Marino.

2. Products coming from third countries shall be considered to be in free circulation in the Community or in San Marino if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied, and there has been no total or partial drawback of such duties or charges in respect of the said products.

TITLE I

Customs union

Article 2

A customs union is hereby established between the European Economic Community and San Marino for products covered by Chapters 1 to 97 of the Common Customs Tariff, except products falling within the scope of the Treaty establishing the European Coal and Steel Community.

Article 3

1. The provisions of this Title shall apply to:

(a) goods produced in the Community or in San Marino, including those obtained wholly or in part from products which come from third countries and are in free circulation in the Community or in San Marino;

Article 4

The provisions of this Title shall also apply to goods obtained or produced in the Community or in San Marino, in the manufacture of which were used products coming from third countries and not in free circulation either in the Community or in San Marino. These provisions shall, however, apply to those goods only if the exporting Contracting Party levies the customs duties laid down in the Community for third country products used in their manufacture.

Article 5

1. The Contracting Parties shall refrain from introducing between themselves any new customs duties on imports or exports or charges having equivalent effect.

2. San Marino also undertakes not to adjust duties referred to in paragraph 1 as applied to imports from the Community on 1 January 1991, without prejudice to existing commitments between San Marino and Italy pursuant to the exchange of letters of 21 December 1972.

Article 6

1. Trade between the Community and San Marino shall be exempt from all import and export duties and charges having equivalent effect, subject to the provisions of paragraphs 2 and 3.

2. In order that the charges having equivalent effect currently applied to imports from the Community may be abolished on 1 January 1996, San Marino undertakes to introduce, within six months of the entry into force of the Agreement, a supplementary tax corresponding to that currently levied on imported goods, to be chargeable on domestic products intended for home consumption. The supplementary tax will apply in full on the above date. It shall be applicable as a countervailing measure and shall be calculated on the added value of domestic products at rates equal to those applied to imported goods of a similar kind.

3. (a) On the entry into force of the Agreement the Community, with the exception of the Kingdom of Spain and the Portuguese Republic, shall admit imports from San Marino exempt from customs duty.

(b) From the entry into force of the Agreement the Kingdom of Spain and the Portuguese Republic shall apply the same customs duties in respect of San Marino as they apply in respect of the Community as constituted on 31 December 1985.

4. In trade in agricultural products between the Community and San Marino, San Marino undertakes to adopt Community veterinary, plant health and quality regulations where necessary for the proper functioning of the Agreement.

Article 7

1. From the entry into force of the Agreement San Marino shall apply in respect of countries not members of the Community:

— the Common Customs Tariff,

— laws, regulations and administrative provisions applicable to customs matters in the Community and necessary for the proper functioning of the customs union,

— the common commercial policy of the Community,

— Community regulations on trade in agricultural products covered by Annex II to the Treaty establishing the European Economic Community, with the exception of refunds and compensatory amounts accorded for exports,

— Community veterinary, plant health and quality regulations where necessary for the proper functioning of the Agreement.

The provisions referred to in this paragraph shall be those applicable at the time in the Community.

2. The provisions referred to in the second to fifth indents of paragraph 1 shall be determined in greater detail by the Cooperation Committee.

3. By way of derogation from the first indent of paragraph 1 publications, works of art, scientific or teaching materials and medical supplies or equipment offered to the San Marino Government, insignias, medals, stamps, printed matter and other similar objects or paper destined for use by the government shall be exempt from customs duties.

Article 8

1. (a) Over a period of five years from the entry into force of the Agreement, and beyond that period if no agreement can be reached in accordance with 1 (b), San Marino shall authorize the Community, acting on behalf of and for San Marino, to carry out customs clearance formalities, in particular release for free circulation of products sent from third countries to San Marino. Such formalities will be effected by Community customs offices.

(b) At the end of this period, and pursuant to Article 26, San Marino may exercise its right to carry out customs clearance formalities, following agreement of the Contracting Parties.

2. Where import duties are payable on goods pursuant to paragraph 1, these duties shall be levied on behalf of San Marino. San Marino shall undertake not to refund these sums directly or indirectly to the parties concerned, subject to the provisions of paragraph 4.

3. The Cooperation Committee shall decide on:

(a) possible changes to the list of the customs offices competent to clear the goods referred to in paragraph 1 and the procedure for forwarding the said goods to San Marino;

(b) the arrangements for assigning to the San Marino Exchequer the amounts collected in accordance with paragraph 2, and the percentage to be deducted by the European Economic Community to cover administrative costs in accordance with the relevant regulations in force within the Community;

(c) any other arrangements necessary for the proper implementation of this Article.

4. The taxes and levies on imports of agricultural products may be used by San Marino for aiding production or exports. San Marino undertakes, however, not to accord higher export refunds or compensatory amounts than those accorded by the European Economic Community for export to third countries.

Article 9

Quantitative restrictions on imports and exports and all measures having equivalent effect between the Community and San Marino shall be prohibited from the entry into force of the Agreement.

Article 10

The Agreement shall not preclude prohibitions or restrictions on imports, export or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; the protection of industrial or commercial property; or controls relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties.

Article 11

The Contracting Parties shall refrain from any domestic tax measure or practice leading directly or indirectly to discrimination between the products of one Contracting Party and similar products from the other Contracting Party.

Products sent to the territory of one of the Contracting Parties shall not be eligible for a refund of domestic charges which is higher than the charges which have been levied directly or indirectly.

Article 12

1. If serious disturbances arise in any sector of the economy of one of the Contracting Parties, the Contracting Party concerned may take the necessary safeguard measures in accordance with the procedures, and subject to the conditions, of the paragraphs below.

2. In the case referred to in paragraph 1, before taking the measures provided for therein or, in the cases covered by paragraph 3, as soon as possible, the Contracting Party in question shall provide the Cooperation Committee with all relevant information required for a detailed examination of the situation with a view to seeking a solution acceptable to the Contracting Parties. At the request of the other Contracting Party, consultations shall take place within the Cooperation Committee before the Contracting Party concerned takes appropriate measures.

3. Where exceptional circumstances require immediate action making prior examination impossible, the Contracting Party concerned may apply forthwith such precautionary measures as are strictly necessary to remedy the situation.

4. In the selection of measures priority must be given to those which least disturb the functioning of the Agreement. Such measures must not exceed the limits of what is strictly necessary to counteract the difficulties that have arisen.

The safeguard measures must be notified immediately to the Cooperation Committee, which shall hold regular consultations on them, particularly with a view to their abolition as soon as circumstances permit.

Article 13

1. In addition to the cooperation provided for in Article 22 (8), the administrative authorities of the Contracting Parties responsible for implementing the provisions of this Agreement shall assist each other in other cases so as to ensure compliance with the provisions.

2. Procedures for the application of paragraph 1 shall be laid down by the Cooperation Committee.

TITLE II

Cooperation

Article 14

The Community and San Marino shall institute cooperation with the aim of strengthening existing links between them on as broad a basis as possible for the mutual benefit of the Parties, taking account of their respective powers. Cooperation shall focus on the priority areas referred to in Articles 15 to 18 of this Title.

Article 15

The Contracting Parties undertake to encourage the growth and diversification of the industrial and services sectors of the economy of San Marino, focusing their cooperation activities on small and medium-sized enterprises.

Article 16

The Contracting Parties undertake to cooperate on matters relating to environmental protection and improvement with the aim of resolving the problems caused by contamination of water, soil and air, by erosion and by deforestation. They will pay special attention to the problems of pollution in the Adriatic Sea.

Article 17

In accordance with their respective laws, the Contracting Parties shall support cooperation in the tourism sector through operations such as the exchange of officials and experts on tourism, exchanges of information and tourist statistics, and training in hotel management and administration. In this context the Contracting Parties shall pay particular attention to the promotion of out-of-season tourism in San Marino.

Article 18

The Contracting Parties agree to undertake joint operations in communications, information and cultural matters to strengthen existing links between them.

Such operations may take the following forms:

- exchanges of information on subjects of mutual interest in the fields of culture and information,

- events of a cultural nature,
- cultural exchanges,
- academic exchanges.

Article 19

The Contracting Parties may enlarge the scope of this Agreement by mutual consent in order to supplement the areas of cooperation through agreements on specific sectors or activities.

TITLE III

Social provisions

Article 20

The treatment accorded by each Member State to workers of San Marino nationality employed in its territory shall be free from any discrimination based on nationality in relation to its own nationals as regards working conditions or remuneration.

San Marino shall accord the same treatment to workers who are nationals of a Member State and employed in its territory.

Article 21

1. Subject to the provisions of the following paragraphs, workers of San Marino nationality and any members of their families living with them shall enjoy, in the field of social security, treatment free from discrimination based on nationality in relation to nationals of Member States in which they are employed.

2. All periods of insurance, employment or residence completed by such workers in the various Member States shall be added together for the purpose of pensions and annuities in respect of old age, death and invalidity, and also for the purpose of medical care for the workers and for members of their families resident in the Community.

3. The workers in question shall receive family allowances for members of their families who are resident in the Community.

4. The workers in question shall be able to transfer freely to San Marino, at the rates applied by virtue of the law of the debtor Member State or States, any pensions or annuities in respect of disability, old age, death, industrial accident or occupational disease.

5. San Marino shall accord to workers who are nationals of a Member State and employed in its territory, and to members of their families, treatment similar to that specified in paragraphs 1, 3, and 4.

Article 22

1. Before the end of the first year following the entry into force of this Agreement, the Cooperation Committee shall adopt provisions to implement the principles set out in Article 21.

2. The Cooperation Committee shall adopt detailed rules for administrative cooperation providing the necessary management and control guarantees for the application of the provisions referred to in paragraph 1.

3. The provisions adopted by the Cooperation Committee shall not affect the rights or obligations arising from bilateral agreements between San Marino and Member States of the Community where those agreements provide for more favourable treatment of nationals of San Marino or the Member States.

TITLE IV

General and final provisions

Article 23

1. A Cooperation Committee is hereby set up with responsibility for administering the Agreement and ensuring that it is properly implemented. To that end it shall formulate recommendations. It shall take decisions in the cases provided for in the Agreement. The decisions shall be executed by the Contracting Parties in accordance with their own regulations.

2. With a view to the proper implementation of the Agreement, the Contracting Parties shall carry out exchanges of information and, at the request of either Party, shall consult together in the Cooperation Committee.

3. The Cooperation Committee shall draw up its own rules of procedure.

4. The Cooperation Committee shall be composed, on the one hand, of representatives of the Commission, assisted by delegates of the Member States and, on the other, of representatives of San Marino.

5. The Cooperation Committee shall take decisions by common accord.

6. The Cooperation Committee shall be chaired by each of the Contracting Parties in turn in accordance with the arrangements to be established in its rules of procedure.

7. The Cooperation Committee shall meet at the request of either of the Contracting Parties, to be lodged at least one month before the date of the intended meeting. Where the Committee is convened pursuant to Article 12, it shall meet within eight working days from the date on which the date is lodged.

8. In accordance with the procedure laid down in paragraph 1, the Cooperation Committee shall establish methods of administrative cooperation for the purposes of applying Articles 3 and 4, taking as a basis the methods adopted by the Community in respect of trade between the Member States.

Article 24

1. Any disputes arising between the Contracting Parties over the interpretation of the Agreement shall be put before the Cooperation Committee.

2. If the Cooperation Committee does not succeed in settling the dispute at its next meeting, each Party may notify the other of the designation of an arbitrator; the other Party shall then be required to designate a second arbitrator within two months.

The Cooperation Committee shall designate a third arbitrator.

The arbitrator's decisions shall be taken by majority vote.

Each Party in the dispute shall be required to take the measures needed to ensure the application of the arbitrators' decision.

Article 25

In trade covered by the Agreement:

— the arrangements applied by San Marino in respect of Community may not give rise to any discrimination between the Member States, their nationals, or their companies,

— the arrangements applied by the Community in respect of San Marino may give rise to any discrimination between San Marino nationals or companies.

No

Article 26

This Agreement is concluded for an unlimited duration. Within no more than five years of its entry into force, the two Parties shall begin consultations to examine the results of its application and, if necessary, open negotiations on its amendment in the light of that examination.

Article 27

Either Contracting Party may denounce this Agreement by notifying the other Contracting Party in writing. In that case, the Agreement shall cease to have effect six months after the date of such notification.

Article 28

This Agreement replaces provisions of agreements concluded between Member States of the Community and San Marino that conflict with it, or which are identical.

Article 29

The Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European

Economic Community is applied and under the conditions laid down in that Treaty and, on the other, to the territory of San Marino.

Article 30

1. This Agreement shall enter into force on 1 July 1992, on condition that the Contracting Parties have notified each other before that date of the completion of the procedures necessary to that effect.

2. After the date provided for in paragraph 1, the Agreement shall enter into force on the first day of the half-year following notification.

Article 31

The Annex to this Agreement shall form an integral part thereof.

Article 32

This Agreement is drawn up in two originals in the Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish languages, each text being equally authentic.

ANNEX

List of customs offices referred to in Article 8 (1) (a)

LIVORNO


RAVENNA

RIMINI

TRIESTE

Declaration by the Community

Where the scale of trade flows so warrants, the Community is prepared to negotiate on behalf of and for the Republic of San Marino with countries with which it has concluded preferential agreements for an appropriate form of recognition of equivalent treatment for products originating in San Marino and products originating in the Community;



Declaration by the Community on transport

At an appropriate moment and in the light, notably, of progress made in drawing up a Community transport policy, the Community will look into the issue of San Marino's access to the market for international transport of passengers and goods by road.

Declaration by the Community on the Erasmus programme

The Community takes note of San Marino's wish to participate, when the time is ripe, in the Erasmus programme for exchanges of students and teachers.

Declaration by the Community on certain subjects which may be raised in the Cooperation Committee

The Community is ready to examine within the framework of the Cooperation Committee any problems that may arise between San Marino and the Community in the fields of:

- trade in services,
- intellectual, industrial and commercial property rights,
- recognition of qualifications,
- assessment of products' conformity with technical regulations.

Declaration by the Member States concerning the Minutes of the negotiations

Each Member State will look favourably on requests made by San Marino concerning authorizations for the transport of passengers or freight by road.

Joint Declaration

In the event that the deadline of 1 July 1992 specified in Article 30 (1) is not met, the dates stipulated in Article 6 (2) will be adjusted in accordance with Article 30 (2).

PROTOCOL
to the Agreement on customs union and cooperation
between the European Economic Community and the Republic of San Marino
consequent on the accession to the European Union of the Republic of Austria, the
Republic of Finland and the Kingdom of Sweden

HIS MAJESTY THE KING OF THE BELGIANS,
HER MAJESTY THE QUEEN OF DENMARK,
THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,
THE PRESIDENT OF THE HELLENIC REPUBLIC,
HIS MAJESTY THE KING OF SPAIN,
THE PRESIDENT OF THE FRENCH REPUBLIC,
THE PRESIDENT OF IRELAND,
THE PRESIDENT OF THE ITALIAN REPUBLIC,
HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,
HER MAJESTY THE QUEEN OF THE NETHERLANDS,
THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA,
THE PRESIDENT OF THE PORTUGUESE REPUBLIC,
THE PRESIDENT OF THE REPUBLIC OF FINLAND,
HIS MAJESTY THE KING OF SWEDEN,
HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty establishing the European Community, and

THE COUNCIL OF THE EUROPEAN UNION,

of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF SAN MARINO,

of the other part,

Having regard to the Agreement on customs union and cooperation between the European Economic Community and the Republic of San Marino signed in Brussels on 16 December 1991, hereinafter referred to as "the Agreement",

Whereas the Republic of Austria, the Republic of Finland and the Kingdom of Sweden joined the European Union on 1 January 1995,

HAVE AGREED AS FOLLOWS:

Article 1

The Republic of Austria, the Republic of Finland and the Kingdom of Sweden hereby become Contracting Parties to the Agreement.

Article 2

The Finnish and Swedish texts of the Agreement shall be authentic in the same manner as the original texts.

Article 3

This Protocol shall be approved by the Contracting Parties in accordance with their own procedures. It shall enter into force on the first day of the month following notification by the Contracting Parties that they have completed those procedures.

Article 4

This Protocol is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

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