

# 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<sup>109</sup>

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## TITLE IV FREE MOVEMENT OF GOODS

### CHAPTER III COMMON PROVISIONS

#### **Article 43**

##### *State monopolies*

With regard to any state monopolies of a commercial character, Montenegro shall ensure that, by the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States of the European Union and Montenegro.

## TITLE VI APPROXIMATION OF LAWS, LAW ENFORCEMENT AND COMPETITION RULES

#### **Article 73<sup>110</sup>**

##### *Competition and other economic provisions*

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Montenegro:

- (i) all Agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;
- (ii) abuse by one or more undertakings of a dominant position in the territories of the Community or Montenegro as a whole or in a substantial part thereof;

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109 The Agreement was signed on 15 October 2007. Pending the completion of the procedures necessary for the entry into force of this Agreement, the provisions on trade and trade-related matters are implemented by means of an Interim Agreement (Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Montenegro, of the other part) which entered into force on 1 January 2008.

110 Article 38 of the Interim Agreement

(iii) any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular from Articles 81, 82, 86 and 87 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions.

3. The Parties shall ensure that an operationally independent public body is entrusted with the powers necessary for the full application of paragraph 1 (i) and (ii) of this Article, regarding private and public undertakings and undertakings to which special rights have been granted.

4. Montenegro shall establish an operationally independent authority which is entrusted with the powers necessary for the full application of paragraph 1 (iii) of this Article within 1 year from the date of entry into force of this Agreement. This authority shall have, inter alia, the powers to authorise State aid schemes and individual aid grants in conformity with paragraph 2 of this Article, as well as the powers to order the recovery of State aid that has been unlawfully granted.

5. The Community on one side and Montenegro on the other side shall ensure transparency in the area of State aid, inter alia by providing to the other Parties a regular annual report, or equivalent, following the methodology and the presentation of the Community survey on State aid. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

6. Montenegro shall establish a comprehensive inventory of aid schemes instituted before the establishment of the authority referred to in paragraph 4 and shall align such aid schemes with the criteria referred to in paragraph 2 of this Article within a period of no more than 4 years from the entry into force of this Agreement.

7. (a) For the purposes of applying the provisions of paragraph 1(iii), the Parties recognise that during the first 5 years after the entry into force of this Agreement, any public aid granted by Montenegro shall be assessed taking into account the fact that Montenegro shall be regarded as an area identical to those areas of the Community described in Article 87(3) (a) of the Treaty establishing the European Community.

(b) Within 4 years from the entry into force of this Agreement, Montenegro shall submit to the Commission of the European Communities its GDP per capita figures harmonised at NUTS II level. The authority referred to in paragraph 4 and the Commission of the European Communities shall then jointly evaluate the eligibility of the regions of Montenegro as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the relevant Community guidelines.

8. As appropriate, Protocol 5 establishes the rules on state aid in the steel industry. This protocol establishes the rules applicable in the event restructuring aid is granted to the steel industry. It would stress the exceptional character of such aid and the fact that the aid would be limited in time and would be linked to capacity reductions within the framework of feasibility programmes.

9. With regard to products referred to in Chapter II of Title IV:

- paragraph 1 (iii) shall not apply;
- any practices contrary to paragraph 1(i) shall be assessed according to the criteria established by the Community on the basis of Articles 36 and 37 of the Treaty establishing the European Community and specific Community instruments adopted on this basis.

10. If one of the Parties considers that a particular practice is incompatible with the terms of paragraph 1 of this Article, it may take appropriate measures after consultation within the Stabilisation and Association Council or after thirty working days following referral for such consultation. Nothing in this Article shall prejudice or affect in any way the taking, by the Community or Montenegro, of countervailing measures in accordance with the relevant Articles of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures and the respective related internal legislation.

**Article 74<sup>111</sup>**

*Public undertakings*

By the end of the third year following the entry into force of this Agreement, Montenegro shall apply to public undertakings and undertakings to which special and exclusive rights have been granted the principles set out in the Treaty establishing the European Community, with particular reference to Article 86.

Special rights of public undertakings during the transitional period shall not include the possibility to impose quantitative restrictions or measures having an equivalent effect on imports from the Community into Montenegro.

## **PROTOCOL 5 ON STATE AID TO THE STEEL INDUSTRY**

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1. The Parties recognise the need that Montenegro addresses promptly any structural weaknesses of its steel sector to ensure the global competitiveness of its industry.
2. Further to the disciplines stipulated by Article 38 paragraph 1(iii) of this Agreement [SAA Article 73 paragraph 1(iii)], the assessment of the compatibility of State aid to the steel industry as defined in Annex I of the Guidelines on national regional aid for 2007-2013 shall be made on the basis of the criteria arising from the application of Article 87 of the EC Treaty to the steel sector, including secondary legislation.
3. For the purposes of applying the provisions of Article 38 paragraph 1(iii) of this Agreement [SAA Article 73 paragraph 1(iii)] with regard to the steel industry, the Community recognises that, during five years after the entry into force of this Agreement, Montenegro may exceptionally grant State aid for restructuring purposes to steel producing firms in difficulties, provided that
  - (a) it leads to the long-term viability of the benefiting firms under normal market conditions at the end of the restructuring period, and
  - (b) the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability, and aid is where appropriate progressively reduced;
  - (c) Montenegro presents restructuring programmes that are linked to a global rationalisation which includes the closing of inefficient capacity. Every steel producing firm benefiting from restructuring aid shall, as far as possible, provide for compensatory measures balancing the distortion of competition caused by the aid.
4. Montenegro shall submit to the European Commission for assessment a National Restructuring Programme and individual business plans for each of the companies benefiting from restructuring aid which demonstrate that the above conditions are fulfilled.

The individual business plans shall have been assessed and agreed by the State aid monitoring authority of Montenegro in view of their compliance with paragraph 3 of this Protocol.

The European Commission shall confirm that the National Restructuring Programme is in compliance with the requirements of paragraph 3.

5. The European Commission shall monitor the implementation of the plans, in close cooperation with the competent national authorities, in particular the State aid monitoring authority of Montenegro.
6. If the monitoring indicates that aid to the beneficiaries which is not approved in the National Restructuring Programme or any restructuring aid to steel firms not identified in the National Restructuring Programme has been granted from the date of signature

of this Agreement onwards, the State aid monitoring authority of Montenegro shall ensure that any such aid is reimbursed.

7. Upon request, the Community shall provide Montenegro with technical support for the preparation of the National Restructuring Programme and the individual business plans.

8. Each Party shall ensure full transparency with respect to State aid. In particular, as regards State aid granted to steel production in Montenegro and the implementation of the restructuring programme and the business plans, a full and continuous exchange of information shall take place.

9. The Interim Committee shall monitor the implementation of the requirements set out in paragraphs 1 to 4 above. To this effect, the Interim Committee may draft implementing rules.

10. If one of the Parties considers that a particular practice of the other Party is incompatible with the terms of this Protocol, and if that practice causes or threatens to cause prejudice to the interests of the first Party or material injury to its domestic industry, this Party may take appropriate measures after consultation within the Sub-Committee dealing with competition matters or after thirty working days following referral for such consultation.