

# SAN MARINO



Decision of 28.2.2002  
[OJ L 84/41 of 28.3.2002](#)

Agreement: Title I  
[OJ L 84/43](#)

Decision No 3/92 of 22.12.1992  
[OJ L 42/29 of 19.2.1993](#)

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 28 February 2002

**on the conclusion of an agreement on co-operation and customs union between the European Economic Community and the Republic of San Marino and of the Protocol thereto following the enlargement which took effect on 1 January 1995**

(2002/245/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 133 and 308, in conjunction with the second sentence of Article 300(2) and the first subparagraph of Article 300(3) thereof,

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

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas:

- (1) The Agreement on co-operation and customs union between the European Economic Community and the Republic of San Marino, hereinafter referred to as the 'Agreement', was signed in Brussels on 16 December 1991 and has been ratified by the 12 Member States who were signatories thereto at the time.
- (2) An Interim Agreement on Trade and Customs Union was concluded between the European Economic Community and the Republic of San Marino pending the Agreement's entry into force <sup>(3)</sup>.
- (3) Austria, Finland and Sweden have joined the European Union and must, in accordance with the Treaty of Accession, accede to the Agreement.
- (4) Their accession requires no amendment to the Agreement other than the preparation of authentic texts in the Finnish and Swedish languages.

(5) This being so, given the special situation of San Marino and in furtherance of the Community's external economic relations, the Agreement should enter into force in so far as it concerns the Community and the 12 signatory Member States.

(6) The Council, acting on behalf of the Community, should at the same time approve a Protocol to the Agreement consequent upon the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union (hereinafter referred to as the 'Protocol').

(7) In the case of Austria, Finland and Sweden, the Agreement and the Protocol thereto and, in that of the other 12 Member States, the Protocol, will enter into force after notification has been given that the relevant procedures have been completed,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Agreement on co-operation and customs union between the European Economic Community and the Republic of San Marino, signed in Brussels on 16 December 1991, including the declarations forming part thereof, is hereby approved on behalf of the Community.

The texts of the Agreement and the declarations are annexed 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.

<sup>(1)</sup> OJ C 302, 22.11.1991, p. 10 and

OJ C 124, 21.4.1997, p. 1.

<sup>(2)</sup> OJ C 241, 21.9.1992, p. 169 and

OJ C 328, 26.10.1998, p. 218.

<sup>(3)</sup> OJ L 359, 9.12.1992, p. 13.

*Article 2*

The Protocol to the Agreement on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino consequent upon the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union is hereby approved on behalf of the Community.

The text of the Protocol is annexed to this Decision.

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

Done at Brussels, 28 February 2002.

*For the Council*

*The President*

A. ACEBES PANIAGUA

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**AGREEMENT****on Cooperation and Customs Union between the European Economic Community and the Republic of San Marino**

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 PRESIDENT OF THE PORTUGUESE REPUBLIC,  
 HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,  
 whose States are Contracting Parties to the Treaty establishing the European Economic Community, and  
 THE COUNCIL OF THE EUROPEAN COMMUNITIES,  
 of the one part, and  
 THE REPUBLIC OF SAN MARINO,  
 of the other part,

RESOLVED to consolidate and extend the 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 the 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 the Republic of San Marino and the European Economic Community,

HAVE AGREED AS FOLLOWS:

*Article 1**Article 3*

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 the Republic of San Marino and strengthening relations between the Parties.

## TITLE I

**CUSTOMS UNION***Article 2*

A customs union is hereby established between the European Economic Community and the Republic of 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.

1. The provisions of this Title shall apply to:
  - (a) goods produced in the Community or in the Republic of 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;
  - (b) goods which come from third countries and are in free circulation in the Community or in the Republic of San Marino.
2. Products coming from third countries shall be considered to be in free circulation in the Community or in the Republic of 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.

*Article 4*

The provisions of this Title shall also apply to goods obtained or produced in the Community or in the Republic of 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. The Republic of 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 the Republic of 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, the Republic of San Marino undertakes to introduce, within six months of the entry into force of this 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 the Republic of 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 the Republic 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, the Republic of San Marino undertakes to adopt Community veterinary, plant health and quality regula-

tions where necessary for the proper functioning of the Agreement.

*Article 7*

1. From the entry into force of the Agreement the Republic of 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 Government of the Republic of San Marino, insignia, 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), the Republic of San Marino shall authorise 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 under Article 26, the Republic of 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 the Republic 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 the Republic of 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 exports to third countries.

#### Article 9

Quantitative restrictions on imports and exports and all measures having equivalent effect between the Community and the Republic of 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, exports 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 23(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 the Republic of 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.

The Republic of 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. The Republic of 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 the Republic 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 under Article 12, it shall meet within eight working days of 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 arbitrators' 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 the Republic of San Marino in respect of the 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 not give rise to any discrimination between San Marino nationals or companies.

#### 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 the Republic of San Marino that conflict with it, or which are identical.

#### Article 29

This 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 the Republic of San Marino.

#### Article 30

This Agreement will be approved by the Contracting Parties in accordance with their own procedures.

This Agreement shall enter into force on the first day of the second month following notification that the procedures referred to in the first subparagraph have been complied with.

#### Article 31

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

#### Article 32

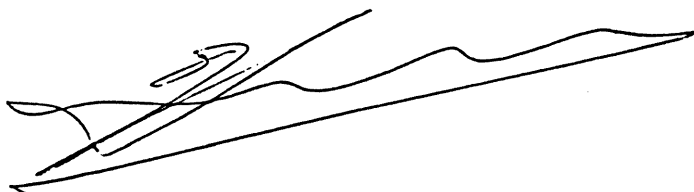
This Agreement is drawn up in two originals in the Danish, Dutch, English, French, German, Greek, Italian, Portuguese and Spanish languages, each text being equally authentic.



Hecho en Bruselas, el dieciséis de diciembre de mil novecientos noventa y uno.  
Udfærdiget i Bruxelles, den sekstende december nitten hundrede og enoghalvfems.  
Geschehen zu Brüssel am sechzehnten Dezember neunzehnhunderteinundneunzig.  
Έγινε στις Βρυξέλλες, στις δέκα έξι Δεκεμβρίου χίλια εννιακόσια ενενήντα ένα.  
Done at Brussels on the sixteenth day of December in the year one thousand nine hundred and ninety-one.  
Fait à Bruxelles, le seize décembre mil neuf cent quatre-vingt-onze.  
Fatto a Bruxelles, addì sedici dicembre millenovecentonovantuno.  
Gedaan te Brussel, de zestiende december negentienhonderd eenennegentig.  
Feito em Bruxelas, em dezasseis de Dezembro de mil novecentos e noventa e um.

Pour Sa Majesté le Roi des Belges

Voor Zijne Majesteit de Koning der Belgen



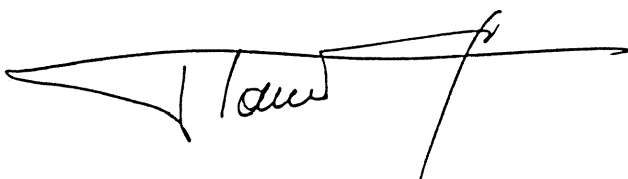
For Hendes Majestæt Danmarks Dronning



Für den Präsidenten der Bundesrepublik Deutschland



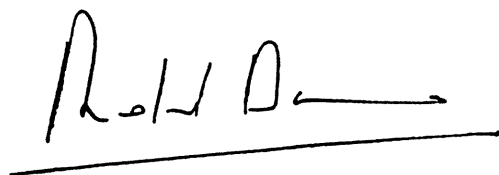
Για τον Πρόεδρο της Ελληνικής Δημοκρατίας



Por Su Majestad el Rey de España



Pour le Président de la République française

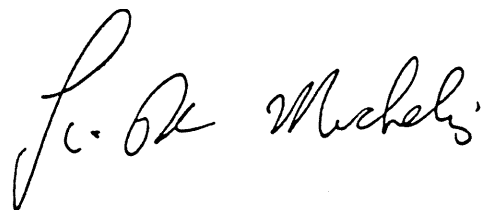


For the President of Ireland

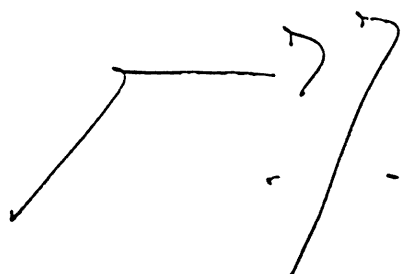
Thar ceann Uachtarán na hÉireann



Per il presidente della Repubblica italiana



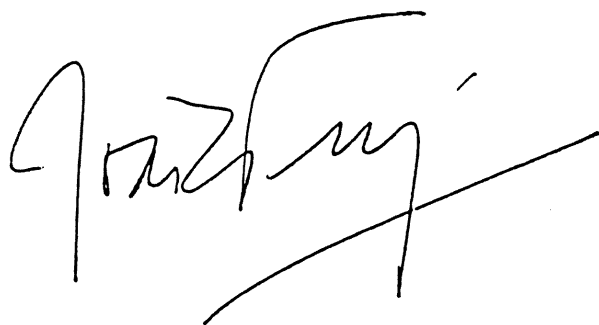
Pour Son Altesse Royale le Grand-Duc de Luxembourg



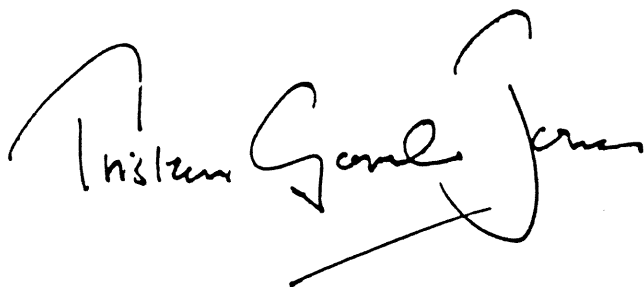
Voor Hare Majesteit de Koningin der Nederlanden



Pelo Presidente da República Portuguesa



For Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland



Por el Consejo de las Comunidades Europeas

For Rådet for De Europæiske Fællesskaber

Für den Rat der Europäischen Gemeinschaften

Για το Συμβούλιο των Ευρωπαϊκών Κοινοτήτων

For the Council of the European Communities

Pour le Conseil des Communautés européennes

Per il Consiglio delle Comunità europee

Voor de Raad van de Europese Gemeenschappen

Pelo Conselho das Comunidades Europeias



Per la Repubblica di San Marino



ANNEX

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

Livorno  
Ravenna  
Rimini  
Trieste

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**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 will examine with a positive ear 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 its powers and the Cooperation Committee, any problems that may arise between San Marino and the Community in the fields of, in particular:

- 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 authorisations for the transport of passengers or freight by road.

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**DECISION No 3/92 OF THE EEC-SAN MARINO COOPERATION COMMITTEE**

of 22 December 1992

on the arrangements for the provision of mutual assistance pursuant to Article 13 of the Agreement between the Community and San Marino

(93/103/EEC)

**THE COOPERATION COMMITTEE**

Having regard to the Interim Agreement between the European Economic Community and the Republic of San Marino, and in particular Article 13 (8) thereof,

Whereas the proper functioning of the Agreement requires close collaboration between the authorities of the Contracting Parties responsible for implementing the provisions of that Agreement,

HAS DECIDED AS FOLLOWS :

**TITLE I**

**GENERAL PROVISIONS**

*Article 1*

The administrative authorities of the Parties shall assist each other in accordance with the terms of this Protocol.

**TITLE II**

*Article 2*

**Definitions**

Within the meaning of this Decision :

- (a) 'customs legislation' shall be all the provisions applicable in the territories of the Parties to import, export and transit of goods and the placing of goods under any other customs procedure, including measures relating to prohibition, restriction or monitoring ;
- (b) 'customs duties' shall be all the varieties of duty, charge, fee and tax charged and collected in the territories of the Contracting Parties pursuant to the terms of customs legislation, with the exception of fees and charges commensurate with the approximate cost of services rendered ;
- (c) 'requesting authority' shall be an administrative authority, suitably empowered by one of the Contracting Parties, which submits a request for assistance ;

(d) 'receiving authority' shall be an administrative authority, suitably empowered by one of the Contracting Parties, which receives a request for assistance ;

(e) 'violation' shall be any attempted or actual infringement of this legislation.

*Article 3*

**Scope**

1. The Contracting Parties shall assist each other in the manner and according to the conditions laid down in this Protocol, to ensure that customs legislation is correctly implemented, notably by preventing and detecting violations of that legislation, and by conducting investigations in that connection.
2. Assistance with customs-related matters, as provided for in this Protocol, shall be the concern of any administrative authority of the Contracting Parties which is responsible for the implementation of this Protocol. It shall not affect any provisions regulating mutual assistance in criminal matters. It shall furthermore not apply to information gathered under the powers which the authorities exercise at the request of the judicial authorities, unless those authorities give their assent.

*Article 4*

**Assistance in response to a request**

1. The receiving authority shall provide the requesting authority, at its request, with all information likely to help it to ensure that customs legislation is implemented correctly. This shall apply in particular to information concerning operations detected or planned which constitute or appear to constitute a violation of that legislation.
2. The receiving authority shall inform the requesting authority, at its request, if goods exported from the territory of one of the Contracting Parties are regularly brought into the territory of the other Contracting Party, and shall give details, where applicable, of the customs procedure by which such goods are covered.
3. At the request of the requesting authority, the receiving authority shall take steps to establish surveillance of :

- (a) natural or legal persons, in cases in which there are reasonable grounds for believing that they are violating or have violated customs legislation ;
- (b) movements of goods indicated as being the object of potential serious violations of customs legislation ;
- (c) means of transport, in cases in which there are reasonable grounds for believing that they have been used, are being used or have been used in violating customs legislation.

#### *Article 5*

##### **Spontaneous assistance**

The Contracting Parties shall assist each other in the matters for which they are responsible in cases in which they consider such action necessary to the correct implementation of customs legislation, particularly if they receive information relating to :

- operations which have violated, are violating or may violate that legislation, and which may be of interest to other Contracting Parties ;
- new ways or means of carrying out such operations ;
- goods known to be connected with a serious violation of customs legislation governing imports, transit or any other customs procedure.

#### *Article 6*

##### **Forwarding/notification**

At the request of the requesting authority, the receiving authority shall take all the necessary steps, in conformity with its legislation :

- to forward any document, or
- to provide notification of any decision

which falls within the scope of implementation of this Protocol to an addressee who is resident or established in its territory. In such cases, Article 7 (3) shall apply.

#### *Article 7*

##### **Form and content of requests for assistance**

1. Requests pursuant to this Protocol shall be made in writing. The request shall be accompanied by the documents needed for a reply to be provided. If the urgency of a particular situation so demands, the request may be made verbally, but it must be confirmed immediately in writing.

2. Requests made in accordance with the terms of paragraph 1 shall be accompanied by the following information :

- (a) details of the requesting authority submitting the application ;
- (b) the measure requested ;
- (c) the grounds for and aim of the request ;
- (d) the relevant legislation, rules and other legal documents ;
- (e) particulars of the natural or legal persons to which an investigation relates, in as full and accurate a form as possible ;
- (f) a summary of the pertinent facts, except in the cases referred to in Article 6.

3. Requests shall be drawn up in one of the official languages of the requesting authority or in a language which suits that authority.

4. If a request does not comply with the formal requirements, a call may be made for it to be corrected or added to. Precautionary measures may be ordered, however.

#### *Article 8*

##### **Replying to requests**

1. In response to a request for assistance, the receiving authority, or, in cases in which that authority cannot act alone, the administrative department to which the authority has referred the request, shall supply information already at its disposal and carry out or commission the appropriate inquiries as though acting on its own account or on behalf of another authority of the same Contracting Party.

2. Requests for assistance shall be answered in accordance with the legislation, rules and other legal instruments of the receiving Contracting Party.

3. By agreement between a Contracting Party and the other Contracting Party concerned, and in the manner established by the latter, officials duly authorized by the second Contracting Party may collect at the offices of the receiving authority, or another authority under its responsibility, information concerning violations of customs legislation which is needed by the requesting authority for the purposes of this Protocol.

4. Officials of one Contracting Party, by agreement with the other Contracting Party, may be present during the inquiries carried out on the territory of the latter.

*Article 9***Forwarding of information**

1. The receiving authority shall forward the results of the inquiries to the requesting authority in the form of documents, certified true copies of documents, reports and other similar written material.
2. The material described in paragraph 1 may be replaced by computerized information produced in any form for the same purpose.

*Article 10***Derogations from the obligation to provide assistance**

1. The Contracting Parties may refuse assistance under this Protocol if such assistance :
  - (a) is likely to harm their sovereignty, public order, security or other vital interests ;
  - (b) invokes a rule or regulation concerning taxes or exchange which is not part of the rules and regulations concerning customs duties ;
  - (c) or would entail a violation of industrial, commercial or professional secrecy.
2. If the requesting authority asks to be provided with information which it would not itself be in a position to supply if requested, it shall draw attention to this fact in its request. It is then the responsibility of the receiving authority to decide how to respond to that request.
3. If assistance is refused, the requesting authority must be informed immediately of the decision and grounds for that decision.

*Article 11***Safeguarding of secrecy**

1. The information communicated pursuant to this Protocol in any form whatsoever shall be confidential. It shall be covered by professional confidentiality and enjoy the protection provided by the laws in force in the territory of the Contracting Party receiving the information and the protection of corresponding rules applying to Community bodies.
2. Personal data shall not be passed on in instances in which there are reasonable grounds for belief that supplying or using such information would conflict with the fundamental legal principles of one of the Parties, especially if the individual in question would suffer unjustified harm as a result. If so requested, the Party receiving the information shall provide the Party supplying the

information with details of the use to which it is put and the results obtained.

3. Personal data may only be communicated to the administrative authorities, and in cases in which they are needed for legal proceedings, to the national ministry of justice and to the judicial authorities. No other individual or authority may collect such information without prior permission from the authority supplying that information.

4. The Party supplying the information shall check its accuracy. If it becomes apparent that the information provided is inaccurate or should be destroyed, the receiving Party shall be informed without delay, and shall be expected to correct or destroy the information.

5. The individual in question may request information on the data held and the ends to which it is held. This shall be without prejudice to cases in which the public interest is an overriding consideration.

*Article 12***Use of information**

1. The information collected must be used only for the purposes of this Protocol. It may be used by the Contracting Parties for other purposes only with prior written permission from the administrative authority supplying that information, and shall moreover be subject to the restrictions imposed by that authority. These provisions shall not apply to information concerning crimes connected with narcotic drugs and psychotropic substances ; information of this type may be passed on the authorities directly involved in combating the trafficking of drugs, within the bounds of Article 3.
2. The terms of paragraph 1 shall not preclude the use of information in administrative or legal proceedings subsequently instituted in connection with infringements of customs legislation.
3. Information collected and documents consulted pursuant to the terms of this Protocol may be cited as proof in a Contracting Party's statements, reports and evidence and during legal proceedings and procedures.

*Article 13***Experts and witnesses**

An agent of a receiving authority may be permitted, within the bounds of the authorization he has received, to appear as an expert or witness in legal or administrative proceedings instituted within the fields covered by this Protocol, within the jurisdiction of another Contracting Party, and to produce items and documents or certified true copies of documents needed for those proceedings. The summons must provide clear details of the case concerned and state in what connection and capacity the agent will be questioned.



*Article 14***Cost of assistance**

No Contracting Party shall submit any claim for refunds of costs incurred as a result of the implementation of this Protocol except, where appropriate, for fees paid to experts and witnesses and to interpreters and translators not connected with the authorities.

*Article 15***Implementation**

1. Implementation of this Protocol shall be the responsibility of the national administrative authorities of the Republic of San Marino and of the appropriate departments of the Commission. They shall decide on all the practical steps required in this connection, taking into account current data-protection rules. They may propose to the relevant bodies such alterations to this Protocol as they consider necessary.

2. The Contracting Parties shall consult each other on and subsequently notify each other about implementing rules, which shall be adopted in accordance with the procedures laid down in this Article.

*Article 16***Complementarity**

1. This Protocol shall supplement and shall not prevent the implementation of actual or potential mutual assistance agreements between one or more Community Member States and San Marino. It shall likewise do nothing to prevent mutual assistance of wider scope being provided under those agreements.

2. Without prejudice to the terms of Article 12, the agreements shall not affect Community provisions governing the passing between the appropriate departments of the Commission and the customs authorities of the Member States of any customs-related information likely to be of interest to the Community.

*Article 17*

This Decision shall enter into force on 1 January 1993.

Done at Brussels, 22 December 1992.

*For the Cooperation Committee*

*The Chairman*

Pietro GIACOMINI

### Joint Declaration

Article 6 of Decision No 3/92

The Parties stress that the reference made to their own legislation may, where appropriate, include any international commitments into which they may have entered, such as the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters signed in The Hague on 15 November 1965.

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