



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.6.2003
COM(2003) 365 final

Proposal for a

COUNCIL DECISION

on a Community position in the Association Council on the implementation of Article 36 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The EU-Morocco Association Agreement came into force on 1 March 2000 and provides for the establishment of a free trade area between the EU and Morocco by 28 February 2012 at the latest.
2. Article 36 of the Agreement states that the Association Council may adopt the necessary rules for the implementation of the competition rules within five years of the entry into force of the Agreement.
3. The EU's competition policy must help to strengthen economic relations and ensure that restrictions on competition do not affect trade relations. Above all it must boost the economic dynamism of third countries by combating cartels, the abuse of dominant position and monopolies and primarily benefit consumers and innovative small and medium-sized enterprises, thus contributing to economic growth and job creation.
4. New competition legislation entered into force in Morocco in 2000 banning restrictive competition practices and introducing the monitoring of economic concentration operations and price freedom and consumer protection measures. The legislation is based on French law but consultations were also held with UNCTAD.
5. A Competition Board was also established by the new legislation. The implementing decree for the law was adopted in October 2001. It sets out the composition of the Competition Board (a President and 12 members appointed for 5 years, renewable once). The Competition Board was officially established in March 2002 and will become operational in 2003.
6. This proposal is based on the texts adopted for agreements with Mexico, Algeria and Chile or currently being negotiated for agreements with Tunisia, Israel, Mercosur, Jordan, Syria and the GCC, with a view to ensuring a standard approach. Given the application of the GATT rules, aid (referred to in Article 36(1)(c)) is not covered in the implementing rules proposed here.
7. The aim of this proposal is to establish the Community position in the Association Council with a view to adopting the necessary rules for the implementation of competition rules. As the next meeting of the Association Council will not take place until the first half of 2004, the Commission suggests that this proposal be adopted by written procedure.

Proposal for a

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on a Community position in the Association Council on the implementation of Article 36 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,¹

Whereas:

- (1) The Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, was concluded on 24 January 2000.
- (2) Article 36 of the Agreement provides that the Association Council may adopt the necessary rules for the implementation of the competition rules within five years of the entry into force of the Association Agreement,

HAS DECIDED AS FOLLOWS:

Sole Article

The position to be adopted by the Community in the Association Council established by the Euro-Mediterranean Agreement concluded between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, on the implementation of Article 36 of the Agreement, shall be based on the draft Decision of the Association Council annexed to this Decision.

Done at Brussels,

*For the Council
The President*

¹ OJ C [...], [...], p. [...].

ANNEX A

Draft

DECISION OF THE EU-MOROCCO ASSOCIATION COUNCIL

adopting the necessary rules for the implementation of the competition rules

The EU-Morocco Association Council,

Having regard to the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part,

Whereas:

- (1) A free trade area is to be established between the EU and Morocco by 28 February 2012 at the latest.
- (2) Article 36(3) provides for the existence of administrative cooperation arrangements between the Parties to facilitate the implementation of paragraphs 1 and 2 of the Article, and for the possibility of adopting technical cooperation measures.
- (3) Article 36(3) provides that the Association Council may adopt the necessary rules for the implementation of the competition rules within five years of the entry into force of the Association Agreement,

HAS DECIDED AS FOLLOWS:

Sole Article

1. A mechanism of cooperation between the Parties' authorities responsible for the implementation of competition rules is established in Annex I.
2. The Parties' competition authorities shall inform the Association Committee's Internal Market Subcommittee on the implementation of the cooperation established under the mechanism referred to above.
3. This Decision shall enter into force on the day of its adoption.

Done at on

For the Association Council

ANNEX I

EU-MOROCCO ASSOCIATION AGREEMENT

Mechanism of cooperation between the Parties' competition authorities responsible for the implementation of competition rules

Chapter I. General provisions

1. Objectives

1.1 Cases relating to practices contrary to Article 36(1)(a) or (b) of the Euro-Mediterranean Agreement shall be dealt with by applying the appropriate legislation, in order to avoid adverse effects on trade and economic development and the possible negative impact that such practices may have on the other Party's important interests.

1.2 The competences of the Parties' competition authorities to deal with these cases shall flow from the existing rules of their respective competition laws, including where these rules are applied to undertakings located outside their respective territories.

1.3 The purpose of these rules is to promote cooperation and coordination between the Parties in the application of their competition laws in order to ensure that restrictions on competition do not block or cancel out the benefits which should be ensured following the progressive liberalisation of trade between the European Community and Morocco.

2. Definitions

For the purposes of these rules:

(a) "Competition law" shall mean:

(i) for the European Community ("the Community"), Articles 81 and 82 of the EC Treaty, Council Regulation (EEC) No 4064/89 and related secondary legislation adopted by the Community;

(ii) for Morocco, the Price Liberalisation and Free Competition Act (No 6/99) of 2 rabii I 1421 (5 June 2000), and related secondary legislation.

(b) "Competition authority" shall mean:

(i) for the Community, the Commission of the European Community as to its responsibilities pursuant to the competition law of the Community;

(ii) for Morocco, the Deputy Ministry for Economic and General Affairs and the Upgrading of the Economy - Department of Prices and Competition.

(c) "Enforcement activity" shall mean any application of competition law by way of investigation or proceeding conducted by the competition authority of a Party, which may result in penalties or remedies.

(d) "Anti-competitive activity" and "conduct and practices which restrict competition" shall mean any conduct or transaction that is impermissible under the competition laws of a Party and may be subject to penalties or remedies.

Chapter II. Cooperation and coordination

3. Notification

3.1 Each Party's competition authority shall notify the other of its enforcement activities where:

- (a) the notifying Party considers them relevant to enforcement activities of the other Party;
- (b) they may significantly affect important interests of the other Party;
- (c) they relate to restrictions on competition which may directly and substantially affect the territory of the other Party;
- (d) they involve anti-competitive activities carried out mainly in the territory of the other Party;
- (e) they condition or prohibit action in the territory of the other Party.

3.2 As far as possible, and provided that this is not contrary to the Parties' competition laws and does not adversely affect any investigation being carried out, notification shall take place during the initial phase of the procedure, to enable the notified competition authority to express its opinion. The notified authority shall give due consideration to the opinions received when taking decisions.

3.3 The notifications provided for in Article 3.1 of this Chapter shall be detailed enough to permit an evaluation in the light of the interests of the other Party.

3.4 The Parties undertake to give the above notification wherever possible, depending on available administrative resources.

4. Exchange of information and confidentiality

4.1 The Parties shall exchange information which will facilitate the effective application of their respective competition laws and promote a better understanding of their respective legal frameworks.

4.2 The exchange of information shall be subject to the standards of confidentiality applicable under the law of each Party. Confidential information whose dissemination is expressly prohibited or which, if disseminated, could adversely affect the Parties, shall not be provided without the express consent of the source of the information. Each competition authority shall maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other competition authority under the rules and shall oppose, to the fullest extent possible, any application for disclosure of such information by a third party that is not authorised by the competition authority that supplied the information.

5. Co-ordination of enforcement activities

5.1 Each competition authority may notify the other of its willingness to coordinate enforcement activities with respect to a specific case. This coordination shall not prevent the Parties from taking autonomous decisions.

5.2 In determining the extent of coordination, the competition authorities shall consider:

- (a) the effective results which coordination could produce;
- (b) the additional information to be obtained;
- (c) the reduction in costs for the competition authorities and the economic agents involved, and
- (d) the applicable deadlines under their respective legislation.

6. Consultation when important interests of one Party are adversely affected in the territory of the other Party

6.1 Each Party shall, wherever possible and in accordance with its own legislation, take into consideration the important interests of the other Party in the course of its enforcement activities. A competition authority which considers that an enforcement activity being conducted by the competition authority of the other Party under its competition law may affect the important interests of the Party it represents should transmit its views on the matter to or request consultations with the other competition authority. Without prejudice to the continuation of its action under its competition laws or to its full freedom of ultimate decision, the competition authority so addressed should give full and sympathetic consideration to the views expressed by the requesting competition authority, and in particular to any suggestions as to alternative means of fulfilling the needs and objectives of the enforcement activity.

6.2 A competition authority which considers that one or more undertakings situated in one Party's territory are or have been engaged in anti-competitive activities of whatever origin that are substantially and adversely affecting the interests of the Party it represents may request consultations with the other competition authority, recognising that entering into such consultations is without prejudice to any action under its competition laws and to the full freedom of ultimate decision of the competition authority concerned. The requested competition authority may take the appropriate remedial action, in the light of the legislation in force.

7. Technical Cooperation

7.1. The Parties shall be open to technical cooperation in order to enable them to take advantage of their respective experience and to strengthen the implementation of their competition law and policies, according to the resources available to them.

7.2. The following cooperation activities may be included in the programme to back up the implementation of the Association Agreement:

- (a) training for officials, to enable them to gain practical experience,
- (b) seminars, in particular for civil servants,
- (c) studies of competition law and policies, with a view to supporting their development.

8. Management of implementing rules

Cooperation will be monitored and evaluated by the Internal Market Subcommittee established in the Association Agreement by the Association Council Decision of 24 February 2003.

9. Amendment and update of the rules

The Association Council may amend these rules after consultation of the competition authorities.