



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.12.2006
COM(2006) 772 final

Proposal for a

COUNCIL DECISION

on a Community position in the EC-Bulgaria Association Council on the amendment of Article 3 of the Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, with regard to an extension of the period laid down in Article 9(4) of Protocol 2 to the Europe Agreement

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Until the date of accession, the process of restructuring of the Bulgarian steel industry is regulated by Protocol 2 of the Europe Agreement with the Bulgarian Government¹. According to Article 9(4) of this protocol, during the first five years after entry into force of the Agreement (i.e. until end 1997), and by derogation from paragraph 1(iii) of the same Article, Bulgaria could exceptionally, as regards steel products, grant public aid for restructuring purposes, provided that: (a) it leads to the viability of the benefiting firms under normal market conditions at the end of the restructuring period; (b) the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore such viability and are progressively reduced; (c) a National restructuring plan will be developed which specifies the measures to compensate the competitive advantage resulting from the aid, e.g. reduction of overall production capacity in Bulgaria.
2. The initial period of 5 years expired on 31 December 1997. The Bulgarian government submitted a request to the Association Council for an extension of the initial period. The Community and Bulgaria signed on 21 November 2002 an Additional Protocol to the Europe Agreement (hereinafter the Additional Protocol to the Europe Agreement), which extended for a further eight years, from 1 January 1998, the period during which Bulgaria might grant public aid for restructuring purposes under the conditions listed in Article 9(4) of Protocol 2 to the Europe Agreement. Under the terms of the Additional Protocol the extension is subject to fulfilment of a number of conditions, namely that Bulgaria submits to the Commission a restructuring programme and business plans, and that the Commission provides a final assessment of whether that programme and plans meet the requirements listed in Article 9(4) of Protocol 2 to the Europe Agreement, and that the Council decides that the programme and plans are in compliance with that Article.
3. On 18 March 2004, the Bulgarian government adopted a National Restructuring Plan for the steel sector (NRP) and an individual business plan (IBP) for the only company benefiting of state aid, Kremikovtzi, which cover the period 1998-2006. The Commission services assessment concluded that the NRP and IBP meet the requirements of Protocol 2 to the Europe Agreement on steel. The NRP and IBP foresaw that the Kremikovtzi AD would reach viability at the end of the restructuring period. This allowed the EU Council to confirm the extension of the period in which state aid may exceptionally be granted for restructuring until 31 December 2005 or the date of accession, whichever comes first (Council Decision 2004/746/EC of 18 October 2004²).
4. The European Union and Bulgaria agreed to closely monitor the implementation of the restructuring programme until end 2007. These commitments are specified in the EU-Common Position of June 2004 (CONF-BG 18/04) which led to the closure of the Competition Chapter in the accession negotiations.

¹ OJ L358, 31.12.1994, p. 91

² OJ L 328, 30.10.2004, p. 101

5. The monitoring carried out on the basis of 6-monthly reports from Bulgaria and an annual independent evaluation carried out on behalf of the Commission in 2005 showed that Bulgaria lacked considerably behind the benchmarks for implementing the restructuring plan. A further analysis by external consultants in spring 2006 revealed that the performance of the company benefiting from state aid, Kremikovtzi AD, remained below forecast and that Kremikovtzi AD would under current market conditions not reach viability by the end of 2006 as required by the restructuring plan.
6. Following discussions with the Commission and the Bulgarian government, the new majority share holders³ of Kremikovtzi since August 2005, Global Steel Holding, decided to prepare a new individual business plan (IBP), which was first presented in May 2006. This new plan proposes to modify the company's investment and marketing plan and to prolong the restructuring period until the end of 2008.
7. Following from this, the Bulgarian government prepared a revised National Restructuring Programme (NRP) which was approved by the government on 13 September 2006 and formally notified to the Commission on 19 September 2006. This NRP confirms the extension of the restructuring period as well as an extension of the existence of a Steering Committee and a monitoring process for the restructuring of the steel sector until May 2009. However, Bulgaria does not ask an extension of the period for granting restructuring aid, i.e. beyond 31 December 2005. Also, the public aid granted during this earlier period has not exceeded what was laid down in the prior IBP. If the Commission establishes, on the basis of the monitoring, that substantial deviations from the forecasts of the macroeconomic developments, the financial situation of the concerned company or the viability assessment have occurred, it may require Bulgaria to take appropriate steps to reinforce or modify the restructuring measures of the concerned company Kremikovtzi AD. Finally, it is also stated in the revised NRP that in case of non fulfilment of the key restructuring measures until the end of 2008 as foreseen by Kremikovtzi in its updated IBP the Bulgarian authorities will recover from the company an appropriate amount of public aid.
8. The existence of a revised National Restructuring Programme for the steel sector and new commitments of Bulgaria with regard to the recovery of unduly paid state aid necessitate the modification of the Additional Protocol to the Europe Agreement.
9. The Commission is proposing a Council Decision which establishes the Community position for the necessary amendment of Article 3 of this Additional Protocol.
10. The Council is therefore requested to approve the attached draft proposal for a Decision on a Community position in the EC-Bulgaria Association Council on the amendment of Article 3 of the Additional Protocol to the Europe Agreement.

³ 25 % shares remain public

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on a Community position in the EC-Bulgaria Association Council on the amendment of Article 3 of the Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, with regard to an extension of the period laid down in Article 9(4) of Protocol 2 to the Europe Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Decision 94/908/EC, ECSC, Euratom of the Council and the Commission of 19 December 1994 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part⁴, and in particular Article 2 (1) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) An Additional Protocol to the Europe Agreement, with regard to an extension of the period laid down in Article 9(4) of Protocol 2 to the Europe Agreement, has been signed between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part on 21 November 2002. The Additional Protocol has been modified by Decision No 1/2004 of the EU-Bulgaria Association Council of 28 September 2004⁵.

(2) Under Article 4, the Additional Protocol may be amended by decision of the Association Council,

HAS DECIDED AS FOLLOWS:

Sole Article

The position to be adopted by the Community in the Association Council established by the Agreement establishing an Association between the European Communities and Bulgaria shall be based on the draft Decision of the EC-Bulgaria Association Council annexed to this Decision.

⁴ OJ L 358, 31.12.1994, p. 1.

⁵ OJ L68, 15.3.2005, p. 41.

Done at Brussels,

*For the Council
The President*

Decision No xxx/2006 of the EU-Bulgaria Association Council

of <date>

amending Article 3 of the Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, with regard to an extension of the period laid down in Article 9(4) of Protocol 2 to the Europe Agreement (2006/xxx/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part [1],

Having regard to the Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, with regard to an extension of the period laid down in Article 9(4) of Protocol 2 to the Europe Agreement [2], and in particular Article 4 thereof,

Whereas:

(1) Bulgaria has recently indicated that it would not be able to meet the requirements of Article 9(4) of Protocol 2 to the Europe Agreement on the basis of the current national restructuring programme and individual business plan. Therefore, it has submitted a modified restructuring programme and business plan to the European Commission. In its restructuring programme Bulgaria proposes that if monitoring of the implementation of the restructuring shows that the relevant requirements of Protocol 2 to the Europe Agreement and key restructuring measures (including all investments implemented) have not been fulfilled or that in the course of the restructuring period Bulgaria has granted additional State aid in favour of the steel industry, and to Kremikovtzi AD in particular, Bulgaria will recover any aid granted in breach of these conditions according to the law applicable before or after its accession to the European Union.

(2) The Commission has made an assessment of the modified restructuring programme and the business plan submitted by Bulgaria. The assessment indicates that the implementation of the restructuring programme and the business plan will allow the company concerned to reach viability under normal market conditions and meet the requirements of Article 9(4) of Protocol 2 to the Europe Agreement.

(3) The European Union and Bulgaria agree to closely monitor the implementation of the restructuring programme. If the Commission establishes, on the basis of the monitoring, that substantial deviations from the forecasts of the macroeconomic developments, the financial situation of the concerned company or the viability assessment have occurred, it should be able to require on behalf of the European Community that Bulgaria takes appropriate steps to reinforce or modify the restructuring measures of the company concerned, Kremikovtzi AD.

(4) The Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, with regard to an extension of the period laid down in Article 9(4) of Protocol 2 to the Europe Agreement (hereinafter the Additional Protocol to the Europe Agreement), should therefore be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

Article 3 of the Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, with regard to an extension of the period laid down in Article 9(4) of Protocol 2 to the Europe Agreement, is replaced by the following:

"Article 3

The European Commission shall regularly monitor the implementation of the restructuring programme and the plans referred to in Article 2 on behalf of the European Community. The Ministry of Finance shall do so on behalf of Bulgaria. The European Commission may require Bulgaria to take appropriate steps to modify the restructuring plan for Kremikovtzi AD company in case the fulfilment of the requirements of Article 9(4) of Protocol 2 to the Europe Agreement are unlikely to be fulfilled.

The European Commission shall decide whether the restructuring programme and the plans are fully implemented and are in compliance with the requirements of Article 9(4) of Protocol 2 to the Europe Agreement.

In case monitoring of the implementation of the restructuring programme and the plans shows that the relevant conditions of Protocol 2 to the Europe Agreement and key restructuring measures, including all investments implemented, have not been fulfilled or that in the course of the restructuring period Bulgaria has granted additional State aid in favour of the steel industry, and to Kremikovtzi AD in particular, Bulgaria shall recover from the beneficiary any aid granted in breach of these conditions before or after its accession to the European Union."

Article 2

This Decision shall enter into force on the day of its adoption by the Association Council.

Done at Brussels, <date> 2006.

For the Association Council

The President

[1] OJ L 358, 31.12.1994, p. 3.

[2] The Additional Protocol to the Europe Agreement as amended by Decision No 1/2004 of the EU-Bulgaria Association Council, OJ L68, 15.3.2005, p. 41.