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Proposal for a

COUNCIL DECISION

revoking the agreements between the European Coal and Steel Community and the Swiss Confederation

EXPLANATORY MEMORANDUM

The European Coal and Steel Community (ECSC) ceased to exist when the Treaty establishing it expired on 23 July 2002. The ECSC had concluded a number of international agreements with third countries, including Switzerland, which did not provide for the eventuality of the expiry of the aforementioned Treaty.

Under the first paragraph of Article 71 of the Treaty establishing the ECSC, commercial agreements between the ECSC and third countries were concluded by the Member States. For that reason, the representatives of the Governments of the Member States, meeting within the Council, decided, on the expiry of the ECSC Treaty, that from 24 July 2002 the European Community (EC) would take over the rights and obligations arising under the international agreements concluded by the ECSC with third countries; the Council decided that the EC would succeed to these rights and obligations¹. Since then, these international agreements have been governed by the EC Treaty.

Shortly before these decisions were taken, the representatives of the Governments of the Member States, meeting within the Council, had already decided to terminate the Agreement of 21 March 1955 on the establishment of through international railway tariffs for the carriage of coal and steel², and the Commission had terminated the Agreement of 28 July 1956 on the setting of through international railway tariffs for the carriage of coal and steel in transit through Swiss territory³.

Community and Swiss experts concluded in their report of 30 April 2003 that the other agreements between the ECSC and Switzerland (particularly the Free Trade Agreement concluded between the ECSC and Switzerland on 22 July 1972⁴) had also lost their *raison d'être*. In relations between the European Communities and Switzerland, a parallel structure of agreements for the coal and steel sectors had been established for reasons of competence only.

Although there are differences in detail between the agreement between the ECSC and Switzerland and the Free Trade Agreement concluded at the same time by the EC and Switzerland, particularly with regard to safeguard measures, these differences do not justify maintaining the ECSC Agreement. Moreover, it is a long time since the provisions in question have been applied. There would be no added value in maintaining a special regime for coal and steel products. Following the revocation of the agreement between the ECSC and Switzerland, the provisions of the Free Trade Agreement between the EC and Switzerland will apply automatically to the products in question, particularly the tariff concessions and surveillance measures.

For that reason, Switzerland proposed, by Note Verbale of the Swiss Mission to the European Communities of 10 November 2004, revoking, by mutual consent, all agreements still in force between the ECSC and Switzerland, namely the Consultation Agreement between the Swiss Confederation and the High Authority of the ECSC of 7 May 1956⁵, the Free Trade Agreement for ECSC products of 22 July 1972, the Additional Agreement concerning the

¹ Decisions 2002/595/EC and 2002/596/EC of 19 July 2002 (OJ L 194, 23.7.2002, pp. 35 and 36).

² Decision 2001/764/ECSC of 23 October 2001 (OJ L 288, 1.11.2001, p. 38).

³ Decision 2002/275/ECSC of 12 April 2002 (OJ L 96, 13.04.2002, p. 27).

⁴ OJ L 350, 19.12.1973, p. 13.

⁵ OJ 7, 21.2.1957, p. 85.

validity, for Liechtenstein, of the aforementioned agreement⁶, and all the amendments following the enlargements of the European Union. These agreements should be revoked simultaneously under the procedure referred to in this Note Verbale.

The revocation of the agreements between the ECSC and Switzerland forms part of the measures to improve Community legislation. The processes and instruments implemented under the Better Regulation Action Plan include the simplification of existing legislation, requiring, among other things, an evaluation of the entire Community *acquis* in order to ensure that Community legislation is clear and up to date.

The Treaty establishing the EC does not provide explicitly for internal procedures for revoking an international agreement. Nonetheless, the revocation of an international agreement by mutual consent is comparable to the amendment of an agreement.

⁶ OJ L 350, 19.12.1973, p. 29.

Proposal for a

COUNCIL DECISION

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission⁷,

Whereas:

- (1) Under Article 97 of the Treaty establishing the European Coal and Steel Community, the Treaty expired on 23 July 2002.
- (2) Under Decision 2002/595/EC of the representatives of the Governments of the Member States of the European Communities, meeting within the Council of 19 July 2002⁸, the rights and obligations arising under the international agreements concluded by the European Coal and Steel Community with third countries have been taken over by the European Community. By Council Decision 2002/596/EC of 19 July 2002⁹, the Community succeeded to the rights and obligations arising under the aforementioned agreements.
- (3) Since the ECSC Treaty has expired, maintaining a special regime for coal and steel products is no longer justified.
- (4) The revocation of the agreements between the European Coal and Steel Community and the Swiss Confederation forms part of the measures to improve Community legislation,

HAS DECIDED AS FOLLOWS:

Article 1

The following agreements between the European Coal and Steel Community and the Swiss Confederation are revoked by mutual agreement:

⁷ OJ C [...], [...], p. [...].

⁸ OJ L 194, 23.07.2002, p. 35.

⁹ OJ L 194, 23.07.2002, p. 36.

1. Consultation Agreement of 7 May 1956 between the Swiss Confederation and the High Authority of the European Coal and Steel Community¹⁰,
2. Agreement of 22 July 1972 between the Member States of the European Coal and Steel Community and the Swiss Confederation¹¹,
3. Additional Agreement of 22 July 1972 concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation¹²,

and all relevant supplementary and additional agreements and protocols.

Article 2

The Commission is authorised to reply to the Note Verbale of the Swiss Mission to the European Communities of 10 November 2004 by the Note Verbale set out in the Annex.

Done at Brussels, [...]

*For the Council
The President*

¹⁰ OJ 7, 21.2.1957, p. 85.

¹¹ OJ L 350, 19.12.1973, p. 13.

¹² OJ L 350, 19.12.1973, p. 29.

ANNEX

Note Verbale

The Commission of the European Communities presents its compliments to the Swiss Mission to the European Communities and has the honour to acknowledge receipt of its Note of 10 November 2004 on the revocation of several Agreements concluded between the Swiss Confederation and the European Coal and Steel Community, which was worded as follows:

‘The Swiss Mission to the European Communities presents its compliments to the Commission of the European Communities and, referring to the Consultation Agreement of 7 May 1956 between the Swiss Confederation and the High Authority of the European Coal and Steel Community, as well as the Agreement of 22 July 1972 between the Member States of the European Coal and Steel Community and the Swiss Confederation, and all relevant supplementary agreements, has the honour to inform the Commission of the following:

On 19 July 2002, the Council of the European Union decided that the European Community would take over the rights and obligations arising under the international agreements concluded by the European Coal and Steel Community (ECSC). Since the ECSC ceased to exist on 23 July 2002, the provisions of the Agreements binding it to the Swiss Confederation have lost all practical application. The Mission has the honour to propose to the Commission the revocation, by mutual consent, in accordance with Article 54(b) of the Vienna Convention on the Law of Treaties, of the following Agreements:

- Consultation Agreement of 7 May 1956 between the Swiss Confederation and the High Authority of the European Coal and Steel Community
- Agreement of 22 July 1972 between the Member States of the European Coal and Steel Community and the Swiss Confederation
- Additional Protocol of 17 July 1980 to the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Hellenic Republic to the Community
- Additional Agreement of 22 July 1972 concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation (with final act and declaration)
- Supplementary Protocol of 17 July 1980 to the Additional Agreement concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Hellenic Republic to the Community
- Additional Protocol to the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the implementation of the Harmonised Commodity Description and Coding System
- Supplementary Protocol to the Additional Agreement concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the implementation of the Harmonised Commodity Description and Coding System

- Additional Protocol to the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Kingdom of Spain and the Portuguese Republic to the Community
- Second Additional Protocol to the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Kingdom of Spain and the Portuguese Republic to the Community
- Supplementary Protocol to the Additional Agreement concerning the validity, for the Principality of Liechtenstein, of the Agreement between the Member States of the European Coal and Steel Community and the Swiss Confederation following the accession of the Kingdom of Spain and the Portuguese Republic to the Community

and all relevant supplementary and additional agreements.

If the Commission agrees with this proposal, the Mission proposes that this Note and the Commission's reply constitute an agreement revoking the aforementioned Agreements, which will take effect the day after notification of the Community's reply.'

The Commission has the honour to notify the Mission that, pursuant to the Council Decision of [...], it supports, on behalf of the European Community, the proposal to revoke the aforementioned Agreements.

The proposal of the Mission and this Note therefore constitute an agreement on the revocation of the aforementioned Agreements, which shall take effect the day after notification of this reply.

The Principality of Liechtenstein shall be informed of the revocation of these agreements.

The Commission avails itself of this opportunity to renew to the Mission the assurances of its highest consideration.

Brussels, [date]