

Proposal for a Council Decision on the signature on behalf of the Community of an 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 Estonia, of the other part, on Conformity Assessment and Acceptance of Industrial Products

(2003/C 45 E/25)

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(Submitted by the Commission on 7 November 2002)

EXPLANATORY MEMORANDUM

I. EXPLANATORY MEMORANDUM

On the basis of negotiating directives adopted by the Council on 21 September 1992 and of the specific decision issued by the Council in June 1997 addressing guidelines to the Commission for the negotiation of European Conformity Assessment Agreements with Central and Eastern European Countries, the Commission has negotiated and initialled an additional protocol to the Europe Agreement with Estonia (Protocol to the Europe Agreement on Conformity assessment and Acceptance of industrial products, hereinafter referred to as 'PECA').

The text of this Protocol is attached to this Communication. The following provides an assessment of the Protocol in the light of the negotiating directives approved by the Council, and proposes that the Council authorises the signature of the additional Protocol to the Europe Agreement and decides to approve its conclusion on behalf of the Community. This assessment and these proposals are similar to the relevant documents for the PECAs concluded by the Council with Latvia, Lithuania, Hungary, and the Czech Republic.

1. Assessment of the Agreement

Considering that this agreement is intended to work only during the pre-accession period, and that an appropriate legal framework was offered by the Europe Agreement, it was decided, in consultation with the 133 Committee, to adopt this agreement as a Protocol to the Europe Agreement rather than an stand alone agreement as foreseen previously.

The draft PECA follows the general principles laid down in the Commission's communication on Community External Trade Policy in the field of standards and conformity assessment⁽¹⁾ under its paragraph 49. The PECA is a transitional arrangement, and thus will terminate with the candidate country accession.

The PECA provides for an extension of certain benefits of the Internal Market in sectors already aligned. The PECA thus facilitates market access by eliminating technical barriers to trade with respect to industrial products. To this end, the PECA provides for two mechanisms, a) for the mutual acceptance of industrial products which fulfil the requirements to be lawfully placed on the market in one of the Parties, and b) the mutual recognition of the results of conformity assessment of industrial products subject to Community law and to the equivalent national law.

The first mechanism, i.e. the mutual acceptance of industrial products, confirms that Articles 11 and 14.2 of the Europe Agreement with Estonia apply without other restriction as referred to in Article 34 of the Europe Agreement. This provision adds the predictability that is necessary to manufacturers and exporters, confirming in advance that industrial products under this mechanism may freely move between the Parties. The annexes making this mechanism operational have still to be negotiated.

⁽¹⁾ COM(96) 564 final, 13.11.1996.

The second mechanism is a particular type of mutual recognition agreement (MRA) in which the mutual recognition operates on the basis of the *acquis communautaire*. It allows industrial products certified by Notified Bodies in the European Union to be placed on the Estonian market without having to undergo any further approval procedures, and vice-versa. The following sectors are covered: electrical safety, electromagnetic compatibility, lifts and safety of toys.

The draft with Estonia is fully in line with the PECAs concluded by the Council on 25th June 2002 with Latvia and Lithuania and also with those concluded with on 4th April 2001 with Hungary and the Czech Republic ⁽¹⁾. Estonia has taken over the Community technical legislation in the sectors covered by the Protocol and participates in the European organisations in the field of standards, metrology, testing laboratories and accreditation.

The PECA consists of a framework agreement and a series of annexes as referred to above. A unilateral Community declaration inviting the Estonian representatives to experts meetings and committees established under the Community law referred to in the annexes is attached to the Final Act, making it clear that this will not entail any participation in the Community decision-making process. An assessment of the PECA is made in the next paragraphs.

1.1. **Framework Agreement**

An article-by-article assessment follows:

Pre-amble. This sets out the basic objective of the PECA which is that, as the application for membership of the European Union implies the implementation of the *acquis communautaire* by the applicant country, it provides the opportunity to extend certain benefits of the Single Market in certain sectors already aligned before.

Article 1: Purpose. This article establishes the purpose of the PECA, namely the elimination of technical barriers to trade in respect to industrial products. The PECA provides for two mechanisms, a) for the mutual acceptance of industrial products which fulfil the requirements to be lawfully placed on the market in one of the Parties, and b) the mutual recognition of the results of conformity assessment of industrial products subject to Community law and to the equivalent national law.

Article 2: Definitions. This is self-explanatory. Definitions of industrial products, Community and national law have been included. All pieces of legislation and implementation measures (administrative provisions, guidelines and other means of implementation of the legislation) are covered by the definitions of Community and national law.

Article 3: Alignment of legislation. This contains a commitment for Estonia to take appropriate measures in order to maintain or complete the take-over of Community law, namely in the field of technical legislation and for the purpose of the PECA. Together with the 4th *whereas*, it means that the alignment is an ongoing process and the Parties agree to iron out any problems of transposition that could appear later.

Article 4: Mutual acceptance of industrial products. The principle under Article 1.1) is detailed in this article. It provides that listing industrial products in such annexes will confirm that these products can freely circulate between the Parties. As already stated, no such annex has been negotiated yet.

⁽¹⁾ Council Decision 2001/365/EC of 4 April 2001 on the conclusion of a PECA with the Czech Republic (OJ L 135, 17.5.2001, p. 1) Council Decision 2001/366/EC of 4 April 2001 on the conclusion of a PECA with Hungary (OJ L 135, 17.5.2001, p. 35).

Article 5: Mutual recognition of the results of conformity assessment procedures. This provision expands the principle under Article 1.2). This kind of recognition is similar to the one in Mutual Recognition Agreements, with the special feature that all legislation and standards are aligned. The sectoral annexes will contain the references to the relevant Community and national legislation.

Article 6: Safeguard clause. This sets up the right of each Party to deny market access when such Party is able to demonstrate that a product might endanger the legitimate concern which is protected by legislation listed in the annexes (safety and/or public health of users or other persons mainly). The annexes provide for the detailed procedures to be used in such cases.

Article 7: Extension of coverage. The Parties may modify the scope and coverage of this Protocol through an amendment of the annexes or by the addition of new annexes as soon as all alignment conditions are met.

Article 8: Origin. The provisions of this Protocol shall apply to industrial products irrespective of their origin.

Article 9: Obligations of Parties as regards their authorities and bodies. This article obliges the Parties to ensure that their respective authorities continuously monitor the technical competence and compliance of the notified bodies and have the necessary power and expertise for designating, suspending, and withdrawing their bodies. In addition, it obliges the Parties to ensure that their respective notified bodies continuously comply with the requirements of Community or national law and maintain their technical competence to carry out the tasks for which they have been notified.

Article 10: Notified bodies. This describes the procedure for the notification of bodies to assess conformity in relation to the legal requirements specified in the corresponding annexes. The procedure is simplified and similar to the one applied within the Community. The second paragraph sets out the procedure for the removal of notified bodies.

Article 11: Verification of notified bodies. This article gives the right to one Party to request a verification of a body notified by the other Party. The verification may be done either by the authorities which have designated the body or together by the authorities of both Parties. If the Parties do not agree on appropriate steps to take, they may notify the Chair of the Association Council of their dissent, and leave to the Association Council to decide on appropriate action. The notified body would then be suspended from the notification of the Association Council until a final decision is taken.

Article 12: Exchange of information. A transparency provision to ensure a correct and uniform application and interpretation of the Protocol. The Parties are advised to encourage their bodies to cooperate in order to establish mutual recognition agreements in the voluntary sphere.

Article 13: Confidentiality. A classical provision to avoid disclosing information acquired under this Protocol.

Article 14: Management of the Protocol. The Association Council will be responsible for its effective functioning and may delegate its duties in conformity with the relevant Articles of the Europe Agreement.

Article 15: Technical cooperation and assistance. This confirms the Community policy on technical cooperation and assistance with a view to properly implementing this Protocol.

Article 16: Agreements with other countries. This confirms that, unless otherwise agreed, the PECA does not entail any obligation, for one Party, to accept conformity assessments carried out in another country, even if there is an agreement on recognition of conformity assessment between the other Party and any other third country.

Article 17: Entry into force. This is a standard provision that provides the arrangement for the entry into force.

Article 18: Status of the Protocol. This establishes the fact that the PECA is an integral part of the Europe Agreement.

1.2. The Annexes to the Protocol

1.2.1. Annexes on Mutual Recognition of Results of Conformity Assessment

There follows an assessment of the content of the annexes in terms of their coverage, and other implications where relevant. In making this assessment, the Commission has kept in mind the following elements:

- a) the overall consistency with the Community policy objectives in the field of standardisation, certification and conformity assessment for the sectors and industrial products covered;
- b) the overall consistency with Community policy objectives in the field of the removal of technical barriers to trade.

The sectoral assessment is followed in item I.2 by an overall appreciation of the benefits of the Protocol.

Annexes on Electrical Safety, Electromagnetic Compatibility, Lifts and Safety of Toys

These annexes on mutual recognition of results of conformity assessment cover a range of industrial products subject to third party conformity assessment under the New Approach Directives in the relevant sectors. All these annexes present the same structure.

Coverage is determined by the relevant Community or national law, listed under Section I of each annex. Section II, on notifying authorities, lists the authorities responsible for the designation of bodies in the Member States and Estonia. Section III, on notified bodies, makes reference to the notification of all Conformity Assessment Bodies notified by the Member States and by Estonia. Section IV, on specific arrangements, fixes the two procedures for the safeguard clause, relating to industrial products and to harmonised standards.

1.2.2. Annexes on Mutual Acceptance of Industrial Products

No such annexes have been negotiated for the moment. The PECA, in line with the Europe Agreement, provides nevertheless the basis for such acceptance of products, similar to the one which operates in the Community.

1.2.3. *Unilateral Declaration*

This is attached to the Final Act and is annexed to this Communication.

Unilateral Community Declaration relating to attendance of the Estonian representatives to Committees. Through this declaration, Estonia is invited to send observers to the meetings of the Committees established or referred to under the Community legislation included in the annexes. This declaration follows the principles of the Commission Communication on 'Participation of candidate countries in Community programmes, agencies and committees' ⁽¹⁾.

1.3. *Relations with EFTA /EEA Member Countries*

In accordance with the general information and consultation procedures set out in the European Economic Area-Agreement and Protocol 12 of that Agreement, the Commission kept EFTA/EEA Member Countries regularly informed on the progress of the negotiations and informed them on the final result thereof. The EFTA/EEA Member Countries are in the initial stage of negotiating a parallel mutual recognition agreement with Estonia.

2. **Overall Appreciation**

The Commission considers that the proposed PECA creates an acceptable balance of benefits for all parties in the pre-accession framework. In all sectors the Community has secured effective market access — in terms of access to all mandatory procedures of the other party. The PECA confirms that Estonia has taken over the Community legislation in certain sectors before its accession. Both political and commercial benefits are achieved with the PECA.

The Protocol will allow Community exporters, if they so choose, to test and certify their industrial products to the same (aligned) requirements prior to export, and then access that market without any further conformity assessment requirements. The certification procedures will only need to be carried out one time for both markets and against the same aligned requirements or standards. The recognition of certification will permit savings and stimulate exports. European industry federations were consulted and supported unequivocally the Protocol.

Industrial groups, while supporting the Protocol, have not always been able to quantify the costs or time taken to obtain conformity assessment of their industrial products in Estonia. The precise extent of savings in time, cost and market opportunity of this Protocol is therefore not feasible in every case to determine. This may only be possible once the Protocol has been in operation for some time. However, on the basis of a rough calculation, it is estimated ⁽²⁾ that this Protocol would create cost saving opportunities for the European exporting industry of around EUR 6,5 millions per year and about EUR 13 millions per year in terms of cost savings to Estonian exporters to the EC. Some of these savings will be passed on to European importers and consumers.

Trade figures between the EC and Estonia are attached for information. In 2001 the general trade balance in sectors covered by this Protocol shows a trade surplus for Estonia of around EUR 400 million owing to Estonian strength in the electrical sector. However, the trade surplus is for the EU in lifts and safety of toys sectors. It is expected that trade will increase further when the PECA is in force.

⁽¹⁾ COM (1999) 710 final, 20.12.1999, point 4.2.b.

⁽²⁾ Working hypothesis that certification and other related costs amount to an average of 1,5 % of trade.

In fact, most benefits are clearly not quantifiable, such as reduced time for accessing markets, better predictability, less protectionism, and harmonisation of systems. What can be ascertained is that any agreement provides reciprocal levels of market access, in terms of conformity assessment.

These advantages outweigh greatly the resources that the Commission will have to engage in maintenance activities of the Protocol, evaluated at 0.8 person per year and some travel and other expenses relating to meetings and other activities such as editing guides.

In terms of the benefits to Estonia, the PECA will facilitate access to the Community market and will give political credit for having aligned its legislation. Estonia regards the PECA as a means to develop closer industrial relations with the EU and fully to integrate certain sectors with the Single Market before accession.

II. THE DRAFT COUNCIL DECISIONS

A proposal for two Council decisions is attached. Both are similar to the Commission proposals for the previous Council decisions on the signature on behalf of the Community and conclusion of the PECAs with Latvia, Lithuania, Hungary and the Czech Republic ⁽¹⁾.

The first one is concerned with the signature of the Protocol. Signature is required by Estonia for the adoption of this Protocol. It is accordingly proposed that the President of the Council be authorised to designate the person empowered to sign the Protocol on behalf of the Community, subject to conclusion later, on the basis of Articles 133 and 300 of the Treaty.

The proposal for a second decision is concerned with the adoption of the PECA. In this context, the Council should, in line with the previous Council decisions on the conclusion of PECAs and mutual recognition agreements, establish the appropriate Community procedure for the implementation and management of the Protocol.

In particular, the Council should confer on the Commission, in consultation with the special committee appointed by the Council, the necessary powers for the management and implementation of the Protocol. Moreover, the Council should delegate to the Commission, acting in consultation with the special committee, the necessary powers to determine in certain cases the Community position with regard to this Protocol in the Association Council, or where applicable the Association Committee. The delegation of powers to the Commission includes delegation of the power to add new Annexes, since, as indicated in the Preamble, membership of the European Union, for which Estonia has applied, implies the effective implementation of all the Community acquis.

In all other cases the Community position with respect to the Protocol shall be determined by the Council, acting by qualified majority, on a proposal from the Commission.

The Commission therefore proposes that the Council adopts the attached decisions on the signature and conclusion of the PECA.

⁽¹⁾ For the Czech Republic, Council decision 2001/365/EC of 4 April 2001 (OJ L 135, 17.5.2001, p. 1). For Hungary, Council decision 2001/366/EC of 4 April 2001 (OJ L 135, 17.5.2001, p. 35).

EU-Estonia Trade — Annex to the Explanatory Memorandum to the Council (EUR 1 000)

	1999				2000				2001			
	Import	Export	Balance	Total Trade	Import	Export	Balance	Total Trade	Import	Export	Balance	Total Trade
Electrical sector	183 529	202 968	19 439	386 496	1 099 637	631 442	- 468 195	1 731 078	831 884	411 390	- 420 494	1 243 274
Lifts	1	1 623	1 622	1 623	44	1 492	1 448	1 536	5	2 108	2 103	2 113
Toys	10 122	11 831	1 709	21 953	15 538	17 283	1 744	32 821	15 924	25 445	9 521	41 369
Total sectors	193 652	216 422	22 770	410 072	1 115 219	650 217	- 465 003	1 765 435	847 813	438 943	- 408 870	1 286 756

Source: Comext/Eurostat. Date extracted on 25 July 2002 and elaborated by DG Trade-F2.

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) The Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia of the other part ⁽¹⁾, entered into force on 1st February 1998.
- (2) Article 75 of the Europe Agreement provides that cooperation in the fields of standardisation and conformity assessment shall seek to achieve the conclusion of agreements on mutual recognition.
- (3) The Protocol to the Europe Agreement on Conformity Assessment and Acceptance of Industrial Products has been negotiated by the Commission on behalf of the Community.
- (4) Subject to its possible conclusion at a later date, the Protocol to the Europe Agreement on Conformity Assessment and Acceptance of Industrial Products initialled in Brussels on 19th July 2002 should be signed.

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the Community, the Protocol to the Europe Agreement with the Republic of Estonia on Conformity Assessment and Acceptance of Industrial Products.

⁽¹⁾ OJ L 68, 9.3.1998, p. 3.