

ACT

concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded

In accordance with Article 2 of the Treaty of Accession, this Act shall be applicable in the event that the Treaty establishing a Constitution for Europe is not in force on 1 January 2007 until the date of entry into force of the Treaty establishing a Constitution for Europe.

PART ONE

PRINCIPLES

Article 1

For the purposes of this Act:

- the expression 'original Treaties' means:
 - (a) the Treaty establishing the European Community ('EC Treaty') and the Treaty establishing the European Atomic Energy Community ('EAEC Treaty'), as supplemented or amended by treaties or other acts which entered into force before accession,
 - (b) the Treaty on European Union ('EU Treaty'), as supplemented or amended by treaties or other acts which entered into force before accession;
- the expression 'present Member States' means the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland;
- the expression 'the Union' means the European Union as established by the EU Treaty;
- the expression 'the Community' means one or both of the Communities referred to in the first indent, as the case may be;

- the expression 'new Member States' means the Republic of Bulgaria and Romania;
- the expression 'the institutions' means the institutions established by the original Treaties.

Article 2

From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on Bulgaria and Romania and shall apply in those States under the conditions laid down in those Treaties and in this Act.

Article 3

1. Bulgaria and Romania accede to the decisions and agreements adopted by the Representatives of the Governments of the Member States meeting within the Council.
2. Bulgaria and Romania are in the same situation as the present Member States in respect of declarations or resolutions of, or other positions taken up by, the European Council or the Council and in respect of those concerning the Community or the Union adopted by common agreement of the Member States; they will accordingly observe the principles and guidelines deriving from those declarations, resolutions or other positions and will take such measures as may be necessary to ensure their implementation.
3. Bulgaria and Romania accede to the conventions and protocols, listed in Annex I. Those conventions and protocols shall enter into force in relation to Bulgaria and Romania on the date determined by the Council in the decisions referred to in paragraph 4.
4. The Council, acting unanimously on a recommendation by the Commission and after consulting the European Parliament, shall make all adjustments required by reason of

TITLE IV

OTHER PROVISIONS

Article 36

1. If, until the end of a period of up to three years after accession, difficulties arise which are serious and liable to persist in any sector of the economy or which could bring about serious deterioration in the economic situation of a given area, Bulgaria or Romania may apply for authorisation to take protective measures in order to rectify the situation and adjust the sector concerned to the economy of the internal market.

In the same circumstances, any present Member State may apply for authorisation to take protective measures with regard to Bulgaria, Romania, or both those States.

2. Upon request by the State concerned, the Commission shall, by emergency procedure, determine the protective measures which it considers necessary, specifying the conditions and modalities under which they are to be put into effect.

In the event of serious economic difficulties and at the express request of the Member State concerned, the Commission shall act within five working days of the receipt of the request accompanied by the relevant background information. The measures thus decided on shall be applicable forthwith, shall take account of the interest of all parties concerned and shall not entail frontier controls.

3. The measures authorised under paragraph 2 may involve derogations from the rules of the EC Treaty and this Act to such an extent and for such periods as are strictly necessary in order to attain the objectives referred to in paragraph 1. Priority shall be given to such measures as will least disturb the functioning of the internal market.

Article 37

If Bulgaria or Romania has failed to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market, including any commitments in all sectoral policies which concern economic activities with cross-border effect, or an imminent risk of such breach the Commission may, until the end of a period of up to three years after accession, upon motivated request of a Member State or on its own initiative, take appropriate measures.

Measures shall be proportional and priority shall be given to measures which least disturb the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the first day of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted when the relevant commitment is implemented. They may however be applied beyond the period specified in the first paragraph as long as the relevant commitments have not been fulfilled. In response to progress made by the new Member State concerned in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect.

Article 38

If there are serious shortcomings or any imminent risks of such shortcomings in Bulgaria or Romania in the transposition, state of implementation, or the application of the framework decisions or any other relevant commitments, instruments of cooperation and decisions relating to mutual recognition in the area of criminal law under Title VI of the EU Treaty and Directives and Regulations relating to mutual recognition in civil matters under Title IV of the EC Treaty, the Commission may, until the end of a period of up to three years after accession, upon the motivated request of a Member State or on its own initiative and after consulting the Member States, take appropriate measures and specify the conditions and modalities under which these measures are put into effect.

These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between Bulgaria or Romania and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The safeguard clause may be invoked even before accession on the basis of the monitoring findings and the measures adopted shall enter into force as of the first day of accession unless they provide for a later date. The measures shall be maintained no longer than strictly necessary and, in any case, shall be lifted when the shortcomings are remedied. They may however be applied beyond the period specified in the first paragraph as long as these shortcomings persist. In response to progress made by the new Member State concerned in rectifying the identified shortcomings, the Commission may adapt the measures as appropriate after consulting the Member States. The Commis-

sion shall inform the Council in good time before revoking the safeguard measures, and it shall take duly into account any observations of the Council in this respect.

Article 39

1. If, on the basis of the Commission's continuous monitoring of commitments undertaken by Bulgaria and Romania in the context of the accession negotiations and in particular the Commission's monitoring reports, there is clear evidence that the state of preparations for adoption and implementation of the *acquis* in Bulgaria or Romania is such that there is a serious risk of either of those States being manifestly unprepared to meet the requirements of membership by the date of accession of 1 January 2007 in a number of important areas, the Council may, acting unanimously on the basis of a Commission recommendation, decide that the date of accession of that State is postponed by one year to 1 January 2008.

2. Notwithstanding paragraph 1, the Council may, acting by qualified majority on the basis of a Commission recommendation, take the decision mentioned in paragraph 1 with respect to Romania if serious shortcomings have been observed in the fulfilment by Romania of one or more of the commitments and requirements listed in Annex IX, point I.

3. Notwithstanding paragraph 1, and without prejudice to Article 37, the Council may, acting by qualified majority on the basis of a Commission recommendation and after a detailed assessment to be made in the autumn of 2005 of the progress made by Romania in the area of competition policy, take the decision mentioned in paragraph 1 with respect to Romania if serious shortcomings have been observed in the fulfilment by Romania of the obligations undertaken under the Europe Agreement⁽¹⁾ or of one or more of the commitments and requirements listed in Annex IX, point II.

4. In the event of a decision taken under paragraph 1, 2 or 3, the Council shall, acting by qualified majority, decide immediately upon such adjustments to this Act, including its Annexes and Appendices, as have become indispensable by reason of the postponement decision.

⁽¹⁾ Europe Agreement establishing an association between the European Economic Communities and their Member States, of the one part, and Romania, of the other part (OJ L 357, 31.12.1994, p 2).

Article 40

In order not to hamper the proper functioning of the internal market, the enforcement of Bulgaria's and Romania's national rules during the transitional periods referred to in Annexes VI and VII shall not lead to border controls between Member States.

Article 41

If transitional measures are necessary to facilitate the transition from the existing regime in Bulgaria and Romania to that resulting from the application of the common agricultural policy under the conditions set out in this Act, such measures shall be adopted by the Commission in accordance with the procedure referred to in Article 25(2) of Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals⁽²⁾ or, as appropriate, in the corresponding Articles of the other Regulations on the common organisation of agricultural markets or the relevant procedure as determined in the applicable legislation. The transitional measures referred to in this Article may be adopted during a period of three years following the date of accession and their application shall be limited to that period. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend this period.

The transitional measures relating to implementation of the instruments concerning the common agricultural policy not specified in this Act which are required as a result of accession shall be adopted prior to the date of accession by the Council acting by a qualified majority on a proposal from the Commission or, where they affect instruments initially adopted by the Commission, they shall be adopted by the Commission in accordance with the procedure required for adopting the instruments in question.

Article 42

If transitional measures are necessary to facilitate the transition from the existing regime in Bulgaria and Romania to that resulting from the application of the Community veterinary, phytosanitary and food safety rules, such measures shall be adopted by the Commission in accordance with the relevant procedure as determined in the applicable legislation. These measures shall be taken during a period of three years following the date of accession and their application shall be limited to that period.

⁽²⁾ OJ L 270, 21.10.2003, p. 78.