

Protocol concerning the conditions and arrangements for admission of Bulgaria and Romania to the EU (25 April 2005)

Caption: On 25 April 2005, in Luxembourg, the representatives of Belgium, the Czech Republic, Denmark, the Federal Republic of Germany, Estonia, Greece, Spain, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Finland, Sweden and the United Kingdom, together with the Bulgarian and Romanian representatives, sign the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union.

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THE HIGH CONTRACTING PARTIES,

CONSIDERING that the Republic of Bulgaria and Romania become members of the European Union on 1 January 2007;

CONSIDERING that Article I-58 of the Treaty establishing a Constitution for Europe provides that the conditions and arrangements for admission shall be the subject of an agreement between the Member States and the candidate State;

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community:

Part one **Principles**

Article 1

1. For the purposes of this Protocol:

- the expression ‘Constitution’ means the Treaty establishing a Constitution for Europe;
- the expression ‘EAEC Treaty’ means the Treaty establishing the European Atomic Energy Community, 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 ‘new Member States’ means the Republic of Bulgaria and Romania;
- the expression ‘the institutions’ means the institutions established by the Constitution.

2. The references in this Protocol to the Constitution and to the Union shall, where appropriate, be taken as references, respectively, to the EAEC Treaty and to the Community established by the EAEC Treaty.

Article 2

From the date of accession, the provisions of the Constitution, the EAEC Treaty and the acts adopted by the institutions before accession shall be binding on Bulgaria and Romania and shall apply in those States under the conditions laid down in the Constitution, in the EAEC Treaty and in this Protocol.

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 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 adopt European decisions making all adjustments required by reason of accession to the conventions and protocols referred to in paragraph 3 and publish the adapted text in the Official Journal of the European Union.
5. Bulgaria and Romania undertake in respect of the conventions and protocols referred to in paragraph 3 to introduce administrative and other arrangements, such as those adopted by the date of accession by the present Member States or by the Council, and to facilitate practical cooperation between the Member States' institutions and organisations.
6. The Council, acting unanimously on a proposal from the Commission, may adopt European decisions supplementing Annex I with those conventions, agreements and protocols signed before the date of accession.
7. The particular instruments mentioned in this Article include those referred to in Article IV-438 of the Constitution.

Article 4

1. The provisions of the Schengen acquis, referred to in Protocol No 17 to the Constitution on the Schengen acquis integrated into the framework of the European Union, and the acts building upon it or otherwise related to it, listed in Annex II, as well as any further such acts adopted before the date of accession, shall be binding on and applicable in Bulgaria and Romania from the date of accession.
2. Those provisions of the Schengen acquis as integrated into the framework of the European Union and the acts building upon it or otherwise related to it not referred to in paragraph 1, while binding on Bulgaria and Romania from the date of accession, shall only apply in each of those States pursuant to a European decision of the Council to that effect after verification in accordance with the applicable Schengen evaluation procedures that the necessary conditions for the application of all parts of the acquis concerned have been met in that State.

The Council shall take its decision, after consulting the European Parliament, acting with the unanimity of its members representing the Governments of the Member States in respect of which the provisions referred to in this paragraph have already been put into effect and of the representative of the Government of the Member State in respect of which those provisions are to be put into effect. The members of the Council representing the Governments of Ireland and of the United Kingdom of Great Britain and Northern Ireland shall take part in such a decision insofar as it relates to the provisions of the Schengen acquis and the acts building upon it or otherwise related to it in which these Member States participate.

Article 5

Bulgaria and Romania shall participate in Economic and Monetary Union from the date of accession as Member States with a derogation within the meaning of Article III-197 of the Constitution.

Article 6

1. The agreements or conventions concluded or provisionally applied by the Union with one or more third States, with an international organisation or with a national of a third State, shall, under the conditions laid down in the Constitution and in this Protocol, be binding on Bulgaria and Romania.

2. Bulgaria and Romania undertake to accede, under the conditions laid down in this Protocol, to the agreements or conventions concluded or signed by the Union and the present Member States, acting jointly.

The accession of Bulgaria and Romania to the agreements or conventions concluded or signed by the Union and the present Member States acting jointly with particular third countries or international organisations shall be agreed by the conclusion of a protocol to such agreements or conventions between the Council, acting unanimously on behalf of the Member States, and the third country or countries or international organisation concerned. The Commission shall negotiate these protocols on behalf of the Member States on the basis of negotiating directives approved by the Council, acting unanimously, and in consultation with a committee comprised of the representatives of the Member States. It shall submit a draft of the protocols for conclusion to the Council.

This procedure is without prejudice to the exercise of the Union's own competences and does not affect the allocation of powers between the Union and the Member States as regards the conclusion of such agreements in the future or any other amendments not related to accession.

3. Upon acceding to the agreements and conventions referred to in paragraph 2 Bulgaria and Romania shall acquire the same rights and obligations under those agreements and conventions as the present Member States.

4. As from the date of accession, and pending the entry into force of the necessary protocols referred to in paragraph 2, Bulgaria and Romania shall apply the provisions of the agreements or conventions concluded jointly by the Union and the present Member States before accession, with the exception of the agreement on the free movement of persons concluded with Switzerland. This obligation also applies to those agreements or conventions which the Union and the present Member States have agreed to apply provisionally.

Pending the entry into force of the protocols referred to in paragraph 2, the Union and the Member States, acting jointly as appropriate in the framework of their respective competences, shall take any appropriate measure.

5. Bulgaria and Romania accede to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part⁽¹⁾, signed in Cotonou on 23 June 2000.

6. Bulgaria and Romania undertake to accede, under the conditions laid down in this Protocol, to the Agreement on the European Economic Area⁽²⁾, in accordance with Article 128 of that Agreement.

7. As from the date of accession, Bulgaria and Romania shall apply the bilateral textile agreements and arrangements concluded by the Union with third countries.

The quantitative restrictions applied by the Union on imports of textile and clothing products shall be adjusted to take account of the accession of Bulgaria and Romania to the Union. To that effect, amendments to the bilateral agreements and arrangements referred to above may be negotiated by the Union with the third countries concerned prior to the date of accession.

Should the amendments to the bilateral textile agreements and arrangements not have entered into force by the date of accession, the Union shall make the necessary adjustments to its rules for the import of textile and clothing products from third countries to take into account the accession of Bulgaria and Romania.

8. The quantitative restrictions applied by the Union on imports of steel and steel products shall be adjusted on the basis of imports of Bulgaria and Romania over recent years of steel products originating in the supplier countries concerned.

To that effect, the necessary amendments to the bilateral steel agreements and arrangements concluded by the Union with third countries shall be negotiated prior to the date of accession.

Should the amendments to the bilateral agreements and arrangements not have entered into force by the date of accession, the provisions of the first subparagraph shall apply.

9. Fisheries agreements concluded before accession by Bulgaria or Romania with third countries shall be managed by the Union.

The rights and obligations resulting for Bulgaria and Romania from those agreements shall not be affected during the period in which the provisions of those agreements are provisionally maintained.

As soon as possible, and in any event before the expiry of the agreements referred to in the first subparagraph, appropriate decisions for the continuation of fishing activities resulting from those agreements shall be adopted in each case by the Council on a proposal from the Commission, including the possibility of extending certain agreements for periods not exceeding one year.

10. With effect from the date of accession, Bulgaria and Romania shall withdraw from any free trade agreements with third countries, including the Central European Free Trade Agreement.

To the extent that agreements between Bulgaria, Romania or both those States on the one hand, and one or more third countries on the other, are not compatible with the obligations arising from this Protocol, Bulgaria and Romania shall take all appropriate steps to eliminate the incompatibilities established. If Bulgaria or Romania encounters difficulties in adjusting an agreement concluded with one or more third countries before accession, it shall, according to the terms of the agreement, withdraw from that agreement.

11. Bulgaria and Romania accede under the conditions laid down in this Protocol to the internal agreements concluded by the present Member States for the purpose of implementing the agreements or conventions referred to in paragraphs 2, 5 and 6.

12. Bulgaria and Romania shall take appropriate measures, where necessary, to adjust their position in relation to international organisations, and to those international agreements to which the Union or to which

other Member States are also parties, to the rights and obligations arising from their accession to the Union.

They shall in particular withdraw at the date of accession or the earliest possible date thereafter from international fisheries agreements and organisations to which the Union is also a party, unless their membership relates to matters other than fisheries.

13. Where this Article refers to conventions and agreements concluded or signed by the Union, they include those referred to in Article IV-438 of the Constitution.

Article 7

A European law of the Council may repeal the transitional provisions set out in this Protocol, when they are no longer applicable. The Council shall act unanimously after consulting the European Parliament.

Article 8

1. Acts adopted by the institutions to which the transitional provisions laid down in this Protocol relate shall retain their status in law; in particular, the procedures for amending those acts shall continue to apply.

2. Provisions of this Protocol the purpose or effect of which is to repeal or amend acts adopted by the institutions, otherwise than as a transitional measure, shall have the same status in law as the provisions which they repeal or amend and shall be subject to the same rules as those provisions.

Article 9

The application of the Constitution and acts adopted by the institutions shall, as a transitional measure, be subject to the derogations provided for in this Protocol.

Part two

Adjustments to the constitution

Title I

Institutional provisions

Article 10

1. Article 9, first paragraph, of Protocol No 3 on the Statute of the Court of Justice of the European Union, annexed to the Constitution and the EAEC Treaty, shall be replaced by the following:

‘When, every three years, the Judges are partially replaced, fourteen and thirteen Judges shall be replaced alternately.’

2. Article 48 of Protocol No 3 on the Statute of the Court of Justice of the European Union, annexed to the Constitution and the EAEC Treaty, shall be replaced by the following:

‘Article 48

The General Court shall consist of twenty-seven Judges.’

Article 11

Protocol No 5 on the Statute of the European Investment Bank, annexed to the Constitution, is hereby amended as follows:

1. In Article 4(1), first subparagraph:

(a) the introductory sentence shall be replaced by the following:

‘1. The capital of the Bank shall be 164 795 737 000 euro subscribed by the Member States as follows (*):

(*) The figures quoted for Bulgaria and Romania are indicative and based on the 2003 data published by Eurostat.’

(b) the following shall be inserted between the entries for Ireland and Slovakia:

‘Romania 846 000 000’; and

(c) the following shall be inserted between the entries for Slovenia and Lithuania:

‘Bulgaria 296 000 000’.

2. In Article 9(2) the first, second and third paragraphs shall be replaced by the following:

‘2. The Board of Directors shall consist of twenty-eight directors and eighteen alternate directors.

The directors shall be appointed by the Board of Governors for five years, one nominated by each Member State. One shall also be nominated by the Commission.

The alternate directors shall be appointed by the Board of Governors for five years as shown below:

- two alternates nominated by the Federal Republic of Germany,
- two alternates nominated by the French Republic,
- two alternates nominated by the Italian Republic,
- two alternates nominated by the United Kingdom of Great Britain and Northern Ireland,
- one alternate nominated by common accord between the Kingdom of Spain and the Portuguese Republic,
- one alternate nominated by common accord between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,
- two alternates nominated by common accord between the Kingdom of Denmark, the Hellenic Republic, Ireland and Romania,
- two alternates nominated by common accord between the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,

— three alternates nominated by common accord between the Republic of Bulgaria, the Czech Republic, the Republic of Cyprus, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,

— one alternate nominated by the Commission.’.

Article 12

Article 134(2), first subparagraph, of the EAEC Treaty on the composition of the Scientific and Technical Committee shall be replaced by the following:

‘2. The Committee shall consist of forty-one members, appointed by the Council after consultation with the Commission.’

Title II

Other adjustments

Article 13

The last sentence of Article III-157(1) of the Constitution shall be replaced by the following:

‘With regard to restrictions existing under national law in Bulgaria, Estonia and Hungary, the date in question shall be 31 December 1999.’

Article 14

Article IV-440(1) of the Constitution shall be replaced by the following:

‘1. This Treaty shall apply to the Kingdom of Belgium, the Republic of Bulgaria, 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, Romania, 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.’

Article 15

1. The following subparagraph shall be added to Article IV-448(1) of the Constitution:

‘Pursuant to the Accession Treaty, the Bulgarian and Romanian versions of this Treaty shall also be authentic.’

2. The second paragraph of Article 225 of the EAEC Treaty shall be replaced by the following:

‘The Bulgarian, Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish versions of this Treaty shall also be authentic.’

Part three

Permanent provisions

Title I**Adaptations to acts adopted by the institutions****Article 16**

The acts listed in Annex III to this Protocol shall be adapted as specified in that Annex.

Article 17

The adaptations to the acts listed in Annex IV to this Protocol made necessary by accession shall be drawn up in conformity with the guidelines set out in that Annex.

Title II**Other provisions****Article 18**

The measures listed in Annex V to this Protocol shall be applied under the conditions laid down in that Annex.

Article 19

A European law of the Council may make the adaptations to the provisions of this Protocol relating to the common agricultural policy which may prove necessary as a result of a modification of Union law. The Council shall act unanimously after consulting the European Parliament.

Part four**Temporary provisions****Title I****Transitional measures****Article 20**

The measures listed in Annexes VI and VII to this Protocol shall apply in respect of Bulgaria and Romania under the conditions laid down in those Annexes.

Title II**Institutional provisions****Article 21**

1. In Article 1(2) of Protocol No 34 on the transitional provisions relating to the institutions and bodies of the Union, annexed to the Constitution and to the EAEC Treaty, the following subparagraph shall be added:

‘By way of derogation from the maximum number of Members of the European Parliament fixed in Article I-20(2) of the Constitution, the number of Members of the European Parliament shall be increased to take account of the accession of Bulgaria and Romania with the following number of Members from those

countries for the period running from the date of accession until the beginning of the 2009-2014 term of the European Parliament:

Bulgaria 18
Romania 35’.

2. Before 31 December 2007, Bulgaria and Romania shall each hold elections to the European Parliament, by direct universal suffrage of their citizens, for the number of Members fixed in paragraph 1, in accordance with the provisions of the Act concerning the election of the Members of the European Parliament by direct universal suffrage⁽³⁾.

3. By way of derogation from Article I-20(3) of the Constitution, if elections are held after the date of accession, the Members of the European Parliament representing the citizens of Bulgaria and Romania for the period running from the date of accession until each of the elections referred to in paragraph 2, shall be appointed by the Parliaments of those States within themselves in accordance with the procedure laid down by each of those States.

Article 22

1. In Article 2(2), second subparagraph, of Protocol No 34 on the transitional provisions relating to the institutions and bodies of the Union, annexed to the Constitution and to the EAEC Treaty, the following shall be inserted between the entries for Belgium and the Czech Republic:

‘Bulgaria 10’

and, between the entries for Portugal and Slovenia:

‘Romania 14’.

2. Article 2(2), third subparagraph, of Protocol No 34 on the transitional provisions relating to the institutions and bodies of the Union, annexed to the Constitution and to the EAEC Treaty, shall be replaced by the following:

‘Acts shall be adopted if there are at least 255 votes in favour representing a majority of the members where, under the Constitution, they must be adopted on a proposal from the Commission. In other cases decisions shall be adopted if there are at least 255 votes in favour representing at least two thirds of the members.’

Article 23

In Article 6 of Protocol No 34 on the transitional provisions relating to the institutions and bodies of the Union, annexed to the Constitution and to the EAEC Treaty, the following shall be inserted between the entries for Belgium and the Czech Republic:

‘Bulgaria 12’

and, between the entries for Portugal and Slovenia:

‘Romania 15’

Article 24

In Article 7 of Protocol No 34 on the transitional provisions relating to the institutions and bodies of the Union, annexed to the Constitution and to the EAEC Treaty, the following shall be inserted between the entries for Belgium and the Czech Republic:

‘Bulgaria 12’

and, between the entries for Portugal and Slovenia:

‘Romania 15’.

Title III **Financial provisions**

Article 25

1. From the date of the accession, Bulgaria and Romania shall pay the following amounts corresponding to their share of the capital paid in for the subscribed capital as defined in Article 4 of Protocol No 5 on the Statute of the European Investment Bank, annexed to the Constitution⁽⁴⁾:

Bulgaria EUR 14 800 000

Romania EUR 42 300 000.

These contributions shall be paid in eight equal instalments falling due on 31 May 2007, 31 May 2008, 31 May 2009, 30 November 2009, 31 May 2010, 30 November 2010, 31 May 2011 and 30 November 2011.

2. Bulgaria and Romania shall contribute, in eight equal instalments falling due on the dates referred to in paragraph 1, to the reserves and provisions equivalent to reserves, as well as to the amount still to be appropriated to the reserves and provisions, comprising the balance of the profit and loss account, established at the end of the month preceding accession, as entered on the balance sheet of the Bank, in amounts corresponding to the following percentages of the reserves and provisions (1):

Bulgaria 0,181 %

Romania 0,517 %.

3. The capital and payments provided for in paragraphs 1 and 2 shall be paid in by Bulgaria and Romania in cash in euro, save by way of derogation decided unanimously by the Board of Governors.

Article 26

1. Bulgaria and Romania shall pay the following amounts to the Research Fund for Coal and Steel referred to in Decision 2002/234/ECSC of the Representatives of the Governments of the Member States, meeting within the Council, of 27 February 2002 on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel ⁽⁵⁾:

(EUR million, current prices)

Bulgaria 11,95

Romania 29,88.

2. The contributions to the Research Fund for Coal and Steel shall be made in four instalments starting in 2009 and paid as follows, in each case on the first working day of the first month of each year:

2009: 15 %

2010: 20 %

2011: 30 %

2012: 35 %.

Article 27

1. Tendering, contracting, implementation and payments for pre-accession assistance under the Phare programme⁽⁶⁾, the Phare CBC programme⁽⁷⁾ and for assistance under the Transition Facility referred to in Article 31 shall be managed by implementing agencies in Bulgaria and Romania as of the date of accession.

The ex-ante control by the Commission over tendering and contracting shall be waived by a Commission decision to that effect, following an accreditation procedure conducted by the Commission and a positively assessed Extended Decentralised Implementation System (EDIS) in accordance with the criteria and conditions laid down in the Annex to Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89⁽⁸⁾ and in Article 164 of the Financial Regulation applicable to the general budget of the European Communities⁽⁹⁾.

If this Commission decision to waive ex-ante control has not been taken before the date of accession, any contracts signed between the date of accession and the date on which the Commission decision is taken shall not be eligible for pre-accession assistance.

However, exceptionally, if the Commission decision to waive ex-ante control is delayed beyond the date of accession for reasons not attributable to the authorities of Bulgaria or Romania, the Commission may accept, in duly justified cases, eligibility for pre-accession assistance of contracts signed between the date of accession and the date of the Commission decision, and the continued implementation of pre-accession assistance for a limited period, subject to ex-ante control by the Commission over tendering and contracting.

2. Financial commitments made before accession under the pre-accession financial instruments referred to in paragraph 1 as well as those made under the Transition Facility referred to in Article 31 after accession, including the conclusion and registration of subsequent individual legal commitments and payments made after accession shall continue to be governed by the rules and regulations of the pre-accession financing instruments and be charged to the corresponding budget chapters until closure of the programmes and projects concerned. Notwithstanding this, public procurement procedures initiated after accession shall be carried out in accordance with the relevant Union provisions.

3. The last programming exercise for the pre-accession assistance referred to in paragraph 1 shall take place in the last year preceding accession. Actions under these programmes will have to be contracted within the following two years. No extensions shall be granted for the contracting period. Exceptionally and in duly justified cases, limited extensions in terms of duration may be granted for execution of contracts.

Notwithstanding this, pre-accession funds to cover administrative costs, as defined in paragraph 4, may be committed in the first two years after accession. For audit and evaluation costs, pre-accession funds may be committed up to five years after accession.

4. In order to ensure the necessary phasing out of the pre- accession financial instruments referred to in paragraph 1 and of the ISPA programme⁽¹⁰⁾, the Commission may take all appropriate measures to ensure that the necessary statutory staff is maintained in Bulgaria and Romania for a maximum of nineteen months following accession. During this period, officials, temporary staff and contract staff assigned to posts in Bulgaria and Romania before accession and who are required to remain in service in those States after the date of accession shall benefit, as an exception, from the same financial and material conditions as were applied by the Commission before accession in accordance with the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68⁽¹¹⁾. The administrative expenditure, including salaries for other staff necessary shall be covered by the heading 'Phasing-out of pre-accession assistance for new Member States' or equivalent under the appropriate policy area of the general budget of the European Union dealing with enlargement.

Article 28

1. Measures which on the date of accession have been the subject of decisions on assistance under Regulation (EC) No 1267/1999 establishing an Instrument for Structural Policies for Pre-accession and the implementation of which has not been completed by that date shall be considered to have been approved by the Commission under Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund⁽¹²⁾. Amounts which still have to be committed for the purpose of implementing such measures shall be committed under the Regulation relating to the Cohesion Fund in force at the date of accession and allocated to the chapter corresponding to that Regulation under the general budget of the European Union. Unless stated otherwise in paragraphs 2 to 5, the provisions governing the implementation of measures approved pursuant to the latter Regulation shall apply to those measures.

2. Any procurement procedure relating to a measure referred to in paragraph 1 which on the date of accession has already been the subject of an invitation to tender published in the Official Journal of the European Union shall be implemented in accordance with the rules laid down in that invitation to tender. However, the provisions contained in Article 165 of the Financial Regulation applicable to the general budget of the European Communities shall not apply. Any procurement procedure relating to a measure referred to in paragraph 1 which has not yet been the subject of an invitation to tender published in the Official Journal of the European Union shall be in keeping with the provisions of the Constitution, with the acts adopted pursuant thereto and with Union policies, including those concerning environmental protection, transport, trans-European networks, competition and the award of public contracts.

3. Payments made by the Commission under a measure referred to in paragraph 1 shall be posted to the earliest open commitment made in the first instance pursuant to Regulation (EC) No 1267/1999, and then pursuant to the Regulation relating to the Cohesion Fund then in force.

4. For the measures referred to in paragraph 1, the rules governing the eligibility of expenditure pursuant to Regulation (EC) No 1267/1999 shall remain applicable, except in duly justified cases to be decided on by the Commission at the request of the Member State concerned.

5. The Commission may decide, in exceptional and duly justified cases, to authorise specific exemptions from the rules applicable pursuant to the Regulation relating to the Cohesion Fund in force at the date of accession for the measures referred to in paragraph 1.

Article 29

Where the period for multiannual commitments made under the SAPARD programme⁽¹³⁾ in relation to

afforestation of agricultural land, support for the establishment of producer groups or agri-environment schemes extends beyond the final permissible date for payments under SAPARD, the outstanding commitments will be covered within the 2007-2013 rural development programme. Should specific transitional measures be necessary in this regard, these shall be adopted in accordance with the procedure laid down in Article 50(2) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds⁽¹⁴⁾

Article 30

1. Bulgaria, having closed — in line with its commitments — definitively for subsequent decommissioning Unit 1 and Unit 2 of the Kozloduy Nuclear Power Plant before the year 2003, commits to the definitive closure of Unit 3 and Unit 4 of this plant in 2006 and to subsequent decommissioning of these units.
2. During the period 2007-2009, the Community shall provide Bulgaria with financial assistance in support of its efforts to decommission and to address the consequences of the closure and decommissioning of Units 1 to 4 of the Kozloduy Nuclear Power Plant.

The assistance shall, *inter alia*, cover: measures in support of the decommissioning of Units 1 to 4 of the Kozloduy Nuclear Power Plant; measures for environmental upgrading in line with the acquis; measures for the modernisation of the conventional energy production, transmission and distribution sectors in Bulgaria; measures to improve energy efficiency, to enhance the use of renewable energy sources and to improve security of energy supply.

For the period 2007-2009, the assistance shall amount to EUR 210 million (2004 prices) in commitment appropriations, to be committed in equal annual tranches of EUR 70 million (2004 prices).

The assistance, or parts thereof, may be made available as a Community contribution to the Kozloduy International Decommissioning Support Fund, managed by the European Bank for Reconstruction and Development.

3. The Commission may adopt rules for implementation of the assistance referred to in paragraph 2. The rules shall be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁵⁾. To this end, the Commission shall be assisted by a committee. Articles 4 and 7 of Decision 1999/468/EC shall apply. The period laid down in Article 4(3) of Decision 1999/468/EC shall be six weeks. The committee shall adopt its rules of procedure.

Article 31

1. For the first year of accession, the Union shall provide temporary financial assistance, hereinafter referred to as the 'Transition Facility', to Bulgaria and Romania to develop and strengthen their administrative and judicial capacity to implement and enforce Union law and to foster exchange of best practice among peers. This assistance shall fund institution-building projects and limited small-scale investments ancillary thereto.
2. Assistance shall address the continued need for strengthening institutional capacity in certain areas through action which cannot be financed by the Structural Funds or by the Rural Development Funds.
3. For twinning projects between public administrations for the purpose of institution building, the procedure for call for proposals through the network of contact points in the Member States shall continue to apply, as established in the Framework Agreements with the Member States for the purpose of pre-accession

assistance.

The commitment appropriations for the Transition Facility, at 2004 prices, for Bulgaria and Romania, shall be EUR 82 million in the first year after accession to address national and horizontal priorities. The appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

4. Assistance under the Transition Facility shall be decided and implemented in accordance with Council Regulation (EEC) No 3906/89 on economic aid to certain countries of Central and Eastern Europe.

Article 32

1. A Cash-flow and Schengen Facility is hereby created as a temporary instrument to help Bulgaria and Romania between the date of accession and the end of 2009 to finance actions at the new external borders of the Union for the implementation of the Schengen acquis and external border control and to help improve cash-flow in national budgets.

2. For the period 2007-2009, the following amounts (2004 prices) shall be made available to Bulgaria and Romania in the form of lump-sum payments under the temporary Cash-flow and Schengen Facility:

(EUR million, 2004 prices)

| | | | | | | |
|------------|--------|-------|--------|-------|--------|-------|
| Bulgaria : | 2007 : | 121,8 | 2008 : | 59,1 | 2009 : | 58,6 |
| Romania : | 2007 : | 297,2 | 2008 : | 131,8 | 2009 : | 130,8 |

3. At least 50 % of each country allocation under the temporary Cash-flow and Schengen Facility shall be used to support Bulgaria and Romania in their obligation to finance actions at the new external borders of the Union for the implementation of the Schengen acquis and external border control.

4. One twelfth of each annual amount shall be payable to Bulgaria and Romania on the first working day of each month in the corresponding year. The lump-sum payments shall be used within three years from the first payment. Bulgaria and Romania shall submit, no later than six months after expiry of this three-year period, a comprehensive report on the final execution of the lump-sum payments under the Schengen part of the temporary Cash-flow and Schengen Facility with a statement justifying the expenditure. Any unused or unjustifiably spent funds shall be recovered by the Commission.

5. The Commission may adopt any technical provisions necessary for the operation of the temporary Cash-flow and Schengen Facility.

Article 33

1. Without prejudice to future policy decisions, the overall commitment appropriations for structural actions to be made available for Bulgaria and Romania over the three-year period 2007-2009 shall be as follows:

(EUR million, 2004 prices)

2007 2008 2009

| | | | |
|-----------|-------------|-------------|-------------|
| Bulgaria: | 2007: 539 | 2008: 759 | 2009: 1 002 |
| Romania. | 2007: 1 399 | 2008: 1 972 | 2009: 2 603 |

2. During the three years 2007-2009, the scope and nature of the interventions within these fixed country envelopes shall be determined on the basis of the provisions then applicable to structural actions expenditure.

Article 34

1. In addition to the regulations concerning rural development in force on the date of accession, the provisions laid down in Sections I to III of Annex VIII shall apply to Bulgaria and Romania for the period 2007-2009 and the specific financial provisions laid down in Section IV of Annex VIII shall apply to Bulgaria and Romania throughout the programming period 2007-2013.

2. Without prejudice to future policy decisions, commitment appropriations from the EAGGF Guarantee Section for rural development for Bulgaria and Romania over the three- year period 2007-2009 shall amount to EUR 3 041 million (2004 prices).

3. Implementing rules, where necessary, for the application of the provisions of Annex VIII shall be adopted in accordance with the procedure laid down in Article 50(2) of Regulation (EC) No 1260/1999.

4. The Council, acting on a proposal from the Commission, and after consulting the European Parliament, shall make any adaptations to the provisions of Annex VIII where necessary to ensure coherence with the regulations concerning rural development.

Article 35

The amounts referred to in Articles 30, 31, 32, 33 and 34 shall be adjusted by the Commission each year in line with movements in prices as part of the annual technical adjustments to the financial perspective.

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, adopt the European regulations or decisions establishing 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 Constitution and in particular from this Protocol 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 the motivated request of a Member State or on its own initiative, adopt European regulations or decisions establishing 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 European regulations and decisions establishing 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 Treaty on European Union and Directives and Regulations relating to mutual recognition in civil matters under Title IV of the Treaty establishing the European Community, and European laws and framework laws adopted on the basis of Sections 3 and 4 of Chapter IV of Title III of Part III of the Constitution, 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, adopt European regulations or decisions establishing 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 Commission shall inform the Council in good time before revoking the European regulations and decisions establishing 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⁽¹⁶⁾ 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 Protocol, including its Annexes and Appendices, as have become indispensable by reason of the postponement decision.

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 Protocol, 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⁽¹⁷⁾ or, as appropriate, in the corresponding Articles of the other Regulations on the common organisation of agricultural markets or of the European laws replacing them 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. A European law of the Council may extend this period. The Council shall act unanimously after consulting the European Parliament.

The transitional measures relating to implementation of the instruments concerning the common agricultural policy not specified in this Protocol which are required as a result of accession shall be established prior to the date of accession by European regulations or decisions adopted by the Council on a proposal from the Commission or, where they affect instruments initially adopted by the Commission, by European regulations or decisions 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 Union 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.

Part five

Provisions relating to the implementation of this protocol

Title I

Setting up of the institutions and bodies

Article 43

The European Parliament shall make such adaptations to its Rules of Procedure as are rendered necessary by accession.

Article 44

The Council shall make such adaptations to its Rules of Procedure as are rendered necessary by accession.

Article 45

A national of each new Member State shall be appointed to the Commission as from the date of accession. The new Members of the Commission shall be appointed by the Council, by common accord with the President of the Commission, after consulting the European Parliament and in accordance with the criteria set out in Article I-26(4) of the Constitution.

The terms of office of the Members thus appointed shall expire at the same time as those of the Members in office at the time of accession.

Article 46

1. Two Judges shall be appointed to the Court of Justice and two Judges shall be appointed to the General Court.
2. The term of office of one of the Judges of the Court of Justice appointed in accordance with paragraph 1 shall expire on 6 October 2009. This Judge shall be chosen by lot. The term of office of the other Judge shall expire on 6 October 2012.

The term of office of one of the Judges of the General Court appointed in accordance with paragraph 1 shall expire on 31 August 2007. This Judge shall be chosen by lot. The term of office of the other Judge shall

expire on 31 August 2010.

3. The Court of Justice shall make such adaptations to its Rules of Procedure as are rendered necessary by accession.

The General Court, in agreement with the Court of Justice, shall make such adaptations to its Rules of Procedure as are rendered necessary by accession.

The Rules of Procedure as adapted shall require the consent of the Council.

4. For the purpose of judging cases pending before the Courts on the date of accession in respect of which oral proceedings have started before that date, the full Courts or the Chambers shall be composed as before accession and shall apply the Rules of Procedure in force on the day preceding the date of accession.

Article 47

A national of each new Member State shall be appointed to the Court of Auditors as from the date of accession for a term of office of six years.

Article 48

The Committee of the Regions shall be enlarged by the appointment of 27 members representing regional and local bodies in Bulgaria and Romania, who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly. The terms of office of the members thus appointed shall expire at the same time as those of the members in office at the time of accession.

Article 49

The Economic and Social Committee shall be enlarged by the appointment of 27 members representing the various economic and social components of organised civil society in Bulgaria and Romania. The terms of office of the members thus appointed shall expire at the same time as those of the members in office at the time of accession.

Article 50

Adaptations to the rules of the Committees established by the Constitution and to their rules of procedure, necessitated by the accession, shall be made as soon as possible after accession.

Article 51

1. New members of the committees, groups or other bodies created by the Constitution or by an act of the institutions shall be appointed under the conditions and according to the procedures laid down for the appointment of members of these committees, groups or other bodies. The terms of office of the newly appointed members shall expire at the same time as those of the members in office at the time of accession.
2. The membership of committees or groups created by the Constitution or by an act of the institutions with a number of members fixed irrespective of the number of Member States shall be completely renewed upon accession, unless the terms of office of the present members expire within the year following accession.

Title II

Applicability of the acts of the institutions

Article 52

Upon accession, Bulgaria and Romania shall be considered as being addressees of European framework laws, regulations and decisions within the meaning of Article I-33 of the Constitution, and of directives and decisions within the meaning of Article 249 of the Treaty establishing the European Community and of Article 161 of the EAEC Treaty, provided that those European framework laws, regulations and decisions, and those directives and decisions have been addressed to all the present Member States. Except with regard to European decisions which enter into force pursuant to Article I-39(2) of the Constitution, and to directives and decisions which have entered into force pursuant to Article 254(1) and (2) of the Treaty establishing the European Community, Bulgaria and Romania shall be considered as having received notification of such European decisions and such directives and decisions upon accession.

Article 53

1. Bulgaria and Romania shall put into effect the measures necessary for them to comply, from the date of accession, with the provisions of European framework laws and those European regulations which are binding as to the result to be achieved but leave the national authorities the choice of form and methods within the meaning of Article I-33 of the Constitution, and of directives and decisions within the meaning of Article 249 of the Treaty establishing the European Community and of Article 161 of the EAEC Treaty, unless another time limit is provided for in this Protocol. They shall communicate those measures to the Commission at the latest by the date of accession or, where appropriate, by the time limit provided for in this Protocol.

2. To the extent that amendments to directives within the meaning of Article 249 of the Treaty establishing the European Community and of Article 161 of the EAEC Treaty introduced by this Protocol require a modification of the laws, regulations or administrative provisions of the present Member States, the present Member States shall put into effect the measures necessary to comply, from the date of accession, with the amended directives, unless another time limit is provided for in this Protocol. They shall communicate those measures to the Commission by the date of accession or, where later, by the time limit provided for in this Protocol.

Article 54

Provisions laid down by law, regulation or administrative action designed to ensure the protection of the health of workers and the general public in the territory of Bulgaria and Romania against the dangers arising from ionising radiations shall, in accordance with Article 33 of the EAEC Treaty, be communicated by those States to the Commission within three months of accession.

Article 55

At the duly substantiated request of Bulgaria or Romania submitted to the Commission no later than the date of accession, the Council acting on a proposal from the Commission, or the Commission, if the original act was adopted by the Commission, may adopt European regulations or decisions establishing temporary derogations from acts of the institutions adopted between 1 October 2004 and the date of accession. The measures shall be adopted according to the voting rules governing the adoption of the act from which a temporary derogation is sought. Where these derogations are adopted after accession they may be applied as from the date of accession.

Article 56

Where acts of the institutions adopted prior to accession require adaptation by reason of accession, and the necessary adaptations have not been provided for in this Protocol or its Annexes, the Council, acting on a proposal from the Commission, or the Commission, if the original act was adopted by the Commission, shall

to this end adopt the necessary acts. Where these adaptations are adopted after accession they may be applied as from the date of accession.

Article 57

Unless otherwise stipulated, the Council, on a proposal from the Commission, shall adopt the European regulations or decisions establishing the necessary measures to implement the provisions of this Protocol.

Article 58

The texts of the acts of the institutions adopted before accession and drawn up by the Council, the Commission or the European Central Bank in the Bulgarian and Romanian languages shall, from the date of accession, be authentic under the same conditions as the texts drawn up in the present official languages. They shall be published in the Official Journal of the European Union if the texts in the present languages were so published.

Title III

Final provisions

Article 59

Annexes I to IX and the Appendices thereto shall form an integral part of this Protocol.

Article 60

The Government of the Italian Republic shall remit to the Governments of the Republic of Bulgaria and Romania a certified copy of the Treaty establishing the European Atomic Energy Community, and the Treaties amending or supplementing it, in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages.

The text of that Treaty, drawn up in the Bulgarian and Romanian languages, shall be annexed to this Protocol. Those texts shall be authentic under the same conditions as the texts of the Treaty referred to in the first paragraph, drawn up in the present languages.

Article 61

A certified copy of the international agreements deposited in the archives of the General Secretariat of the Council of the European Union shall be remitted to the Governments of the Republic of Bulgaria and Romania by the Secretary General.

(1) OJ L 317, 15.12.2000, p. 3.

(2) OJ L 1, 3.1.1994, p. 3.

(3) OJ L 278, 8.10.1976, p. 5. Act as last amended by Council Decision 2002/772/EC, Euratom (OJ L 283, 21.10.2002, p. 1).

(4) The figures quoted are indicative and based on the 2003 data published by Eurostat.

(5) OJ L 79, 22.3.2002, p. 42.

(6) Council Regulation (EEC) No 3906/89 of 18.12.1989 on economic aid to certain countries of Central and Eastern Europe (OJ L 375, 23.12.1989, p. 11). Regulation as last amended by Regulation (EC) No 769/2004 (OJ L 123, 27.4.2004, p.1).

(7) Commission Regulation (EC) No 2760/98 of 18.12.1998 concerning the implementation of a programme for cross-border cooperation in the framework of the PHARE programme (OJ L 345, 19.12.1998, p. 49). Regulation as last amended by Regulation (EC) No 1822/2003 (OJ L 267, 17.10.2003, p. 9).

- (8) OJ L 161, 26.6.1999, p. 68.
- (9) Council Regulation (EC, Euratom) No 1605/2002 of 25.6.2002 (OJ L 248, 16.9.2002, p. 1).
- (10) Council Regulation (EC) No 1267/1999 of 21.6.1999 establishing an Instrument for Structural Policies for Pre-Accession (OJ L 161, 26.6.1999, p. 73). Regulation as last amended by Regulation (EC) No 769/2004 (OJ L 123, 27.4.2004, p. 1).
- (11) OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 723/2004 (OJ L 124, 27.4.2004, p. 1).
- (12) OJ L 130, 25.5.1994, p. 1. Regulation as last amended by the 2003 Act of Accession (OJ L 236, 23.9.2003, p. 33).
- (13) Council Regulation (EC) No 1268/1999 of 21.6.1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of Central and Eastern Europe in the pre-accession period (OJ L 161, 26.6.1999, p. 87). Regulation as last amended by Regulation (EC) No 2008/2004 (OJ L 349, 25.11.2004, p. 12).
- (14) OJ L 161, 26.6.1999, p. 1. Regulation as last amended by the 2003 Act of Accession (OJ L 236, 23.9.2003, p. 33).
- (15) OJ L 184, 17.7.1999, p. 23.
- (16) 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)
- (17) OJ L 270, 21.10.2003, p. 78.