

Guidelines on Trading with the European Community (EC)

January 2008

A practical guide for Kimberley Participants and companies involved in trade in rough diamonds with Europe

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Disclaimer

This document is provided as a service to interested parties. It is non-binding guidance and does not represent the official view of the European Communities, nor should it be taken as legal advice. You are advised to seek further advice before relying on anything herein.

For more information:

EU and Kimberley Process: http://ec.europa.eu/external_relations/kimb/intro/index.htm

Kimberley Process website: <http://www.kimberleyprocess.com>

1. **Introduction**

The European Union (EU)/European Community (EC) currently comprises 27 states.

It is a single market and an economic and customs union. For most international trade matters, including for the purposes of the Kimberley Process Certification Scheme (KPCS), the European Community is considered as one entity without internal borders.

One set of rules applies for the twenty seven customs administrations of the Member States for import or export transactions at the external borders of the single market.

The EC as a whole is a Participant in the KPCS, and a single Regulation applies common rules in all Member States.

Applicable legal texts can be found here:

http://ec.europa.eu/comm/external_relations/kimb/intro/index.htm

Rough diamonds may legally be exported to or imported from any of the 27 Member States which, at January 2008, are the following:.

Austria	Belgium	Bulgaria
Cyprus	Czech Republic	Denmark
Estonia	Finland	France
Germany	Greece	Hungary
Ireland	Italy	Latvia
Lithuania	Luxembourg	Malta
Poland	Portugal	Romania
Slovakia	Slovenia	Spain
Sweden	The Netherlands	United Kingdom

2. *Imports of rough diamonds into the EU/EC*

- To facilitate the uniform application of EC customs and tariffs legislation by the customs services of each Member State, the EC created the Integrated Tariff of the Community (**TARIC**, Tarif Intégré de la Communauté) and a Combined Nomenclature (CN) in 1987.
- TARIC is an electronic system that indicates all customs duties or commercial policy measures applicable to any given product. Its use is obligatory in customs declarations in trade with third countries.
- Importers or economic operators can freely choose a point of entry at an external border of the EC for the import of rough diamonds.
- If rough diamonds are registered at any Community customs authority for import into the European Community, TARIC automatically flags the existence of a trade restriction (electronic warning screen) and refers to Council Regulation (EC) No 2368/2002 implementing the Kimberley Process certification scheme for the international trade in rough diamonds, which specifies the applicable rules.

Article 3 provides: “The import of rough diamonds into the Community shall be prohibited unless all of the following conditions are fulfilled:

- (a) the rough diamonds are accompanied by a certificate validated by the competent authority of a participant (Kimberley process);
- (b) the rough diamonds are contained in tamper-resistant containers, and the seals applied at export by that participant are not broken;
- (c) the certificate clearly identifies the consignment to which it refers.”

- Every import of rough diamonds must be verified by a **Community authority**.

A Community authority is a competent authority designated by a Member State and agreed by the Commission to fulfill certain tasks in connection with the implementation of the KPCS, namely the verification of incoming shipments for conformity with KP rules and the issuance of KP Certificates for export shipments.

- **If there is a Community authority in either**
- **the Member State where the rough diamonds are imported, or**
 - **the Member State for which they are destined**

the container(s) and certificate(s) should be submitted for verification, together and at the earliest opportunity, to the Community authority in either the importing or the destination Member State, as applicable.

- **If the above does not apply**, then the importer can choose which Community authority it will submit the shipment and certificate to, for verification.

The customs authorities at the point of entry into Community territory should register the shipment of rough diamonds for the **external transit procedure**. This procedure, as provided for in Council Regulation (EEC) No 2913/92 of 12 October 1992, allows the movement of goods from one point to another within the customs territory of the Community, without such goods being subject to import duties.

Registration for this procedure allows the transfer of the rough diamonds to a Community authority for verification.

After verification by a Community authority, the goods are submitted to the relevant national customs authorities for regular customs procedures.

Article 4 provides:

1. Containers and the corresponding certificates shall be submitted for verification, together and at the earliest opportunity, to a Community authority either in the Member State where they are imported or in the Member State for which they are destined, as indicated in the accompanying documents.
2. In cases where rough diamonds are imported into a Member State where there is no Community authority, they shall be submitted to the appropriate Community authority in the Member State for which they are destined. If a Community authority exists neither in the importing Member State nor in the Member State of destination they shall be submitted to an appropriate Community authority in another Member State.
3. The Member State where the rough diamonds are imported shall ensure their submission to the appropriate Community authority provide for in paragraphs 1 and 2. Customs transit may be granted to that effect. If such customs transit is granted, the verification provide for by this Article shall be suspended until arrival at the appropriate Community authority.
4. The importer shall be responsible for the proper movement of the rough diamonds and the costs thereof.

Community authorities

- The following provides general information on the general procedures at the Community Authorities.
- **Importers/exporters should contact the CA they wish to use *in the first instance*, who will provide further details if necessary.**
- There are currently Community Authorities in:
 - Antwerp (Belgium),
 - London (United Kingdom),
 - Idar-Oberstein (Germany),
 - Prague (Czech Republic),
 - Bucharest (Romania)
 - Sofia (Bulgaria)
- Community Authorities verify if the content of a container matches the particulars on the corresponding certificate.
- Imports to be verified by the Czech Community Authority should be sent to the *Special Customs Office Prague D1 at the General Directorate of Customs, Budějovická str. 7, Prague 4*. Persons handling rough diamonds in the Czech Republic are obliged to register with the General Directorate of Customs¹.
- Contact details are provided in Section 10 of this document and are available on-line:

http://ec.europa.eu/external_relations/kimb/intro/address.htm

¹ For more information:

Act No. 440/2003 Coll., on the handling of rough diamonds, the conditions of their import, export and transit, and amending certain acts, as amended by the Act No. 60/2005:

<http://www.cs.mfcr.cz/CmsGrc/Obchod-se-zbozím/Kimberlejsky-proces/440en.htm>

Registration form:

<http://www.cs.mfcr.cz/CmsGrc/Obchod-se-zbozím/Kimberlejsky-proces/registrace.htm>

3. **Exports of rough diamonds from the EU/EC**

- To obtain a Community certificate for export, the exporter must submit an **export declaration** and/or an **invoice** to a Community authority. He must provide conclusive documentary evidence that the diamonds to be exported were legally imported into the Community². This may include the provision of invoices from the original import certificate onwards.
- According to Article 13 of Council Regulation (EC) No 2368/2002, the Community authority may accept as conclusive evidence of lawful import into the Community a signed declaration by the exporter to that effect, if the exporter is a member of a diamond organisation implementing the system of warranties and industry self-regulation referred to in Article 17 of the Regulation.
- Before issuing a Community certificate, the Community authority may decide to **physically inspect** the contents of the consignment in order to verify that the conditions laid down in Council Regulation (EC) No 2368/2002 have been met.
- Within the validity period of the KP Certificate, economic operators are in principle free to choose when and where customs formalities and the actual export from the Community are to take place. Verification of the actual export of the shipment is undertaken by control of import receipts from the receiving participant.
- The Community authorities in London, Prague and Idar-Oberstein systematically send advance notice of shipments by e-mail containing information on the carat weight, value, country of origin or provenance, exporter, importer and the serial number of the Certificate to the importing authorities of participants. The Community authority in Antwerp sends this information to all those Participants that have made a respective request.
- All details of rough diamond shipments are recorded on a computerized database and reported to the Commission as the KP authority on a monthly basis in accordance with Article 15 of Council Regulation (EC) No 2368/2002.

² According to Article 12(1) of Council Regulation (EC) No 2368/2002, a Community authority may issue a Community certificate to an exporter when it has established that the exporter has provided conclusive evidence that

- (a) the rough diamonds for which a certificate is being requested were lawfully imported in accordance with the provisions of Article 3,
- (b) the other information requested on the certificate is correct;
- (c) the rough diamonds are effectively destined for arrival in the territory of a participant, and
- (d) the rough diamonds are to be transported in a tamper-resistant container

4. Statistical reporting

Community Authorities provide statistical returns to the EC, which in turn is responsible for compilation and submission of statistical reports. A summary of Kimberley Statistics can be found here: <https://mmsd1.mms.nrcan.gc.ca/kimberleystats/default.asp>

5. Import confirmation and resolution of discrepancies and difficulties

Technical Guideline 14 (October 2004) states:

Exporting Participants are requested to exchange with Importing Participants on a bilateral basis quarterly lists of KP Certificate numbers accompanying rough diamond shipments. Importing Participants are requested to verify and flag any missing numbers and other discrepancies to the Exporting Participant and the Chair.

Questions concerning import confirmation should be brought to the attention of the relevant Community Authority as much as possible.

Only if a Community Authority is not in a position to answer a question, or if additional information that the Community Authority cannot provide is needed, should this question be addressed to the EC.

6. Resolution of discrepancies and other difficulties

The same principle as under '5' applies to the resolution of discrepancies and other difficulties. As much as possible, these issues should be solved with the relevant Community Authority. The resulting solution should be communicated to the EC.

7. FAQs

- Special member state territories and their status in respect of the Kimberley Process (outermost regions, overseas countries and territories etc)

The following are part of the territory of the European Community and Regulation 2368/2002 applies directly to them:

- French Guiana, Guadeloupe, Martinique, Réunion (France)
- Gibraltar (United Kingdom)
- Åland (Finland)
- Azores, Madeira (Portugal) (NB some exceptions may apply)
- Canary Islands (Spain)
- Ceuta and Melilla (Spain) (NB some exceptions may apply)

The following are not part of the territory of the European Community:

- French Polynesia, New Caledonia, Wallis and Futuna, French Southern and Antarctic Lands, Mayotte, Saint Barthelemy, Saint Martin, Saint Pierre and Miquelon (France)
- Aruba, the Netherlands Antilles (Netherlands)
- Faroe Islands, Greenland (Denmark)
- Guernsey, Jersey, the Isle of Man, Akrotiri and Dhekelia (Sovereign Base Areas), Bermuda, the Turks and Caicos Islands, Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, the Falkland Islands, the Pitcairn Islands, Saint Helena, British Indian Ocean Territory, South Georgia and the South Sandwich Islands (United Kingdom)

If you have any questions regarding exports to, or imports from any of the above referenced territories and countries, or any areas in customs union with the EU, please do not hesitate to contact us.

- What if a member state does not have a Community Authority?

Shipments of rough diamonds are possible to and from anywhere in the Community. Where a Member State does not have a Community authority, the exporter or importer may choose which Community authority to use.

8. ***Procedures for irregular shipments***

- Regulation (EC) No 2368/2002, implementing the KPCS in the EC, sets out the conditions under which imports or exports of rough diamonds into or out of the European Community are permitted. Given that the Regulation is directly applicable law throughout the Community, all relevant authorities (notably national customs authorities) are bound by its provisions.
- The Regulation provides that the import of rough diamonds into the Community, and the export of rough diamonds from the Community, are prohibited unless the very clear conditions set out in Article 3 (for imports) or Article 11 (for exports) are fulfilled.
- The Regulation also provides that in any case where the conditions are not fulfilled, the competent authorities (specifically, one of the Community authorities or any other competent authority of the Member State concerned, such as customs) has to detain the shipment.
- A shipment cannot therefore be released (or sent back to the country of provenance, in the case of incoming shipments) unless all the conditions laid down in the EC Regulation are met. This is a strong deterrent to any attempt to circumvent the provisions of the Regulation.
- In addition, the Community Customs Code of the EC³ (which is also directly applicable law in all Member States) contains provisions relating to the handling of goods to which restrictions or prohibitions apply (as in the case of rough diamonds). Specifically, the Customs Code provides that goods for which the required documentation for the relevant customs procedure has not been produced **cannot be released**. The Customs Code further provides that any necessary measures, including **confiscation** and **sale**, are to be taken to deal with goods which cannot be released.
- Regulation (EC) No 2368/2002 also provides (Article 27) that all Member States are to determine sanctions in their national law or regulations for infringements of the Regulation. While the precise sanctions are at the discretion of the Member States (and may be based on existing customs or external trade laws or regulations), the Regulation stipulates that the sanctions have to be **effective, proportionate and dissuasive** and capable of preventing those responsible for the infringement from obtaining any economic benefit from their action.
- The Commission has an overview of the sanctions in place in different Member States pursuant to Article 27, as well as a detailed list of all contraventions of the Regulation (EC) No 2368/2002.

³ Council Regulation (EEC) No 2913/92 of 12 October 1992; cf. notably Articles 56-58, 73 and 75.

9. **Industry self-regulation in the EC**

- The European Community explicitly endorses the principle of **industry self-regulation** as laid down in Section IV of the KPCS Document in its legislation implementing the Kimberley Process Certification Scheme in the Community.
- Chapter IV (“Industry Self-Regulation”) of Council Regulation (EC) No 2368/2002 sets out requirements for the establishment of a system of warranties and industry self-regulation by organisations representing traders in rough diamonds should be guided and provides for a “**fast track**” procedure for organisations applying a system of warranties and industry self-regulation.
- It is important to clarify that the EC does not understand by the term ‘industry self-regulation’ the delegation of governmental responsibilities to industry bodies. Rather it means the granting of a privilege (‘fast track’ issuance of KPCs) to companies subject to considerable responsibilities as members of industry bodies.
- To be listed in Annex V of Council Regulation (EC) No 2368/2002n an organisation representing traders in rough diamonds has to provide conclusive evidence to the Commission that it has adopted rules and regulations obliging the organisation and its members to respect specific principles and procedures set out in Article 17 of the Regulation.
- In particular, the rules and regulations of such organisations must oblige members:
 - to sell only diamonds purchased from legitimate sources in compliance with the Kimberley Process Certification Scheme;
 - to guarantee that, on the basis of their personal knowledge and/or written warranties provided by the suppliers of rough diamonds, the rough diamonds sold are not conflict diamonds;
 - not to buy rough diamonds from suspect or unknown sources of supply and/or rough diamonds originating in non-participants in the KP certification scheme;
 - not to knowingly buy, sell or assist others in buying or selling conflict diamonds;
 - to create and maintain for at least three years records of invoices received from suppliers and issued to customers, and
 - instruct an independent auditor to certify that these records have been created and maintained accurately.
- The rules and regulations adopted by the organisation must foresee disciplinary measures, in particular the obligation for the organisation to

expel any member found, after a due process inquiry by the organisation itself, to have seriously violated the principles laid down in Article 17 of the Regulation.

- Community Authorities communicate relevant developments and information on the Kimberley Process to the Bourses:
 - Updates to KP Participants list
 - New EC Regulations
 - New technical guidelines, best practices, administrative decisions etc
 - Chair's notices
 - practical guidelines for import and export procedures etc.
- In turn, Bourses should pass on this information to their members.
- In accordance with Article 13 of Council Regulation (EC) No 2368/2002, Members of a listed organisation can obtain a Community certificate on the basis of a signed declaration by that member that the rough diamonds to be exported were lawfully imported.
- By its Regulations No 762/2003 of 30 April 2003 and No 1214/2003 of 7 July 2003, the Commission granted listing in Annex V to:
 - Antwerpsche Diamantkring C.V.,
 - Beurs voor Diamanthatel C.V.,
 - Diamantclub van Antwerpen C.V.,
 - Vrije Diamanthatel N.V. (all based in Antwerp) and,
 - the London Diamond Bourse and Club

upon their application and following verification that each of the bourses has adopted rules and regulations, in particular a binding Code of Conduct, that ensure compliance by the bourses and their members with the requirements laid down in the Regulation.

On 7 September 2004, the Belgian Minister of Economy and the Presidents of the four Antwerp Bourses signed a Protocol on the modalities for the implementation of the provisions on industry self-regulation in Belgium. This Protocol provides a framework for the Belgian Community Authority with regard to the monitoring of the functioning and implementation of article 17.

- In accordance with Article 17(5) of Council Regulation (EC) No 2368/2002, the Community authorities in Antwerp and London provide the European Commission with annual reports on their assessment of the functioning of the system of warranties and industry self-regulation on an annual basis.
- In a small number of cases, members of bourses have failed to submit the required attestations by independent auditors and have been subjected to

disciplinary hearings. Some have been temporarily suspended from the ‘fast track’ procedure. This has sometimes resulted in the required attestation being provided, but where it has not, the companies concerned have been suspended from membership of the relevant bourse and are therefore required to provide “conclusive evidence” for each export of rough diamonds rather than benefiting from the fast track procedure.

- The Community Authorities have carried out, or intend to carry out, random spot-checks of company audits. This involves:
 - examining the invoices of the companies, and checking for the presence of the warranty on the invoices;
 - checking the presence of Kimberley Process certificates in respect of imports and exports of rough diamonds;
 - checking data on the annual stock declarations against information on the KPC database held by the Community Authority.

10. Contact points

Kimberley Process

www.kimberleyprocess.com

European Community

Unit A/2

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Community authorities

Under the terms of the relevant legislation (Council Regulation (EC) No 2368/2002 of 20 December 2002), each Member State of the European Community may designate a competent authority at the national level to act as a 'Community authority' acting as the importing and exporting authority for the purposes of the EC. After verification that such an authority is in a position to exercise effectively the role of importing and exporting authority in accordance with the provisions of the KPCS and relevant EC legislation, and consultation of a Management Committee composed of representatives of all Member States of the EC, each authority is listed in a Commission Regulation amending Council Regulation (EC) No 2368/2002. There are now six such Community authorities whose contact details, including the names of contact persons, are given below:

They issue Certificates with numbers as listed below:

	EC Certificates N°s:
Belgium	from EC 25,001 upwards.
UK	from EC 001 to EC 20,000
Germany	from EC 20,001 to EC 21,000
Czech Republic	from EC 21,001 to EC 22,000
Romania	from EC 22,001 to EC 23,000
Bulgaria	EC 23,001 to EC 24,000

1. Community authority in Belgium:

Federal Public Service of Economy
Italielei 124, bus 71
2000 Antwerp
Belgium
Tel: +32 3 206 9487/71/72, Fax: +32 3 206 9490
Email: kpcs-belgiumdiamonds@economie.fgov.be

Contact persons: Ms Frieda Coosemans, Ms Anja Waem
(fax and address as above)
Tel: +32 3 206 9472/87
Email: frieda.coosemans@economie.fgov.be, anja.waem@economie.fgov.be
For registrations of companies :
Daniël Daeyaert, tel +32 3 206 94 81
e-mail : daniel.daeyaert@economie.fgov.be

Location for the controls of the import- and export shipments and issuance of KP-certificates at export:

Diamond Office
Hoveniersstraat 22
2018 Antwerp
tel. +32 3 222 05 11

The Community authority in Belgium issues EC certificate numbers from EC 25,001 upwards.

2. Community Authority in the United Kingdom

Government Diamond Office
Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH
United Kingdom
Tel: +44 20 7008 6903, Fax: +44 20 7008 3905
Email: GDO@gtnet.gov.uk

Contact person: Mr Stephen Russell and Miss Nini Njoku
Email: Stephen.Russell@fco.gov.uk and Nini.Njoku@fco.gov.uk

The Community authority in the United Kingdom issues EC certificates from EC 001 to EC 20,000.

3. Community Authority in Idar-Oberstein, Germany

Hauptzollamt Koblenz
- Zollamt Idar-Oberstein –
Zertifizierungsstelle für Rohdiamanten
Hauptstrasse 197
D-55743 Idar-Oberstein
Germany
Tel. + 49 678 156 270, Fax: +49 678 156 2719
Email: poststelle@zabir.bfinv.de

Contact person: Mr Jürgen Bender (details as above)

or

Bundesfinanzdirektion Südost
Krelingstraße 50
90408 Nürnberg
Tel. +49 911 376-3561; 376-3586; 376-3582, Fax. +49 911 376-2270
Email: diamond.cert@ofdn.bfinv.de

Contact person: Ms Hiltraud Reinhardt
Email: hiltraud.reinhardt@ofdko-nw.bfinv.de

(NB: The Community authority in Germany issues EC certificates numbers from EC 20,001 to EC 21,000)

4. Community Authority in Prague, Czech Republic:

General Directorate of Customs (Generální ředitelství cel)
Budějovická 7
140 96 Praha 4
Czech Republic
Tel: + 420 261 333 841, Fax: + 420 261 333 870
Email: diamond@cs.mfcr.cz

Contact person:
Ms Petra Neumanova (details as above)
Email: p.neumanova@cs.mfcr.cz

The Community authority in the Czech Republic issues EC certificates from EC 21,001 to EC 22,000.

5. Community Authority in Bucharest, Romania

National Authority for Consumer Protection
Precious Metals and Precious Stones Department
5 Georges Clemenceau Street
Sector 1, Bucharest 010295, Romania
Tel: +40 21 318 4635, +40 21 312 1275, Fax: +40 21 318 4635, +40 21 314 3462
Email: MihaelaPetcu@anpc.ro , website: www.anpc.ro

The Community authority in Romania issues EC certificates from EC 22,001 to EC 23,000.

6. Community authority in Sofia, Bulgaria

Ministry of Finance
External Finance Directorate
102, G. Rakovski str.
Sofia, 1040
Bulgaria
Tel. (359-2) 98 59 24 01/98 59 24 10/98 59 24 15, Fax (359-2) 98 12 498
E-mail: feedback@minfin.bg

Contact person:
Ms. Antonia Ruskova (details as above)
Email: a.ruskova@minfin.bg

The Community authority in Bulgaria issues EC certificates from EC 23,001 to EC 24,000.