EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DEFINITION OF TREATIES) (AGREEMENT ON ENLARGEMENT OF THE EUROPEAN ECONOMIC AREA) ORDER 2007

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

This Order would declare that the Agreement on the Participation of the Republic of Bulgaria and Romania in the European Economic Area ("the Agreement"), signed on 25th July 2007, is to be regarded as a Community Treaty as defined in section 1(2) of the European Communities Act 1972. The provisions of section 2 of the European Communities Act 1972 (which provide for the general implementation of Community Treaties) would then apply in relation to the Agreement, and could be used for the implementation of its provisions.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 The Agreement is concluded by the European Community and all its Member States, and must be ratified by each of those States as well as by the Community before it can come into force. The Government intends, subject to the making of this Order, to ratify the Agreement on behalf of the United Kingdom.

4.2 The United Kingdom must be in a position to implement all the provisions of the Agreement before it can ratify the Agreement. The proposed Order would provide the necessary powers, under section 2 of the European Communities Act 1972.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Secretary of State for Foreign and Commonwealth Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the draft European Communities (Definition of Treaties)(Agreement on Enlargement of the European Economic Area) Order 2007 are compatible with the Convention rights."

7. Policy background

7.1 By Article 6(6) of the Act of Accession annexed to the Treaty of Accession to the European Union signed at Luxembourg on 25th April 2005, the Republic of Bulgaria and Romania undertook to accede to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 ("the EEA Agreement"). The EEA Agreement extended the internal market to Iceland, Liechtenstein and Norway and provided in Article 128 that any European States becoming members of the European Union must also apply to become parties to the EEA Agreement. The present Agreement achieves this in respect of the Republic of Bulgaria and Romania.

7.2 The Agreement covered by the Order sets out the amendments to the EEA Agreement consequent upon Bulgaria and Romania's participation therein. The bulk of the amendments originate from the Treaty of Accession of the Republic of Bulgaria and Romania. The arrangements for the application of Community acquis by the Republic of Bulgaria and Romania, such as technical adaptations and transition periods, which were agreed in the EU enlargement negotiations, are taken over from the Act of Accession in the EEA Agreement.

7.3 Aside from the technical adaptations, the Agreement has been negotiated on the basis that any substantial modalities, notably concerning financial contributions and market access concessions in respect of fish, should be agreed only for the remainder of the five year period that was negotiated in the context of the 2004 EU/EEA enlargement, i.e. from 1 January 2007 to 30 April 2009.

7.4 On that basis, it has been agreed that the EEA EFTA States (Iceland, Norway and Liechtenstein) will provide 21.5 million euro for Bulgaria and 50.5 million euro for Romania through the EEA financial mechanism from 1 January 2007 to 30 April 2009, when the current financial mechanisms expire. Norway will provide 20 million euro for Bulgaria and 48 million euro for Romania as additional bilateral financial contributions over the same period. In return, the Community will grant Norway and Iceland a number of market access concessions in the field of fisheries, limited in time until 30 April 2009.

7.5 The bilateral Norwegian financial contributions to the Republic of Bulgaria and Romania, respectively, as well as the EC Norway and EC Iceland fish agreements are separate agreements, but integral parts of the overall EEA enlargement package, thus consisting of the Agreement and four related agreements.

7.6 It was the delay in reaching agreement on the financial modalities and fisheries market access concessions with the EFTA States, that led to the negotiations on the Agreement only being concluded on 29 March 2007 after the Republic of Bulgaria and Romania had become members of the European Union on 1st January 2007.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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