

EURO-MEDITERRANEAN AGREEMENT ESTABLISHING AN ASSOCIATION BETWEEN THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES, OF THE ONE PART AND EGYPT, OF THE OTHER PART¹²⁷

**CHAPTER 2
COMPETITION AND OTHER ECONOMIC MATTERS**

Article 35

1. The following are incompatible with the proper functioning of the Agreement, in so far as they may affect trade between the Community and Egypt:

- (i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;
- (ii) abuse by one or more undertakings of a dominant position in the territories of the Community or Egypt as a whole or in a substantial part thereof;
- (iii) any public aid which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods.

2. The Association Council shall, within five years of the entry into force of the Agreement, adopt by decision the necessary rules for the implementation of paragraph 1.

Until these rules are adopted, the provisions of Article 23 bis shall be applied as regards the implementation of paragraph 1(iii).

3. Each Party shall ensure transparency in the area of public aid, inter alia by reporting annually to the other Party on the total amount and the distribution of the aid given and by providing, upon request, information on aid schemes. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

4. With regard to agricultural products referred to in Title II, Chapter 3, paragraph 1(iii) does not apply. The WTO Agreement on Agriculture and the relevant provisions on WTO Agreement on Subsidies and Countervailing duties shall apply with regard to these products.

5. If the Community or Egypt considers that a particular practice is incompatible with the terms of the first paragraph of this Article, and:

- is not adequately dealt with under the implementing rules referred to in paragraph 2, or

- in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other Party or material injury to its domestic industry, including its services industry,

it may take appropriate measures after consultation within the Association Committee or after thirty working days following referral for such consultation.

With reference to practices incompatible with paragraph 1(iii) of the present Article, such appropriate measures, when the WTO rules are applicable to them, may only be adopted in accordance with the procedures and under the conditions laid down by the WTO or by any other relevant instrument negotiated under its auspices and applicable to the Parties.

6. Notwithstanding any provisions to the contrary adopted in conformity with paragraph 2, the Parties shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.

Article 36

The Member States and Egypt shall progressively adjust, without prejudice to their commitments to the GATT, any State monopolies of a commercial character, so as to ensure that, by the end of the fifth year following the entry into force of this Agreement, no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of the Member States and Egypt. The Association Committee will be informed about the measures adopted to implement this objective.

Article 37

With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Association Council shall ensure that as from the fifth year following the date of entry into force of this Agreement there is neither enacted nor maintained any measure distorting trade between the Community and Egypt contrary to the Parties' interests. This provision should not obstruct the performance in law or in fact of the particular tasks assigned to these enterprises.

JOINT DECLARATION ON ARTICLE 35

The Parties recognize that Egypt is currently in the process of drafting its own competition law. This will provide the necessary conditions for agreeing on the implementation rules referred to in paragraph 2 of article 35. While drafting its law, Egypt will take into account the competition rules developed within the European Union.

Until the implementation rules referred to in Article 35 paragraph 2 are adopted, if serious problems arise, the Parties may raise the matter for consideration in the Association Council.

DECLARATION BY THE EUROPEAN COMMUNITY ON ARTICLE 35

The Community declares that, until the adoption by the Association Council of the implementing rules on fair competition referred to in Art. 35 paragraph 2, in the context of the interpretation of Article 35 paragraph 1, it will assess any practice contrary to that Article on the basis of the criteria resulting from the rules contained in Articles 85, 86 and 92 of the Treaty establishing the European Community, and, for products covered by the Treaty establishing the European Coal and Steel Community, by those contained in Articles 65 and 66 of that Treaty and the Community rules on State aids, including secondary legislation.

The Community declares that, as regards the agricultural products referred to in Title II Chapter 3, the Community will assess any practice contrary to paragraph 1(i) of Article 35 according to the criteria established by the Community on the basis of Articles 42 and 43 of the Treaty establishing the European Community and in particular those established in Council Regulation No. 26/62, and any practice contrary to paragraph 1(iii) of Article 35 according to the criteria established by the European Community on the basis of Articles 42 and 92 of the Treaty establishing the European Community.