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Price: EUR 18

⁽¹⁾ Text with EEA relevance

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EN

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⁽¹⁾ Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 150/2008

of 18 February 2008

amending the scope of the anti-dumping measures imposed by Regulation (EC) No 130/2006 on imports of tartaric acid originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾ (the basic Regulation), and in particular Article 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

1. MEASURES IN FORCE

- (1) By Regulation (EC) No 130/2006⁽²⁾ (the original Regulation) the Council imposed a definitive anti-dumping duty on imports of tartaric acid originating in the People's Republic of China (PRC).

2. PRESENT INVESTIGATION

2.1. Procedure

- (2) The Commission received a request from CU Chemie Uetikon GmbH ('the applicant'), an importer from Germany, for a partial interim review pursuant to Article 11(3) of the basic Regulation. The applicant alleged that the so-called D(-) type is a distinct product from other types of tartaric acid, due to its

specific molecular structure, which in turns determines specific chemical characteristics not shared by other types of the product concerned and should not be therefore subject to the abovementioned measures.

- (3) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission, on 17 March 2007, initiated an investigation⁽³⁾ according to Article 11(3) of the basic Regulation. The investigation was limited in scope to the definition of the product covered by the measures in force.
- (4) The Commission officially advised the applicant importer, the authorities of the exporting country and all parties known to be concerned, of the initiation of this review. Questionnaires were sent to Community producers, importers, users and exporting producers who cooperated in the investigation that led to the existing measures. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
- (5) Two questionnaire replies were received and one party was granted a hearing.
- (6) The Commission sought and verified all the information it deemed necessary for the purpose of assessing whether the scope of the measures should be amended and carried out investigations at the premises of the following companies:

— CU Chemie Uetikon GmbH, Lahr, Germany,

— Longchem Corporation, Hangzhou, China.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ L 23, 27.1.2006, p. 1.

⁽³⁾ OJ C 63, 17.3.2007, p. 2.

- (7) The investigation period covered the period from 1 January 2006 to 31 December 2006.

manufacture of its products, rather than just using one (less expensive) type of tartaric acid.

2.2. Product concerned

- (8) The product concerned, as defined in the original Regulation, is tartaric acid originating in the People's Republic of China, currently classifiable within CN code 2918 12 00. The product concerned is used in wine, in beverage and food additives, as a retardant in plaster and in numerous other products. It can be obtained either from the by-products of wine making, as is the case with all Community producers, or via chemical synthesis from petrochemical compounds, as is the case with all PRC exporting producers.

2.3. Findings

- (9) Tartaric acid is a 'chiral' molecule, i.e. it exists in different geometric configurations. The 'L-(+)' and 'D-(-)' types (hereinafter 'L' and 'D' tartaric acid respectively), whose molecules are a mirror image of each other, are of particular relevance. Those types of tartaric acid are distinguished in widely accepted industry references such as Chemical Abstract Services (CAS) or European Inventory of Existing Commercial Chemical Substances (Einecs). They can be readily distinguished from one another through a test which measures the rotation of polarised light. The direction of rotation for 'L' tartaric acid is positive while that for 'D' tartaric acid is negative.
- (10) The investigation which led to the measures in force focused on naturally-occurring tartaric acid. It was found that the product manufactured and sold by the Chinese producers had the same basic characteristics as the product of the Community industry, and was in competition with the latter for a majority of the above-mentioned applications.
- (11) 'D' tartaric acid, on the other hand, is not naturally-occurring and can only be obtained via chemical synthesis. This type of tartaric acid is not produced by the Community industry and it is not recognised in the Community as a food additive. Its known applications are in the pharmaceutical industry, in the production of certain auxiliary substances which are themselves used to produce the active ingredients of medicines. Either 'L' or 'D' tartaric acid can be used in this type of pharmaceutical applications, depending on the intended characteristics of the end product. However, the 'D' and 'L' types cannot be substituted for one another within any single application. These conclusions were confirmed by the fact that the applicant, a company producing auxiliary substances for the pharmaceutical industry, purchased and used both 'L' and 'D' tartaric acid in the

- (12) The investigation has also shown that the price of 'D' tartaric acid is 4 to 5 times higher than that of other types of tartaric acid, which is a result of the different production process used in its manufacture. This higher price restricts the market for 'D' tartaric acid to applications such as mentioned above, where other, less expensive types of tartaric acid cannot be used. As a result of those differences in application and costs, the size of the market for 'D' tartaric acid is estimated to be less than 1 % of the overall market for tartaric acid.
- (13) In summary, the investigation has found that 'D' tartaric acid has substantially different physical and chemical characteristics from those of 'L' tartaric acid produced by the Community industry, meaning that the two types are not interchangeable and not competing in the Community market. Given those differences between 'D' tartaric acid and the product investigated, it is concluded that 'D' tartaric acid should not be covered by the product scope of the measures.
- (14) The above conclusions were based on the characteristics of pure 'D' tartaric acid, and therefore do not apply to any mixtures of 'D' tartaric acid with other products.
- (15) Interested parties were informed of the above conclusions.
- (16) The Community industry, while not questioning the findings of the investigation, expressed its concern that exempting one product type could facilitate the circumvention of the measures.
- (17) It is considered, however, that given the differences in prices and quantities involved, circumvention can promptly be detected through statistical data. Furthermore, 'D' tartaric acid can be easily distinguished from other types through an optical test as mentioned above.
- (18) The Commission will monitor the import data of 'D' tartaric acid and the other types which are subject to measures. Should the quantities and/or prices of imports of 'D' tartaric acid into any Member State depart from the normal trend, the Commission will immediately alert the appropriate customs authorities.

3. RETROACTIVE APPLICATION

- (19) Given the above, it is considered appropriate to amend the original Regulation to clarify the product definition and to exclude 'D' tartaric acid from the measures.
- (20) Since the present review investigation is limited to the clarification of the product scope and since it was not intended this product type be covered by the original measures, in order to prevent any consequent prejudice to importers of the product, it is considered appropriate that the findings be applied from the date of the entry into force of the original Regulation, including any imports subject to provisional duties between 30 July 2005 and 28 January 2006. Moreover, in particular in view of the relatively recent entry into force of the original Regulation and of the expected limited number of requests for refunds, there is no overriding reason not to provide for such retroactive application.
- (21) Consequently, for goods not covered by Article 1(1) of Regulation (EC) No 130/2006 as amended by this Regulation, the definitive anti-dumping duties paid or entered in the accounts pursuant to Article 1(1) of Regulation (EC) No 130/2006 in its initial version should be repaid or remitted.
- (22) Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.
- (23) This review does not affect the date on which Regulation (EC) No 130/2006 will expire pursuant to Article 11(2) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(1) of Regulation (EC) No 130/2006 is hereby replaced by the following:

'1. A definitive anti-dumping duty is hereby imposed on imports of tartaric acid, excluding D-(-)-tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, falling within CN code ex 2918 12 00 (TARIC code 2918 12 00 90), and originating in the People's Republic of China.'

Article 2

For goods not covered by Article 1(1) of Regulation (EC) No 130/2006 as amended by this Regulation, the definitive anti-dumping duties paid or entered in the accounts pursuant to Article 1(1) of Regulation (EC) No 130/2006 in its initial version shall be repaid or remitted, pursuant to Article 236 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁾. Repayment or remission shall be requested from national customs authorities in accordance with applicable customs legislation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply from 28 January 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 18 February 2008.

For the Council
The President
D. RUPEL

⁽¹⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

COMMISSION REGULATION (EC) No 151/2008**of 21 February 2008****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽¹⁾, and in particular Article 138(1) thereof,

Whereas:

- (1) Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes

the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 February 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

to Commission Regulation of 21 February 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	53,3
	JO	69,6
	MA	44,0
	TN	129,8
	TR	90,5
	ZZ	77,4
0707 00 05	JO	190,5
	MA	150,4
	TR	172,3
	ZZ	171,1
0709 90 70	MA	55,8
	TR	139,5
	ZZ	97,7
0709 90 80	EG	54,8
	ZZ	54,8
0805 10 20	EG	51,5
	IL	50,9
	MA	60,2
	TN	47,8
	TR	92,1
	ZZ	60,5
0805 20 10	IL	121,5
	MA	104,3
	ZZ	112,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	EG	82,4
	IL	74,9
	MA	129,1
	PK	65,4
	TR	75,8
	ZZ	85,5
0805 50 10	EG	107,9
	IL	124,7
	MA	114,0
	TR	118,1
	ZZ	116,2
0808 10 80	AR	96,3
	CA	88,1
	CL	60,8
	CN	88,8
	MK	39,9
	US	117,4
	ZZ	81,9
0808 20 50	AR	90,2
	CN	92,4
	US	121,6
	ZA	97,8
	ZZ	100,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 152/2008**of 21 February 2008****granting no export refund for butter in the framework of the standing invitation to tender provided for in Regulation (EC) No 581/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular the third subparagraph of Article 31(3) thereof,

Whereas:

(1) Commission Regulation (EC) No 581/2004 of 26 March 2004 opening a standing invitation to tender for export refunds concerning certain types of butter ⁽²⁾ provides for a permanent tender.

(2) Pursuant to Article 5 of Commission Regulation (EC) No 580/2004 of 26 March 2004 establishing a tender

procedure concerning export refunds for certain milk products ⁽³⁾ and following an examination of the tenders submitted in response to the invitation to tender, it is appropriate not to grant any refund for the tendering period ending on 19 February 2008.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the permanent tender opened by Regulation (EC) No 581/2004, for the tendering period ending on 19 February 2008 no export refund shall be granted for the products and destinations referred to in Article 1(1) of that Regulation.

Article 2

This Regulation shall enter into force on 22 February 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by the Council (EC) No 1152/2007 (OJ L 258, 4.10.2007, p. 3). Regulation (EEC) No 1255/1999 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 90, 27.3.2004, p. 64. Regulation as last amended by Regulation (EC) No 1543/2007 (OJ L 337, 21.12.2007, p. 62).

⁽³⁾ OJ L 90, 27.3.2004, p. 58. Regulation as last amended by Regulation (EC) No 128/2007 (OJ L 41, 13.2.2007, p. 6).

COMMISSION REGULATION (EC) No 153/2008**of 21 February 2008****fixing the export refunds on pigmeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat⁽¹⁾, and in particular the second paragraph of Article 13(3) thereof,

Whereas:

- (1) Article 13(1) of Regulation (EEC) No 2759/75 provides that the difference between prices on the world market for the products listed in Article 1 of that Regulation and prices for these products within the Community may be covered by an export refund.
- (2) Given the present situation in the market in pigmeat, export refunds should therefore be fixed in accordance with the rules and criteria provided for in Article 13 of Regulation (EEC) No 2759/75.
- (3) Article 13(3) of Regulation (EEC) No 2759/75 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of Regulation (EEC) No 2759/75 according to destination.
- (4) Refunds should be granted only on products that are allowed to move freely in the Community and that bear the health mark as provided for in Article 5(1)(a) of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin⁽²⁾.

Those products should also comply with the requirements of Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs⁽³⁾ and of Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption⁽⁴⁾.

- (5) The Management Committee for Pigmeat has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. Export refunds as provided for in Article 13 of Regulation (EEC) No 2759/75 shall be granted on the products and for the amounts set out in the Annex to this Regulation subject to the condition provided for in paragraph 2 of this Article.

2. The products eligible for a refund under paragraph 1 must meet the relevant requirements of Regulations (EC) No 852/2004 and (EC) No 853/2004, notably preparation in an approved establishment and compliance with the health marking requirements laid down in Annex I, Section I, Chapter III to Regulation (EC) No 854/2004.

Article 2

This Regulation shall enter into force on 22 February 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 282, 1.11.1975, p. 1. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2). Regulation (EEC) No 2759/75 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 139, 30.4.2004, p. 55. Corrected version in OJ L 226, 25.6.2004, p. 22. Regulation as last amended by Regulation (EC) No 1243/2007 (OJ L 281, 25.10.2007, p. 8).

⁽³⁾ OJ L 139, 30.4.2004, p. 1. Corrected version in OJ L 226, 25.6.2004, p. 3.

⁽⁴⁾ OJ L 139, 30.4.2004, p. 206. Corrected version in OJ L 226, 25.6.2004, p. 83. Regulation as last amended by Regulation (EC) No 1791/2006.

ANNEX

Export refunds on pigmeat applicable from 22 February 2008

Product code	Destination	Unit of measurement	Amount of refund
0203 11 10 9000	A00	EUR/100 kg	31,10
0203 21 10 9000	A00	EUR/100 kg	31,10
0203 12 11 9100	A00	EUR/100 kg	31,10
0203 12 19 9100	A00	EUR/100 kg	31,10
0203 19 11 9100	A00	EUR/100 kg	31,10
0203 19 13 9100	A00	EUR/100 kg	31,10
0203 19 55 9110	A00	EUR/100 kg	31,10
0203 22 11 9100	A00	EUR/100 kg	31,10
0203 22 19 9100	A00	EUR/100 kg	31,10
0203 29 11 9100	A00	EUR/100 kg	31,10
0203 29 13 9100	A00	EUR/100 kg	31,10
0203 29 55 9110	A00	EUR/100 kg	31,10
0203 19 15 9100	A00	EUR/100 kg	19,40
0203 19 55 9310	A00	EUR/100 kg	19,40
0203 29 15 9100	A00	EUR/100 kg	19,40
0210 11 31 9110	A00	EUR/100 kg	54,20
0210 11 31 9910	A00	EUR/100 kg	54,20
0210 19 81 9100	A00	EUR/100 kg	54,20
0210 19 81 9300	A00	EUR/100 kg	54,20
1601 00 91 9120	A00	EUR/100 kg	19,50
1601 00 99 9110	A00	EUR/100 kg	15,20
1602 41 10 9110	A00	EUR/100 kg	29,00
1602 41 10 9130	A00	EUR/100 kg	17,10
1602 42 10 9110	A00	EUR/100 kg	22,80
1602 42 10 9130	A00	EUR/100 kg	17,10
1602 49 19 9130	A00	EUR/100 kg	17,10

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

COMMISSION REGULATION (EC) No 154/2008**of 21 February 2008****fixing the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 31(3) thereof,

Whereas:

(1) Article 31(1) of Regulation (EC) No 1255/1999 provides that the difference between prices in international trade for the products listed in Article 1(a), (b), (c), (d), (e), and (g) of that Regulation and prices within the Community may be covered by an export refund.

(2) Commission Regulation (EC) No 1043/2005 of 30 June 2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽²⁾, specifies the products for which a rate of refund is to be fixed, to be applied where these products are exported in the form of goods listed in Annex II to Regulation (EC) No 1255/1999.

(3) In accordance with the first paragraph of Article 14 of Regulation (EC) No 1043/2005, the rate of the refund per 100 kilograms for each of the basic products in question is to be fixed each month.

(4) However, in the case of certain milk products exported in the form of goods not covered by Annex I to the Treaty, there is a danger that, if high refund rates are fixed in advance, the commitments entered into in relation to

those refunds may be jeopardised. In order to avert that danger, it is therefore necessary to take appropriate precautionary measures, but without precluding the conclusion of long-term contracts. The fixing of specific refund rates for the advance fixing of refunds in respect of those products should enable those two objectives to be met.

(5) Article 15(2) of Regulation (EC) No 1043/2005 provides that, when the rate of the refund is being fixed, account is to be taken, where appropriate, of production refunds, aids or other measures having equivalent effect applicable in all Member States in accordance with the Regulation on the common organisation of the market in the product in question to the basic products listed in Annex I to Regulation (EC) No 1043/2005 or to assimilated products.

(6) Article 12(1) of Regulation (EC) No 1255/1999 provides for the payment of aid for Community-produced skimmed milk processed into casein if such milk and the casein manufactured from it fulfil certain conditions.

(7) Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/1999 as regards measures for the disposal of cream, butter and concentrated butter ⁽³⁾, lays down that butter and cream at reduced prices should be made available to industries which manufacture certain goods.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products listed in Annex I to Regulation (EC) No 1043/2005 and in Article 1 of Regulation (EC) No 1255/1999, and exported in the form of goods listed in Annex II to Regulation (EC) No 1255/1999, shall be fixed as set out in the Annex to this Regulation.

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Council Regulation (EC) No 1152/2007 (OJ L 258, 4.10.2007, p. 3).

⁽²⁾ OJ L 172, 5.7.2005, p. 24. Regulation as last amended by Regulation (EC) No 1496/2007 (OJ L 333, 19.12.2007, p. 3).

⁽³⁾ OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 1546/2007 (OJ L 337, 21.12.2007, p. 68).

Article 2

This Regulation shall enter into force on 22 February 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Heinz ZOUREK

Director-General Enterprise and Industry

ANNEX

Rates of the refunds applicable from 22 February 2008 to certain milk products exported in the form of goods not covered by Annex I to the Treaty ⁽¹⁾

(EUR/100 kg)

CN code	Description	Rate of refund	
		In case of advance fixing of refunds	Other
ex 0402 10 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content not exceeding 1,5 % by weight (PG 2):		
	(a) on exportation of goods of CN code 3501	—	—
	(b) on exportation of other goods	0,00	0,00
ex 0402 21 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content of 26 % by weight (PG 3):		
	(a) where goods incorporating, in the form of products assimilated to PG 3, reduced-price butter or cream obtained pursuant to Regulation (EC) No 1898/2005 are exported	0,00	0,00
	(b) on exportation of other goods	0,00	0,00
ex 0405 10	Butter, with a fat content by weight of 82 % (PG 6):		
	(a) where goods containing reduced-price butter or cream which have been manufactured in accordance with the conditions provided for in Regulation (EC) No 1898/2005 are exported	0,00	0,00
	(b) on exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat	0,00	0,00
	(c) on exportation of other goods	0,00	0,00

⁽¹⁾ The rates set out in this Annex are not applicable to exports to

- (a) third countries: Andorra, the Holy See (Vatican City State), Liechtenstein, the United States of America and the goods listed in Tables I and II of Protocol 2 to the Agreement between the European Community and the Swiss Confederation of 22 July 1972 exported to the Swiss Confederation.
- (b) territories of EU Member States not forming part of the customs territory of the Community: Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, Heligoland, Greenland, the Faeroe Islands and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar.

COMMISSION REGULATION (EC) No 155/2008**of 21 February 2008****concerning the classification of certain goods in the Combined Nomenclature**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, and in particular Article 9(1)(a) thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to Regulation (EEC) No 2658/87, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to those general rules, the goods described in column 1 of the table set out in the Annex should be classified under the CN code indicated in column 2, by virtue of the reasons set out in column 3 of that table.
- (4) It is appropriate to provide that, subject to the measures in force in the Community relating to double checking systems and to prior and retrospective Community

surveillance of textile products on importation into the Community, binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature and which is not in accordance with this Regulation, can continue to be invoked for a period of 60 days by the holder, under Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽²⁾.

- (5) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column 2 of that table.

Article 2

Subject to the measures in force in the Community relating to double checking systems and to prior and retrospective Community surveillance of textile products on importation into the Community, binding tariff information issued by the customs authorities of Member States which is not in accordance with this Regulation, can continue to be invoked for a period of 60 days, under Article 12(6) of Regulation (EEC) No 2913/92.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

László KOVÁCS

Member of the Commission

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Commission Regulation (EC) No 1352/2007 (OJ L 303, 21.11.2007, p. 3).

⁽²⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

ANNEX

Description of the goods	Classification CN code	Reasons
(1)	(2)	(3)
Article consisting of two preformed soft cellular plastic cups covered on both surfaces with knitted fabric. Knitted bands are sewn on to the edges of the cups to reinforce their oval shape. The cups are joined together with a magnetic metal clasp. The inside of each cup is coated with an adhesive which is protected by a plastic film. Following removal of the plastic film, the adhesive enables the cups to adhere to the breasts when in direct contact with the skin. The article is designed to be worn next to the skin. (brassière) (See photographs Nos 643A and 643B) (*)	6212 10 90	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature, notes 2(a)(5) to Chapter 59 and 2(a) to Chapter 61 and the wording of CN codes 5903, 6212, 6212 10 and 6212 10 90. As the cellular plastic of the cups is combined with textile fabric on both faces, the textile fabric is regarded as having a function beyond that of mere reinforcement within the meaning of note 2(a)(5) to Chapter 59, it confers the essential character of textile to the combined material of the cups and consequently is considered to be the constituent material of the article (see also the HS Explanatory Notes to Chapter 39, General, 'Plastics and textile combinations', (d) and seventh paragraph). Thus, the article is a textile article of section XI and not a plastic article of apparel of subheading 3926 20. The article has the characteristics of a brassière, i.e. the oval shaped, preformed, cellular plastic cups which are reinforced along the edges, together with the magnetic metal clasp hold the breasts in place. Instead of the classic straps reaching around the back of the body, this article adheres to the body by means of an adhesive coating on the inside of the cups. Due to the thickness of the cellular plastic cups when attached to the underside of the breasts, it gives support by pushing the breasts up. Moreover, when putting the article on, the upper part of the cups is fixed as high as possible to the skin above the breasts and consequently the breasts which are inside the cups are lifted up and supported. Thus, the article is of a kind 'designed for wear as body-supporting garment' within the meaning of the HS Explanatory Notes to heading 6212, first paragraph. Furthermore, like other brassieres, the article is designed to be worn next to the skin. The article is classified as a brassière in heading 6212, because this heading includes brassieres of all kinds (see also the HS Explanatory Notes to heading 6212, second paragraph, (1)).

(*) The photographs are purely for information.



643 A



643 B

COMMISSION REGULATION (EC) No 156/2008**of 21 February 2008****amending Regulation (EC) No 109/2007 as regards the minimum content of the feed additive monensin sodium (Coxidin)****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾ and in particular Article 13(3) thereof,

Whereas:

- (1) The additive monensin sodium (Coxidin) was authorised under certain conditions in accordance with Regulation (EC) No 1831/2003. Commission Regulation (EC) No 109/2007 ⁽²⁾ authorised that additive for 10 years for use for chickens for fattening and turkey, linking the authorisation to the holder of authorisation for putting that additive into circulation.
- (2) Regulation (EC) No 1831/2003 provides for the possibility of modifying the authorisation of an additive further to a request from the holder of the authorisation and an opinion of the European Food Safety Authority (the Authority).
- (3) The holder of the authorisation of the feed additive monensin sodium (Coxidin) has submitted an application

which proposes changing the terms of the authorisation by reducing the minimum content of that additive as regards use for turkeys.

- (4) In its opinion adopted on 18 September 2007, the Authority has proposed to reduce the minimum content of the additive for turkeys from 90 mg to 60 mg per kg of complete feedingstuff because it can be considered efficacious in the control of coccidiosis ⁽³⁾.
- (5) Regulation (EC) No 109/2007 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 109/2007 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Markos KYPRIANOU

Member of the Commission

⁽¹⁾ OJ L 268, 18.10.2003, p. 29. Regulation as amended by Commission Regulation (EC) No 378/2005 (OJ L 59, 5.3.2005, p. 8).

⁽²⁾ OJ L 31, 6.2.2007, p. 6.

⁽³⁾ Opinion of the Scientific Panel on Additives and Products or Substances used in Animal Feed on Efficacy of Coxidin 25 % (monensin sodium) as a feed additive for turkeys. Adopted on 18 September 2007. *The EFSA Journal* (2007) 545, 1-13.

ANNEX

'ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive (Trade name)	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation	Provisional Maximum Residue Limits (MRLs) in the relevant food-stuffs of animal origin
Coccidiostats and histomonostats										
5 1 701	Huvepharma NV Belgium	Monensin sodium (Coxidin)	Active substance: $C_{36}H_{61}O_{11}Na$ Sodium salt of polyether monocarboxylic acid produced by <i>Streptomyces cinnamonensis</i> , 28682, LMG S-19095 in powder form. Factor composition: Monensin A: not less than 90 % Monensin A + B: not less than 95 % Monensin C: 0,2-0,3 % Additive composition: Monensin sodium technical substance equivalent to monensin activity: 25 % Pellete: 15-20 % Wheat bran: 55-60 % Analytical method (1) Method for determination of the active substance: high performance liquid chromatography (HPLC) with post-column derivatisation and UV detection ($\lambda = 520$ nm).	Chickens for fattening	—	100	125	1. Use prohibited at least three days before slaughter. 2. The additive shall be incorporated in compound feeding-stuffs in form of a premixture. 3. Maximum permitted dose of monensin sodium in complementary feedingstuffs: — 625 mg/kg for chickens for fattening; — 500 mg/kg for turkeys. 4. Monensin sodium shall not be mixed with other coccidiostats. 5. Indicate in the instructions for use: "Dangerous for equines. This feedingstuff contains an ionophore: avoid simultaneous administration with tiamulin and monitor for possible adverse reactions when used concurrently with other medicinal substances". 6. Wear suitable protective clothing, gloves and eye/face protection. In case of insufficient ventilation in the premise, wear suitable respiratory equipments.	6.2.2017	25 μ g monensin sodium/kg of wet skin + fat. 8 μ g monensin sodium/kg of wet liver, kidney and muscle.
				Turkeys	16 weeks	60	100			

(1) Details of the analytical methods are available at the following address of the Community Reference Laboratory: www.irrmn.jrc.be/crl-feed-additives

(1) Details of the analytical methods are available at the following address of the Community Reference Laboratory: www.irmm.jrc.be/crl-feed-additives

COMMISSION REGULATION (EC) No 157/2008**of 21 February 2008****determining the aid referred to in Council Regulation (EC) No 1255/1999 for the private storage of butter**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) Article 41(2) of Commission Regulation (EC) No 105/2008 of 5 February 2008 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter ⁽²⁾ stipulates that the amount of aid for private storage referred to in Article 6(3) of Regulation (EC) No 1255/1999 is to be fixed each year.
- (2) The third subparagraph of Article 6(3) of Regulation (EC) No 1255/1999 specifies that the aid shall be fixed in the light of storage costs and the likely trend in prices for fresh butter and butter from stocks.
- (3) Regarding storage costs, notably the costs for entry and exit of the products concerned, the daily costs for cold storage and the financial costs of storage should be taken into account.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

Article 1

1. The aid referred to in Article 6(3) of Regulation (EC) No 1255/1999 shall be calculated per tonne of butter for contracts concluded in 2008 on the basis of the following elements:

- EUR 15,62 for fixed storage costs,
- EUR 0,23 for the costs of cold storage for each day of contractual storage,
- an amount per day of contractual storage, calculated on the basis of 90 % of the intervention price for butter in force on the day the contractual storage begins and on the basis of an annual interest rate of 4,25 %.

2. The intervention agency shall register the date of receipt of the applications to conclude a contract as referred to in Article 37(1) of Regulation (EC) No 105/2008 as well as the corresponding quantities.

3. The Member States shall inform the Commission no later than 12 noon (Brussels time) on each Tuesday of the quantities covered during the preceding week by such applications.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1152/2007 (OJ L 258, 4.10.2007, p. 3).

⁽²⁾ OJ L 32, 6.2.2008, p. 3.

COMMISSION REGULATION (EC) No 158/2008**of 21 February 2008****registering certain names in the Register of protected designations of origin and protected geographical indications (Salate von der Insel Reichenau (PGI), Gurken von der Insel Reichenau (PGI), Feldsalat von der Insel Reichenau (PGI), Tomaten von der Insel Reichenau (PGI))**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006 and in accordance with Article 17(2) thereof, Germany's applications to register the names 'Salate von der Insel Reichenau', 'Gurken von der Insel Reichenau', 'Feldsalat von der Insel Reichenau'

and 'Tomaten von der Insel Reichenau' were published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no objections within the meaning of Article 7 of Regulation (EC) No 510/2006 were received by the Commission, these names should be entered in the Register,

HAS ADOPTED THIS REGULATION:

Article 1

The names contained in the Annex to this Regulation shall be entered in the Register.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 93, 31.3.2006, p. 12. Regulation as amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ C 135, 19.6.2007, p. 22 (Salate von der Insel Reichenau), OJ C 135, 19.6.2007, p. 25 (Gurken von der Insel Reichenau), OJ C 135, 19.6.2007, p. 27 (Feldsalat von der Insel Reichenau), OJ C 135, 19.6.2007, p. 29 (Tomaten von der Insel Reichenau).

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6 — Fruit, vegetables and cereals, fresh or processed

GERMANY

Salate von der Insel Reichenau (PGI)

Gurken von der Insel Reichenau (PGI)

Feldsalat von der Insel Reichenau (PGI)

Tomaten von der Insel Reichenau (PGI)

COMMISSION REGULATION (EC) No 159/2008**of 21 February 2008****amending Regulations (EC) No 800/1999 and (EC) No 2090/2002 as regards physical checks carried out when agricultural products qualifying for refunds are exported**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts ⁽¹⁾, and in particular Article 6 thereof,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽²⁾, and in particular Article 18 thereof, and the corresponding provisions of the other regulations on the common organisation of the markets in agricultural products,

Whereas:

(1) Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products ⁽³⁾ and Commission Regulation (EC) No 2090/2002 of 26 November 2002 laying down detailed rules for applying Council Regulation (EEC) No 386/90 as regards physical checks carried out when agricultural products qualifying for refunds are exported ⁽⁴⁾ provide for the rules concerning physical controls and substitution checks by customs on export products for which an export refund is claimed. In the light of experience gained, problems mentioned by Member States in their annual reports on physical checks and recommendations of the European Court of Auditors, appropriate amendments are required.

(2) Before affixing seals the customs office of export should visually check the conformity between the refund products and the documents. Visual conformity checks

aim at improving the general control measures in the framework of the customs procedure and they are of a different nature than substitution checks as described in Article 10(4) of Regulation (EC) No 2090/2002 or physical checks as described in Article 5 of the same Regulation. The visual conformity check shall confirm to customs that the products loaded are of the kind as mentioned in the documents. In principle products or goods are not unloaded and packaging is not opened or removed. In case a visual conformity check reveals that the conformity could be a problem, customs can decide to execute a physical check in accordance with Regulation (EEC) No 386/90. A minimum level of 10 % of visual conformity checks is deemed to be effective, proportionate and dissuasive. For information reasons, the customs office of export should note its conformity check on the control copy T5 or its equivalent.

(3) Customs should be informed on the rate of export refunds at stake when selecting export declarations for physical or substitution checks. This information should therefore be mentioned in the export declaration and in the control copy T5 or equivalent document. However, in some Member States the authorities concerned already dispose of the same information. Consequently exporters may be exempted from the obligation to mention this information either in the export declaration, or in the T5 control copy or equivalent document, or in both.

(4) In order to ensure effective application of the obligation to mention the export refund rate, provisions need to be laid down to deter inaccurate information. A suitable penalty system should therefore be established. In case of substantial differences between the refund calculated according to the export refund rate mentioned and the export refund actually applicable customs would be particularly misled not to execute the necessary controls. In particular if the exporter indicates a rate representing an export refund less than EUR 1 000 and the refund applicable is more than EUR 10 000, the penalty should be effective, proportionate and dissuasive.

(5) In order to concentrate controls more on export products covering a relatively high amount of refunds, the selection thresholds, under which controls are generally disregarded for calculating the minimum control rates, expressed in quantities or in amounts of refunds are raised.

⁽¹⁾ OJ L 42, 16.2.1990, p. 6. Regulation as last amended by Regulation (EC) No 14/2008 (OJ L 8, 11.1.2008, p. 1).

⁽²⁾ OJ L 270, 21.10.2003, p. 78. Regulation as last amended by Regulation (EC) No 735/2007 (OJ L 169, 29.6.2007, p. 6). Regulation (EC) No 1784/2003 will be replaced by Regulation (EC) No 1234/2007 as from 1.7.2008.

⁽³⁾ OJ L 102, 17.4.1999, p. 11. Regulation as last amended by Regulation (EC) No 1001/2007 (OJ L 226, 30.8.2007, p. 9).

⁽⁴⁾ OJ L 322, 27.11.2002, p. 4. Regulation as last amended by Regulation (EC) No 1001/2007.

- (6) Predictability of customs controls due to a steady control pattern by customs authorities should be minimised. Therefore, customs authorities' timing of arriving at the exporter's premises and of executing controls should vary. In parallel, exporters should be more tightly bound to non-substitution of products after the export declaration was lodged and before customs arrive, by identifying the export products before their being loaded. The registration of customs authorities' physical controls should be adapted accordingly.
- (7) When a Member State applies the third subparagraph of Article 3(2) of Regulation (EEC) No 386/90 it should be possible to apply the specific provisions set up by Article 6 of Regulation (EC) No 2090/2002.
- (8) Substitution checks should be targeted to all exports which were not physically checked at the start of the procedure. The number of substitution checks and specific substitution checks together must cover a representative part of the exports leaving the Community's customs territory. The number of these checks should therefore be based on a percentage of the number of T5 control copies or equivalent documents, rather than in the number of days that refund products leave the Community's customs territory.
- (9) In order to decide whether substitution checks or specific substitution checks are required the customs office of exit should actively check the presence and soundness of seals. A minimum level of 10 % of checks on seals is deemed to be effective, proportionate and dissuasive.
- (10) The provisions on annual reports in Annex III to Regulation (EC) No 2090/2002 should be adapted accordingly.
- (11) Regulations (EC) No 800/1999 and (EC) No 2090/2002 should therefore be amended accordingly.
- (12) The Management Committees concerned have not delivered an opinion within the time limit set by their chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 800/1999 is amended as follows:

1. Article 5 is amended as follows:

- (a) The fourth subparagraph of paragraph 7 is replaced by the following:

'The products shall be identified by appropriate means before the indicated time for starting loading. The competent customs office must be able to make physical checks and identify the goods for transport to the office of exit from the customs territory of the Community.'

- (b) In paragraph 8, the following subparagraph is added:

'Before affixing seals, the customs office shall visually check the conformity of the products with the export declarations. The number of visual checks shall not be less than 10 % of the number of export declarations, other than those in respect of which the products covered by them have been physically checked or selected for a physical check under Article 2 of Regulation (EEC) No 386/90. The customs office shall note this check in box D of the control copy T5 or equivalent document by one of the entries listed in Annex XIII. For the year 2008, the rate of controls shall be calculated on the basis of the export declarations accepted from 1 April 2008;'

2. After Article 8, the following Article 8a is inserted:

'Article 8a

The exporter shall mention the rate of export refunds in EUR per unit of products or goods on the date of advanced fixing, as mentioned in the export license or certificate of Regulation (EC) No 1291/2000 or the refund certificate of Chapter III of Regulation (EC) No 1043/2005 (*), in box 44 of the export declaration or its electronic equivalent and in box 106 of the control copy T5 or its equivalent. If the export refunds have not been fixed in advance, information on previous refund payments for the same products or goods not older than 12 months may be used. If the product or good to be exported does not cross the border of another Member State and if the national currency is not EUR, the rates of refunds may be mentioned in national currency.

The competent authorities may exempt the exporter of the requirements provided for in the first paragraph if the administration operates a system by which the services concerned are informed with the same information.

The exporter may choose to mention one of the entries listed in Annex XIV for export declarations and T5 control copies and equivalent documents covering an amount of export refunds less than EUR 1 000.

(*) OJ L 172, 5.7.2005, p. 24.;

3. In Article 51, the following paragraph 1a is inserted:

‘1a. Without prejudice to the second paragraph of Article 8a, where it is found that the rate of export refund pursuant to Article 8a was not mentioned, the rate mentioned will be deemed to be zero. If the amount of export refund calculated according to the information pursuant to Article 8a is lower than the amount applicable, the refund due for the relevant exportation shall be that applicable to the products actually exported, reduced by:

- (a) 10 % of the difference between the calculated refund and that applicable to the actual export if the difference is more than EUR 1 000;
- (b) 100 % of the difference between the calculated refund and that applicable to the actual export if the exporter indicated that the refunds would be less than EUR 1 000 and the refund applicable is more than EUR 10 000;
- (c) 200 % of the difference between the calculated refund and that applicable where the exporter intentionally provides false information.

The first subparagraph shall not apply if the exporter proves to the satisfaction of the competent authorities that the situation referred to in that subparagraph is due to *force majeure*, to obvious error, or, where applicable, that it was based on correct previous payment information.

The first subparagraph shall not apply when Article 51(1) applies for penalties based on the same elements fixing the right to export refunds.;

4. Annexes XIII and XIV, the text of which are set out in Annex I to this Regulation, are added.

Article 2

Regulation (EC) No 2090/2002 is amended as follows:

1. Article 2 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. When calculating the minimum rates of checks to be carried out in accordance with Article 3(2) and Article 3a of Regulation (EEC) No 386/90, Member States shall disregard export declarations for physical controls and T5 control copies or equivalent documents for substitution checks involving:

(a) either quantities not exceeding:

(i) 25 000 kg in the case of cereals and rice,

(ii) 5 000 kg in the case of products not listed in Annex I to the Treaty,

(iii) 2 500 kg in the case of other products;

(b) or refund amounts of less than EUR 1 000.;

(b) paragraph 3 is replaced by the following:

‘3. When implementing paragraphs 1 and 2, Member States shall adopt appropriate provisions to prevent fraud and abuses. Any checks made to that end may be counted for the purposes of calculating compliance with the minimum rates of checks referred to in paragraph 2 if the Member State applies risk analysis in accordance with Commission Regulation (EC) No 3122/94 (*).

(*) OJ L 330, 21.12.1994, p. 31.;

2. in Article 5(2), the following subparagraph is added:

‘Member States shall ensure that there are variations in the start of the physical check at the exporter's premises by comparison with the indicated time for starting loading as referred to in Article 5(7) of Regulation (EC) No 800/1999.;

3. in Article 6, the following subparagraph is added:

‘When applying the third subparagraph of Article 3(2) of Regulation (EEC) No 386/90, a Member State may apply the rules provided for in the first subparagraph.’;

4. in Article 8, paragraph 2 is replaced by the following:

‘2. The competent customs officer shall produce a detailed inspection report on each physical check carried out.

Inspection reports shall at least bear:

- (a) the place, date, time of arrival, time of completion, means of transport and the name and signature of the competent officer, and
- (b) date and time of receipt of information as referred to in point (b) of Article 5(7) of Regulation (EC) No 800/1999, the indicated time for starting loading and completion of the loading of the products in the means of transport.

The reports shall be kept accessible for consultation at the customs office which executed the physical control, or at one place in the Member State for three years from the year of export.’;

5. Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. If the customs office of export had not executed a physical control within the meaning of Article 2(a) of Regulation (EEC) No 386/90, substitution checks shall be carried out, wherever possible in the light of a risk analysis, without prejudice to paragraph 2a and to checks carried out under other provisions.

The total of the minimum number of substitution checks and specific substitution checks under this paragraph and paragraph 2a carried out each calendar year shall not be less than 8 % of the number of T5 control copies and equivalent documents covering products for which a refund is claimed and which leave the Community’s customs territory at the customs office of exit.

For the year 2008, Member States may decide to calculate the rate of controls as referred in the second subparagraph on the basis of T5 control copies and equivalent documents accepted either from 1 January 2008 or from 1 April 2008.’;

(b) paragraph 2a is replaced by the following:

‘2a. The customs office of exit or the office to which the T5 control copy or equivalent document is sent shall check the seals. The number of checks shall not be less than 10 % of the total number of T5 control copies and equivalent documents other than those selected for a substitution check pursuant to paragraph 2.

If the customs office of exit or the office to which the T5 control copy is sent finds that the seals affixed on departure have been removed other than under customs supervision or have been broken or that the dispensation from sealing under Article 357(4) of Regulation (EEC) No 2454/93 has not been granted, a specific substitution check shall be carried out. For the year 2008, Member States may decide to calculate the rate of controls as referred in the first subparagraph on the basis of T5 control copies and equivalent documents accepted either from 1 January 2008 or from 1 April 2008.’;

(c) the first subparagraph of paragraph 4 is replaced by the following:

‘The substitution check referred to in paragraph 2 shall be carried out by means of a visual check that the products or goods correspond to the documents which accompanied them from the office of exportation to the customs office of exit or the office to which the T5 control copy is sent. If such a visual check on the complete cargo would be insufficient to check substitution, other physical control methods, where necessary including partial unloading, shall be used.’;

(d) point (a) of paragraph 5 is replaced by the following:

‘(a) the number of T5 control copies and equivalent documents taken into account for the purposes of the substitution checks referred to in paragraph 2 and for the purposes of checks on seals and for specific substitution checks referred to in paragraph 2a.’;

- (e) the first subparagraph of paragraph 5a is replaced by the following:

‘Every substitution check referred to in paragraphs 2 and 2a shall be the subject of a report drawn up by the competent official who carries it out. The report shall permit monitoring of the checks carried out and shall bear the date and the name of the official. The checks on seals referred to in paragraph 2a, and the cases of removed or broken seals shall be registered in accordance with Article 912c(3) of Regulation (EEC) No 2454/93.’;

- (f) the first subparagraph of paragraph 7 is replaced by the following:

‘Where the substitution check reveals that the refund rules have not been complied with, the paying agency shall inform the customs office referred to in paragraph 5 of the action taken as a result of the findings.’;

6. in Annex I, paragraph 1, the following point (c) is added:

‘(c) Where an export declaration only covers part of the cargo of a ship, the customs office shall ensure supervision of the physical departure of the whole cargo. To this end, when the loading process is completed, the customs office shall verify the total weight of the cargo loaded by use of the information under point (a) or (b), with, where appropriate the information in commercial documents.’;

7. Annex III is amended in accordance with the Annex II to this Regulation.

Article 3

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 April 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX I

In Regulation (EC) No 800/1999 the following Annexes XIII and XIV are added:

‘ANNEX XIII

Entries referred to in Article 5(8)

— in Bulgarian:	Проверка за съответствие — Регламент (ЕО) № 800/1999
— in Spanish:	Control de conformidad Reglamento (CE) n° 800/1999
— in Czech:	Kontrola souladu Nařízení (ES) č. 800/1999
— in Danish:	Overensstemmelseskontrol forordning (EF) nr. 800/1999
— in German:	Konformitätskontrolle Verordnung (EG) Nr. 800/1999
— in Estonian:	Vastavuskontroll. Määrus (EÜ) nr 800/1999
— in Greek:	Έλεγχος αντιστοιχίας — Κανονισμός (ΕΚ) αριθ. 800/1999
— in English:	Conformity check Regulation (EC) No 800/1999
— in French:	Contrôle de conformité Règlement (CE) n° 800/1999
— in Italian:	Controllo di conformità regolamento (CE) n. 800/1999
— in Latvian:	Regulas (EK) Nr. 800/1999 atbilstības pārbaude
— in Lithuanian:	Atitikties patikrinimo Reglamentas (EB) Nr. 800/1999
— in Hungarian:	Megfelelőségi ellenőrzés 800/1999/EK rendelet
— in Maltese:	Verifika ta' konformità r-Regolament (KE) Nru 800/1999
— in Dutch:	Conformiteitscontrole Verordening (EG) nr. 800/1999
— in Polish:	Kontrola zgodności Rozporządzenie (WE) nr 800/1999
— in Portuguese:	Verificação de concordância Regulamento (CE) n.º 800/1999
— in Romanian:	Control de conformitate Regulamentul (CE) nr. 800/1999
— in Slovak:	Kontrola zhody Nariadenie (ES) č. 800/1999
— in Slovenian:	Preverjanje skladnosti z Uredba (ES) št. 800/1999
— in Finnish:	Vastaavuustarkastus. Asetus (EY) N:o 800/1999
— in Swedish:	Kontroll av överensstämmelse Förordning (EG) nr 800/1999

ANNEX XIV

Entries referred to in Article 8a

— in Bulgarian:	Сума на възстановяване под 1 000 EUR
— in Spanish:	Restitución inferior a 1 000 EUR
— in Czech:	Částka náhrady nižší než 1 000 EUR
— in Danish:	Restitutioner mindre end 1 000 EUR
— in German:	Erstattung weniger als 1 000 EUR
— in Estonian:	Eksporditoetus alla 1 000 EURO
— in Greek:	Επιστροφή μικρότερη από 1 000 EUR
— in English:	Refunds less than EUR 1 000
— in French:	Restitution inférieure à 1 000 EUR
— in Italian:	Restituzione inferiore a 1 000 EUR
— in Latvian:	Kompensācija, kas ir mazāka par EUR 1 000
— in Lithuanian:	Išmokos mažesnės negu 1 000 EUR
— in Hungarian:	1 000 eurónál kevesebb visszatérítés
— in Maltese:	Rifużjonijiet ta' anqas minn EUR 1 000
— in Dutch:	Restitutie minder dan 1 000 EUR
— in Polish:	Refundacja poniżej 1 000 EUR
— in Portuguese:	Restituição inferior a 1 000 EUR
— in Romanian:	Restituire inferioară valorii de 1 000 EUR
— in Slovak:	Náhrady nižšie ako 1 000 EUR
— in Slovenian:	Nadomestila manj kot 1 000 EUR
— in Finnish:	Alle 1 000 euron tuet
— in Swedish:	Bidragsbelopp lägre än 1 000 euro'

ANNEX II

Annex III to Regulation (EC) No 2090/2002 is amended as follows:

(1) paragraph 1 is amended as follows:

(a) point 1.1 is replaced by the following:

‘1.1. The number of export declarations per sector per customs office not excluded under Article 2 when calculating the minimum rate of checks. If the Member State applies the third subparagraph of Article 3(2) of Regulation (EEC) No 386/90, the report shall mention the total number of export declarations per sector in its territory not excluded under Article 2 when calculating the minimum rate of checks.’

(b) points 1.3 and 1.4 are replaced by the following:

‘1.3. The number and percentage of physical checks carried out per sector per customs office. If the Member State applies the third subparagraph of Article 3(2) of Regulation (EEC) No 386/90, the report shall mention the total number and percentage of physical checks carried out per sector in its territory.

1.4. If applicable, a list of customs offices applying reduced rates of checks pursuant to Article 6(c). If the Member State applies the third subparagraph of Article 3(2) of Regulation (EEC) No 386/90, and if it applies Article 6, the report shall mention the number and percentage of physical checks carried out per sector per customs office defined in that article.’

(2) paragraph 2 is amended as follows:

(a) points 2.1, 2.2 and 2.3 are replaced by the following:

‘2.1. The number of T5 control copies and equivalent documents per customs office of exit where the products for which a refund is claimed leave the Community’s customs territory, noted as:

(a) the number of T5 control copies and equivalent documents covering exports which were physically controlled as meant in Article 3(2) of Regulation (EEC) No 386/90;

(b) the number of T5 control copies and equivalent documents covering export declarations which were not physically controlled as meant in Article 3(2) of Regulation (EEC) No 386/90;

(c) the total number of T5 control copies and equivalent documents.

2.2. The number and percentage of checks, broken down in substitution checks and specific substitution checks referred to in paragraphs 2 and 2a of Article 10, carried out per customs office of exit where the products for which a refund is claimed leave the Community’s customs territory.

2.3. The number of T5 control copies and equivalent documents for which the seals affixed on departure have been removed other than under customs supervision, or the seals have been broken or the dispensation from sealing under Article 357(4) of Regulation (EEC) No 2454/93 has not been granted.’

(b) the point 2.4 is deleted;

(c) the following point 2.8 is added:

‘2.8. For the year 2008, Member States shall indicate how the rate of controls is calculated pursuant to Article 10(2) and Article 10(2a).’

(3) in paragraph 3, point 3.1 is replaced by the following:

‘3.1. A description of the procedures for the selection of consignments for physical checks, for substitution checks and for specific substitution checks and their effectiveness.’

COMMISSION REGULATION (EC) No 160/2008**of 21 February 2008****registering certain names in the Register of protected designations of origin and protected geographical indications (Pane di Matera (PGI), Tinca Gobba Dorata del Pianalto di Poirino (PDO))**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Pianalto di Poirino' were published in the *Official Journal of the European Union* ⁽²⁾.

Having regard to the Treaty establishing the European Community,

- (2) As no objections within the meaning of Article 7 of Regulation (EC) No 510/2006 were received by the Commission, these names should be entered in the Register,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

HAS ADOPTED THIS REGULATION:

Article 1

Whereas:

The names contained in the Annex to this Regulation shall be entered in the Register.

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006 and in accordance with Article 17(2) thereof, Italy's applications to register the names 'Pane di Matera' and 'Tinca Gobba Dorata del

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 93, 31.3.2006, p. 12. Regulation as amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ C 128, 9.6.2007, p. 15 (Pane di Matera), OJ C 128, 9.6.2007, p. 19 (Tinca Gobba Dorata del Pianalto di Poirino).

ANNEX

1. Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.7. Fresh fish, molluscs, and crustaceans and products derived therefrom

ITALY

Tinca Gobba Dorata del Pianalto di Poirino (PDO)

2. Foodstuffs listed in Annex I to Regulation (EC) No 510/2006:

Class 2.4. Bread, pastry, cakes, confectionery, biscuits and other baker's wares

ITALY

Pane di Matera (PGI)

COMMISSION REGULATION (EC) No 161/2008**of 21 February 2008****fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs ⁽¹⁾, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽²⁾, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin ⁽³⁾, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽⁴⁾, fixes detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

- (2) It results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices for imports of certain products should be amended taking into account variations of prices according to origin. Therefore, representative prices should be published.

- (3) It is necessary to apply this amendment as soon as possible, given the situation on the market.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 February 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 282, 1.11.1975, p. 49. Regulation as last amended by Regulation (EC) No 679/2006 (OJ L 119, 4.5.2006, p. 1). Regulation (EEC) No 2771/75 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 282, 1.11.1975, p. 77. Regulation as last amended by Regulation (EC) No 679/2006 (OJ L 119, 4.5.2006, p. 1).

⁽³⁾ OJ L 282, 1.11.1975, p. 104. Regulation as last amended by Commission Regulation (EC) No 2916/95 (OJ L 305, 19.12.1995, p. 49).

⁽⁴⁾ OJ L 145, 29.6.1995, p. 47. Regulation as last amended by Regulation (EC) No 34/2008 (OJ L 15, 18.1.2008, p. 13).

ANNEX

to the Commission Regulation of 21 February 2008 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

‘ANNEX I

CN code	Description	Representative price (EUR/100 kg)	Security referred to in Article 3(3) (EUR/100 kg)	Origin ⁽¹⁾
0207 12 10	Chicken carcasses 70 % presented, frozen	103,9	0	01
		100,4	0	02
0207 12 90	Chickens, plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as “65 % chickens”, or otherwise presented, frozen	113,1	1	01
		108,1	3	02
0207 14 10	Boneless cuts of fowl of the species Gallus domesticus, frozen	232,9	20	01
		274,5	8	02
		325,1	0	03
0207 14 50	Breasts of chicken, frozen	322,0	0	01
		283,9	0	02
0207 14 60	Legs and cuts of chicken, frozen	114,8	8	01
0207 14 70	Other parts of chickens, frozen	211,9	22	01
0207 25 10	Turkey carcasses, known as 80 % turkeys, frozen	181,1	0	01
0207 27 10	Boneless cuts of turkey, frozen	328,9	0	01
		398,3	0	03
0408 11 80	Dried egg yolks	397,7	0	02
0408 91 80	Dried eggs, not in shell	384,1	0	02
1602 32 11	Preparations of uncooked fowl of the species Gallus domesticus	231,3	17	01
		376,2	0	04
3502 11 90	Dried eggs, albumin	518,4	0	02

⁽¹⁾ Origin of imports:

- 01 Brazil
- 02 Argentina
- 03 Chile
- 04 Thailand.’

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 12 February 2008

on the signing, on behalf of the European Community, and the provisional application of the Agreement in the form of an Exchange of Letters on the amendments to the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles

(2008/150/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37, in conjunction with Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles was adopted by Council Regulation (EC) No 115/2006⁽¹⁾ on 23 January 2006.

(2) In view of the extremely good utilisation of the current fisheries Agreement, the Seychelles authorities' wish to strengthen the partnership and the Community authorities' desire to bring this Protocol into line with other tuna protocols, the two Parties have initialled amendments to the existing Protocol in the form of an Exchange of Letters. The outcome of these amendments

has been the subject of an Exchange of Letters and involves an increase in the reference tonnage, the introduction of financial support for the partnership and adjustment of the ratio between the shares paid by ship-owners and the Community budget.

(3) In order for these amendments to the current Protocol to apply from 18 January 2008, the Agreement in the form of an Exchange of Letters should be signed, subject to its definitive conclusion by the Council.

(4) These amendments do not alter the allocation of fishing opportunities among the Member States,

HAS DECIDED AS FOLLOWS:

Article 1

The signature of the Agreement in the form of an Exchange of Letters on the amendments to the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles is hereby approved by the Council on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters is attached to this Decision.

⁽¹⁾ OJ L 21, 25.1.2006, p. 1.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in the form of an Exchange of Letters on behalf of the Community subject to its conclusion.

Article 3

The Agreement in the form of an Exchange of Letters shall be applied provisionally by the Community from 18 January 2008.

Article 4

The fishing opportunities set out in the Protocol and laid down in Council Regulation (EC) No 115/2006 on 23 January 2006 shall not be amended and are confirmed as follows:

Types of fishing	Member State	Fishing opportunities
Tuna seiners	France	17 vessels
	Spain	22 vessels
	Italy	1 vessel
Surface longliners	Spain	2 vessels
	France	5 vessels
	Portugal	5 vessels

If licence applications from those Member States do not cover all the fishing opportunities laid down by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Done at Brussels, 12 February 2008.

For the Council

The President

A. BAJUK

AGREEMENT

in the form of an Exchange of Letters on the provisional application of the amendments to the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles

A. Letter from the Government of the Republic of Seychelles

Sir,

I am delighted that the Republic of Seychelles and European Community negotiators have been able to reach a consensus on amendments to the Protocol setting out the fishing opportunities and the financial contribution and its Annexes.

The negotiations held in Brussels on 20-21 March 2007 have enabled adjustments to be made to the fishing opportunities provided for in the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles. The amendments made to this Protocol are annexed hereto. The amended Protocol having been initialled by the two Parties on 21 March 2007, I would propose continuing in parallel the procedures for approval and/or ratification of the texts of the amended Protocol and its Annex and Appendices in accordance with the procedures in force in the Republic of Seychelles and in the European Community and necessary for their entry into force.

In order to avoid interrupting fishing activities by Community vessels in Seychelles waters, and referring to the Protocol amended on 21 March 2007 and setting out, for the period from 18 January 2008 to 17 January 2011, the fishing opportunities and the financial contribution, I have the honour to inform you that the Government of the Republic of Seychelles is willing to apply this amended Protocol provisionally from 18 January 2008 pending its entry into force in accordance with Article 13 of the Protocol, provided that the European Community is prepared to do likewise.

This is on the understanding that the amended financial contribution laid down by Article 2 of the amended Protocol shall be paid when the two Parties notify each other that they have completed the procedures necessary for the entry into force of the Protocol and its amended Annexes.

I should be grateful if you would confirm the agreement of the European Community to such a provisional application.

Please accept, Sir, the assurance of my highest consideration.

For the Government of the Republic of Seychelles

B. Letter from the European Community

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

'I am delighted that the Republic of Seychelles and European Community negotiators have been able to reach a consensus on amendments to the Protocol setting out the fishing opportunities and the financial contribution and its Annexes.

The negotiations held in Brussels on 20-21 March 2007 have enabled adjustments to be made to the fishing opportunities provided for in the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the Agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles. The amendments made to this Protocol are annexed hereto. The amended Protocol having been initialled by the two Parties on 21 March 2007, I would propose continuing in parallel the procedures for approval and/or ratification of the texts of the amended Protocol and its Annex and Appendices in accordance with the procedures in force in the Republic of Seychelles and in the European Community and necessary for their entry into force.

In order to avoid interrupting fishing activities by Community vessels in Seychelles waters, and referring to the Protocol amended on 21 March 2007 and setting out, for the period from 18 January 2008 to 17 January 2011, the fishing opportunities and the financial contribution, I have the honour to inform you that the Government of the Republic of Seychelles is willing to apply this amended Protocol provisionally from 18 January 2008 pending its entry into force in accordance with Article 13 of the Protocol, provided that the European Community is prepared to do likewise.

This is on the understanding that the amended financial contribution laid down by Article 2 of the amended Protocol shall be paid when the two Parties notify each other that they have completed the procedures necessary for the entry into force of the Protocol and its amended Annexes.

I should be grateful if you would confirm the agreement of the European Community to such a provisional application.'

I am pleased to confirm the agreement of the European Community to a provisional application.

Please accept, Sir, the assurance of my highest consideration.

For the Community

ANNEX

amendments to the Protocol setting out, for the period from 18 January 2005 to 17 January 2011, the fishing opportunities and the financial contribution provided for by the agreement between the European Economic Community and the Republic of Seychelles on fishing off Seychelles

Article 2 of the Protocol is replaced by the following:

'Article 2

Financial contribution — Methods of payment

1. For the period referred to in Article 1, the financial contribution referred to in Article 7 of the Agreement shall be EUR 24 750 000. From 18 January 2008, the financial contribution shall be amended and shall be EUR 28 440 000 for the duration of the Protocol.
2. Paragraph 1 shall apply subject to Articles 4, 5, 6, 7 and 8 of this Protocol.
3. The financial contribution referred to in paragraph 1 shall be paid by the Community at a rate of EUR 4 125 000 per year during the first three years of the Protocol. From 18 January 2008, the financial contribution referred to in paragraph 1 shall be paid by the Community at a rate of EUR 5 355 000 per year. The financial contribution applicable from 18 January 2008 shall comprise an annual amount of EUR 4 095 000 equivalent to a reference tonnage of 63 000 tonnes per year and a specific amount of EUR 1 260 000 per year for the support and implementation of Seychelles' sectoral fisheries policy. This specific amount shall be an integral part of the single financial contribution defined in Article 7 of the Agreement.
4. If the overall quantity of catches of tuna by Community vessels in Seychelles waters exceeds 63 000 tonnes per year, the amount of the annual financial contribution shall be increased by EUR 65 for each additional tonne caught. However, the total annual amount paid by the Community shall not be more than twice the amount indicated in paragraph 3 (EUR 10 710 000). Where the quantities caught by Community vessels exceed the quantities corresponding to twice the total annual amount, the amount due for the quantity exceeding that limit shall be paid the following year.
5. Payment shall be made no later than 30 September 2005 for the first year, 30 September 2008 for the fourth year and no later than the anniversary date of the Protocol for the following years.
6. Subject to Article 7, Seychelles shall have full discretion regarding the use to which this financial contribution is put.
7. The financial contribution shall be paid into a Seychelles Public Treasury account opened with the Central Bank of Seychelles. The account number shall be specified by the Seychelles authorities.'

Article 7 of the Protocol is replaced by the following:

'Article 7

Promotion of responsible fishing and sustainable fisheries in Seychelles waters

1. Not less than 56 % of the financial contribution paid each year from 18 January 2008 and referred to in Article 2(3) shall be allocated to the drawing up and implementation of a sectoral fisheries policy in Seychelles with a view to promoting responsible and sustainable fishing in Seychelles waters. This contribution shall be managed in the light of objectives identified by mutual agreement between the two Parties, and the annual and multiannual programming to attain them.'

Paragraphs 2, 3, 4 and 5: no change.

Amendments to the Annex to the Protocol

CONDITIONS FOR THE PURSUIT OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN SEYCHELLES WATERS

Chapter I — application for and issue of licences is hereby replaced as follows:

'CHAPTER I

APPLICATION FOR AND ISSUE OF LICENCES**SECTION 1*****Issue of licences***

1 to 10: No change.

11. However, at the request of the European Community and where *force majeure* is proven, a vessel's licence shall be replaced, for the remaining period of its validity, by a new licence for another vessel with similar characteristics to those of the first vessel, with no further fee due. However, if the gross tonnage (GT) of the replacement vessel is above that of the vessel to be replaced, the difference in fee shall be paid *pro rata temporis*.

12 to 14: No change.

SECTION 2

Licence conditions — fees and advance payments

1. Licences shall be valid for one year and are renewable.
2. From 18 January 2008 the fee shall be EUR 35 per tonne caught within Seychelles waters.
3. Licences shall be issued once the following standard amounts have been paid to the competent national authorities:
 - EUR 21 000 for tuna seiners, equivalent to the fees due for 600 tonnes of tuna and tuna-like species caught within Seychelles waters per year,
 - EUR 4 200 for surface longliners of more than 250 GT, equivalent to the fees due for 120 tonnes of tuna and tuna-like species caught within Seychelles waters per year,
 - EUR 3 150 for surface longliners of 250 GT or less, equivalent to the fees due for 90 tonnes of tuna and tuna-like species caught within Seychelles waters per year.
4. No change.
5. No change.
6. Where the shipowners do not agree with the statement submitted by the SFA, they may consult the scientific institutes competent for verifying catch statistics such as the IRD (*Institut de Recherche pour le Développement*), the IEO (*Instituto Español de Oceanografía*) and IPIMAR (*Instituto de Investigação das Pescas e do Mar*), and thereafter discuss together with the Seychelles authorities, who shall inform the Commission thereof, to establish the final statement before 31 May of the current year. In the absence of observations by the shipowners at that date, the statement submitted by the SFA is considered as the final one.
7. No change.
8. No change.
9. No change.'

Chapter VI — Observers is hereby replaced as follows:

'CHAPTER VI

OBSERVERS

1. Vessels authorised to fish in Seychelles waters under the Agreement shall take on board observers appointed by the competent regional fisheries organisation, following agreement between the Parties, or failing this by the Seychelles authorities on the terms set out below.

1.1 to 14: No change.'

COUNCIL DECISION

of 12 February 2008

concerning the conclusion of the Agreement in the form of an Exchange of Letters on the provisional application of the protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Côte d'Ivoire on fishing in Côte d'Ivoire's fishing zones for the period from 1 July 2007 to 30 June 2013

(2008/151/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 300(2) in conjunction with Article 37 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Community has negotiated with Côte d'Ivoire a Fisheries Partnership Agreement providing Community vessels with fishing opportunities in the waters over which Côte d'Ivoire has sovereignty or jurisdiction in respect of fisheries.

(2) As a result of those negotiations, a new Fisheries Partnership Agreement was initialled on 5 April 2007.

(3) The Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire⁽¹⁾ is repealed by the new Fisheries Partnership Agreement.

(4) In order to guarantee the continuation of fishing activities by Community vessels, it is essential that the new Fisheries Partnership Agreement should be applied as quickly as possible. Both parties have therefore initialled an Agreement in the form of an Exchange of Letters providing for the provisional application from 1 July 2007 of the initialled Protocol attached to the new Fisheries Partnership Agreement.

(5) It is in the Community's interest to approve that Agreement in the form of an Exchange of Letters.

(6) The method for allocating the fishing opportunities among the Member States should be defined,

Article 1

The Agreement in the form of an Exchange of Letters on the provisional application of the protocol setting out the fishing opportunities and financial contribution provided for in the fisheries partnership agreement between the European Community and the Republic of Côte d'Ivoire on fishing in Côte d'Ivoire's fishing zones for the period from 1 July 2007 to 30 June 2013 is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters is attached to this Decision.

Article 2

The fishing opportunities set out in the Protocol to the Agreement shall be allocated among the Member States as follows:

— 25 purse seiners,	France:	10 vessels
	Spain:	15 vessels
— 15 surface longliners,	Spain:	10 vessels
	Portugal:	5 vessels.

If licence applications from these Member States do not cover all the fishing opportunities laid down by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Article 3

The Member States whose vessels fish under the Agreement referred to in Article 1 shall notify the Commission of the quantities of each stock caught within Côte d'Ivoire's fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas⁽²⁾.

⁽¹⁾ OJ L 379, 31.12.1990, p. 3.

⁽²⁾ OJ L 73, 15.3.2001, p. 8.

Article 4

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the Community.

Done at Brussels, 12 February 2008.

For the Council

The President

A. BAJUK

AGREEMENT

in the form of an Exchange of Letters on the provisional application of the protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Côte d'Ivoire on fishing in Côte d'Ivoire's fishing zones for the period from 1 July 2007 to 30 June 2013

A. Letter from the Government of the Republic of Côte d'Ivoire

Sir,

I am delighted that the Republic of Côte d'Ivoire and European Community negotiators have been able to reach a consensus on a fisheries partnership agreement between the Republic of Côte d'Ivoire and the European Community, and on a Protocol setting out the fishing opportunities and financial contribution and the Annexes thereto.

The result of these negotiations improves on the earlier Agreement and will strengthen our fisheries relations and establish a true framework of partnership in which to develop a sustainable fisheries policy and responsible exploitation of fisheries resources in Côte d'Ivoire waters. To this end, I would propose launching in parallel the procedures for approval and ratification of the texts of the Agreement, the Protocol and its Annex and Appendices in accordance with the procedures in force in the Republic of Côte d'Ivoire and the European Community and necessary to their entry into force.

In order to avoid interrupting fishing activities by Community vessels in Côte d'Ivoire waters, and referring to the Agreement and the Protocol initialled on 5 April 2007 and setting out the fishing opportunities and financial contribution from 1 July 2007 to 30 June 2013, I have the honour to inform you that the Government of the Republic of Côte d'Ivoire is willing to apply this Agreement and this Protocol provisionally from 1 July 2007 pending its entry into force in accordance with Article 17 of the Agreement, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment of the financial contribution, laid down by Article 2 of the Protocol, must be paid before 30 March 2008.

I should be obliged if you would confirm the European Community's agreement to such provisional application.

Please accept, Sir, the assurance of my highest consideration.

For the Government of the Republic of Côte d'Ivoire

B. Letter from the European Community

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

'Sir,

I am delighted that the Republic of Côte d'Ivoire and European Community negotiators have been able to reach a consensus on a fisheries partnership agreement between the Republic of Côte d'Ivoire and the European Community, and on a Protocol setting out the fishing opportunities and financial contribution and the Annexes thereto.

The result of these negotiations improves on the earlier Agreement and will strengthen our fisheries relations and establish a true framework of partnership in which to develop a sustainable fisheries policy and responsible exploitation of fisheries resources in Côte d'Ivoire waters. To this end, I would propose launching in parallel the procedures for approval and ratification of the texts of the Agreement, the Protocol and its Annex and Appendices in accordance with the procedures in force in the Republic of Côte d'Ivoire and the European Community and necessary to their entry into force.

In order to avoid interrupting fishing activities by Community vessels in Côte d'Ivoire waters, and referring to the Agreement and the Protocol initialled on 5 April 2007 and setting out the fishing opportunities and financial contribution from 1 July 2007 to 30 June 2013, I have the honour to inform you that the Government of the Republic of Côte d'Ivoire is willing to apply this Agreement and this Protocol provisionally from 1 July 2007 pending its entry into force in accordance with Article 17 of the Agreement, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment of the financial contribution, laid down by Article 2 of the Protocol, must be paid before 30 March 2008.

I should be obliged if you would confirm the European Community's agreement to such provisional application.'

I am pleased to confirm the agreement of the European Community to a provisional application.

Please accept, Sir, the assurance of my highest consideration.

For the European Community

FISHERIES PARTNERSHIP AGREEMENT
between the Republic of Côte d'Ivoire and the European Community

THE REPUBLIC OF CÔTE D'IVOIRE, hereinafter referred to as 'Côte d'Ivoire',

and

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

hereinafter referred to as 'the Parties',

CONSIDERING the close working relationship between the Community and Côte d'Ivoire, particularly in the context of the Cotonou Agreement, and their mutual desire to intensify that relationship,

CONSIDERING the desire of the two Parties to promote the sustainable exploitation of fisheries resources by means of cooperation,

HAVING REGARD TO the United Nations Convention on the Law of the Sea,

DETERMINED to apply the decisions and recommendations of the International Commission for the Conservation of Atlantic Tunas, hereinafter referred to as 'ICCAT',

AWARE of the importance of the principles established by the Code of Conduct for Responsible Fisheries adopted at the FAO Conference in 1995,

DETERMINED to cooperate, in their mutual interest, in promoting the introduction of responsible fisheries to ensure the long-term conservation and sustainable exploitation of marine living resources,

CONVINCED that such cooperation must take the form of initiatives and measures which, whether taken jointly or separately, are complementary and ensure consistent policies and synergy of effort,

INTENDING, to these ends, to commence a dialogue on the sectoral fisheries policy adopted by the Government of Côte d'Ivoire and to identify the appropriate means of ensuring that this policy is effectively implemented and that economic operators and civil society are involved in the process,

DESIROUS of establishing terms and conditions governing the fishing activities of Community vessels in Côte d'Ivoire waters and Community support for the introduction of responsible fishing in those waters,

RESOLVED to pursue closer economic cooperation in the fishing industry and related activities through the setting up and development of joint enterprises involving companies from both Parties,

HEREBY AGREE AS FOLLOWS:

Article 1

Scope

This Agreement establishes the principles, rules and procedures governing:

— economic, financial, technical and scientific cooperation in the fisheries sector with a view to promoting responsible fishing in Côte d'Ivoire's fishing zones to guarantee the conservation and sustainable exploitation of fisheries resources and develop Côte d'Ivoire's fisheries sector,

— the conditions governing access by Community fishing vessels to Côte d'Ivoire's fishing zones,

— cooperation on the arrangements for policing fisheries in Côte d'Ivoire's fishing zones with a view to ensuring that the above rules and conditions are complied with, that the measures for the conservation and management of fish stocks are effective and that illegal, undeclared and unregulated fishing is prevented,

— partnerships between companies aimed at developing economic activities in the fisheries sector and related activities, in the common interest.

Article 2

Definitions

For the purposes of this Agreement:

- (a) 'Côte d'Ivoire authorities' means the Ministry responsible for fisheries resources;
- (b) 'Community authorities' means the European Commission;
- (c) 'Côte d'Ivoire's fishing zone' means the waters over which, as regards fisheries, Côte d'Ivoire has sovereignty or jurisdiction;
- (d) 'fishing vessel' means any vessel equipped for commercial exploitation of living aquatic resources;
- (e) 'Community vessel' means a fishing vessel flying the flag of a Member State of the Community and registered in the Community;
- (f) 'Joint Committee' means a committee made up of representatives of the Community and Côte d'Ivoire, as specified in Article 9 of this Agreement;
- (g) 'transhipment' means the transfer in or off the port of some or all of the catch from one fishing vessel to another vessel;
- (h) 'unusual circumstances' means circumstances, other than natural phenomena, which are beyond the reasonable control of one of the Parties and are such as to prevent fishing activities in Côte d'Ivoire waters;
- (i) 'ACP seamen' means any seamen who are nationals of a non-European signatory to the Cotonou Agreement. To this end, an Ivorian seaman is an ACP seaman.

Article 3

Principles and objectives underlying the implementation of this Agreement

1. The Parties hereby undertake to promote responsible fishing in Côte d'Ivoire's fishing zones on the basis of the principles of non-discrimination between the different fleets fishing in those waters, without prejudice to the agreements concluded between developing countries within a geographical region, including reciprocal fisheries agreements.

2. The Parties shall cooperate with a view to implementing a sectoral fisheries policy adopted by the Government of Côte d'Ivoire and to that end shall initiate a policy dialogue on the necessary reforms. They shall consult with a view to adopting potential measures in this area.

3. The Parties shall also cooperate in carrying out *ex ante*, ongoing and *ex post* evaluations, both jointly and unilaterally, of measures, programmes and actions implemented on the basis of this Agreement.

4. The Parties hereby undertake to ensure that this Agreement is implemented in accordance with the principles of good economic and social governance, respecting the state of fish stocks.

5. In particular, the employment of ACP seamen on board Community vessels shall be governed by the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, which shall apply as of right to the corresponding contracts and general terms of employment. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.

Article 4

Scientific cooperation

1. During the period covered by this Agreement, the Community and Côte d'Ivoire shall endeavour to monitor the evolution of resources in Côte d'Ivoire's fishing zone.

2. The two Parties, on the basis of the recommendations and resolutions adopted within the International Commission for the Conservation of Atlantic Tunas (ICCAT), and in the light of the best available scientific advice, shall consult each other within the Joint Committee provided for in Article 9 of the Agreement and adopt, where appropriate after a scientific meeting and by mutual agreement, measures to ensure the sustainable management of fisheries resources affecting the activities of Community vessels.

3. The Parties undertake to consult one other, either directly, including at subregional level, or within the international organisations concerned, to ensure the management and conservation of living resources in the Atlantic Ocean, and to cooperate in the relevant scientific research.

*Article 5***Access by Community vessels to fisheries in Côte d'Ivoire waters**

1. Côte d'Ivoire undertakes to authorise Community vessels to engage in fishing activities in its fishing zone in accordance with this Agreement, including the Protocol and Annex thereto.

2. The fishing activities governed by this Agreement shall be subject to the laws and regulations in force in Côte d'Ivoire. The Côte d'Ivoire authorities shall notify the Commission of any amendments to that legislation.

3. Côte d'Ivoire shall take all the appropriate steps required for the effective application of the fisheries monitoring provisions in the Protocol. Community vessels shall cooperate with the Côte d'Ivoire authorities responsible for carrying out such monitoring.

4. The Community undertakes to take all the appropriate steps required to ensure that its vessels comply with this Agreement and the legislation governing fisheries in the waters over which Côte d'Ivoire has jurisdiction.

*Article 6***Licences**

1. Community vessels may fish in Côte d'Ivoire's fishing zone only if they are in possession of a valid fishing licence issued by Côte d'Ivoire under this Agreement and the Protocol hereto.

2. The procedure for obtaining a fishing licence for a vessel, the taxes applicable and the method of payment to be used by shipowners shall be as set out in the Annex to the Protocol.

*Article 7***Financial contribution**

1. The Community shall grant Côte d'Ivoire a financial contribution in accordance with the terms and conditions laid down in the Protocol and the Annexes. This single contribution shall be based on two elements, namely:

- (a) access by Community vessels to Côte d'Ivoire waters and fisheries resources, and
- (b) Community financial support for establishing a national fisheries policy based on responsible fishing and on the sustainable exploitation of fisheries resources in Côte d'Ivoire waters.

2. The element of the financial contribution referred to in paragraph 1(b) above shall be determined in the light of objectives identified by mutual agreement between the Parties in accordance with the Protocol, to be achieved in the context of the sectoral fisheries policy drawn up by the Government of Côte d'Ivoire and an annual and multiannual programme for its implementation.

3. The financial contribution granted by the Community shall be paid each year in accordance with the Protocol and subject to this Agreement and the Protocol in the event of any change to the amount of the contribution as a result of:

- (a) unusual circumstances;
- (b) a reduction in the fishing opportunities granted to Community vessels, made by mutual agreement for the purposes of managing the stocks concerned, where this is considered necessary for the conservation and sustainable exploitation of resources on the basis of the best available scientific advice;
- (c) an increase in the fishing opportunities granted to Community vessels, made by mutual agreement between the Parties where the best available scientific advice concurs that the state of resources so permits;
- (d) a reassessment of the terms of financial support for implementing a sectoral fisheries policy in Côte d'Ivoire, where this is warranted by the results of the annual and multi-annual programming observed by both Parties;
- (e) termination of this Agreement under Article 13;
- (f) suspension of the application of this Agreement under Article 12.

*Article 8***Promoting cooperation among economic operators and civil society**

1. The Parties shall encourage economic, scientific and technical cooperation in the fisheries sector and related sectors. They shall consult one another with a view to coordinating the different measures that might be taken to this end.

2. The Parties undertake to promote exchanges of information on fishing techniques and gear, preservation methods and the processing of fishery products.

3. The Parties shall endeavour to create conditions favourable to the promotion of relations between their enterprises in the technical, economic and commercial spheres, by encouraging the establishment of an environment favourable to the development of business and investment.

4. The Parties shall encourage, in particular, the setting-up of joint enterprises in their mutual interest which shall systematically comply with Côte d'Ivoire and Community legislation.

Article 9

Joint Committee

1. A Joint Committee shall be set up to monitor and control the application of this Agreement. The Joint Committee shall perform the following functions:

- (a) overseeing the performance, interpretation and application of this Agreement and, in particular, the definition of the annual and multiannual programming referred to in Article 7(2) and evaluation of its implementation;
- (b) providing the necessary liaison for matters of mutual interest relating to fisheries;
- (c) acting as a forum for the amicable settlement of any disputes regarding the interpretation or application of the Agreement;
- (d) reassessing, where necessary, the level of fishing opportunities and, consequently, of the financial contribution;
- (e) any other function which the Parties decide on by mutual agreement.

2. The Joint Committee shall meet at least once a year, alternately in Côte d'Ivoire and in the Community, and shall be chaired by the Party hosting the meeting. It shall hold a special meeting at the request of either of the Parties.

Article 10

Geographical area to which the Agreement applies

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community applies, under the conditions laid down in that Treaty, and, on the other, to the territory of Côte d'Ivoire.

Article 11

Duration

This Agreement shall apply for six years from the date of its entry into force; it shall be tacitly renewed for six-year periods,

unless notice of termination is given in accordance with Article 13.

Article 12

Suspension

1. Application of this Agreement may be suspended at the initiative of one of the Parties in the event of a serious disagreement as to the application of provisions laid down in the Agreement. Suspension of application of the Agreement shall require the interested Party to notify its intention in writing at least three months before the date on which suspension is due to take effect. On receipt of this notification, the Parties shall enter into consultations with a view to resolving their differences amicably.

2. Payment of the financial contribution referred to in Article 7 shall be reduced proportionately and *pro rata temporis*, according to the duration of the suspension.

Article 13

Termination

1. This Agreement may be terminated by either Party in the event of unusual circumstances such as the degradation of the stocks concerned, the discovery of a reduced level of exploitation of the fishing opportunities granted to Community vessels, or failure to comply with undertakings made by the Parties with regard to combating illegal, unreported and unregulated fishing.

2. The Party concerned shall notify the other Party in writing of its intention to withdraw from the Agreement at least six months before the date of expiry of the initial period or each additional period.

3. Dispatch of the notification referred to in paragraph 2 shall open consultations by the Parties.

4. Payment of the financial contribution referred to in Article 7 for the year in which the termination takes effect shall be reduced proportionately and *pro rata temporis*.

Article 14

Protocol and Annex

The Protocol and the Annex shall form an integral part of this Agreement.

*Article 15***National law**

The activities of Community vessels operating in Côte d'Ivoire waters shall be governed by the applicable law in Côte d'Ivoire, unless otherwise provided in the Agreement, this Protocol and the Annex and Appendices hereto.

*Article 16***Repeal**

On the date of its entry into force, this Agreement repeals and replaces the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off

the coast of Côte d'Ivoire which entered into force on 19 December 1990.

*Article 17***Entry into force**

This Agreement, drawn up in duplicate in the Bulgarian, Spanish, Czech, Danish, German, Estonian, Greek, English, French, Italian, Latvian, Lithuanian, Hungarian, Maltese, Dutch, Polish, Portuguese, Romanian, Slovak, Slovenian, Finnish and Swedish languages, each of these texts being equally authentic, shall enter into force on the date on which the Parties notify each other in writing that they have completed their respective necessary internal procedures to that end.

PROTOCOL

setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire for the period from 1 July 2007 to 30 June 2013

Article 1

Period of application and fishing opportunities

1. For a period of six years from 1 July 2007, the fishing opportunities granted under Article 5 of the Agreement shall be as follows:

highly migratory species (species listed in Annex 1 to the 1982 United Nations Convention):

— freezer tuna seiners: 25 vessels,

— surface longliners: 15 vessels.

2. Paragraph 1 shall apply subject to Articles 4 and 5 of this Protocol.

3. Vessels flying the flag of a Member State of the European Community may fish in Côte d'Ivoire's fishing zone only if they are in possession of a valid fishing licence issued by Côte d'Ivoire under this Protocol in accordance with the Annex hereto.

Article 2

Financial contribution — methods of payment

1. The financial contribution referred to in Article 7 of the Agreement shall comprise, for the period referred to in Article 1, an annual amount of EUR 455 000 equivalent to a reference tonnage of 7 000 tonnes per year and a specific amount of EUR 140 000 per year for the support and implementation of Côte d'Ivoire's sectoral fisheries policy. This specific amount shall be an integral part of the single financial contribution defined in Article 7 of the Agreement.

2. Paragraph 1 shall apply subject to Articles 4, 5, 6 and 7 of this Protocol.

3. The Community shall pay the total amount fixed in paragraph 1, i.e. EUR 595 000, each year during the period of application of this Protocol.

4. If the overall quantity of catches by Community vessels in Côte d'Ivoire's fishing zones exceeds the reference tonnage, the amount of the annual financial contribution shall be increased by EUR 65 for each additional tonne caught. However, the total annual amount paid by the Community shall not be more than twice the amount indicated in paragraph 3 (EUR 1 190 000). Where the quantities caught by Community vessels exceed the quantities corresponding to twice the total annual amount, the amount due for the quantity exceeding that limit shall be paid the following year.

5. Payment of the financial contribution referred to in paragraph 1 shall be made no later than 30 March 2008 in the first year and no later than 1 July in the following years.

6. Subject to Article 6, the Côte d'Ivoire authorities shall have full discretion regarding the use to which this financial contribution is put.

7. The financial contribution shall be paid into a single Côte d'Ivoire Public Treasury bank account.

Article 3

Cooperation on responsible fishing — Scientific cooperation

1. The Parties hereby undertake to promote responsible fishing in Côte d'Ivoire waters on the basis of the principles of non-discrimination between the different fleets fishing in those waters.

2. During the period covered by this Protocol, the Community and the Côte d'Ivoire authorities shall endeavour to monitor the evolution of resources in Côte d'Ivoire's fishing zone.

3. The Parties undertake to promote cooperation at sub-regional level on responsible fishing and, in particular, within the International Commission for the Conservation of Atlantic Tunas (ICCAT) or any other subregional or international organisation concerned.

4. In accordance with Article 4 of the Agreement and on the basis of the recommendations and resolutions adopted within the International Commission for the Conservation of Atlantic Tunas (ICCAT), and in the light of the best available scientific advice, the Parties shall consult each other within the Joint Committee provided for in Article 9 of the Agreement and adopt, where appropriate after a scientific meeting possibly at subregional level, and by mutual agreement, measures to ensure the sustainable management of fisheries resources affecting the activities of Community vessels.

Article 4

Review of fishing opportunities by mutual agreement

1. The fishing opportunities referred to in Article 1 may be increased by mutual agreement provided that the conclusions of the scientific meeting referred to in Article 3(4) confirm that such an increase will not endanger the sustainable management of Côte d'Ivoire's resources. In this case the financial contribution referred to in Article 2(1) shall be increased proportionately and *pro rata temporis*. However, the total amount of the financial contribution paid by the European Community in respect of the reference tonnage shall not be more than twice the amount of the financial contribution referred to in Article 2(1). Where the quantities caught annually by Community vessels are more than twice 7 000 tonnes (i.e. 14 000 tonnes), the amount due for the quantity exceeding that limit shall be paid the following year.

2. Conversely, if the Parties agree to adopt a reduction in the fishing opportunities provided for in Article 1, the financial contribution shall be reduced proportionately and *pro rata temporis*.

3. The allocation of the fishing opportunities among different categories of vessels may also be reviewed, following consultations and by mutual agreement between the Parties, provided that any changes comply with recommendations made by the scientific meeting referred to in Article 3(4) regarding the management of stocks liable to be affected by such redistribution. The Parties shall agree on the corresponding adjustment of the financial contribution where the redistribution of fishing opportunities so warrants.

Article 5

New and exploratory fishing opportunities

1. Should Community vessels be interested in fishing activities which are not indicated in Article 1, the Community shall consult Côte d'Ivoire in order to seek authorisation for these new activities. Where appropriate, the Parties shall agree

on the conditions applicable to these new fishing opportunities and, if necessary, make amendments to this Protocol and to the Annex hereto.

2. The Parties may carry out joint exploratory fishing trips in Côte d'Ivoire's fishing zones, subject to an opinion by the scientific meeting provided for in Article 3(4). To this end, they shall hold consultations whenever one of the Parties so requests and determine, on a case-by-case basis, relevant new resources, conditions and other parameters.

3. The two Parties shall carry out exploratory fishing activities in accordance with scientific and administrative parameters adopted by mutual agreement. The authorisations for exploratory fishing shall be granted for test purposes, for a maximum of two six-month trips, from the date decided by mutual agreement between the two Parties.

4. Where the Parties conclude that the exploratory fishing trips have produced positive results, while preserving ecosystems and conserving living marine resources, new fishing opportunities may be awarded to Community vessels following the consultation procedure provided for in Article 4 of this Protocol and until the expiry of the Protocol and in accordance with the allowable effort. The financial contribution will be increased as a result.

Article 6

Suspension and review of the payment of the financial contribution in the event of unusual circumstances

1. Where unusual circumstances, other than natural phenomena, prevent fishing activities in Côte d'Ivoire's exclusive economic zone (EEZ), the European Community may suspend payment of the financial contribution provided for in Article 2(1). The suspension decision shall be taken following consultations between the two Parties within a period of two months following the request of one of the Parties, and provided that the Community has paid in full any amounts due at the time of suspension.

2. Payment of the financial contribution shall resume as soon as the Parties find, by mutual agreement following consultations, that the circumstances preventing fishing activities are no longer present and/or that the situation allows a resumption of fishing activities.

3. Where the validity of the licences granted to Community vessels is suspended along with the payment of the financial contribution, it shall be extended by a period equal to the period during which fishing activities were suspended.

Article 7

Promotion of responsible fishing in Côte d'Ivoire waters

1. One hundred percent of the total amount of the financial contribution fixed in Article 2 shall be allocated each year to the support and implementation of initiatives taken in the context of the sectoral fisheries policy drawn up by the Côte d'Ivoire Government.

Côte d'Ivoire shall manage the corresponding amount following the identification by mutual agreement between the two Parties, in accordance with the current priorities of Côte d'Ivoire's fisheries policy for ensuring sustainable and responsible management of the sector, of the objectives to be attained and the annual and multiannual programming required to attain them, pursuant to paragraph 2 below, in particular as regards monitoring and control, the management of resources, improving health and hygiene conditions in the production of fishery products and strengthening the monitoring capacity of the competent authorities.

2. On a proposal from Côte d'Ivoire and for the purposes of implementing the preceding paragraph, as soon as this Protocol enters into force and no later than three months after that date, the Community and Côte d'Ivoire shall agree, within the Joint Committee provided for in Article 9 of the Agreement, on a multiannual sectoral programme and detailed implementing rules covering, in particular:

- (a) annual and multiannual guidelines for using the percentage of the financial contribution referred to in paragraph 1 and its specific amounts for the initiatives to be carried out each year;
- (b) the objectives, both annual and multiannual, to be achieved with a view to promoting responsible fishing and sustainable fisheries, taking account of the priorities expressed by Côte d'Ivoire in its national fisheries policy and other policies relating to or having an impact on the introduction of responsible fishing and sustainable fisheries;
- (c) criteria and procedures for evaluating the results obtained each year.

3. Any proposed amendments to the multiannual sectoral programme or of the use of the specific amounts for the initiatives to be carried out each year must be approved by both Parties within the Joint Committee.

4. Each year, Côte d'Ivoire shall allocate the share corresponding to the percentage referred to in paragraph 1 with a view to implementing the multiannual programme. For the first

year of application of the Protocol, that allocation must be notified to the Community at the time when the multiannual sectoral programme is approved within the Joint Committee. For each year thereafter, Côte d'Ivoire shall notify the Community of the allocation no later than 1 May of the previous year.

5. Where the annual evaluation of the progress made in implementing the multiannual sectoral programme so warrants, the European Community may ask for the amount for the support and implementation of Côte d'Ivoire's sectoral fisheries policy within the financial contribution referred to in Article 2(1) of this Protocol to be readjusted with a view to bringing the actual amount of financial resources allocated to implementation of the programme into line with its results.

Article 8

Disputes — suspension of application of the Protocol

1. Any dispute between the Parties over the interpretation of this Protocol or its application shall be the subject of consultations between the Parties within the Joint Committee provided for in Article 9 of the Agreement, in a special meeting if necessary.

2. Without prejudice to Article 9, application of the Protocol may be suspended at the initiative of one Party if the dispute between the two Parties is deemed to be serious and if the consultations held within the Joint Committee under paragraph 1 have not resulted in an amicable settlement.

3. Suspension of application of the Protocol shall require the interested Party to notify its intention in writing at least three months before the date on which suspension is due to take effect.

4. In the event of suspension, the Parties shall continue to consult with a view to finding an amicable settlement to their dispute. As soon as an amicable settlement is reached, application of the Protocol shall resume and the amount of the financial contribution shall be reduced proportionately and *pro rata temporis* according to the period during which application of the Protocol was suspended.

Article 9

Suspension of application of the Protocol on grounds of non-payment

Subject to Article 6, if the Community fails to make the payments provided for in Article 2, application of this Protocol may be suspended on the following terms:

- (a) the competent Côte d'Ivoire authorities shall notify the European Commission of the non-payment. The Commission shall carry out the requisite checks and, where necessary, transmit the payment within no more than 60 working days of the date of receipt of the notification;
- (b) if no payment is made and non-payment is not adequately justified within the period provided for in Article 2(5) of this Protocol, the competent Côte d'Ivoire authorities shall be entitled to suspend application of the Protocol. They shall inform the European Commission of such action forthwith;
- (c) application of the Protocol shall resume as soon as the payment concerned has been made.

Article 10

National law

The activities of Community vessels operating in Côte d'Ivoire waters shall be governed by the applicable law in Côte d'Ivoire, unless otherwise provided in the Agreement, this Protocol and the Annex and Appendices hereto.

Article 11

Review clause

Following the third anniversary of this Protocol and the Annex thereto, the Parties shall review the application of the Protocol and the Annex thereto and, where appropriate, consult each other within the Joint Committee on any amendments of their provisions. Any such amendments may include the reference tonnage and the standard amounts paid for licences.

Article 12

Repeal

The Annex to the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire is hereby repealed and replaced by the Annex to this Protocol.

Article 13

Entry into force

1. This Protocol with its Annex shall enter into force on the date on which the Parties notify each other of the completion of the procedures necessary for that purpose.
2. They shall apply with effect from 1 July 2007.

ANNEX

CONDITIONS GOVERNING FISHING ACTIVITIES BY COMMUNITY VESSELS IN CÔTE D'IVOIRE'S FISHING ZONE

CHAPTER I

Application for and issue of licences

SECTION 1

Issue of licences

1. Only eligible vessels may obtain a licence to fish in Côte d'Ivoire's fishing zone.
2. For a vessel to be eligible, neither the owner, the master nor the vessel itself must be prohibited from fishing in Côte d'Ivoire. They must be in order vis-à-vis the Côte d'Ivoire authorities insofar as they must have fulfilled all prior obligations arising from their fishing activities in Côte d'Ivoire under fisheries agreements concluded with the Community.
3. The relevant Community authorities shall submit (by electronic means) to the Ministry responsible for fisheries in Côte d'Ivoire an application for each vessel wishing to fish or assist in fishing activities under the Agreement at least 30 working days before the date of commencement of the period of validity requested.
4. Applications shall be submitted to the Ministry responsible for fisheries on a form drawn up in accordance with the specimen in Appendix I. The Côte d'Ivoire authorities shall take all the necessary steps to ensure that the data received as part of the licence application are treated as confidential. This data will be used exclusively in the context of the implementation of the Fisheries Agreement.
5. All licence applications shall be accompanied by the following documents:
 - proof of payment of the flat-rate advance for the period of validity of the licence,
 - any other documents or certificates required under the specific rules applicable to the type of vessel concerned pursuant to this Protocol.
6. The fee shall be paid into the account specified by the Côte d'Ivoire authorities in accordance with Article 2(7) of the Protocol.
7. The fees shall include all national and local charges with the exception of port taxes and service charges.
8. Licences for all vessels shall be issued to shipowners or their representatives via the Delegation of the European Commission to Côte d'Ivoire within 15 working days of receipt of all the documents referred to in point 6 by the Ministry responsible for fisheries in Côte d'Ivoire.
9. Licences shall be issued for a specific vessel and shall not be transferable.
10. However, at the request of the European Community and where *force majeure* is proven, a vessel's licence shall be replaced by a new licence for another vessel of the same category as the first vessel, as referred to in Article 1 of the Protocol, with no further fee due. In this case, the calculation of the catch levels to determine whether an additional payment should be made shall take account of the sum of the total catches of the two vessels.
11. The owner of the first vessel, or his or her representative, shall return the cancelled licence to the Ministry responsible for fisheries in Côte d'Ivoire via the Delegation of the European Commission.

12. The new licence shall take effect on the day that the vessel's owner returns the cancelled licence to the Ministry responsible for fisheries in Côte d'Ivoire. The Delegation of the European Commission to Côte d'Ivoire shall be informed of the licence transfer.
13. The licence must be held on board at all times. The European Community shall keep an up-to-date draft list of the vessels for which a fishing licence has been applied for under this Protocol. This draft shall be notified to the Côte d'Ivoire authorities as soon as it is drawn up, and then each time it is updated. On receipt of this draft list and of notification of payment of the advance sent to the coastal State authorities by the Commission, the vessel shall be entered by the competent Côte d'Ivoire authority on a list of vessels authorised to fish, which shall be notified to the authorities responsible for fisheries inspection. In this case, a certified copy of this list shall be sent to the shipowner and kept on board instead of the fishing licence until the licence has been issued.
14. The two Parties shall seek agreement for the purposes of promoting the introduction of a licence system based exclusively on the electronic exchange of all the information and documents described above. The two Parties shall seek agreement for the purposes of promoting the rapid replacement of the paper licence by an electronic equivalent such as the list of vessels authorised to fish in Côte d'Ivoire's fishing zone.

SECTION 2

Licence conditions — Fees and advance payments

1. Licences shall be valid for a period of one year. They shall be renewable.
2. The fee shall be EUR 35 per tonne caught within Côte d'Ivoire's fishing zone in the case of tuna seiners and surface longliners.
3. Licences shall be issued once the following standard amounts have been paid to the competent national authorities:
 - EUR 3 850 per tuna seiner, equivalent to the fees due for 110 tonnes per year,
 - EUR 1 400 per surface longliner, equivalent to the fees due for 40 tonnes per year.
4. Member States shall inform the European Commission not later than 15 June each year of the tonnages caught during the past year, as confirmed by the scientific institutes referred to in point 5 below.
5. The final statement of the fees due for year n shall be drawn up by the European Commission by 31 July of year $n + 1$ at the latest on the basis of the catch declarations made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data in the Member States, such as the *Institut de Recherche pour le Développement* (IRD), the *Instituto Español de Oceanografía* (IEO), the *Instituto Português de Investigação Marítima* (IPIMAR) and the Côte d'Ivoire *Centre de Recherches Océanologiques* (CRO). It shall be sent via the Delegation of the European Commission.
6. This statement shall be sent simultaneously to the Ministry responsible for fisheries in Côte d'Ivoire and to the shipowners.
7. Any additional payments (for quantities caught in excess of 110 tonnes for tuna seiners and 40 tonnes for longliners) shall be made by the shipowners to the competent Côte d'Ivoire national authorities by 31 August of year $n + 1$, into the account referred to in point 6 of Section 1 of this Chapter, on the basis of EUR 35 per tonne.
8. However, if the amount of the final statement is lower than the advance referred to in point 3 of this Section, the resulting balance shall not be reimbursable to the shipowner.

CHAPTER II

Fishing zones

1. Community vessels may carry out fishing activities in waters beyond 12 nautical miles from the base lines in the case of tuna seiners and surface longliners.

CHAPTER III

Catch reporting arrangements

1. For the purposes of this Annex, the duration of a trip by a Community vessel in Côte d'Ivoire's fishing zone shall be defined as follows:

— the period elapsing between entering and leaving Côte d'Ivoire's fishing zone,

— or the period elapsing between entering Côte d'Ivoire's fishing zone and a transshipment and/or a landing in Côte d'Ivoire.

2. All vessels authorised to fish in Côte d'Ivoire waters under the Agreement shall be obliged to notify their catches to the Ministry responsible for fisheries in Côte d'Ivoire so that it can check the quantities caught, which shall be validated by the competent scientific institutes in accordance with the procedure referred to in point 4 of Section 2 of Chapter I of this Annex. Catches shall be notified as follows:

- 2.1. During an annual period of validity of the licence within the meaning of Section 2 of Chapter I of this Annex, declarations shall include the catches made by the vessel during each trip. The original of the declarations shall be transmitted on a physical medium to the Côte d'Ivoire Ministry responsible for fisheries within 45 days following the end of the last trip made during the period. These notifications shall also be made by fax (225 21 35 04 09 or 225 21 35 63 15) or e-mail.

- 2.2. Vessels shall declare their catches on the corresponding form in the logbook, in accordance with the specimen in Appendix 2. The words 'Outside Côte d'Ivoire's fishing zone' shall be entered in the logbook in respect of periods during which the vessel is not in Côte d'Ivoire's fishing zone.

- 2.3. The forms shall be filled in legibly and signed by the master of the vessel or by his or her legal representative.

- 2.4. Catch declarations shall be reliable in order to contribute to the monitoring of the evolution of stocks.

3. Where the provisions set out in this Chapter are not complied with, the Government of Côte d'Ivoire reserves the right to suspend the licence of the offending vessel until formalities have been completed and to apply to the shipowner the penalty laid down in current Côte d'Ivoire legislation. The European Commission and the flag Member State shall be informed thereof.

4. The two Parties shall seek agreement for the purposes of promoting a catch reporting system based exclusively on the electronic exchange of all the information and documents described above. The two Parties shall seek agreement for the purposes of promoting the rapid replacement of the written declaration (logbook) by an equivalent in the form of an electronic file.

CHAPTER IV

Embarking seamen

1. Owners of tuna seiners and surface longliners shall employ ACP nationals, subject to the following conditions and limits:

— for the fleet of tuna seiners, at least 20 % of the seamen signed on during the tuna-fishing season in the fishing zone of the third country shall be of ACP origin,

- for the fleet of surface longliners, at least 20 % of the seamen signed on during the fishing season in the fishing zone of the third country shall be of ACP origin.
- 2. Shipowners shall endeavour to sign on additional seamen of ACP origin.
- 3. The International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by Community vessels. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.
- 4. The employment contracts of ACP seamen shall be drawn up between the shipowners' representative(s) and the seamen and/or their trade unions or representatives. A copy of these contracts shall be given to the signatories. These contracts shall guarantee the seamen the social security cover applicable to them, including life assurance and sickness and accident insurance.
- 5. The wages of the ACP seamen shall be paid by the shipowners. They shall be fixed by mutual agreement among the shipowners or their representatives and the seamen and/or their trade unions or representatives. However, the wage conditions granted to ACP seamen shall not be lower than those applied to crews from their respective countries and shall under no circumstances be below ILO standards.
- 6. All seamen employed aboard Community vessels shall report to the master of the vessel designated on the day before their proposed embarkation date. Where a seaman fails to report at the date and time agreed for embarkation, shipowners shall be automatically absolved of their obligation to take the seaman on board.

CHAPTER V

Technical measures

Vessels shall comply with the measures and recommendations adopted by ICCAT in the region regarding fishing gear and the technical specifications thereof and all other technical measures applicable to their fishing activities.

CHAPTER VI

Observers

1. Vessels authorised to fish in Côte d'Ivoire waters under the Agreement shall take on board observers appointed by the competent regional fisheries organisation on the terms set out below.
 - 1.1. At the request of the competent authority, Community vessels shall take on board an observer designated by the authority in order to check catches made in Côte d'Ivoire waters.
 - 1.2. The competent authority shall draw up a list of vessels designated to take an observer on board and a list of the appointed observers. These lists shall be kept up to date. They shall be forwarded to the European Commission as soon as they have been drawn up and every three months thereafter where they have been updated.
 - 1.3. The competent authority shall inform the shipowners concerned, or their representatives, of the name of the observer appointed to be taken on board their vessel at the time the licence is issued, or no later than 15 days before the observer's planned embarkation date.
2. The time spent on board by observers shall be one fishing trip. However, at the express request of the competent Côte d'Ivoire authorities, this embarkation may be spread over several trips according to the average duration of trip for a particular vessel. This request shall be made by the competent authority when the name of the observer appointed to board the vessel in question is notified.
3. The conditions under which observers are taken on board shall be agreed between shipowners or their representatives and the competent authority.

4. Observers shall be taken on board at a port chosen by the shipowner at the beginning of the first voyage in Côte d'Ivoire waters after notification of the list of designated vessels.
5. Within two weeks and giving ten days' notice, the shipowners concerned shall make known at which ports in the subregion and on what dates they intend to take observers on board.
6. Where observers are taken on board in a country outside the subregion, their travel costs shall be borne by the shipowner. Should a vessel with a regional observer on board leave the regional fishing zone, all measures must be taken to ensure the observer's return as soon as possible at the expense of the shipowner.
7. If the observer is not present at the time and place agreed or within the twelve hours following the time agreed, shipowners shall be automatically absolved of their obligation to take the observer on board.
8. Observers shall be treated as officers. Where vessels are operating in Côte d'Ivoire waters, they shall carry out the following tasks:
 - 8.1. observe the fishing activities of the vessels;
 - 8.2. verify the position of vessels engaged in fishing operations;
 - 8.3. perform biological sampling in the context of scientific programmes;
 - 8.4. note the fishing gear used;
 - 8.5. verify the catch data for Côte d'Ivoire waters recorded in the logbook;
 - 8.6. verify the percentages of by-catches and estimate the quantity of discards of species of marketable fish;
 - 8.7. report by any appropriate means fishing data, including the quantity of catches and by-catches on board, to their competent authority.
9. Masters shall do everything in their power to ensure the physical safety and welfare of observers during performance of their duties.
10. Observers shall be offered every facility needed to carry out their duties. The master shall give them access to the means of communication needed for the discharge of their duties, to documents directly concerned with the vessel's fishing activities, including in particular the logbook and the navigation log, and to those parts of the vessel necessary to facilitate the exercise of their tasks as observer.
11. While on board, observers shall:
 - 11.1. take all appropriate steps to ensure that the conditions of their boarding and presence on the vessel neither interrupt nor hamper fishing operations,
 - 11.2. respect the material and equipment on board and the confidentiality of all documents belonging to the vessel.
12. At the end of the observation period and before leaving the vessel, observers shall draw up an activity report to be transmitted to the competent authorities, with a copy to the European Commission. They shall sign it in the presence of the master, who may add or cause to be added to it any observations considered relevant, followed by the master's signature. A copy of the report shall be handed to the master when the scientific observer is put ashore.

13. Shipowners shall bear the cost of accommodating observers in the same conditions as the officers, within the confines of the practical possibilities offered by the vessel.
14. The salary and social contributions of the observer shall be borne by the competent authorities.
15. The two Parties shall consult each other, and interested third parties, as soon as possible as regards the definition of a system of regional observers and the choice of the competent regional fisheries organisation. Pending the implementation of a system of regional observers, vessels authorised to fish in Côte d'Ivoire's fishing zone under the Agreement shall take on board, instead of regional observers, observers designated by the competent Côte d'Ivoire authorities in accordance with the rules set out above.

CHAPTER VII

Monitoring

1. In accordance with point 13 of Section 1 of Chapter I of this Annex, the European Community shall keep an up-to-date list of the vessels to which a fishing licence has been issued under this Protocol. This list shall be notified to the Côte d'Ivoire authorities responsible for fisheries inspection as soon as it is drawn up and each time it is updated.
2. On receipt of this draft list and of notification of payment of the advance (referred to in point 3 of Section 2 of Chapter I of this Annex) sent to the coastal State authorities by the European Commission, the vessel shall be entered by the competent Côte d'Ivoire authority on a list of vessels authorised to fish, which shall be sent to the authorities responsible for fisheries inspection. In this case, a certified copy of this list shall be sent to the shipowner and kept on board instead of the fishing licence until the licence has been issued.
3. *Entering and leaving the zone*
 - 3.1. At least three hours in advance Community vessels shall notify the competent Côte d'Ivoire authorities responsible for fisheries inspection of their intention to enter or leave Côte d'Ivoire's fishing zone; they shall also declare the overall quantities and the species on board.
 - 3.2. When notifying leaving, vessels shall also communicate their position. This information should preferably be communicated by fax (225 21 35 04 09 or 225 21 35 63 15) or e-mail ([...]) or, for vessels not equipped with a fax or e-mail, by radio (call sign: [...]).
 - 3.3. Vessels found to be fishing without having informed the competent Côte d'Ivoire authority shall be regarded as vessels in breach of the rules.
 - 3.4. Vessels shall also be informed of the fax and telephone numbers and e-mail address when the fishing licence is issued.
4. *Control procedures*
 - 4.1. Masters of Community fishing vessels engaged in fishing activities in Côte d'Ivoire waters shall allow and facilitate boarding and the discharge of their duties by any Côte d'Ivoire official responsible for the inspection and control of fishing activities.
 - 4.2. These officials shall not remain on board for longer than is necessary for the discharge of their duties.
 - 4.3. Once the inspection and control has been completed, a certificate shall be issued to the master of the vessel.

5. *Satellite monitoring*

- 5.1. All Community vessels fishing under this Agreement shall be subject to satellite monitoring in line with Appendix 3. These provisions shall enter into force on the tenth day following notification by the Government of Côte d'Ivoire to the Delegation of the European Commission to Côte d'Ivoire of the entry into operation of the Côte d'Ivoire Fisheries Monitoring Centre (FMC).

6. *Boarding*

- 6.1. The competent Côte d'Ivoire authorities shall inform the flag State and the European Commission, within no more than 36 hours, of all boardings of and penalties imposed on Community vessels in Côte d'Ivoire waters.
- 6.2. The flag State and the European Commission shall at the same time receive a brief report of the circumstances and reasons leading to the boarding.

7. *Statement of boarding*

- 7.1. After the competent Côte d'Ivoire authority has drawn up a statement, the master of the vessel shall sign it.
- 7.2. This signature shall not prejudice the rights of the master or any defence which he or she may make to the alleged infringement. If the master refuses to sign this document, he or she shall specify the reasons for doing so in writing and the inspector shall write 'refusal to sign' on it.
- 7.3. The master shall take the vessel to the port indicated by the Côte d'Ivoire authorities. In the case of minor infringements, the competent Côte d'Ivoire authorities may authorise the boarded vessel to continue fishing.

8. *Consultation meeting in the event of boarding*

- 8.1. Before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the presumed infringement, a consultation meeting shall be held, within one working day of the receipt of the above information, between the European Commission and the competent Côte d'Ivoire authorities, possibly attended by a representative of the Member State concerned.
- 8.2. At the meeting, the Parties shall exchange any relevant documentation or information helping to clarify the circumstances of the established facts. The shipowner or his or her representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.

9. *Settlement of boarding*

- 9.1. Before any judicial procedure, an attempt shall be made to resolve the presumed infringement through a compromise procedure. This procedure shall end no later than three working days after the boarding.
- 9.2. In the event of an amicable settlement, the amount of the fine shall be determined in accordance with Côte d'Ivoire legislation.
- 9.3. If the case cannot be settled by amicable procedure and has to be brought before a competent judicial body, a bank security set to take account of the boarding costs and the fines and compensation payable by the parties responsible for the infringement shall be lodged by the shipowner with a bank specified by the competent Côte d'Ivoire authorities.
- 9.4. The bank security shall be irrevocable until the legal proceedings have been concluded. It shall be released once legal proceedings end without a conviction. Similarly, in the event of a conviction leading to a fine of less than the security lodged, the balance shall be released by the competent Côte d'Ivoire authorities.
- 9.5. The vessel shall be released and its crew authorised to leave the port:
- once the obligations arising under the amicable settlement have been fulfilled, or,
 - when the bank security referred to in point 9.3 has been lodged and accepted by the competent Côte d'Ivoire authorities, pending completion of the legal proceedings.

10. *Transhipment*

10.1. All Community vessels wishing to tranship catches in Côte d'Ivoire waters shall do so in or off Côte d'Ivoire ports.

10.2. The owners of such vessels must notify the following information to the competent Côte d'Ivoire authorities at least 24 hours in advance:

- the names of the transshipping fishing vessels,
- the names, OMI numbers and flag of the cargo vessels,
- the tonnage by species to be transhipped,
- the day and place of transhipment.

10.3. Transhipment shall be considered as an exit from Côte d'Ivoire's fishing zone. Masters of vessels must submit their catch declarations to the competent Côte d'Ivoire authorities and state whether they intend to continue fishing or leave Côte d'Ivoire's fishing zone.

10.4. Any transhipment of catches not covered above shall be prohibited in Côte d'Ivoire's fishing zone. Any person infringing this provision shall be liable to the penalties provided for by Côte d'Ivoire law.

11. Masters of Community fishing vessels engaged in landing or transhipment operations in a Côte d'Ivoire port shall allow and facilitate the inspection of such operations by Côte d'Ivoire inspectors. Once the inspection has been completed in the port, a certificate shall be issued to the master of the vessel.

Appendices

1. Licence application form
2. ICCAT logbook
3. Provisions applicable to the satellite-based vessel monitoring system (VMS) and coordinates of Côte d'Ivoire's fishing zone

Appendix 1

MINISTÈRE DE LA PRODUCTION ANIMALE
BP V 84 Abidjan
(République de Côte-d'Ivoire)

RÉPUBLIQUE DE CÔTE-D'IVOIRE
UNION-DISCIPLINE-TRAVAIL

APPLICATION FOR A FISHING LICENCE**SECTION A**

1. Name of shipowner:

.....

2. Nationality of shipowner:

.....

3. Business address of shipowner:

.....

SECTION B

(to be completed for each vessel)

1. Period of validity:

.....

2. Name of vessel:

.....

3. Year of construction:

.....

4. Flag of origin:

.....

5. Current flag:

.....

6. Date on which current flag was acquired:

.....

7. Year of purchase:

.....

8. Home port and registration number:

.....

9. Areas of operation:

.....

10. Type of fishing:

.....

11. Gross tonnage (GRT):

.....

12. Net tonnage (NRT):

.....

13. Radio call sign:

.....

14. Length overall (metres):

.....

15. Stem (metres):
.....
16. Depth (metres):
.....
17. Hull construction material:
.....
18. Engine power:
.....
19. Speed (knots):
.....
20. Cabins:
.....
21. Capacity of fuel tanks (m³):
.....
22. Capacity of fish holds (m³):
.....
23. Freezing capacity in tonnes/24 hours and system used:
.....
24. Colour of hull:
.....
25. Colour of superstructure:
.....
26. Crew numbers:
.....
27. On-board communication equipment:
.....

Type	Make	Model	Power (Watt)	Year of construction	Frequencies	
					Reception	Transmission

28. Navigating and sounding equipment:

[illegible]

29. Auxiliary boats used (for each vessel):

.....

29.1. Gross tonnage:

.....

29.2. Length overall (metres):

.....

29.3. Stem (metres):

.....

29.4. Depth (metres):

.....

29.5. Hull construction material:

.....

29.6. Engine power:

.....

29.7. Speed (knots):

.....

30. Auxiliary aerial equipment used to detect fish (even if not installed on board):

.....

.....

31. Home port:

.....

32. Name of captain:

.....

33. Address:

.....

34. Nationality of captain:

.....

Attach:

- three colour photocopies showing vessel (side view), auxiliary fishing boats and auxiliary aerial equipment used to detect fish,
- an illustration and detailed description of the fishing gear used,
- a document proving that the representative of the shipowner is empowered to sign this application.

.....

(Date of application)

.....

(Signature of representative of shipowner)

Appendix 2

WICCAT LOGBOOK FOR TUNA FISHERY

CCAT LOGBOOK FOR TUNA FISHERY										
Longline Live bait Purse seine Trawl Outros (Others)	Name of vessel:		Gross tonnage:		Vessel DEPARTED:		Month	Day	Year	Port
	Flag country:		Capacity — (M.T.):		Vessel RETURNED:					
	Registration No:		Captain:							
	Shipowner:		No of crew:							
	Address:		Reporting date:		No of days at sea:					
		Reported by:								
						No of fishing days:	No of sets made:			
										
						Trip number:				

Date		Sector		Surface water temperature (°C)	Fishing effort No of hooks used	Capturas (Catches)												Isco usado na pesca (Bait used)														
Month	Day	Latitude N/S	Longitude E/W			Bluefin tuna <i>Thunnus thynnus</i> or <i>maccoyii</i>		Yellowfin tuna <i>Thunnus albacares</i>		(Bigeye tuna) <i>Thunnus obesus</i>		Albacore <i>Thunnus alalunga</i>		(Swordfish) <i>Xiphias gladius</i>		(Strip marlin) <i>Tetrapturus audax</i> or <i>albidus</i>		(Black marlin) <i>Makaira indica</i>		(Sailfish) <i>Istiophorus albicans</i> or <i>platypterus</i>		Skipjack <i>Katsuwonus pelamis</i>		(Miscellaneous fish)		Daily total (weight in kg only)		Saury	Squid	Live bait	(Other)	
						No	Weight kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No	kg	No

Notes

- Use one sheet per month, and one line per day.
- 1 — At the end of each trip, forward a copy of the log to your correspondent or to the ICCAT, Calle Corazón de María, 8, 28002 Madrid, Spain.
- 2 —
- 3 — 'Day' refers to the day you set the line.
- 4 — Round off minutes and seconds.
- 5 — The last line (landing weight) should be completed only at the end of the trip. Actual weight at the time of unloading should be recorded.
- 6 — All information reported here will be kept strictly confidential.

TUNA SEINERS, POLE-AND-LINE TUNA VESSELS

NAME OF VESSEL

MASTER

--	--

PORT OF DEPARTURE
DATE TIME
LOG

	PORT OF ARRIVAL	
DATE	TIME	
LOG		

Sheet No

[illegible]

Appendix 3

The two Parties shall consult each other at a later stage within the Joint Committee to lay down the provisions applicable to the satellite-based vessel monitoring system (VMS) and the coordinates of Côte d'Ivoire's fishing zone.

COUNCIL DECISION
of 18 February 2008
appointing a Spanish member and two Spanish alternate members to the Committee of the Regions
(2008/152/EC)

THE COUNCIL OF THE EUROPEAN UNION,

(a) as a member:

Having regard to the Treaty establishing the European Community, and in particular Article 263 thereof,

— Mr Pedro CASTRO VÁZQUEZ, Alcalde de Getafe (Madrid),

Having regard to the proposal from the Spanish Government,

and

Whereas:

(b) as alternate members:

(1) On 24 January 2006 the Council adopted Decision 2006/116/EC appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2006 to 25 January 2010 ⁽¹⁾.

— Ms Esther MONTERRUBIO VILLAR, Comisionada para las Relaciones Exteriores del Gobierno de Aragón, Comunidad Autónoma de Aragón,

(2) A seat as a member of the Committee of the Regions has fallen vacant following the end of the mandate of Mr GALLEGU CUESTA. Two seats as alternate members have fallen vacant following the end of the mandates of Mr MARTÍN MALLÉN and Mr SUÁREZ RODRÍGUEZ,

— Mr Francisco DE LA TORRE PRADOS, Alcalde de Málaga.

Article 2

This Decision shall take effect on the day of its adoption.

HAS DECIDED AS FOLLOWS:

Done at Brussels, 18 February 2008.

Article 1

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which ends on 25 January 2010:

For the Council
The President
I. JARC

⁽¹⁾ OJ L 56, 25.2.2006, p. 75.

COMMISSION

COMMISSION DECISION

of 13 November 2007

State aid C 37/2006 (ex NN 91/2005) — Fishing Vessel Modernisation Scheme implemented in the United Kingdom

(notified under document number C(2007) 5395)

(Only the English version is authentic)

(Text with EEA relevance)

(2008/153/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, and in particular Article 6(1) Article 14 thereof,

Having called on interested third parties to submit their comments pursuant to the provisions cited above ⁽²⁾,

Whereas:

I. PROCEDURE

- (1) By letter dated 15 June 2004, the Commission was informed by a citizen of the United Kingdom that the *Shetland Islands Council*, the public authority in the Shetland Islands of the United Kingdom had implemented aid to the fisheries sector, which possibly concerned illegal state aid. By letters dated 24 August 2004, 4 February 2005, 11 May 2005 and 16 December 2005, the Commission requested the United Kingdom to provide information about such aid. By letters dated 10 December 2004, 6 April 2005, 8 September 2005 and 31 January 2006, the United Kingdom provided the Commission with further information.
- (2) By letter dated 13 September 2006, the Commission informed the United Kingdom that it had decided to initiate the procedure laid down in Article 88(2) of the

EC Treaty in respect of the aid. The United Kingdom provided its comments on the aid by letters dated 16 October 2006 and 6 February 2007.

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments on the aid.
- (4) The Commission received no comments from interested parties.

II. DETAILED DESCRIPTION

- (5) The *Shetland Islands Council* made payments to the fisheries sector under the scope of two general aid measures, named '*Aid to the Fish Catching and Processing Industry*' and '*Aid to the Fish Farming Industry*', which actually consisted of several different types of aid schemes in force since the 1970's. One such scheme was the '*Fishing Vessel Modernisation Scheme*' ('the scheme'). Under the scheme, which applied from at least the 1980's until 14 January 2005, aid could be granted for the modernisation of fishing vessels, related to a major improvement, such as, for example, better storage of catches, replacement of the engine, improvements in working conditions or to crew safety.
- (6) Aid was granted up to 10 % of the total cost of the improvement project, with a maximum amount of GBP 40 000 per vessel. Only one application per year could be considered. Improvement projects which exceeded 50 % of the costs of a new vessel of the same type were not eligible, as well as work to vessels less than five years old. The works had to meet all the required standards specified by *Shetland Seafood Quality Control*.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ C 293, 2.12.2006, p. 9.

⁽³⁾ OJ C 293, 2.12.2006, p. 9.

- (7) All applicants had to hold a *pressure stock licence* and other relevant certificates of competency and applicants had to become members of the *Shetlands Fishermen's Association*.
- (8) The beneficiary of the aid had to undertake to operate the vessel full-time, to retain ownership of the vessel and to provide full-time employment for the vessel crew for a period of at least five years from receipt of the aid. Finally, beneficiaries had a yearly reporting obligation in order to prove that all conditions had been complied with and the scheme contained a provision for reimbursement of the aid in case of non-compliance with any of the conditions.
- (12) In addition, the United Kingdom provided information showing that none of the grants of aid exceeded 40 % of the eligible costs.
- (13) Finally, the United Kingdom maintained that if the Commission adopts a negative decision, recovery of aid granted prior to 3 June 2003 should not be required as it would be contrary to the principle of the protection of legitimate expectations. In that respect, the United Kingdom made reference to Commission Decision 2003/612/EC of 3 June 2003 on loans for the purchase of fishing quotas in the Shetland Islands (United Kingdom) ⁽³⁾ and Commission Decision 2006/226/EC of 7 December 2005 on Investments of Shetland Leasing and Property Developments in the Shetland Islands (United Kingdom) ⁽⁴⁾, stating that until 3 June 2003, the *Shetland Islands Council* legitimately considered the funds used for such aid to be private rather than public.

Grounds for initiating the procedure

- (9) The Commission had serious doubts that the aid granted under the scheme after 1 July 2001 could be regarded as compatible with the requirements of the Guidelines for the examination of State aid to fisheries and aquaculture of 2001 ⁽¹⁾ ('2001 Guidelines') in conjunction with Article 9 of Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector ⁽²⁾, in particular with the conditions that no aid may be granted for modernisation of fishing vessels if it concerns capacity in terms of tonnage or of power.

III. COMMENTS FROM THE UNITED KINGDOM

- (10) In its letters dated 16 October 2006 and 6 February 2007, the United Kingdom provided further information on the individual aids granted under the scheme after 1 July 2001. In the period from August 2002 until June 2005, 23 aids were granted for vessel modernisation, concerning, amongst others, fish handling systems, fire fighting equipment, aid for winches or deck cranes and for engine replacement. The amount of aid granted varied between GBP 403 and GBP 7 090 per beneficiary.
- (11) As regards compliance with the condition of Article 9 of Regulation (EC) No 2792/1999 that no aid may be granted when the modernisation concerns capacity in terms of tonnage or of power, the United Kingdom stated that none of the improvements facilitated by the grants of aid affected the gross tonnage or the power of any vessel.

IV. ASSESSMENT OF THE AID

- (14) It must be determined firstly if the measure can be regarded as State aid and if so, if it is compatible with the common market. Aid has been granted to a limited number of companies within the fisheries sector, and is thus of a selective nature. The aid has been granted by the *Shetland Islands Council* from state resources. The aid benefited recipients which are in direct competition with other companies in the fisheries sector, both within the United Kingdom, and in other Member States. Therefore, the measures distort or threaten to distort competition and are to be considered State aid within the meaning of Article 87(1) of the EC Treaty.
- (15) As regards State aid to the fisheries sector, State aid is deemed to be compatible with the common market if it complies with the conditions of the Guidelines for the examination of State aid to fisheries and aquaculture ⁽⁵⁾ of 2004 ('2004 Guidelines'). According to the second paragraph of point 5.3 of the 2004 Guidelines: 'an "unlawful aid" within the meaning of Article 1(f) of Regulation (EC) No 659/1999 will be appraised in accordance with the guidelines applicable at the time when the administrative act setting up the aid has entered into force'. This is also in accordance with the general rules expressed in the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ⁽⁶⁾. The aid is thus to be assessed with regard to its compatibility with the 2001 Guidelines and the 2004 Guidelines.

⁽¹⁾ OJ C 19, 20.1.2001, p. 7.

⁽²⁾ OJ L 337, 30.12.1999, p. 10. Regulation as last amended by Regulation (EC) No 485/2005 (OJ L 81, 30.3.2005, p. 1).

⁽³⁾ OJ L 211, 21.8.2003, p. 63.

⁽⁴⁾ OJ L 81, 18.3.2006, p. 36.

⁽⁵⁾ OJ C 229, 14.9.2004, p. 5.

⁽⁶⁾ OJ C 119, 22.5.2002, p. 22.

Compatibility of the scheme

Conditions under the Guidelines

2001 Guidelines

- (16) According to point 2.2.3.2 of 2001 Guidelines, applicable to existing aid as from 1 July 2001, aid for the modernisation of commissioned vessels may be deemed compatible with the common market provided that it complies with the relevant requirements laid down in Regulation (EC) No 2792/1999.

Regulation (EC) No 2792/1999

- (17) Articles 6, 7, 9 and 10 of Regulation (EC) No 2792/1999 and Annex III thereto require that any entry of new capacity is to be compensated by the withdrawal of a capacity without public aid which is at least equal to the new capacity introduced in the segments concerned. Until 31 December 2001, where the objectives for the size of the fleet were not yet respected, the withdrawal of capacity should at least have been 30 % more than the new capacity introduced.
- (18) The aid may only be granted where the Member State has submitted the information concerning the application of the multiannual Guidance Programme ('MAGP'), has complied with its obligations under Council Regulation (EEC) No 2930/86 of 22 September 1986 defining characteristics for fishing vessels⁽¹⁾, has implemented the permanent arrangements for fleet renewal and modernisation under Article 6 of Regulation (EC) No 2792/1999, and has complied with the overall MAGP-objectives.
- (19) In addition, the aid for the modernisation of fishing vessels can be granted only if the aid does not concern capacity in terms of tonnage or of power.
- (20) Finally, the vessels have to be registered in the fleet register and any changes in vessels characteristics must be communicated to this register. The replacement of fishing gear is not eligible.
- (21) As Shetland is an objective I region, aid may be granted up to 40 % of the total eligible costs.

Regulation (EC) No 2369/2002

- (22) On 1 January 2003, the relevant Articles and Annex of Regulation (EC) No 2792/1999 were amended by Regulation (EC) No 2369/2002⁽²⁾. In addition to the existing conditions of Regulation (EC) No 2792/1999, the aid for the modernisation of fishing vessels was further restricted

in the sense that such aid may only be granted provided that the aid does not serve to increase the effectiveness of the fishing gear.

- (23) As regards the condition regarding the fact that the aid may not concern capacity in terms of tonnage or of power, the amendments made by Regulation (EC) No 2369/2002 introduced an exemption to that restriction, allowing such types of aids when they are in line with Article 11(5) of Regulation (EC) No 2371/2002⁽³⁾, which allows capacity increases in the case of modernisation works over the main deck to improve safety on board, working conditions, hygiene and product quality.

Regulation (EC) No 1421/2004

- (24) With regard to conditions concerning the replacement of fishing gear, Regulation (EC) No 2792/1999 was later amended by Regulation (EC) No 1421/2004⁽⁴⁾, which entered into force on 26 August 2004. Pursuant to Regulation (EC) No 2792/1999, as thus amended, replacement of fishing gear could be considered eligible if the vessel is subject to a recovery plan and is required to end its participation in the fishery concerned and fish for other species with different fishing gear. In such a case, the Commission may decide that the first replacement of fishing gear, where fishing possibilities are significantly reduced by a recovery plan, may be considered eligible.

2004 Guidelines

- (25) The 2004 Guidelines should be applied to all existing schemes as from 1 January 2005. With regard to the aid for modernisation of fishing vessels, these guidelines refer to the Articles 9 and 10 of, and point 1.4 of Annex III to, Regulation (EC) No 2792/1999 and thus the same conditions continue to apply.

Compatibility

- (26) From the information provided by the United Kingdom, it can be deduced that, during the period from August 2002 until June 2005, 23 aids were granted for vessel modernisation, including five for replacements of engines and one for a project regarding the auxiliary engine, pump and clutch unit.
- (27) According to the United Kingdom, none of those improvements facilitated by the grants affected the gross tonnage or the power of any vessel and therefore the aids were compatible with the conditions of the respective guidelines.

⁽¹⁾ OJ L 274, 25.9.1986, p. 1. Regulation as amended by Regulation (EC) No 3259/94 (OJ L 339, 29.12.1994, p. 11).

⁽²⁾ OJ L 358, 31.12.2002, p. 49.

⁽³⁾ OJ L 358, 31.12.2002, p. 59. Regulation as amended by Regulation (EC) No 865/2007 (OJ L 192, 24.7.2007, p. 1).

⁽⁴⁾ OJ L 260, 6.8.2004, p. 1.

- (28) As regards the 17 grants for vessel modernisations, other than the replacement of engines and the project concerning the auxiliary engine, pump and clutch unit, the United Kingdom has provided information showing that the aid complies with the conditions under the Guidelines applicable at the time the aid was granted.
- (29) However, as regards the remaining six grants, according to Article 9(1)(c)(i) of Regulation (EC) No 2792/1999, the aid may not 'concern capacity in terms of tonnage or power'. The replacement of an engine of a fishing vessel concerns the capacity of the vessel in terms of power and thus no aid may be granted for such purpose. This was also been confirmed to all Member States by letter dated 5 May 2003 (Reference D(2003)37148) from Mr. Holmquist, Director-General for fisheries. In the same line, the aid for the project concerning the auxiliary engine, pump and clutch unit cannot be allowed.
- (30) As regards the amendments to Regulation (EC) No 2792/1999, referred to in Recital 23, those six modernisation projects have all taken place below deck and can therefore not be regarded as falling within the scope of Article 11(5) of Regulation (EC) No 2371/2002.
- (31) In view of the foregoing Recitals 26 to 30, the Commission considers that the aid granted under the scheme for the six modernisation projects concerning the capacity of the vessel in terms of tonnage or power is incompatible with Article 9(1)(c)(i) of Regulation (EC) No 2792/1999 and therefore incompatible the 2001 and 2004 Guidelines. The other aid granted under the scheme is, however, compatible with those conditions.

Recovery of the aid

- (32) Under Article 14(1) of Regulation (EC) No 659/1999, where negative decisions are taken in case of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary.
- (33) The United Kingdom has raised the issue that the Commission is not to require recovery of the aid if that would be contrary to the principle of the protection of legitimate expectations and claims that this principle applies to this case.
- (34) The funds used for the financing of the scheme are the same funds used for the aids subject to the negative decisions taken by the Commission in Decisions 2003/612/EC and 2006/226/EC, as referred to in

Recital 13 of the present Decision. In those cases, the Commission considered that these funds must be regarded as State resources for the purposes of Article 87 of the EC Treaty. At the same time, the Commission acknowledged that in the specific circumstances of the cases in question, legitimate expectations as to the private nature of the fund in question had been created on the part of the *Shetland Islands Council* and bodies involved through the combination of a number of elements taken together which precluded recovery of the incompatible State aid.

- (35) It is considered, however, that in this case the elements taken into account in those two Commission Decisions cannot be applied in the same way and the legitimate expectations have not been created. The Commission notes, in particular, the actions and statements from the United Kingdom, clearly showing that, at the respective times of granting of aid, the responsible authorities were convinced that the scheme was, in fact, a State aid scheme and that the rules on State aid were applicable.
- (36) To reach that conclusion, the Commission observes that, unlike the aids subject to Decisions 2003/612/EC and 2006/226/EC, the scheme in question has been set up as a normal aid scheme and concerns direct grants to fishermen, granted directly by the *Shetland Islands Council*. In addition, the specific circumstances of this case clearly show that the United Kingdom authorities themselves considered the State aid rules to be applicable, as they have continuously included the expenditure under the scheme in the annual UK State aid reports submitted to the Commission in accordance with Community obligations. In fact, in response to questions raised by the Commission, the United Kingdom stated in its letter dated 10 December 2004 that: 'payments under the schemes have been included in the Annual State Aid Inventory and sent to the Commission annually, as required, for many years' and in its letter dated 6 April 2005 that: 'My authorities have, over many years, acted in good faith and in the belief that the Schemes were compliant with the State aid guidelines'.
- (37) Having regard to those statements, and the circumstances of the case, the Commission considers that requiring the recovery of the aid cannot be considered to be contradictory to the general principle of Community law. Thus, in accordance with Article 14(1) of Regulation (EC) No 659/1999, the Commission considers that the United Kingdom must take all necessary measures to recover the aid from the beneficiaries of the scheme, without prejudice to cases falling within the scope of Commission Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004 ⁽¹⁾.

⁽¹⁾ OJ L 193, 25.7.2007, p. 6.

(38) In that respect, it should be pointed out that in accordance with Article 14(2) of Regulation (EC) No 659/1999, in order to ensure that effective competition be restored, the recovery should include interest. This interest should be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽¹⁾.

(39) The Commission asks the United Kingdom to return to it the attached questionnaire concerning the current status of the recovery procedure and to draw up a list of beneficiaries to which the recovery of aid relates.

V. CONCLUSION

(40) In the light of the assessment made in Section IV, the Commission finds that the United Kingdom has, in breach of Article 88(3) of the EC Treaty, unlawfully granted aid under the Fishing Vessel Modernisation Scheme.

(41) The Commission considers that the aid granted under that scheme is compatible with the common market, with the exception of the aid granted for modernisation projects concerning capacity in terms of tonnage or power,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid which the United Kingdom has implemented on the basis of the Fishing Vessel Modernisation Scheme is compatible with the common market, as far as it concerns aid granted for modernisation projects not concerning capacity in terms of tonnage or power.

2. The State aid which the United Kingdom has implemented on the basis of the Fishing Vessel Modernisation Scheme is incompatible with the common market, as far as it concerns aid granted for modernisation projects concerning capacity in terms of tonnage or power.

Article 2

Individual aid referred to in Article 1(2) of this Decision does not constitute aid if it fulfils the conditions of Regulation (EC) No 875/2007.

⁽¹⁾ OJ L 140, 30.4.2004, p. 1. Regulation as last amended by Regulation (EC) No 1935/2006 (OJ L 407, 30.12.2006).

Article 3

1. The United Kingdom shall take all necessary measures to recover the incompatible aid granted under the scheme referred to in Article 1(2) from the beneficiaries, other than the aid referred to in Article 2.

2. The aids to be recovered shall include interest from the date on which they were put at the disposal of the beneficiaries until the date of their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004.

4. The United Kingdom shall cancel all outstanding payments of aid under the scheme referred to in Article 1 with effect from the date of adoption of this Decision.

Article 4

1. The recovery of the aid granted under the scheme referred to in Article 1(2) shall be immediate and effective.

2. The United Kingdom shall ensure that this Decision is implemented within four months following the date of its notification.

Article 5

1. Within two months following the date of notification of this Decision, the United Kingdom shall submit the following information to the Commission:

- (a) the list of beneficiaries that have received aid referred to Article 1(2) of this Decision that does not fulfil the conditions laid down by Regulation (EC) No 875/2007, and the total amount of aid received by each of them;
- (b) the total amount (principal and interest) to be recovered from each beneficiary;
- (c) a detailed description of the measures already taken and planned to comply with this Decision; and
- (d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

2. The United Kingdom shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1 has been completed.

It shall immediately submit any information which the Commission requests on the measures already taken and planned to comply with this Decision.

It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 6

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 13 November 2007.

For the Commission
Joe BORG
Member of the Commission

COMMISSION DECISION

of 13 November 2007

State aid C 38/2006 (ex NN 93/2005) — Fish factory improvement scheme implemented in the United Kingdom

(notified under document number C(2007) 5397)

(Only the English version is authentic)

(Text with EEA relevance)

(2008/154/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

interested parties to submit their comments on the aid.
No comments were received.

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, and in particular Article 6(1) and Article 14 thereof,

Having called on interested third parties to submit their comments pursuant to the provisions cited above ⁽²⁾,

Whereas:

I. PROCEDURE

- (1) By letter dated 15 June 2004, the Commission was informed by a citizen of the United Kingdom of unlawful aid granted by the *Shetland Islands Council*, the public authority in the Shetland Islands of the United Kingdom. By letters dated 24 August 2004, 4 February 2005, 11 May 2005 and 16 December 2005 the Commission requested the United Kingdom to provide information about such aid. The United Kingdom provided the Commission with further information by letters dated 10 December 2004, 6 April 2005, 8 September 2005 and 31 January 2006.
- (2) By letter dated 13 September 2006, the Commission informed the United Kingdom that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty. The United Kingdom provided its comments on the case by letters dated 16 October 2006 and 30 January 2007.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 28 November 2006 ⁽³⁾. The Commission invited

- (4) The *Shetland Islands Council* made payments to the fisheries sector under the scope of two general aid measures named 'Aid to the Fish Catching and Processing Industry' and 'Aid to the Fish Farming Industry', which actually consisted of several different types of aid schemes, one such scheme was the so-called 'Fish Factory Improvement Scheme'.

- (5) Under the Fish factory improvement scheme (the 'scheme'), aid could be granted for the purchase of new processing machinery and equipment and for the construction, improvement or extension of fish factories. Repairs to machinery or buildings were, however, not eligible. Aid for second-hand equipment was only considered for assistance in special circumstances and was to be inspected or certified as fully serviceable by an independent engineer.

- (6) Aid was granted up to a maximum of 20 % of the eligible costs, with a maximum amount of GBP 20 000 for factories with a turnover of less than GBP 1 000 000; GBP 25 000 for factories with a turnover of between GBP 1 000 000 and GBP 3 000 000; and GBP 30 000 for factories with a turnover of more than GBP 3 000 000.

- (7) From 13 August 1993 until 15 December 2004, payments were made under the scheme in favour of *Shetland Fish Products Limited*, a company involved in the production of fish meal and fish oil, not intended for human consumption. The following grants were paid to that company:

- (a) on 13 August 1997, GBP 24 800 was granted to assist with the purchase of an Alfa Laval Separator; the purpose of which is to separate fish oil from cooked press liquid;

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ C 289, 28.11.2006, p. 10.

⁽³⁾ OJ C 289, 28.11.2006, p. 10.

- (b) on 3 September 1998, GBP 1 592 was granted to assist with the partial re-cladding of the factory building; this work was carried out as part of the factory's improvements to help it conform with requirements as to foul air emissions;
- (c) on 7 January 1999, GBP 3 600 was granted to assist with the purchase of a new feeding screw for the factory's fish pits;
- (d) on 25 February 1999, GBP 9 479 was granted to assist with the installation of a new de-watering system to reduce the amount of excess water entering fish storage pits;
- (e) on 10 December 1999, GBP 19 480 was granted to assist with the replacement of decanters within the factory, thereby improving production and efficiency;
- (f) on 19 January 2001, GBP 14 949,86 was granted to assist with the installation of a flash steam system to improve energy efficiency within the factory and production; and
- (g) on 15 December 2004, GBP 19 700 was granted to assist with the purchase of a fish offloading crane to enable the factory to discharge larger vessels, improve reliability and increase availability of spares.

Grounds for initiating the procedure

- (8) In its decision to initiate the procedure the Commission considered that the conditions of the scheme and the majority of the aid granted was compatible with the common market, as it complied with the provisions of Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and the marketing of its products ⁽¹⁾ and Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector ⁽²⁾, applicable at the respective times of granting of aid.
- (9) However, the Commission has serious doubts on the compatibility with the common market of the aid granted to Shetland Fish Products Limited, as that aid was granted for investments for processing and

marketing of fishery and aquaculture products intended to be used and processed for purposes, other than for human consumption, which was not allowed under Regulation (EC) No 3699/93 and Regulation (EC) No 2792/1999.

III. COMMENTS FROM THE UNITED KINGDOM

- (10) In its reply dated 16 October 2006, the United Kingdom provided further information on the aids granted to Shetland Fish Products Limited.
- (11) It confirmed that the aid granted to that company cannot be regarded as complying with the conditions of Regulation (EC) No 3699/93 and Regulation (EC) No 2792/1999. The United Kingdom stated that those administering the scheme were not aware, at the time that the grants were authorised, that aid for the processing and marketing for fishery and aquaculture products intended to be used and processed for purposes other than for human consumption was precluded by those Regulations.
- (12) However, the United Kingdom pointed out that at least one of the investments which had been made, namely the grant of GBP 1 592 of 3 September 1998, related to environmental improvements, being the re-cladding of one of the company's buildings, the purpose of which was to 'seal' the building and thereby reduce foul air emissions. According to the United Kingdom this aid could be regarded as compatible with paragraph 2.0(b) of Annex III to Regulation (EC) No 3699/93.
- (13) Finally, the United Kingdom maintained that, should the Commission adopt a negative decision, recovery of aid granted prior to 3 June 2003 should not be required as that would be contrary to the principle of the protection of legitimate expectations. In that respect, the United Kingdom made reference to Commission Decision 2003/612/EC of 3 June 2003 on loans for the purchase of fishing quotas in the Shetland Islands (United Kingdom) ⁽³⁾ and Commission Decision 2006/226/EC of 7 December 2005 on Investments of Shetland Leasing and Property Developments in the Shetland Islands (United Kingdom) ⁽⁴⁾, stating that until 3 June 2003, the *Shetland Islands Council* legitimately considered the funds used for such aid to be private rather than public.

⁽¹⁾ OJ L 346, 31.12.1993, p. 1. Regulation as last amended by Regulation (EC) No 25/97 (OJ L 6, 10.1.1997, p. 7).

⁽²⁾ OJ L 337, 30.12.1999, p. 10. Regulation as last amended by Regulation (EC) No 485/2005 (OJ L 81, 30.3.2005, p. 1).

⁽³⁾ OJ L 211, 21.8.2003, p. 63.

⁽⁴⁾ OJ L 81, 18.3.2006, p. 36.

IV. ASSESSMENT OF THE AID

- (14) It must be determined firstly if the measure can be regarded as State aid and if so, if it is compatible with the common market.
- (15) Aid has been granted to a company in the fisheries sector, and is thus of a selective nature. The aid has been granted by the *Shetland Islands Council* from state resources and benefited *Shetland Fish Products Limited*, which operates in direct competition with other companies in the fisheries sector, both within the United Kingdom and in other Member States. Therefore, the aid distorts or threatens to distort competition and appears to be State aid within the meaning of Article 87 of the EC Treaty.

Legality

- (16) According to the United Kingdom, the two general schemes have been applied before the accession of the United Kingdom to the European Economic Community. In any event, due to the absence of past records, the United Kingdom has been unable to provide evidence that the aid measures already existed before the United Kingdom joined the Community. In addition, the United Kingdom confirmed that the aid schemes have been changed over the years and that these changes were never notified to the Commission in accordance with Article 88(3) of the EC Treaty (former Article 93(3)). As a result, the aid measures have to be considered as new aid.

Basis for the assessment

- (17) Council Regulation (EC) No 659/1999 does not lay down any limitation period for the examination of 'unlawful aid', as defined in Article 1(f) thereof, namely aid implemented before the Commission is able to reach a conclusion as to its compatibility with the common market. However, Article 15 of that Regulation stipulates that the power of the Commission to require the recovery of aid is subject to a limitation period of ten years and that the limitation period begins on the day on which the unlawful aid is awarded to the beneficiary and that that limitation period is interrupted by any action taken by the Commission. Consequently, the Commission considers that it is not necessary in this case to examine the aid covered by the limitation period, namely aid granted more than ten years before any measure taken by the Commission concerning it.
- (18) The Commission considers that in this case the limitation period was interrupted by its request for information sent to the United Kingdom on 24 August 2004. Accordingly, the limitation period applies to aid granted to beneficiaries before 24 August 1994. Conse-

quently, the Commission has limited its assessment to the aid granted by decisions taken after 24 August 1994.

- (19) State aid can be declared compatible with the common market if it complies with one of the exceptions provided for in the EC Treaty. As regards State aid to the fisheries sector, State aid is deemed to be compatible with the common market if it complies with the conditions of the Guidelines for the examination of State aid to fisheries and aquaculture ⁽¹⁾ of 2004 ('2004 Guidelines'). According to the second paragraph of point 5.3 of those Guidelines: 'An "unlawful aid" within the meaning of Article 1(f) of Regulation (EC) No 659/1999 will be appraised in accordance with the guidelines applicable at the time when the administrative act setting up the aid has entered into force.' The aid thus needs to be assessed on the basis of its compatibility with the Guidelines for the examination of State aid to fisheries and aquaculture ⁽²⁾ of 1997 ('1997 Guidelines') and the Guidelines for the examination of State aid to fisheries and aquaculture ⁽³⁾ of 2001 ('2001 Guidelines').

Conditions under the Guidelines

- (20) According to point 2.3 of the 1997 and 2001 Guidelines, aid to investments in the processing and marketing of fishery products may be deemed to be compatible with the common market provided that the conditions for granting it are comparable with those laid down in Regulation (EC) No 3699/93 and Regulation (EC) No 2792/1999 respectively and are at least as stringent and the level of the State aid does not exceed, in subsidy equivalent, the total rate of national and Community subsidies fixed in Annex IV to those Regulations.
- (21) According to both Article 11 of Regulation (EC) No 3699/93 and point 2.4 of Annex III thereto, and Article 13 of Regulation (EC) No 2792/1999 and point 2.4 of Annex III thereto, eligible investments are to relate in particular to the construction and acquisition of buildings and installation, the acquisition of new equipment and installations needed for the time of landing and the marketing of fishery and aquaculture products between the time of landing and the end-product stage and the application of new technologies intended in particular to improve competitiveness.
- (22) According to those provisions, investments are not be eligible for assistance when they concern fishery and aquaculture products intended to be used and processed for purposes other than for human consumption, with the exemption of investments exclusively for the handling, processing and marketing of fishery and aquaculture wastes.

⁽¹⁾ OJ C 229, 14.9.2004, p. 5.

⁽²⁾ OJ C 100, 27.3.1997, p. 12.

⁽³⁾ OJ C 19, 20.1.2001, p. 7.

Compatibility

- (23) The United Kingdom has confirmed that all aid granted to Shetland Fish Products Limited concerned aid for the processing and marketing of fishery and aquaculture products intended to be used and processed for purposes other than for human consumption. The aid, therefore, does not comply with the provisions mentioned under Recital 22 and consequently with the conditions of the 1997 Guidelines and 2001 Guidelines and is therefore incompatible with the common market.
- (24) However, the United Kingdom has stated that the grant of GBP 1 592, of 3 September 1998, concerned aid for investments related to environmental improvements, which would be compatible with paragraph 2.0(b) of Annex III to Regulation (EC) No 3699/93.
- (25) According to paragraph 2.0(b) of Annex III to Regulation (EC) No 3699/93, aid in the spheres referred to in Title III for physical investment intended to improve conditions of hygiene or human or animal health, to improve product quality or reduce pollution of the environments is to be eligible. One of the spheres of Title III is 'processing and marketing of fishery and aquaculture products' (point 2.4 of that Title). Investment aid for processing and marketing, even though it concerned a company active in the processing and marketing of products not intended for human consumption, could thus indeed be regarded compatible if the investment is intended to reduce pollution of the environment.
- (26) Aid was granted to assist the re-cladding of one of the company's buildings, the purpose of which was to 'seal' the building and thereby reduce foul air emissions. The Commission considers that this type of aid may be deemed compatible with paragraph 2.0(b) of Annex III to Regulation (EC) No 3699/93 and that this particular grant of GBP 1 592 is thus compatible with the common market.

Recovery of the aid

- (27) Under Article 14(1) of Regulation (EC) No 659/1999, where negative decisions are taken in the case of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary.
- (28) The United Kingdom has raised the issue that the Commission is not to require recovery of the aid if that would be contrary to the principle of the protection of legitimate expectations and claims that this principle applies to this case.
- (29) The funds used for the financing of the scheme are the same funds used for the aids subject to the negative decisions taken by the Commission in Decisions 2003/612/EC and 2006/226/EC, as referred to in

Recital 13. In those cases, the Commission considered that those funds had to be regarded as State resources for the purposes of Article 87(1) of the EC Treaty. At the same time, the Commission acknowledged that in the specific circumstances of the cases in question, legitimate expectations as to the private nature of the fund in question had been created on the part of the Shetland authorities and bodies involved through the combination of a number of elements taken together which precluded recovery of the incompatible State aid.

- (30) The Commission considers, however, that in this case the elements taken into account in Decisions 2003/612/EC and 2006/226/EC cannot be applied in the same way and the legitimate expectations have not been created. The Commission notes, in particular, the actions and statements from the United Kingdom, clearly showing that, at the respective times of granting of aid, the responsible authorities were convinced that the scheme was in fact a State aid scheme and that the rules on State aid were applicable.
- (31) To reach that conclusion, the Commission observes that, unlike the aids subject to Decisions 2003/612/EC and 2006/226/EC, the scheme in question has been set up as a normal aid scheme and concerns direct grants to fishermen, granted directly by the *Shetland Islands Council*. In addition, the specific circumstances of this case clearly show that the United Kingdom considered the State aid rules to be applicable, as they have continuously included the expenditure under the scheme in the annual UK State aid reports submitted to the Commission in accordance with Community obligations. In fact, in response to questions posed by the Commission, the United Kingdom stated in its letter dated 10 December 2004 that: 'payments under the schemes have been included in the Annual State Aid Inventory and sent to the Commission annually, as required, for many years' and in its letter dated 6 April 2005 that: 'My authorities have, over many years, acted in good faith and in the belief that the Schemes were compliant with the State aid guidelines'.
- (32) With regard to those statements and the circumstances of the case, the Commission considers that requiring the recovery of the aid cannot be considered to be contradictory to a general principle of Community law. Thus, in accordance with Article 14(1) of Regulation (EC) No 659/1999 the Commission considers that United Kingdom must take all necessary measures to recover the aid from the beneficiary of the scheme, without prejudice to cases falling within the scope of Regulation (EC) No 875/2007 of 24 July 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the fisheries sector and amending Regulation (EC) No 1860/2004 ⁽¹⁾.

⁽¹⁾ OJ L 193, 25.7.2007, p. 6.

- (33) In that respect, it should be pointed out that in accordance with Article 14(2) of Regulation (EC) No 659/1999, in order to ensure that effective competition be restored, the recovery should include interest. This interest should be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004⁽¹⁾.
- (34) The Commission would ask United Kingdom to return to it the attached questionnaire concerning the current status of the recovery procedure.

V. CONCLUSION

- (35) In the light of the assessment made in Section IV, the Commission finds that the United Kingdom has, in breach of Article 88(3) of the EC Treaty, unlawfully granted aid to Shetland Fish Products Limited under the Fish factory improvement scheme.
- (36) The Commission considers that this aid is not compatible with the common market, as far as it concerns the aid granted on 13 August 1997, 7 January 1999, 25 February 1999, 10 December 1999, 19 January 2001 and 15 December 2004, amounting to a total amount of GBP 92 009.
- (37) The aid granted on 3 September 1998 amounting to a total of GBP 1 592 is considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

1. The aid granted to Shetland Fish Products under the Fish factory improvement scheme is compatible with the common market as far as it concerns the amount of GBP 1 592, granted on 3 September 1998.
2. The aid granted to Shetland Fish Products under the Fish factory improvement scheme is incompatible with the common market as far as it concerns the amount of GBP 92 007, granted on 13 August 1997, 7 January 1999, 25 February 1999, 10 December 1999, 19 January 2001 and 15 December 2004.

Article 2

Individual aid referred to in Article 1(2) of this Decision does not constitute aid if it fulfils the conditions of Regulation (EC) No 875/2007.

⁽¹⁾ OJ L 140, 30.4.2004, p. 1. Regulation as last amended by Regulation (EC) No 1935/2006 (OJ L 407, 30.12.2006).

Article 3

1. The United Kingdom shall recover the incompatible aid granted under the scheme referred to in Article 1(2) from the beneficiary, other than that referred to in Article 2.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004.
4. The United Kingdom shall cancel all outstanding payments of aid under the scheme referred to in Article 1(2) with effect from the date of adoption of this Decision.

Article 4

1. The recovery of the aid granted under the scheme referred to in Article 1(2) shall be immediate and effective.
2. The United Kingdom shall ensure that this Decision is implemented within four months following the date of its notification.

Article 5

1. Within two months following the date of notification of this Decision, the United Kingdom shall submit the following information to the Commission:
 - (a) total amount (principal and interests) to be recovered from the beneficiary that does not fulfil the conditions laid down by Regulation (EC) No 875/2007;
 - (b) a detailed description of the measures already taken and planned to comply with this Decision; and
 - (c) documents demonstrating that the beneficiary has been ordered to repay the aid.
2. The United Kingdom shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1(2) has been completed.

It shall immediately submit any information which the Commission requests on the measures already taken and planned to comply with this Decision.

It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiary.

Article 6

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 13 November 2007.

For the Commission

Joe BORG

Member of the Commission

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

Only the original UN/ECE texts have legal effect under international public law. The status and date of entry into force of this Regulation should be checked in the latest version of the UN/ECE status document TRANS/WP.29/343, available at: <http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29fdocsts.html>

Regulation No 24 of the Economic Commission for Europe of the United Nations (UN/ECE) — Uniform provisions concerning:

- I. The approval of compression ignition (C.I.) engines with regard to the emission of visible pollutants**
- II. The approval of motor vehicles with regard to the installation of C.I. engines of an approved type**
- III. The approval of motor vehicles equipped with C.I. engines with regard to the emission of visible pollutants by the engine**
- IV. The measurement of power of C.I. engines**

Supplement 3 to the 03 series of amendments — Date of entry into force: 2 February 2007

Amendment to Regulation 24 published in OJ L 326 of 24.11.2006

Paragraphs 1.1.1. to 1.1.3., amend to read (inserting a reference to a new footnote ⁽¹⁾ and a new footnote ⁽¹⁾):

- ‘1.1.1. Part I. The emission of visible exhaust pollutants from C.I. engines which are intended for fitting to vehicles of categories L, M and N ⁽¹⁾.
- 1.1.2. Part II. The installation into vehicles of categories L, M and N of C.I. engines that have been type approved to Part I of this Regulation ⁽¹⁾.
- 1.1.3. Part III. The emission of visible exhaust pollutants from a vehicle of categories L, M and N ⁽¹⁾ that is fitted with an engine that has not been separately type approved to Part I of this Regulation.

⁽¹⁾ As defined in Annex 7 to the Consolidated Resolution on the Construction of Vehicles (R.E.3), (document TRANS/WP.29/78/Rev.1/Amend.2 as last amended by Amend.4).’

Paragraph 5.4.1., the reference to footnote ⁽¹⁾ and footnote ⁽¹⁾, renumber as footnote ⁽²⁾ and amend to read:

‘⁽²⁾ 1 for Germany, ... 10 for Serbia, ... 36 for Lithuania, 37 for Turkey, 38 (vacant), 39 for Azerbaijan, ... 47 for South Africa, 48 for New Zealand, 49 for Cyprus, 50 for Malta, 51 for the Republic of Korea, 52 for Malaysia, 53 for Thailand, 54 and 55 (vacant) and 56 for Montenegro. Subsequent numbers shall be assigned ...’.

Only the original UN/ECE texts have legal effect under international public law. The status and date of entry into force of this Regulation should be checked in the latest version of the UN/ECE status document TRANS/WP.29/343, available at: <http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29docstts.html>

Regulation No 101 of the Economic Commission for Europe of the United Nations (UN/ECE) — Uniform provisions concerning the approval of passenger cars powered by an internal combustion engine only, or powered by a hybrid electric power train with regard to the measurement of the emission of carbon dioxide and fuel consumption and/or the measurement of electric energy consumption and electric range, and of categories M₁ and N₁ vehicles powered by an electric power train only with regard to the measurement of electric energy consumption and electric range

Supplement 7 to the original version of the Regulation — Date of entry into force: 18 June 2007

Amendment to Regulation 101 published in OJ L 158 of 19.6.2007

Paragraph 1., amend to read (footnote ⁽¹⁾ not amended):

‘1. SCOPE

This Regulation applies to vehicles of categories M₁ and N₁ ⁽¹⁾ with regard to:

- (a) the measurement of the emission of carbon dioxide (CO₂) and fuel consumption and/or to the measurement of electric energy consumption and electric range of vehicles powered by an internal combustion engine only or by a hybrid electric power train,
- (b) and to the measurement of electric energy consumption and electric range of vehicles powered by an electric power train only.

It does not apply to a category N₁ vehicle if both:

- (a) the engine type fitted to that type of vehicle has received type-approval pursuant to Regulation No 49, and
- (b) the total annual worldwide production of N₁ vehicles of the manufacturer is less than 2 000 units.’

Insert new paragraphs 2.7. and 2.8., to read:

‘2.7. “Lorry” means a motor vehicle of category N₁ which is designed and constructed exclusively or principally for conveying goods.

2.8. “Van” means a lorry with the cab integrated into the body.’

Paragraphs 2.7. to 2.16. (former), renumber as paragraphs 2.9. to 2.18.

Paragraph 3.3., amend to read:

‘3.3. A vehicle, representative of the vehicle type to be approved, shall be submitted to the technical services responsible for conducting approval tests. For M₁ and N₁ vehicles, type-approved with respect to their emissions according to Regulation No 83, the technical service will check during the test that this vehicle, if powered by an internal combustion engine only or by a hybrid electric power train, conforms to the limit values applicable to that type, as described in Regulation No 83.’

Paragraph 5.2.1., amend to read:

- '5.2.1. The emissions of CO₂ and fuel consumption shall be measured according to the test procedure described in Annex 6. Vehicles which do not attain the acceleration and maximum speed values required in the test cycle must be operated with the accelerator control fully depressed until they once again reach the required operating curve. Deviations from the test cycle must be recorded in the test report.'

Paragraphs 7.1. to 7.1.3., amend to read (inserting a reference to new footnote ⁽⁴⁾):

- '7.1. *Vehicles powered by an internal combustion engine only, except vehicles equipped with a periodically regenerating emission control system*

The type approval can be extended to vehicles from the same type or from a different type differing with regard to the following characteristics of Annex 4 if the CO₂ emissions measured by the technical service do not exceed the type approved value by more than 4 per cent for vehicles of category M₁ and 6 per cent for vehicles of category N₁:

7.1.1. Reference mass.

7.1.2. Maximum authorized mass.

7.1.3. Type of bodywork:

(a) for M₁: saloon, hatchback, station wagon, coupé, convertible, multipurpose vehicle ⁽⁴⁾

(b) for N₁: lorry, van.'

Insert new footnote ⁽⁴⁾, to read:

- '⁽⁴⁾ As defined in Annex 7 to the Consolidated Resolution on the Construction of Vehicles (R.E.3) (TRANS/WP.29/78/Rev.1/Amend.2).'

Paragraph 7.2., amend to read:

- '7.2. *Vehicles powered by an internal combustion engine only and equipped with a periodically regenerating emission control system*

The type approval can be extended to vehicles from the same type or from a different type, differing with regard to the characteristics of Annex 4, given in paragraphs 7.1.1. to 7.1.5. above, but not exceeding the family characteristics of Annex 10, if the CO₂ emissions measured by the technical service do not exceed the type approved value by more than 4 per cent for vehicles of category M₁ and 6 per cent for vehicles of category N₁, and where the same K_i factor is applicable.

The type approval can be extended also to vehicles from the same type, but with a different K_i factor, if the corrected CO₂ value measured by the technical service does not exceed the type approved value by more than 4 per cent for vehicles of category M₁ and 6 per cent for vehicles of category N₁.'

Paragraphs 7.4. to 7.4.3., amend to read:

- '7.4. *Vehicles powered by a hybrid electric power train*

The type approval can be extended to vehicles from the same type or from a different type differing with regard to the following characteristics of Annex 4 if the CO₂ emissions and the electric energy consumption measured by the technical service do not exceed the type approved value by more than 4 per cent for vehicles of category M₁ and 6 per cent for vehicles of category N₁:

7.4.1. Reference mass.

7.4.2. Maximum authorized mass.

7.4.3. Type of bodywork:

(a) for M₁: saloon, hatchback, station wagon, coupé, convertible, multipurpose vehicle ⁽⁴⁾

(b) for N₁: lorry, van.'

Insert new paragraphs 7.5. to 7.6.3., to read:

7.5. *Extension of approval of vehicles of category N₁ within a family, if powered by an internal combustion engine only or by a hybrid electric power train*

7.5.1. For vehicles of category N₁ that are approved as members of a vehicle family using the procedure in paragraph 7.6.2., the type-approval can be extended to vehicles from within the same family only if the technical service estimates that the fuel consumption of the new vehicle does not exceed the fuel consumption of the vehicle on which the family's fuel consumption is based.

Approvals may also be extended to vehicles which:

(a) are up to 110 kg heavier than the family member tested, provided that they are within 220 kg of the lightest member of the family,

(b) have a lower overall transmission ratio than the family member tested due solely to a change in tyre sizes, and

(c) conform with the family in all other respects.

7.5.2. For vehicles of category N₁ that are approved as members of a vehicle family using the procedure in paragraph 7.6.3., the type-approval can be extended to vehicles from within the same family without additional testing only if the technical service estimates that the fuel consumption of the new vehicle falls within the limits made up of those two vehicles in the family that have the lowest and the highest fuel consumption, respectively.

7.6. *Approval of vehicles of category N₁ within a family, if powered by an internal combustion engine only or by a hybrid electric power train*

Vehicles of category N₁ can be approved within a family as defined in paragraph 7.6.1. using one of the two alternative methods described in paragraphs 7.6.2. and 7.6.3.

7.6.1. N₁ vehicles may be grouped together into a family for the purposes of this Regulation if the following parameters are identical or within the specified limits:

7.6.1.1. Identical parameters are:

(a) manufacturer and type as defined in Annex 4, item 2.,

(b) engine capacity,

(c) emission control system type,

(d) fuel system type as defined in Annex 4, item 6.7.2.

7.6.1.2. The following parameters have to be within the following limits:

- (a) transmission overall ratios (no more than 8 per cent higher than the lowest) as defined in Annex 4, item 6.10.3.,
- (b) reference mass (no more than 220 kg lighter than the heaviest),
- (c) frontal area (no more than 15 per cent smaller than the largest),
- (d) engine power (no more than 10 per cent less than the highest value).

7.6.2. A vehicle family, as defined in paragraph 7.6.1., can be approved with CO₂ emission and fuel consumption data that are common to all members of the family. The technical service must select for testing the member of the family which the service considers to have the highest CO₂ emission. The measurements are performed as described in paragraph 5. and Annex 6, and the results according to the method described in paragraph 5.5. are used as type-approval values that are common to all members of the family.

7.6.3. Vehicles that are grouped in a family as defined in paragraph 7.6.1. can be approved with individual CO₂ emission and fuel consumption data for each of the family members. The technical service selects for testing the two vehicles, which the service considers to have the highest and the lowest CO₂ emissions respectively. The measurements are performed as described in paragraph 5. and Annex 6. If the manufacturer's data for these two vehicles falls within the tolerance limits described in paragraph 5.5., the CO₂ emissions declared by the manufacturer for all members of the vehicle family can be used as type-approval values. If the manufacturer's data do not fall within the tolerance limits, the results according to the method described in paragraph 5.5. are used as type-approval values and the technical service shall select an appropriate number of other family members for additional tests.'

Annex 4,

The TITLE, amend to read (inserting a new reference to footnote ⁽⁶⁾):

'COMMUNICATION ⁽⁶⁾'

Insert new footnote ⁽⁶⁾, to read:

⁽⁶⁾ For vehicles that are approved within a family according to paragraph 7.6., this communication must be supplied for each individual member of the vehicle family.'

Item 6.3., amend to read (inserting a new reference to footnote ⁽⁷⁾):

'6.3. Type of body:

6.3.1. For M₁: saloon, hatchback, station wagon, coupé, convertible, multipurpose vehicle ⁽²⁾ ⁽⁷⁾

6.3.2. For N₁: lorry, van. ⁽²⁾'

Insert new footnote ⁽⁷⁾, to read:

⁽⁷⁾ As defined in Annex 7 to the Consolidated Resolution on the Construction of Vehicles (R.E.3) (TRANS/WP.29/78/Rev.1/Amend.2).'

Item 7., amend to read:

'7. Type-approval values.'

CORRIGENDA

Corrigendum to Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 on establishing the European Globalisation Adjustment Fund*(Official Journal of the European Union L 406 of 30 December 2006)*

On Page 1, Regulation (EC) No 1927/2006 should read as follows:

**REGULATION (EC) No 1927/2006 of the EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 20 December 2006
on establishing the European Globalisation Adjustment Fund**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third paragraph of Article 159 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Notwithstanding the positive effects of globalisation on growth, jobs and prosperity and the need to enhance European competitiveness further through structural change, globalisation may also have negative consequences for the most vulnerable and least qualified workers in some sectors. It is therefore opportune to establish a European Globalisation Adjustment Fund (the EGF), accessible to all Member States, through which the Community could show its solidarity towards workers affected by redundancies resulting from changes in world trade patterns.

(2) It is necessary to preserve European values and to promote the development of fair external trade. The negative effects of globalisation should be tackled in

the first instance by a long term, sustainable Community strategy for trade policy aimed at high social and ecological standards. The assistance provided by the EGF should be dynamic and capable of adapting to circumstances in the market that are constantly changing and often unforeseen.

(3) The EGF should provide specific, one-off support to facilitate the re-integration into employment of workers in areas, sectors, territories, or labour market regions suffering the shock of serious economic disruption. The EGF should promote entrepreneurship, for example through micro-credits or by setting up cooperative projects.

(4) Actions under this Regulation should be defined according to strict intervention criteria relating to the scale of economic dislocation and its impact on a given sector or geographical area, to ensure that the financial contribution from the EGF is concentrated on workers in the most seriously affected regions and economic sectors of the Community. Such dislocation is not necessarily concentrated within a single Member State. In such exceptional circumstances, Member States may therefore submit joint requests for assistance from the EGF.

(5) The activities of the EGF should be coherent and compatible with the other Community policies and comply with its *acquis*, especially the interventions of the Structural Funds, while making a genuine contribution to the Community's social policies.

(6) Point 28 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management ⁽⁴⁾ (Interinstitutional Agreement) determines the budgetary framework of the EGF.

⁽¹⁾ OJ C 318, 23.12.2006, p. 38.

⁽²⁾ OJ C 51, 6.3.2007, p. 1.

⁽³⁾ Opinion of the European Parliament of 13 December 2006 (OJ C 317 E, 23.12.2006, p. 432) and Council Decision of 19 December 2006.

⁽⁴⁾ OJ C 139, 14.6.2006, p. 1.

- (7) A specific action funded under this Regulation should not receive financial assistance from other Community financial instruments. Coordination with existing or planned modernisation and restructuring measures in the framework of regional development is necessary however, although such coordination should not result in the creation of parallel or additional management structures for actions funded by the EGF.
- (8) To facilitate the implementation of this Regulation, expenditure should be eligible from the date on which a Member State begins to provide personalised services to the affected workers. Reflecting the need for a concentrated response aiming specifically at re integration into employment, a deadline should be set for the use of the financial contribution from the EGF.
- (9) The Member States should remain responsible for the implementation of the financial contribution and for the management and control of the actions supported by Community financing, in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ (the Financial Regulation). The Member States should justify the use made of the financial contribution received from the EGF.
- (10) The European Monitoring Centre on Change may assist the Commission and the Member State concerned with qualitative and quantitative analyses in order to help in the evaluation of an application for EGF funds.
- (11) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of their scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (12) As the period of implementation of the EGF is linked to the duration of the financial framework from 1 January 2007 to 31 December 2013, support should be available to workers affected by trade-related redundancies from 1 January 2007,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter and scope

1. With the aim of stimulating economic growth and creating more jobs in the European Union, this Regulation establishes the EGF to enable the Community to provide support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation where these redundancies have a significant adverse impact on the regional or local economy.

The period of implementation of the EGF shall be linked to the financial framework, from 1 January 2007 to 31 December 2013.

2. This Regulation lays down rules regarding the operation of the EGF in order to facilitate re-integration into employment of workers affected by trade-related redundancies.

Article 2

Intervention criteria

A financial contribution from the EGF shall be provided where major structural changes in world trade patterns lead to a serious economic disruption, notably a substantial increase of imports into the European Union, or a rapid decline of the EU market share in a given sector or a delocalisation to third countries, which results in:

- (a) at least 1 000 redundancies over a period of 4 months in an enterprise in a Member State, including workers made redundant in its suppliers or downstream producers; or
- (b) at least 1 000 redundancies, over a period of 9 months, particularly in small or medium-sized enterprises, in a NACE 2 sector in one region or two contiguous regions at NUTS II level.
- (c) In small labour markets or in exceptional circumstances, where duly substantiated by the concerned, an application for a contribution from the EGF may be considered admissible even if the conditions laid down in points (a) and (b) are not entirely met, when redundancies have a serious impact on employment and the local economy. The aggregated amount of contributions in exceptional circumstances may not exceed 15 % of the EGF each year.

Article 3

Eligible actions

A financial contribution from the EGF may be made for active labour market measures that form part of a coordinated package of personalised services designed to re-integrate redundant workers into the labour market, including:

⁽¹⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

- (a) for job-search assistance, occupational guidance, tailor-made training and re-training, including information and communication technology skills and certification of acquired experience, as well as for outplacement assistance and entrepreneurship promotion or aid for self-employment;
- (b) for special time-limited measures, such as job-search allowances, mobility allowances or allowances to individuals participating in lifelong learning and training activities; and
- (c) for measures to stimulate in particular disadvantaged or older workers, to remain in or return to the labour market.

The EGF shall not finance passive social protection measures.

On the initiative of the Member State concerned, the EGF may finance the preparatory, management, information and publicity, and control activities for its implementation.

Article 4

Type of financial contribution

The Commission shall award a financial contribution in the form of a single instalment, which shall be implemented within the framework of shared management between the Member States and the Commission, in accordance with Article 53(1)(b) and Article 53(5) and (6) of the Financial Regulation.

Article 5

Applications

1. The Member State(s) shall submit an application for a contribution from EGF to the Commission within a period of 10 weeks from the date on which the conditions set out in Article 2 for mobilising the EGF are met. The application may be supplemented subsequently by the Member State(s) concerned.
2. The application shall include the following information:

- (a) a reasoned analysis of the link between the planned redundancies and major structural changes in world trade patterns and a demonstration of the number of redundancies and an explanation of the unforeseen nature of those redundancies;
- (b) the identification of the dismissing enterprises (national or multi-national), suppliers or downstream producers, sectors, and the categories of workers to be targeted;

- (c) a description of the territory concerned and its authorities and other stakeholders, and the expected impact of the redundancies as regards local, regional or national employment;
- (d) the coordinated package of personalised services to be funded and a breakdown of its estimated cost, including its complementarity with actions financed by the Structural Funds as well as information on actions that are mandatory by virtue of national law or pursuant to collective agreements;
- (e) the date(s) on which personalised services to the affected workers were started or are planned to be started;
- (f) the procedures followed for consulting the social partners; and
- (g) the authority responsible for management and financial control in accordance with Article 18.

3. Having regard to the actions implemented by the Member State(s), the region, the social partners and the enterprises concerned by virtue of national law or collective agreements, and paying particular attention to actions funded by the European Social Fund (the ESF), the information provided under paragraph 2 shall include a summary description of the actions taken and planned by the national authority and enterprises concerned, including an estimate of their cost.

4. The Member State(s) concerned shall also provide statistical and other information, at the most appropriate territorial level, which the Commission requires to assess the fulfilment of the intervention criteria.

5. On the basis of the information provided under paragraph 2 and any additional information submitted by the Member State(s) concerned, the Commission shall assess, in consultation with those Member State(s), whether the conditions for making a financial contribution under this Regulation are met.

Article 6

Complementarity, compliance and coordination

1. A contribution from the EGF shall not replace actions which are the responsibility of companies by virtue of national law or collective agreements.
2. A contribution from the EGF shall complement actions of the Member State(s) at national, regional and local level, including those co-financed by the Structural Funds.

3. A contribution from the EGF shall provide solidarity and support for individual workers made redundant as a result of structural changes in world trade patterns. The EGF shall not finance the restructuring of companies or sectors.

4. In accordance with their respective responsibilities, the Commission and the Member State(s) shall ensure the coordination of the assistance from Community funds.

5. The Member State(s) shall ensure that the specific actions receiving a contribution from the EGF shall not also receive assistance from other Community financial instruments.

Article 7

Equality between men and women and non-discrimination

The Commission and the Member States shall ensure that equality between men and women and the integration of the gender perspective are promoted during the various stages of implementation of the EGF. The Commission and the Member States shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of the implementation of and, in particular, in access to, the EGF.

Article 8

Technical assistance at the initiative of the Commission

1. At the initiative of the Commission, subject to a ceiling of 0,35 % of the financial resources available for that year, the EGF may be used to finance monitoring, information, administrative and technical support, audit, control and evaluation activities necessary to implement this Regulation.

2. Such tasks shall be executed in accordance with the Financial Regulation, as well as the implementing rules applicable to this form of implementation of the budget.

Article 9

Information and publicity

1. The Member State(s) concerned shall provide information on and publicise the funded actions. The information shall be addressed to the workers concerned, local and regional authorities, social partners, the media and the general public. It shall highlight the role of the Community and ensure that the contribution from the EGF is visible.

2. The Commission shall set up an Internet site, available in all Community languages, to provide information, highlighting the role of the budgetary authority.

Article 10

Determination of financial contribution

1. The Commission shall, on the basis of the assessment carried out in accordance with Article 5(5), particularly taking into account the number of workers to be supported, the proposed actions and the estimated costs, evaluate and propose as quickly as possible the amount of financial contribution, if any, that may be made within the limits of the resources available.

The amount may not exceed 50 % of the total of the estimated cost referred to in Article 5(2)(d).

2. Where on the basis of the assessment carried out in accordance with Article 5(5) the Commission has concluded that the conditions for a financial contribution under this Regulation are met, it shall immediately initiate the procedure set out in Article 12.

3. Where on the basis of the assessment carried out in accordance with Article 5(5) the Commission has concluded that the conditions for a financial contribution under this Regulation are not met, it shall notify the Member State(s) concerned as soon as possible.

Article 11

Eligibility of expenditure

Expenditure shall be eligible for a contribution from the EGF from the date(s) on which the Member State(s) concerned starts to provide personalised services to the affected workers, as set out in Article 5(2)(e).

Article 12

Budget procedure

1. The arrangements for the EGF shall comply with the provisions of point 28 of the Interinstitutional Agreement.

2. Appropriations concerning the EGF shall be entered in the general budget of the European Union as a provision through the normal budgetary procedure as soon as the Commission has identified sufficient margins and/or cancelled commitments.

3. Where the Commission has concluded that a financial contribution should be made from the EGF, it shall submit to the budgetary authority a proposal to authorise appropriations corresponding to the amount determined in accordance with Article 10 and a request for the transfer of the amount to the EGF budget line. Proposals may be grouped into batches.

Transfers concerning the EGF shall be carried out pursuant to Article 24(4) of the Financial Regulation.

4. A proposal pursuant to paragraph 3 shall include the following:

- (a) the assessment carried out in accordance with Article 5(5), together with a summary of the information on which that assessment is based;
- (b) evidence that the criteria laid down in Articles 2 and 6 are met; and
- (c) the reasons justifying the amounts proposed.

5. At the same time as it presents its proposal, the Commission shall initiate a trilogue procedure, possibly in simplified form, to seek the agreement of both arms of the budgetary authority on the need to use the EGF and the amount required.

6. On 1 September each year, at least one quarter of the annual maximum amount of the EGF shall remain available in order to cover needs arising until the end of the year.

7. Once the appropriations are made available by the budgetary authority, the Commission shall adopt a decision on a financial contribution.

Article 13

Payment and use of the financial contribution

1. Following adoption of the decision in accordance with Article 12(7), the Commission shall pay the financial contribution to the Member State(s) concerned in a single instalment, in principle within 15 days.

2. The Member State(s) shall use the financial contribution, as well as any interest earned thereon, within 12 months of the application pursuant to Article 5.

Article 14

Use of the euro

Applications, decisions on financial contributions and reports under this Regulation, as well as any other related documents, shall express all amounts in euro.

Article 15

Final report and closure

1. No later than six months after the expiry of the period specified in Article 13(2), the Member State(s) concerned shall

present a report to the Commission on the execution of the financial contribution, including information on the type of actions and main outcomes, together with a statement justifying the expenditure and indicating, whenever appropriate, the complementarity of actions with those funded by the ESF.

2. No later than six months after the Commission has received all the information required under paragraph 1, it shall wind up the financial contribution from the EGF.

Article 16

Annual report

1. By 1 July of each year, and for the first time in 2008, the Commission shall present to the European Parliament and to the Council a quantitative and qualitative report on the activities under this Regulation in the previous year. The report shall focus mainly on the results achieved by the EGF and shall in particular contain information relating to applications submitted, decisions adopted, actions funded, including their complementarity with actions funded by the Structural Funds, notably the ESF, and the winding-up of financial contribution made. It shall also document those requests that have been refused owing to a lack of sufficient appropriations or to non-eligibility.

2. The report shall be transmitted, for information, to the European Economic and Social Committee, the Committee of the Regions and the social partners.

Article 17

Evaluation

1. The Commission shall carry out at its own initiative and in close cooperation with the Member States:

(a) by 31 December 2011, a mid-term evaluation of the effectiveness and sustainability of results obtained; and

(b) by 31 December 2014, an ex-post evaluation with the assistance of external experts, to measure the impact of the EGF and its added value.

2. The results of the evaluation shall be transmitted, for information, to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and to the social partners.

*Article 18***Management and financial control**

1. Without prejudice to the Commission's responsibility for implementing the general budget of the European Communities, the Member States shall take responsibility in the first instance for the management of actions supported by the EGF and the financial control of the actions. To that end, the measures they take shall include:

- (a) verifying that management and control arrangements have been set up and are being implemented in such a way as to ensure that Community funds are being used efficiently and correctly, in accordance with the principles of sound financial management;
- (b) verifying that the financed actions have been properly carried out;
- (c) ensuring that expenditure funded is based on verifiable supporting documents, are correct and regular; and
- (d) preventing, detecting and correcting irregularities as defined in Article 70 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund⁽¹⁾ and recovering amounts unduly paid together with interest on late payments in accordance with the same Article. The Member State(s) shall notify any such irregularities to the Commission in due time and keep the Commission informed of the progress of administrative and legal proceedings.

2. The Member State(s) shall make the financial corrections required where an irregularity is ascertained. The corrections made by the Member State(s) shall consist in cancelling all or part of the Community contribution. The Member State(s) shall recover any amount lost as a result of an irregularity detected, repay it to the Commission and, where the amount is not repaid in the time allowed by the Member State(s) concerned, default interest shall be due.

3. The Commission, in its responsibility for the implementation of the general budget of the European Communities, shall take every step necessary to verify that the actions financed are carried out in accordance with the principles of sound and efficient financial management, in compliance with the Financial Regulation. It is the responsibility of the Member State(s) concerned to ensure that it has smoothly functioning management and control systems. The Commission shall satisfy itself that such systems are in place.

To that end, without prejudice to the powers of the Court of Auditors or the checks carried out by the Member State(s) in accordance with national laws, regulations and administrative provisions, Commission officials or servants may carry out on-the-spot checks, including sample checks, on the actions financed by the EGF with a minimum of one working day's notice. The Commission shall give notice to the Member State concerned with a view to obtaining all the assistance necessary. Officials or servants of the Member State concerned may take part in such checks.

4. The Member State shall ensure that all supporting documents regarding expenditure incurred are kept available for the Commission and the Court of Auditors for a period of three years following the winding-up of the financial contribution received from the EGF.

*Article 19***Reimbursement of financial contribution**

1. In cases where the amount of the actual cost of an action is less than the estimated amount quoted pursuant to Article 12, the Commission shall require the Member State(s) to reimburse a corresponding amount of the financial contribution received.

2. Where the Member State(s) fails to comply with the obligations stated in the decision on a financial contribution, the Commission shall take the necessary steps to require the Member State(s) to reimburse all or part of the financial contribution received.

3. Prior to the adoption of a decision under paragraphs 1 or 2, the Commission shall conduct a suitable examination of the case and shall, in particular, allow the Member State(s) a specified period of time in which to submit its comments.

4. If, after completing the necessary verifications, the Commission concludes that the Member State(s) is or are not complying with its obligations under Article 18(1), it shall, if no agreement has been reached and the Member State has not made the corrections in a period set by the Commission, and taking account of any comments made by the Member State, decide within three months from the end of the period referred above to make the financial corrections required by cancelling all or part of the contribution from the EGF to the action in question. Any amount lost as a result of an irregularity detected shall be recovered and, where the amount is not repaid in the time allowed by the Member State(s) concerned, default interest shall be due.

⁽¹⁾ OJ L 210, 31.7.2006, p. 25. Regulation as amended by Regulation (EC) No 1989/2006 (OJ L 411, 30.12.2006, p. 6).

*Article 20***Review clause**

On the basis of the first annual report provided for in Article 16, the European Parliament and the Council may review this Regulation, on the basis of a proposal by the Commission, to ensure that the solidarity objective of the EGF is met and that its provisions adequately take into account the economic, social and territorial characteristics of all Member States.

The European Parliament and the Council shall in any case review this Regulation by 31 December 2013.

*Article 21***Entry into force**

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 December 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

J. KORKEAOJA

Corrigendum to Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

(Official Journal of the European Union L 390 of 30 December 2006)

On page 7, point 12 (amendment of Article 26 of Regulation (EC, Euratom) No 1605/2002 — Financial Regulation), after point b (replacement of paragraph 2, first subparagraph), a new point (ba) is inserted as follows:

‘(ba) in paragraph 2, the second subparagraph shall be replaced by the following:

“The procedure provided for in Article 24(2) and (3) shall apply. If the Commission proposal is not agreed to by both arms of the budgetary authority and there is a failure to arrive at a common position on the utilisation of this reserve, the European Parliament and the Council shall refrain from acting on the Commission's proposal for a transfer.” ’