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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 1.7.2009
COM(2009) 323 final

2009/0083 (CNS)

Proposal for a
COUNCIL REGULATION (EC) No .../...
of [...]
on the introduction of the euro
(Codified version)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex II to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Regulation (EC) No 974/98 and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex III to the codified Regulation.

↓ 974/98 (adapted)

2009/0083 (CNS)

Proposal for a

COUNCIL REGULATION (EC) No .../...

of [...]

on the introduction of the euro (codified version)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article ☒ 123(4), third sentence ☐ thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Central Bank⁵,

Having regard to the opinion of the European Parliament⁶,

Whereas:

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- (1) Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro⁷ has been substantially amended several times⁸. In the interests of clarity and rationality the said Regulation should be codified.

↓ 974/98 Recital 1 (adapted)

- (2) This Regulation ☒ should define ☐ monetary law provisions of the Member States which have adopted the euro. Provisions on continuity of contracts, the replacement of references to the ecu in legal instruments by references to the euro and on rounding have already been laid down in Council Regulation (EC) No [1103/97 of 17 June 1997] on certain provisions relating to the introduction of the euro⁹. The introduction of the euro concerns day-to-day operations of the whole population in participating Member States.

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ L 139, 11.5.1998, p. 1.

⁸ See Annex II.

⁹ [OJ L 162, 19.6.1997, p. 1.]

↓ 974/98 Recital 2 (adapted)

- (3) At the meeting of the European Council in Madrid on 15 and 16 December 1995, the decision was taken that the term ‘ecu’ used by the Treaty to refer to the European currency unit is a generic term. The Governments of the 15 Member States reached the common agreement that that decision is the agreed and definitive interpretation of the relevant Treaty provisions. The name given to the European currency ☒ is ☒ the ‘euro’. The euro as the currency of the participating Member States ☒ is ☒ divided into one hundred sub-units with the name ‘cent’. The definition of the name ‘cent’ does not prevent the use of variants of this term in common usage in the Member States. The European Council furthermore considered that the name of the single currency must be the same in all the official languages of the European Union, taking into account the existence of different alphabets.
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↓ 974/98 Recital 3 (adapted)

- (4) The Council when acting in accordance with the third sentence of Article ☒ 123(4) ☒ of the Treaty ☒ is to ☒ take the measures necessary for the rapid introduction of the euro other than the adoption of the conversion rates.
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↓ 974/98 Recital 4 (adapted)

- (5) Whenever under Article ☒ 122(2) ☒ of the Treaty a Member State becomes a participating Member State, the Council ☒ acting in accordance with ☒ Article ☒ 123(5) ☒ of the Treaty ☒ is to ☒ take the other measures necessary for the rapid introduction of the euro as the single currency of this Member State.
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↓ 974/98 Recital 5 (adapted)

- (6) ☒ In accordance with ☒ the first sentence of Article ☒ 123(4) ☒ of the Treaty, the Council, at the starting date of the third stage, ☒ adopted ☒ the conversion rates at which the currencies of the participating Member States ☒ were ☒ irrevocably fixed and at which irrevocably fixed rate the euro ☒ was ☒ substituted for those currencies.
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↓ 974/98 Recital 6

- (7) Given the absence of exchange rate risk either between the euro unit and the national currency units or between these national currency units, legislative provisions should be interpreted accordingly.
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↓ 974/98 Recital 7 (adapted)

- (8) The term ‘contract’ used in the definition of legal instruments ☒ should ☒ include all types of contracts, irrespective of the way in which they are concluded.

↓ 974/98 Recital 8 (adapted)

- (9) In order to prepare a smooth changeover to the euro, a transitional period is needed between the substitution of the euro for the currencies of the participating Member States and the introduction of euro banknotes and coins. During this period the national currency units should be defined as sub-divisions of the euro. Thereby a legal equivalence is established between the euro unit and the national currency units.
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↓ 974/98 (adapted)

- (10) Each participating Member State should be able to allow the full use of the euro unit in its territory during the transitional period.
- (11) During the transitional period it should be possible for contracts, national laws and other legal instruments to be drawn up validly in the euro unit or in the national currency unit. During this period, nothing in this Regulation should affect the validity of any reference to a national currency unit in any legal instrument.
- (12) Unless agreed otherwise, economic agents should have to respect the denomination of a legal instrument in the performance of all acts to be carried out under that instrument.
- (13) The euro unit and the national currency units are units of the same currency. It should be ensured that payments inside a participating Member State by crediting an account can be made either in the euro unit or the respective national currency unit. The provisions on payments by crediting an account should also apply to those cross-border payments which are denominated in the euro unit or the national currency unit of the account of the creditor. It is necessary to ensure the smooth functioning of payment systems by laying down provisions dealing with the crediting of accounts by payment instruments credited through those systems. The provisions on payments by crediting an account should not imply that financial intermediaries are obliged to make available either other payment facilities or products denominated in any particular unit of the euro. The provisions on payments by crediting an account should not prohibit financial intermediaries from coordinating the introduction of payment facilities denominated in the euro unit which rely on a common technical infrastructure during the transitional period.
- (14) In accordance with the conclusions reached by the European Council at its meeting held in Madrid, new tradable public debt was to be issued in the euro unit by the participating Member States as from 1 January 1999. It is desirable to allow issuers of debt to redenominate outstanding debt in the euro unit. The provisions on redenomination should be such that they can also be applied in the jurisdictions of third countries. Issuers should be enabled to redenominate outstanding debt if the debt is denominated in a national currency unit of a Member State which has redenominated part or all of the outstanding debt of its general government. These provisions do not address the introduction of additional measures to amend the terms of outstanding debt to alter, among other things, the nominal amount of outstanding debt, these being matters subject to relevant national law. It is desirable to allow

Member States to take appropriate measures for changing the unit of account of the operating procedures of organised markets.

↓ 974/98

- (15) Further action at the Community level may also be necessary to clarify the effect of the introduction of the euro on the application of existing provisions of Community law, in particular concerning netting, set-off and techniques of similar effect.
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↓ 974/98 (adapted)

- (16) Any obligation to use the euro unit can be imposed only on the basis of Community legislation. In transactions with the public sector participating Member States should be able to allow the use of the euro unit. In accordance with the reference scenario decided by the European Council at its meeting held in Madrid, the Community legislation laying down the time frame for the generalisation of the use of the euro unit might leave some freedom to individual Member States.
- (17) In accordance with Article 106(2) of the Treaty, the Council may adopt measures to harmonise the denominations and technical specifications of all coins.
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↓ 974/98

- (18) Banknotes and coins need adequate protection against counterfeiting.
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↓ 974/98 (adapted)

- (19) Banknotes and coins denominated in the national currency units should lose their status of legal tender at the latest six months after the respective cash changeover date . Limitations on payments in notes and coins, established by Member States for reasons of public interest , should not be incompatible with the status of legal tender of euro banknotes and coins, provided that other lawful means for the settlement of monetary debts are available.
- (20) As from the end of the transitional period references in legal instruments existing at the end of the transitional period should be read as references to the euro unit according to the respective conversion rates. A physical redenomination of existing legal instruments is therefore not necessary to achieve this result. The rounding rules defined in Regulation (EC) No [1103/97] should also apply to the conversions to be made at the end of the transitional period or after the transitional period. For reasons of clarity it may be desirable that the physical redenomination take place as soon as appropriate.
- (21) Paragraph 2 of the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland annexed to the Treaty provides that, *inter alia*, paragraph 5 of that Protocol is to have effect if the United Kingdom notifies the Council that it does not intend to move to the third stage. The United Kingdom gave notice to the Council on 30 October 1997 that it does not intend to move to the third stage. Paragraph 5 provides that, *inter alia*, Article 123(4) of the Treaty is not to apply to the United Kingdom.

- (22) Denmark, referring to paragraph 1 of the Protocol on certain provisions relating to Denmark \boxtimes annexed to the Treaty, \boxtimes has notified, in the context of the Edinburgh decision of 12 December 1992, that it will not participate in the third stage. Therefore, in accordance with paragraph 2 of the said Protocol, all Articles and provisions of the Treaty and the Statute of the ESCB referring to a derogation \boxtimes are to \boxtimes be applicable to Denmark.
- (23) In accordance with Article \boxtimes 123(4) \boxtimes of the Treaty, the single currency \boxtimes is to \boxtimes be introduced only in the Member States without a derogation.
- (24) This Regulation \boxtimes should, \boxtimes therefore, be applicable pursuant to Article \boxtimes 249 \boxtimes of the Treaty, subject to the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland and the Protocol on certain provisions relating to Denmark and Article \boxtimes 122(1) of the Treaty \boxtimes ,

\downarrow 974/98

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS

\downarrow 2169/2005 Art. 1 pt. 1 (adapted)

Article 1

- \boxtimes 1. \boxtimes For the purposes of this Regulation:
- (a) ‘participating Member States’ means the Member States listed in the table in Annex I;
 - (b) ‘legal instruments’ means legislative and statutory provisions, acts of administration, judicial decisions, contracts, unilateral legal acts, payment instruments other than banknotes and coins, and other instruments with legal effect;
 - (c) ‘conversion rate’ means the irrevocably fixed conversion rate adopted for the currency of each participating Member State by the Council in accordance with the first sentence of Article 123(4) of the Treaty or with paragraph 5 of that Article;
 - (d) ‘euro adoption date’ means either the date on which the respective Member State enters the third stage under Article 121(3) of the Treaty or the date on which the abrogation of the respective Member State’s derogation under Article 122(2) of the Treaty enters into force, as the case may be;
 - (e) ‘cash changeover date’ means the date on which euro banknotes and coins acquire the status of legal tender in a given participating Member State;

- (f) ‘euro unit’ means the currency unit as referred to in the second sentence of Article 3;
- (g) ‘national currency units’ means the units of the currency of a participating Member State, as those units are defined on the day before the adoption of the euro in that Member State;
- (h) ‘transitional period’ means a period of three years at the most beginning at 00.00 hours on the euro adoption date and ending at 00.00 hours on the cash changeover date;
- (i) ‘phasing-out period’ means a period of one year at the most beginning on the euro adoption date, which can apply only to Member States where the euro adoption date and the cash changeover date fall on the same day;
- (j) ‘redenominate’ means changing the unit in which the amount of outstanding debt is stated from a national currency unit to the euro unit, but which does not have through the act of redenomination the effect of altering any other term of the debt, this being a matter subject to relevant national law;
- (k) ‘credit institutions’ means credit institutions as defined in point (1) of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council¹⁰.

2. For the purpose of this Regulation, the institutions listed in Article 2 of Directive 2006/48/EC with the exception of post office giro institutions shall not be considered credit institutions within the meaning of point (k) of paragraph 1 .

2169/2005 Art. 1 pt. 2

Article 2

The euro adoption date, the cash changeover date, and the phasing-out period, if applicable, for each participating Member State shall be as set out in Annex I.

¹⁰ OJ L 177, 30.6.2006, p. 1.

↓ 974/98

CHAPTER II

SUBSTITUTION OF THE EURO FOR THE CURRENCIES OF THE PARTICIPATING MEMBER STATES

↓ 2169/2005 Art. 1 pt. 3

Article 3

With effect from the respective euro adoption dates, the currency of the participating Member States shall be the euro. The currency unit shall be one euro. One euro shall be divided into one hundred cent.

↓ 974/98 (adapted)

Article 4

The euro shall be substituted for the currency of each participating Member State at the conversion rate.

Article 5

The euro shall be the unit of account of the European Central Bank (ECB) and of the central banks of the participating Member States.

CHAPTER III

TRANSITIONAL PROVISIONS

Article 6

Articles 7 to 10 shall apply during the transitional period.

Article 7

1. The euro shall be divided into the national currency units according to the conversion rates. Any subdivision thereof shall be maintained. Subject to the provisions of this Regulation, the monetary law of the participating Member States shall continue to apply.

2. Where in a legal instrument reference is made to a national currency unit, this reference shall be as valid as if reference were made to the euro unit according to the conversion rates.

Article 8

The substitution of the euro for the currency of each participating Member State shall not in itself have the effect of altering the denomination of legal instruments in existence on the date of substitution.

Article 9

1. Acts to be performed under legal instruments providing for the use of, or denominated in, a national currency unit shall be performed in that national currency unit. Acts to be performed under legal instruments providing for the use of, or denominated in, the euro unit shall be performed in that unit.

2. Paragraph 1 is subject to anything which parties may have agreed.

3. Notwithstanding paragraph 1, any amount denominated either in the euro unit or in the national currency unit of a given participating Member State and payable within that Member State by crediting an account of the creditor, may be paid by the debtor either in the euro unit or in that national currency unit. The amount shall be credited to the account of the creditor in the denomination of his account, with any conversion being effected at the conversion rates.

4. Notwithstanding paragraph 1, each participating Member State may take measures which may be necessary in order to:

- (a) redenominate in the euro unit outstanding debt issued by that Member State's general government, as defined in the European system of integrated accounts, denominated in its national currency unit and issued under its own law. If a Member State has taken such a measure, issuers may redenominate in the euro unit debt denominated in that Member State's national currency unit unless redenomination is expressly excluded by the terms of the contract; this provision shall apply to debt issued by the general government of a Member State as well as to bonds and other forms of securitised debt negotiable in the capital markets, and to money market instruments, issued by other debtors;
- (b) enable the change of the unit of account of their operating procedures from a national currency unit to the euro unit by:
 - (i) markets for the regular exchange, clearing and settlement of any instrument listed in section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council ¹¹ and of commodities; and
 - (ii) systems for the regular exchange, clearing and settlement of payments.

¹¹ OJ L 145, 30.4.2004, p. 1 .

5. Provisions other than those of paragraph 4 imposing the use of the euro unit may only be adopted by the participating Member States in accordance with any time-frame laid down by Community legislation.

6. National legal provisions of participating Member States which permit or impose netting, set-off or techniques with similar effects shall apply to monetary obligations, irrespective of their currency denomination, if that denomination is in the euro unit or in a national currency unit, with any conversion being effected at the conversion rates.

↓ 2169/2005 Art. 1 pt. 4

Article 10

Banknotes and coins denominated in a national currency unit shall retain their status as legal tender within their territorial limits as from the day before the euro adoption date in the participating Member State concerned.

↓ 2169/2005 Art. 1 pt. 5

Article 11

The following shall apply in a Member State with a ‘phasing-out’ period. In legal instruments created during the phasing-out period and to be performed in that Member State, reference may continue to be made to the national currency unit. These references shall be read as references to the euro unit according to the respective conversion rates. Without prejudice to Article 17, the acts performed under those legal instruments shall be performed only in the euro unit. The rounding rules laid down in Regulation (EC) No [1103/97] shall apply.

The Member State concerned shall limit the application of the first paragraph to certain types of legal instrument, or to legal instruments adopted in certain fields.

The Member State concerned may shorten the period.

↓ 974/98

CHAPTER IV

EURO BANKNOTES AND COINS

↓ 2169/2005 Art. 1 pt. 6 (adapted)

Article 12

With effect from the respective cash changeover dates, the ECB and the central banks of the participating Member States shall put into circulation banknotes denominated in euro in the participating Member States.

Without prejudice to Article 17, these banknotes denominated in euro shall be the only banknotes which have the status of legal tender in participating Member States.

Article 13

With effect from the respective cash changeover date, the participating Member States shall issue coins denominated in euro or in cent and complying with the denominations and technical specifications which the Council may lay down in accordance with the second sentence of Article 106(2) of the Treaty. Without prejudice to Article 17 of this Regulation and to the provisions of any agreement under Article 111(3) of the Treaty concerning monetary matters, those coins shall be the only coins which have the status of legal tender in participating Member States. Except for the issuing authority and for those persons specifically designated by the national legislation of the issuing Member State, no party shall be obliged to accept more than 50 coins in any single payment.

↓ 974/98

Article 14

Participating Member States shall ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins.

CHAPTER V

FINAL PROVISIONS

↓ 2169/2005 Art. 1 pt. 7

Article 15

Articles 12, 13, 16, 17 and 18 shall apply with effect from the respective cash changeover date in each participating Member State.

Article 16

Where, in legal instruments existing on the day before the cash changeover date, reference is made to the national currency units, these references shall be read as references to the euro unit according to the respective conversion rates. The rounding rules laid down in Regulation (EC) No [1103/97] shall apply.

↓ 974/98 → ₁ 2169/2005 Art. 1 pt. 8(a)
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Article 17

1. Banknotes and coins denominated in a national currency unit as referred to in Article 7(1) shall remain legal tender within their territorial limits until six months →₁ from the respective cash changeover date ← at the latest; this period may be shortened by national law.
2. Each participating Member State may, for a period of up to six months →₁ from the respective cash changeover date ←, lay down rules for the use of the banknotes and coins denominated in its national currency unit as referred to in Article 7(1) and take any measures necessary to facilitate their withdrawal.

↓ 2169/2005 Art. 1 pt. 8(b)

3. During the period referred to in paragraph 1, credit institutions in participating Member States adopting the euro after 1 January 2002 shall exchange their customers' banknotes and coins denominated in the national currency unit of that Member State for banknotes and coins in euro, free of charge, up to a ceiling which may be set by national law. Credit institutions may require that notice be given if the amount to be exchanged exceeds a ceiling set by national law or, in the absence of such provisions, by themselves and corresponding to a household amount.

The credit institutions referred to in the first subparagraph shall exchange banknotes and coins denominated in the national currency unit of that Member State of persons other than their customers, free of charge up to a ceiling set by national law or, in the absence of such provisions, by themselves.

National law may limit the obligation under the first and the second subparagraphs to specific types of credit institutions. National law may also extend this obligation to other persons.

↓ 974/98

Article 18

In accordance with the laws or practices of participating Member States, the respective issuers of banknotes and coins shall continue to accept, against euro at the conversion rate, the banknotes and coins previously issued by them.

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Article 19

Regulation (EC) No 974/98 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

↓ 974/98 (adapted)

CHAPTER VI

ENTRY INTO FORCE

Article 20

This Regulation shall enter into force on ☒ the twentieth day following that 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, in accordance with ☒ Article 249 of ☒ the Treaty, subject to the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland and the Protocol on certain provisions relating to Denmark and Article ☒ 122(1) of the Treaty ☒.

↓ 974/98

Done at Brussels,

For the Council
The President

↓ 2169/2005 Art. 1 pt. 9 and Annex

ANNEX I

Member State	Euro adoption date	Cash changeover date	Member State with a 'phasing-out' period
Belgium	1 January 1999	1 January 2002	n/a
Germany	1 January 1999	1 January 2002	n/a
Ireland	1 January 1999	1 January 2002	n/a
Greece	1 January 2001	1 January 2002	n/a
Spain	1 January 1999	1 January 2002	n/a
France	1 January 1999	1 January 2002	n/a
Italy	1 January 1999	1 January 2002	n/a

↓ 835/2007 Art. 1 and Annex

Cyprus	1 January 2008	1 January 2008	No
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↓ 2169/2005 Art. 1 pt. 9 and Annex

Luxembourg	1 January 1999	1 January 2002	n/a
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↓ 836/2007 Art. 1 and Annex

Malta	1 January 2008	1 January 2008	No
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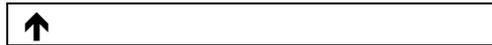
↓ 2169/2005 Art. 1 pt. 9 and Annex

Netherlands	1 January 1999	1 January 2002	n/a
Austria	1 January 1999	1 January 2002	n/a
Portugal	1 January 1999	1 January 2002	n/a

↓ 1647/2006 Art. 1 and Annex

Slovenia	1 January 2007	1 January 2007	No
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			↓ 693/2008 Art. 1 and Annex
Slovakia	1 January 2009	1 January 2009	No
			↓ 2169/2005 Art. 1 pt. 9 and Annex
Finland	1 January 1999	1 January 2002	n/a



ANNEX II

Repealed Regulation with list of its successive amendments

Council Regulation (EC) No 974/98	(OJ L 139, 11.5.1998, p. 1)
Council Regulation (EC) No 2596/2000	(OJ L 300, 29.11.2000, p. 2)
Council Regulation (EC) No 2169/2005	(OJ L 346, 29.12.2005, p. 1)
Council Regulation (EC) No 1647/2006	(OJ L 309, 9.11.2006, p. 2)
Council Regulation (EC) No 835/2007	(OJ L 186, 18.7.2007, p. 1)
Council Regulation (EC) No 836/2007	(OJ L 186, 18.7.2007, p. 3)
Council Regulation (EC) No 693/2008	(OJ L 195, 24.7.2008, p. 1)

ANNEX III

CORRELATION TABLE

Regulation (EC) No 974/98	This Regulation
Article 1, points (a) to (k), first sentence	Article 1(1), points (a) to (k)
Article 1, point (k), second sentence	Article 1(2)
Article 1a	Article 2
Article 2	Article 3
Article 3	Article 4
Article 4	Article 5
Article 5	Article 6
Article 6	Article 7
Article 7	Article 8
Article 8(1), (2) and (3)	Article 9(1), (2) and (3)
Article 8(4), introductory wording	Article 9(4), introductory wording
Article 8(4), first indent	Article 9(4)(a)
Article 8(4), second indent, introductory wording	Article 9(4)(b), introductory wording
Article 8(4), second indent, (a)	Article 9(4)(b)(i)
Article 8(4), second indent, (b)	Article 9(4)(b)(ii)
Article 8(5) and (6)	Article 9(5) and (6)
Article 9	Article 10
Article 9a	Article 11
Article 10	Article 12
Article 11	Article 13
Article 12	Article 14
Article 13	Article 15
Article 14	Article 16

Article 15

Article 16

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Article 17

Annex

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Article 17

Article 18

Article 19

Article 20

Annex I

Annex II

Annex III