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I

(Acts whose publication is obligatory)

**DECISION No 2317/2003/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 December 2003**

**establishing a programme for the enhancement of quality in higher education and the promotion
of intercultural understanding through cooperation with third countries (Erasmus Mundus) (2004
to 2008)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European Com-
munity, and in particular Article 149 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and
Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the
Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽⁴⁾,

Whereas:

- (1) The European Community should contribute to the development of quality education, *inter alia*, through cooperation with third countries.
- (2) The conclusions of the Lisbon European Council (23 and 24 March 2000) emphasised that if Europe is to meet the challenge of globalisation, Member States need to adapt their education and vocational training systems to the demands of the knowledge society.
- (3) The Stockholm European Council (23 and 24 March 2001) indicated that work on the follow-up to the objectives of education and training systems should be assessed in the context of a worldwide perspective. The Barcelona European Council (15 and 16 March 2002) confirmed that opening-up to the wider world is one of the three basic principles of the work programme for 2010 for education and training systems.

(4) The European Ministers of Education, meeting in Bologna (19 June 1999), stated in their joint declaration that it is necessary to ensure that the European higher education system acquires a worldwide degree of attractiveness appropriate to Europe's major cultural and scientific achievements.

(5) The European Ministers in charge of higher education meeting in Prague (19 May 2001) further emphasised, *inter alia*, the importance of enhancing the attractiveness of European higher education to students from Europe and other parts of the world.

(6) In its communication on reinforcing cooperation with third countries in the field of higher education, the Commission argued that greater internationalisation of higher education is necessary to respond to the challenges of the process of globalisation, identified overall objectives for a third-country cooperation strategy in this field and suggested concrete measures for achieving these objectives.

(7) The Council resolution of 14 February 2002 on the promotion of linguistic diversity and language learning in the framework of the implementation of the objectives of the European year of languages 2001 ⁽⁵⁾ underlines the need for the European Union to take into account the principle of linguistic diversity in its relations with third countries.

(8) The academic institutions in the European Union aim to increase the share of internationally mobile students. There is wide recognition of the great potential represented by the combined individual strengths of European higher education institutions, by their educational diversity and their wide experience in networking and in cooperation with third countries, which enable them to offer courses of great quality unique to Europe and allow the benefits of international mobility to be shared more widely within the Community and its partner countries.

⁽¹⁾ OJ C 331 E, 31.12.2002, p. 25.

⁽²⁾ OJ C 95, 23.4.2003, p. 35.

⁽³⁾ OJ C 244, 10.10.2003, p. 14.

⁽⁴⁾ Opinion of the European Parliament of 8 April 2003 (not yet published in the Official Journal), Council Common Position of 16 June 2003 (OJ C 240 E, 7.10.2003, p. 1) and Position of the European Parliament of 21 October 2003 (not yet published in the Official Journal).

⁽⁵⁾ OJ C 50, 23.2.2002, p. 1.

- (9) European higher education institutions must remain at the leading edge of developments. To this end they should encourage cooperation with third-country institutions that have achieved a level of development comparable to that of higher education institutions in the Community. Higher education must be understood as a whole, of which higher vocational training forms an integral part, taking account of specific pathways such as training courses for engineers or higher technicians.
- (10) The aim of this programme is to contribute to improving the quality of higher education in Europe and at the same time to have an impact on the visibility and perception of the European Union around the world, as well as building a capital of goodwill among those who have participated in the programme.
- (11) This programme provides for the establishment of an 'Erasmus Mundus masters course' which will enable students to travel around Europe attending several different universities. This new European dimension to higher education should be taken into account in the review of existing programmes such as Socrates (Erasmus), in order to take adequate measures to promote access to this programme for European students.
- (12) The Community action should be managed in a way that is transparent, user-friendly, open and comprehensible.
- (13) In promoting international mobility, the Community should be mindful of the phenomenon commonly known as 'the brain drain'.
- (14) There is a need to step up Community efforts to promote dialogue and understanding between cultures world-wide, bearing in mind the social dimension of higher education as well as the ideals of democracy and respect for human rights, including gender equality, especially as mobility fosters the discovery of new cultural and social environments and facilitates understanding thereof, and in so doing to ensure that no group of citizens or of third-country nationals is excluded or disadvantaged as mentioned in Article 21(1) of the Charter of Fundamental Rights of the European Union.
- (15) In order to reinforce the added value of Community action it is necessary to ensure coherence and complementarity between the actions implemented in the framework of this Decision and other relevant Community policies, instruments and actions, in particular the sixth framework programme for research established by Decision No 1513/2002/EC ⁽¹⁾ and external cooperation programmes in the higher education sector.
- (16) The Agreement on the European Economic Area (EEA Agreement) provides for greater cooperation in the field of education, training and youth between the European Community and its Member States, on the one hand, and the countries of the European Free Trade Association participating in the European Economic Area (EEA-EFTA States), on the other; the conditions and the detailed rules for the participation of the above countries in this programme should be established in accordance with the relevant provisions of the EEA Agreement.
- (17) The conditions and the detailed rules for the participation of the associated central and east European countries (CEECs) in this programme should be established in accordance with the provisions laid down in the European agreements, in their additional Protocols and in the decisions of the respective Association Councils. With regard to Cyprus, participation should be funded by additional appropriations in accordance with the procedures to be agreed with that country. With regard to Malta and Turkey, participation should be funded by additional appropriations in accordance with the provisions of the Treaty.
- (18) This programme should be regularly monitored and evaluated in cooperation between the Commission and the Member States in order to allow for readjustments, particularly as regards the priorities for implementing the measures; the evaluation should include an external and independent evaluation.
- (19) Since the objectives of the proposed action concerning the contribution of European cooperation to quality education cannot be sufficiently achieved by the Member States, *inter alia*, because of the need for multilateral partnerships and multilateral mobility and exchanges of information between the Community and third countries and can therefore be better achieved at Community level owing to the transnational dimension of Community actions and measures, 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 Decision does not go beyond what is necessary in order to achieve those objectives.

⁽¹⁾ Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contribution to the creation of the European Research Area and to innovation (2002 to 2006) (OJ L 232, 29.8.2002, p. 1).

- (20) This Decision lays down for the entire duration of the programme a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure⁽¹⁾, for the budgetary authority during the annual budgetary procedure.
- (21) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽²⁾,

pating countries as provided for in Article 11, who has not carried out his or her main activity (studies, work, etc.) for more than a total of 12 months over the last five years in any of the Member States or the participating countries; and who has been accepted to register or is registered in an Erasmus Mundus Masters Course as described in the Annex;

3. 'third-country scholar' means a national of a third country other than those from EEA-EFTA States and candidate countries for accession to the European Union, who is not a resident of any of the Member States or the participating countries as provided for in Article 11, who has not carried out his or her main activity (studies, work, etc.) for more than a total of 12 months over the last five years in any of the Member States or the participating countries, and who has outstanding academic and/or professional experience;
4. 'graduate or postgraduate studies' means courses of higher education study that follow a first degree lasting a minimum of three years and lead to a second or further degree.

HAVE DECIDED AS FOLLOWS:

Article 1

Establishment of the programme

1. This Decision establishes a programme — 'Erasmus Mundus' (hereinafter 'the programme') — for the enhancement of quality in higher education within the European Union and the promotion of intercultural understanding through cooperation with third countries.
2. The programme shall be implemented over a period starting on 1 January 2004 and ending on 31 December 2008.
3. The programme shall support and supplement action taken by and in the Member States while fully respecting their responsibility for the content of education and the organisation of education and training systems, and their cultural and linguistic diversity.

Article 2

Definitions

For the purpose of this Decision:

1. 'higher education institution' means any institution which according to national legislation or practice offers qualifications or degrees at that level, whatever such establishments may be called;
2. 'third-country graduate student' means a national of a third country other than those from EEA-EFTA States and candidate countries for accession to the European Union, who has already obtained a first higher education degree, who is not a resident of any of the Member States or the partici-

Article 3

Objectives of the programme

1. The programme's overall aim is to enhance the quality of European higher education by fostering cooperation with third countries in order to improve the development of human resources and to promote dialogue and understanding between peoples and cultures.
2. The programme's specific objectives are:
- (a) to promote a quality offer in higher education with a distinct European added value, attractive both within the European Union and beyond its borders;
- (b) to encourage and enable highly qualified graduates and scholars from all over the world, to obtain qualifications and/or experience in the European Union;
- (c) to develop more structured cooperation between European Union and third-country institutions and greater European Union outgoing mobility as part of European study programmes;
- (d) to improve accessibility and enhance the profile and visibility of higher education in the European Union.
3. The Commission shall, when pursuing the objectives of the programme, observe the Community's general policy on equal opportunities for men and women. The Commission shall also ensure that no group of citizens or third-country nationals is excluded or disadvantaged.

⁽¹⁾ OJ C 172, 18.6.1999, p. 1; Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

*Article 4***Programme actions**

1. The objectives of the programme as set out in Article 3 shall be pursued by means of the following actions:

- (a) Erasmus Mundus masters courses selected on the basis of the quality of the proposed training and hosting of students;
- (b) a scholarship scheme;
- (c) partnerships with third-country higher education institutions;
- (d) measures enhancing the attractiveness of Europe as an educational destination;
- (e) technical support measures.

2. These actions shall be realised using the procedures described in the Annex, and through the following types of approaches, which may be combined where appropriate:

- (a) support for the development of joint educational programmes and cooperation networks facilitating the exchange of experience and good practice;
- (b) enhanced support for mobility, between the Community and third countries, of people in the field of higher education;
- (c) promotion of language skills, preferably providing students with the possibility of learning at least two of the languages spoken in the countries in which the higher education institutions involved in the Erasmus Mundus masters course are situated, and promotion of the understanding of different cultures;
- (d) support for pilot projects based on transnational partnerships designed to develop innovation and quality in higher education;
- (e) support for the analysis and follow-up of trends in, and evolution of, higher education in an international perspective.

*Article 5***Access to the programme**

Under the conditions and arrangements for implementation specified in the Annex and bearing in mind the definitions in Article 2, the programme is aimed in particular at:

- (a) higher education institutions;
- (b) students having obtained a first degree awarded by a higher education institution;
- (c) scholars or professionals who lecture or conduct research;
- (d) staff directly involved in higher education;
- (e) other public or private bodies active in the field of higher education which may take part only in actions 4 and 5 in the Annex.

*Article 6***Implementation of the programme and cooperation with the Member States**

1. The Commission shall:

- (a) ensure the effective implementation of the Community actions covered by the programme in conformity with the Annex;
- (b) take account of bilateral cooperation with third countries undertaken by Member States;
- (c) consult the relevant associations and organisations in the field of higher education at European level and shall inform the Committee referred to in Article 8 of their opinions;
- (d) seek synergies and develop joint actions with other Community programmes and actions in the field of higher education and research.

2. The Member States shall:

- (a) take the necessary steps to ensure the efficient running of the programme at Member State level involving all the parties concerned in education in accordance with national practice including endeavours to adopt such measures as may be deemed appropriate to remove legal and administrative barriers;
- (b) designate appropriate structures to cooperate closely with the Commission;
- (c) encourage potential synergies with other Community programmes and possible similar national initiatives taken at Member State level.

3. The Commission, in cooperation with the Member States, shall ensure:

- (a) appropriate information, publicity and follow-up with regard to actions supported by the programme;
- (b) the dissemination of the results of the actions undertaken within the framework of the programme.

*Article 7***Implementing measures**

1. The following measures necessary for the implementation of this Decision shall be adopted in accordance with the management procedure referred to in Article 8(2):

- (a) the annual plan of work, including priorities;
- (b) the selection criteria and procedures, including the composition and internal rules of procedure of the selection board, and the results of selections for Action 1, with due regard to the provisions set out in the Annex;

- (c) the general guidelines for implementing the programme;
- (d) the annual budget, the breakdown of funds among the different actions of the programme and indicative grant amounts;
- (e) the arrangements for monitoring and evaluating the programme and for the dissemination and transfer of results.

2. Proposals for decisions concerning the results of selections, except selections for Action 1, and all other measures necessary for the implementation of this Decision shall be adopted in accordance with the advisory procedure referred to in Article 8(3).

Article 8

Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
4. The Committee shall adopt its Rules of Procedure.

Article 9

Funding

1. The financial framework for the implementation of the programme for the period specified in Article 1 is hereby set at EUR 230 million. For the period following 31 December 2006, this amount shall be deemed to be confirmed if it is consistent for this phase with the financial perspectives in force for the period commencing in 2007.
2. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

Article 10

Consistency and complementarity

1. The Commission shall, in cooperation with the Member States, ensure overall consistency and complementarity with other relevant Community policies, instruments and actions, in particular with the sixth framework programme for research and with external cooperation programmes in the field of higher education.
2. The Commission shall keep the Committee referred to in Article 8(1) regularly informed about Community initiatives taken in relevant fields, ensure efficient linkage and, where appropriate, joint actions between the programme and the programmes and actions in the area of education undertaken within the framework of the Community's cooperation with third countries, including bilateral agreements, and the competent international organisations.

Article 11

Participation of EEA-EFTA States and candidate countries for accession to the European Union

The conditions and detailed rules on the participation of EEA-EFTA States and candidate countries for accession to the European Union in the programme shall be established in accordance with the relevant provisions of the instruments governing the relations between the European Community and these countries.

Article 12

Monitoring and evaluation

1. The Commission shall regularly monitor the programme in cooperation with the Member States. The results of the monitoring and evaluation process shall be utilised when implementing the programme.

This monitoring shall include the reports referred to in paragraph 3 and specific activities.

2. The programme shall be evaluated regularly by the Commission having regard to the objectives referred to in Article 3, the impact of the programme as a whole and the complementarity between action under the programme and that pursued under other relevant Community policies, instruments and actions.

3. The Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:

- (a) on the accession of new Member States, a report on the financial repercussions of these accessions on the programme, followed, if appropriate, by proposals to deal with those repercussions. The European Parliament and the Council shall take a decision on such proposals as soon as possible;
- (b) an interim evaluation report on the results achieved and on the qualitative aspects of the implementation of the programme by 30 June 2007;
- (c) a communication on the continuation of the programme by 31 December 2007;
- (d) an *ex post* evaluation report by 31 December 2009.

Article 13

Entry into force

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

Done at Brussels, 5 December 2003.

For the European Parliament

The President

P. COX

For the Council

The President

P. LUNARDI

ANNEX

COMMUNITY ACTIONS AND SELECTION PROCEDURES

- ACTION 1: ERASMUS MUNDUS MASTERS COURSES
- ACTION 2: SCHOLARSHIPS
- ACTION 3: PARTNERSHIPS WITH THIRD-COUNTRY HIGHER EDUCATION INSTITUTIONS
- ACTION 4: ENHANCING ATTRACTIVENESS
- ACTION 5: TECHNICAL SUPPORT MEASURES

SELECTION PROCEDURES

ACTION 1: ERASMUS MUNDUS MASTERS COURSES

1. The Community will select European postgraduate courses which, for the purposes of the programme, will be called 'Erasmus Mundus masters courses' and will be selected on the basis of the quality of the courses offered and hosting of students, as provided for under 'Selection procedures' in this Annex.
2. For the purpose of the programme, Erasmus Mundus masters courses shall:
 - (a) involve a minimum of three higher education institutions from three different Member States;
 - (b) implement a study programme which involves a period of study in at least two of the three institutions under point (a);
 - (c) have built-in mechanisms for the recognition of periods of study undertaken in partner institutions based on, or compatible with, the European credit transfer system;
 - (d) result in the awarding of joint, double or multiple degrees, recognised or accredited by the Member States, from the participating institutions;
 - (e) reserve a minimum of places for, and host, third-country students who have been granted financial support under the programme;
 - (f) establish transparent conditions for admissions which pay due regard, *inter alia*, to gender issues and equity issues;
 - (g) agree to respect the rules applicable to the selection procedure of grantees (students and scholars);
 - (h) put in place appropriate arrangements to facilitate access for, and hosting of, third-country students (information facilities, accommodation, etc.);
 - (i) without prejudice to the language of instruction, provide for the use of at least two European languages spoken in the Member States where the higher education institutions involved in the Erasmus Mundus masters course are situated and, as appropriate, for language preparation and assistance for students, in particular by means of courses organised by the institutions in question.
3. Erasmus Mundus masters courses will be selected for a five-year period, subject to a lightweight annual renewal procedure based on progress reporting, which period could include a year's preparatory activities before the actual course begins to run. Balanced representation of different fields of study will be sought over the duration of the programme. The Community may provide financial support for Erasmus Mundus masters courses and funding would be subject to the annual renewal procedure.

ACTION 2: SCHOLARSHIPS

1. The Community will establish a single, global scholarship scheme targeted at the third-country graduate students and scholars.
 - (a) The Community may provide financial support to third-country students who have been admitted, through a competitive process, to Erasmus Mundus masters courses.
 - (b) The Community may provide financial support to third-country scholars visiting the Erasmus Mundus masters courses, with a view to carrying out teaching and research assignments and scholarly work in the institutions participating in Erasmus Mundus masters courses.

2. Scholarships will be open to third-country graduate students and scholars as defined in Article 2, without any precondition for participation other than the existence of relations between the European Union and the country of origin of the students and scholars in question.
3. The Commission shall take steps to ensure that no student or scholar receives financial support for the same purpose under more than one Community programme.

ACTION 3: PARTNERSHIPS WITH THIRD-COUNTRY HIGHER EDUCATION INSTITUTIONS

1. The Community may support structured relations between Erasmus Mundus masters courses and third-country higher education institutions. While having regard to the overarching criteria of quality, a varied geographical distribution among the third-country institutions participating in the programme should also be taken into consideration. Partnerships will provide the framework for outgoing mobility of European Union students and scholars involved in the Erasmus Mundus masters courses.
2. Partnerships will:
 - involve an Erasmus Mundus masters course and at least one higher education institution from a third country,
 - be supported for periods of up to three years,
 - provide a framework for outgoing mobility for students enrolled in the Erasmus Mundus masters courses and the courses' teachers; eligible students and scholars must be citizens of the European Union or third-country nationals who had been legal residents in the European Union for at least three years (and for purposes other than study) before the start of the outgoing mobility,
 - ensure recognition of study periods at the host (i.e., non-European) institution.
3. Partnership project activities may also include:
 - teaching assignments at a partner institution supporting the project's curriculum development,
 - exchanges of teachers, trainers, administrators, and other relevant specialists,
 - development and dissemination of new methodologies in higher education, including the use of information and communication technologies, e-learning, and open and distance learning,
 - development of cooperation schemes with third-country higher education institutions with a view to offering a course in the country in question.

ACTION 4: ENHANCING ATTRACTIVENESS

1. Through this action, the Community may support activities aimed at enhancing the profile and visibility of, and accessibility to, European education. The Community shall also support complementary activities that contribute to the objectives of the programme including activities dealing with the international dimension of quality assurance, credit recognition, recognition of European qualifications abroad and mutual recognition of qualifications with third countries, curriculum development and mobility.
2. Eligible institutions may include public or private organisations active in the field of higher education domestically or at international level. Activities shall be conducted within networks involving a minimum of three organisations from three different Member States and may involve organisations from third countries. Activities (which may include seminars, conferences, workshops, development of ICT tools, production of material for publication, etc.) may take place in the Member States or in third countries.
3. Promotional activities shall seek to establish links between higher education and research, and exploit whenever possible potential synergies.
4. Through this action the Community may support international thematic networks to deal with these issues.
5. The Community may support as appropriate pilot projects with third countries with a view to developing further cooperation in the field of higher education with the countries in question.
6. The Community shall support an alumni association of all students (third-country and Europeans) graduating from Erasmus Mundus masters courses.

ACTION 5: TECHNICAL SUPPORT MEASURES

In carrying out the programme, the Commission may have recourse to experts, to an executive agency, to existing competent agencies in Member States and, if necessary, to other forms of technical assistance, the financing of which may be provided from within the overall financial framework of the programme.

SELECTION PROCEDURES

The selection procedures will be laid down as provided for in Article 7(1). These procedures should respect the following provisions:

- (a) the selection of proposals under action 1 and under action 3 shall be carried out by a selection board presided over by a person whom it elects, composed of personalities of high standing from the academic world who are representative of the diversity of higher education in the European Union. The selection board shall ensure that Erasmus Mundus masters courses and partnerships correspond to the highest academic quality;
 - (b) each Erasmus Mundus masters course will be allocated a specific number of grants under action 2. The selection of third-country students will be carried out by the institutions participating in the Erasmus Mundus masters courses. Selection procedures shall provide for a clearing mechanism at European level, in order to prevent serious imbalances across fields of study and students' and scholars' regions of provenance and Member State of destination;
 - (c) proposals under action 4 will be selected by the Commission;
 - (d) selection procedures shall involve consultation with the structures designated in accordance with Article 6(2)(b).
-

**DECISION No 2318/2003/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 December 2003**

adopting a multiannual programme (2004 to 2006) for the effective integration of information and communication technologies (ICT) in education and training systems in Europe (eLearning Programme)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 149(4) and Article 150(4) 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 for the Regions ⁽²⁾,

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

Whereas:

- (1) The objectives of the Socrates and Leonardo da Vinci education and training programmes established by Decision No 253/2000/EC ⁽⁴⁾ and Decision 1999/382/EC ⁽⁵⁾ respectively include the development of open and distance learning, and the use of information and communication technologies.
- (2) The conclusions of the European Council meeting held in Lisbon on 23 and 24 March 2000 (the Lisbon Council), emphasised the need for adaptation of European education and training systems to the needs of the knowledge economy, and declared the promotion of new basic skills, in particular in information technologies, as one of the three main components of this new approach.
- (3) The initiative 'eLearning: designing tomorrow's education', launched in May 2000 by the Commission in response to the Lisbon Council was endorsed by the European Council at its meeting in Feira in June 2000. At its meeting in Stockholm in March 2001, the European Council noted the positive results of the initiative.

- (4) The 'eLearning Action Plan' developed the four action lines of the eLearning initiative (infrastructures and equipment, training, European quality contents and services and cooperation at all levels) in 10 key actions, bringing together the various Community programmes and instruments, for increased coherence and synergy between them and for enhanced accessibility to users.

- (5) On 15 May 2001 the European Parliament adopted a Resolution ⁽⁶⁾ on both Commission Communications on the subject recognising that the eLearning initiative is helping to strengthen the idea of a 'single European educational area', which complements the European research area and the European single market, and calling for it to be developed independently under a new specific programme, with a clear legal basis, avoiding duplication with existing programmes and providing more visibility and added value to Community action.

- (6) The Council Resolution of 13 July 2001 on eLearning ⁽⁷⁾ endorses this initiative, and calls upon the Commission to continue and to intensify its actions in this field.

- (7) The Commission adopted, on 21 November 2001, the Communication 'Making a European area of lifelong learning a reality', indicating the potential of e-learning for making available and managing new educational opportunities to this end.

- (8) The conclusions of the European Council meeting held in Barcelona in March 2002 called for a Europe-wide school-twinning action and were followed by the Commission Report on school twinnings via Internet, presented to the European Council at its meeting in Seville, as well as an Internet and computer user's certificate for secondary school pupils.

⁽¹⁾ OJ C 133, 6.6.2003, p. 33.

⁽²⁾ OJ C 244, 10.10.2003, p. 42.

⁽³⁾ Opinion of the European Parliament of 8 April 2003 (not yet published in the Official Journal), Council Common Position of 16 June 2003 (OJ C 233 E, 30.9.2003, p. 24) and Position of the European Parliament of 21 October 2003 (not yet published in the Official Journal).

⁽⁴⁾ Decision No 253/2000/EC of the European Parliament and of the Council of 24 January 2000 establishing the second phase of the Community action programme in the field of education 'Socrates' (OJ L 28, 3.2.2000, p. 1). Decision as amended by Decision No 451/2003/EC (OJ L 69, 13.3.2003, p. 6).

⁽⁵⁾ Council Decision 1999/382/EC of 26 April 1999 establishing the second phase of the Community vocational training action programme 'Leonardo da Vinci' (OJ L 146, 11.6.1999, p. 33).

- (9) There is a need to address the problem of social exclusion resulting from the inability of some individuals to take full advantage of the benefits offered by information and communication technologies (ICT) and the Internet in the knowledge society, the so-called 'digital divide', which often affects young people, the disabled and elderly, and social categories who are already victims of other forms of exclusion.

⁽⁶⁾ OJ C 34 E, 7.2.2002, p. 153.

⁽⁷⁾ OJ C 204, 20.7.2001, p. 3.

- (10) Close attention needs to be paid to the education and in-service training of teachers so that they are able to use the Internet and ICT in the classroom in a critical and educationally responsible manner.
- (11) Close attention should be paid to gender differences in the use of e-learning and the promotion of equal opportunities in this field.
- (12) E-learning has the potential to help the Union respond to the challenges of the knowledge society, to improve the quality of learning, to facilitate access to learning resources, to address special needs, and to bring about more effective and efficient learning and training at the workplace, in particular in small and medium-sized enterprises.
- (13) The need for a European dimension in higher education was identified in the Bologna Declaration, signed by 29 European Ministers for Education on 19 June 1999, together with the importance of developing an e-learning dimension in this context.
- (14) The European Union should pay close attention to the effective promotion of virtual higher education campuses to complement activities in mobility programmes within the European Union and with third countries.
- (15) There is a need to reinforce and complement existing instruments and to consider the role of eLearning also in the context of the preparation of the new generation of instruments in the field of education and training.
- (16) In order to reinforce the added value of Community action it is necessary to ensure coherence and complementarity between the actions implemented in the framework of this Decision and other relevant Community policies, instruments and actions, in particular the Information Society Technologies thematic priority of the sixth framework programme for research established by Decision No 1513/2002/EC⁽¹⁾.
- (17) The candidate countries for accession to the European Union and EEA-EFTA States should be able to participate in the eLearning programme. Experts and educational institutions from other third countries should be able to participate in the exchange of experience in the framework of existing cooperation with these third countries.
- (18) The eLearning programme should be regularly monitored and evaluated in cooperation between the Commission and the Member States in order to allow for readjustments, particularly in the priorities for implementing the measures. The evaluation should include an external evaluation to be conducted by independent, impartial bodies.
- (19) Since the objective of the proposed action, namely the promotion of European cooperation to improve the quality and accessibility of education and training by an effective use of e-learning, cannot be sufficiently achieved by the Member States and can therefore by reason of the transnational dimension of the actions and measures necessary 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 Decision does not go beyond what is necessary in order to achieve that objective.
- (20) This Decision lays down for the entire duration of the eLearning programme a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure⁽²⁾, for the budgetary authority during the annual budgetary procedure.
- (21) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽³⁾,

HAVE DECIDED AS FOLLOWS:

Article 1

Establishment of the programme

1. This Decision establishes the eLearning Programme, a multiannual programme for the improvement of the quality and accessibility of European education and training systems through the effective use of information and communication technologies (ICT), hereinafter referred to as 'the programme'.
2. The programme shall be implemented over a period starting on 1 January 2004 and ending on 31 December 2006.

⁽¹⁾ Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the sixth framework programme of the European Community for research, technological development and demonstration activities, contribution to the creation of the European Research Area and to innovation (2002 to 2006), (OJ L 232, 29.8.2002, p. 1).

⁽²⁾ OJ C 172, 18.6.1999, p. 1. Agreement as amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

Article 2

Objectives of the programme

1. The overall objective of the programme is to support and develop further the effective use of ICT in European education and training systems, as a contribution to a quality education and an essential element of their adaptation to the needs of the knowledge society in a lifelong learning context.

2. The specific objectives of the programme are:

- (a) to identify the actors concerned and inform them of ways and means of using e-learning for promoting digital literacy and thereby contribute to strengthening social cohesion and personal development and fostering intercultural dialogue;
- (b) to exploit the potential of e-learning for enhancing the European dimension in education;
- (c) to provide mechanisms for supporting development of European quality products and services, and for exchange and transfer of good practice;
- (d) to exploit the potential of e-learning in the context of innovation in teaching methods with a view to improving the quality of the learning process and fostering the autonomy of learners.

Article 3

Areas of intervention of the programme

1. The objectives of the programme shall be pursued in the following areas of intervention, in accordance with the action lines described in the Annex:

- (a) promoting digital literacy:

actions in this area will address the contribution of ICT in school and more broadly in a lifelong learning context, in particular for those who, owing to their geographical location, social situation or special needs, do not have easy access to those technologies. The objective is to identify good examples and build synergies between the many national and European activities, which address these target groups;

- (b) European virtual campuses:

actions in this area will pursue a better integration of the virtual dimension in higher education. The objective is to encourage the development of new organisational models for providing higher education in Europe (virtual campuses) and for European exchange and sharing schemes (virtual mobility), building on existing European cooperation

frameworks (Erasmus programme, Bologna process), and providing an 'e-learning dimension' to their operational tools (European credit transfer system (ECTS), European Masters, quality assurance, mobility);

- (c) e-twinning of schools in Europe and promotion of teachers' training:

actions in this area will support and further develop networking in schools, to make it possible for all schools in Europe to build pedagogical partnerships with schools elsewhere in Europe, to promote innovative cooperation methods and transfer quality educational approaches and reinforce language learning and intercultural dialogue; actions in this area will also address the updating of teachers' and trainers' professional skills in the pedagogical and collaborative use of ICT through an exchange and dissemination of good practices and the setting up of transnational and multidisciplinary cooperation projects;

- (d) transversal actions:

actions in this area will address the promotion of e-learning in Europe, building on the monitoring of the eLearning Action Plan. The objectives are the dissemination, promotion and transfer of good and innovative practices and results from the projects and programmes and to reinforce cooperation between the various actors involved, in particular by fostering public-private partnerships.

2. These actions shall be implemented in accordance with the procedures set out in the Annex, and through the following approaches, which may be combined where appropriate:

- (a) support for pilot projects, with potential for strategic impact in education and training practice, and clear prospects for long-term sustainability;
- (b) support for the development of methods, tools and practice and for the analysis of trends in the design and use of 'e-learning' models for education and training;
- (c) support for innovative actions by European networks and partnerships designed to foster innovation and quality in the design and use of products and services, based on the relevant use of ICT for education and training;
- (d) support for European networks and partnerships that promote and strengthen the pedagogical and educational use of Internet and ICT and for the exchange of good practice. These activities are designed to ensure that teachers and pupils are not only technically proficient at using Internet and ICT but are also proficient in a pedagogical, critical and responsible sense;

- (e) support for European cooperation, transfer of e-learning products, and dissemination and exchange of good practice;
- (f) technical and administrative assistance.

Article 4

Implementation of the programme and cooperation with the Member States

1. The Commission shall:
 - (a) ensure the implementation of the Community actions covered by the programme in conformity with the Annex;
 - (b) ensure synergies with other Community programmes and actions in the field of education, research, social policy and regional development;
 - (c) foster and facilitate cooperation with international organisations developing activities in the field of e-learning.
2. The Member States shall identify appropriate correspondents who shall cooperate closely with the Commission as regards relevant information about e-learning use and practice.

Article 5

Implementing measures

1. The following measures necessary for the implementation of this Decision shall be adopted in accordance with the management procedure referred to in Article 6(2):
 - (a) the annual plan of work, including priorities, and the selection criteria and procedures and results;
 - (b) the annual budget and the breakdown of funds among the different actions of the programme, in accordance with Articles 9 and 10;
 - (c) the measures for monitoring and evaluating the programme and for the dissemination and transfer of results.
2. All other measures necessary for the implementation of this Decision shall be adopted in accordance with the advisory procedure referred to in Article 6(3).

Article 6

Committee

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

4. The Committee shall adopt its rules of procedure.

Article 7

Consistency and complementarity

1. The Commission shall, in cooperation with the Member States, ensure overall consistency and complementarity of the programme with other relevant Community policies, instruments and actions, in particular with the Socrates, Leonardo da Vinci education and training programmes and the Youth programme.
2. The Commission shall ensure efficient linkage and, where appropriate, coordinated actions, between this programme and the programmes and actions in the area of new technologies for education and training, in particular with the relevant actions for research, technological development and demonstration activities under the sixth framework programme.

Article 8

Funding

1. The financial framework for the implementation of the programme for the period specified in Article 1 is hereby set at EUR 44 million.
2. Annual appropriations shall be authorised by the budgetary authority within the limit of the financial perspective.

Article 9

Budget distribution

Budgetary distribution between the actions shall be as follows:

- (a) e-learning for promoting digital literacy: around 10 % of total budget;
- (b) European virtual campuses: around 30 % of total budget;
- (c) e-twinning of schools in Europe and promotion of teacher training: around 45 % of total budget;
- (d) transversal actions and monitoring of eLearning action plan: maximum 7,5 % of total budget;
- (e) technical and administrative assistance: maximum 7,5 % of total budget.

*Article 10***Participation of candidate countries for accession to the European Union and EEA-EFTA States**

The conditions and detailed rules for the participation of candidate countries for accession to the European Union and EEA-EFTA States in the programme shall be established in accordance with the relevant provisions of the instruments governing the relations between the Community and these countries.

*Article 11***Cooperation with third countries**

On the initiative of the Commission, experts from third countries other than those referred to in Article 10 may be invited to participate in conferences and meetings with the exception of meetings of the Committee referred to in Article 6.

The funds allocated for the reimbursement of travel and subsistence expenses, under the applicable Commission regulations, shall not exceed 0,5 % of the programme's total budget.

*Article 12***Monitoring and evaluation**

1. The Commission shall regularly monitor the programme in cooperation with the Member States. This monitoring shall include the report referred to in paragraph 2 and specific activities.

2. The Commission shall ensure external evaluation of the programme at the moment of its completion. This evaluation is intended to assess the relevance, effectiveness and impact of the different actions, and it shall also consider the overall impact of the programme. Special attention shall be paid to social cohesion issues and to equal opportunities issues.

This evaluation shall also examine the complementarity between action under the programme and that pursued under other relevant Community policies, instruments and actions.

The Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions an *ex post* evaluation report by the end of 2007.

*Article 13***Entry into force**

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

Done at Brussels, 5 December 2003.

For the European Parliament

The President

P. COX

For the Council

The President

P. LUNARDI

ANNEX

1. ACTION LINES

The action lines are a means to implement the general objective of the programme: to foster the development and appropriate use of e-learning in Europe, and to accompany Member States' efforts in this field. They are structured according to the four areas of intervention of the programme.

Action line 1: 'Promoting digital literacy'

Action in this field must cover both conceptual and practical issues, from the understanding of digital literacy to identification of remedial actions for specific target groups. Digital literacy is one of the essential skills and competences needed to take an active part in the knowledge society and the new media culture. Digital literacy also relates to media literacy and social competence, as they have in common objectives such as active citizenship and the responsible use of ICTs.

- (a) Identification and dissemination of good practice in the promotion of digital literacy. Particular attention will be paid to improving access to learning resources for those who have no easy access to ICT, to addressing different cognitive and didactic approaches, and different learning styles, to addressing special needs, for example, those of immigrants, hospitalised children or disabled users; and to exploring the use of engaging and motivating approaches.
- (b) Awareness actions via European networks in this field. The programme will support actions carried out by European networks, associations, public authorities, public-private partnerships, etc.; supporting contacts and exchange of good practice between them.

Action line 2: 'European virtual Campuses'

This action line aims at providing an 'e-learning dimension' to European initiatives in the field of higher education, contributing to the creation of a European area of higher education.

- (a) Development of existing instruments in particular those concerning virtual mobility as a complement and reinforcement for physical mobility (virtual Erasmus); recognition and validation schemes (based on ECTS); information and guidance services, and any other synergies between virtual and traditional models. These projects should be based on institutional agreements, whenever possible extending or complementing existing cooperation agreements in the context of the Community mobility programmes.
- (b) Transnational virtual campuses. The programme will support strategic projects to be proposed by higher educational establishments from at least three Member States. Cooperation models for e-learning should be developed regarding: design of joint curricula development by several universities, including agreements for the evaluation, validation and recognition of acquired competences, subject to national procedures; large-scale experiments of virtual mobility in addition to physical mobility; and development of innovative dual mode curricula, based on both traditional and on-line learning methods.
- (c) European e-learning models for higher education. These projects should develop new models for cooperation between European higher education institutions, in particular addressing the provision of continuous training and professional development, and in the development of learning support services as well as for training teachers, trainers and other educational personnel in the pedagogical use of e-learning; examining quality assurance methods; the development of a better understanding of organisational change and possible risks associated with implementing e-learning in higher education; and the development of European models for public-private partnerships in the field of e-learning in higher education, as well as developing the opportunities opened by new partnerships and funding models.

Action line 3: 'E-twinning for primary and secondary schools in Europe and promotion of teachers' training'

This action line should facilitate school twinings via the Internet, and promote teachers' training, while stimulating European schools to build pedagogical partnerships with schools elsewhere in Europe, fostering language learning and intercultural dialogue. The action will address primary and secondary schools.

- (a) Identification and analysis of existing initiatives. This action should analyse existing practices. It will identify good demonstration projects on the contribution of educational multimedia and of communication networks for supporting school twinning, especially in the area of multilingual and multicultural projects. It will provide case studies, evaluation materials and methods with a view to helping teachers to exploit the potential of ICT for innovative cooperation methods, such as, for example, virtual classrooms, joint curricula developments for the in-service training of teachers, multidisciplinary approaches or the use of common teaching tools and resources.

- (b) E-twinning support network. This network would be formed by teachers or educators with experience in the area of European cooperation. It will provide pedagogical support and guidance; tools and services for partner search; methods for exchange of experience as well as an Internet hub, based on existing websites, for the twinning action.
- (c) Support for cooperation networks in the field of in-service training of teachers and of other educational personnel. These networks will be based on institutions responsible for the pedagogical use of information and communication technologies. These networks will focus on priority areas of cooperation as outlined in the context of the Report on the concrete and future objectives of the education and training systems. Particular attention will be given to setting up favourable conditions for exploiting the potential of ICT for innovative cooperation methods, for the exchange of educational resources and approaches, and for the joint development of training materials.
- (d) Promotion and communication actions. Success of the initiative depends on a dynamic communication action, anchored in the website, and including, *inter alia*, design of an attractive visual image, publications, press releases, preparation of fact-sheets on schools projects, launching and closing events, competitions and awards.

Action line 4: Transversal actions and monitoring of the eLearning Action Plan

In addition, funding will be given to transversal actions, such as:

- (a) support for active monitoring of the eLearning Action Plan. This action would provide increased coherence and visibility to EU actions on e-learning, via the dissemination of relevant material, such as reports and studies, the clustering of projects addressing similar objectives or using similar methodologies; and support for exchange of experience, networking and any other possible synergies within the Action Plan activities;
- (b) maintenance of an eLearning portal, providing an easy, one-stop access to European activities in the fields of e-learning and to existing information sources, directories, databases, or knowledge repositories; and facilitating user-friendly access to EU programmes, projects, studies, reports and working groups;
- (c) awareness and information actions via European networks. This action would support European networks in the field of e-learning, and relevant activities such as focused conferences, seminars, or workshops on key e-learning themes such as quality assurance; and foster European debate and exchange of good practice in this field;
- (d) design and development of monitoring, analysis and forecasting tools for e-learning in Europe, in cooperation with Eurostat and the European Investment Bank.

This programme may also contribute to cross-actions with international projects related to good and effective use of ICT for education and training, such as, for example, those under way at the OECD or Unesco.

Technical support actions

In addition, the programme execution will be supported by actions aiming at the dissemination of results (e.g. publications, Internet referencing, showcasing projects and events), and transfer, if necessary, by strategic studies addressing emerging problems or opportunities, or any other key issues for e-learning evolution in Europe. The programme will also support continuing feedback by users and participants, and its final external evaluation.

2. METHODS OF IMPLEMENTATION AND ARRANGEMENTS FOR BUDGET INTERVENTION

Funding will be granted following calls for tenders and calls for proposals.

There will be 100 % financing for purchased services (such as case studies, or experts) and possibly for the contribution to a future Executive Agency, which is under consideration.

Actions will be funded through:

- subsidies covering a maximum of 80 % of the eligible costs with other sources in the public and/or private sector for cooperation projects such as, for example, innovative projects of a structuring nature (all action lines),
- subsidies covering a maximum of 80 % of the eligible costs for eLearning partnerships led by higher education institutions, aiming at providing an 'e-learning dimension' and new models for European higher education (action line 2),

- 100 % financing of a support structure for school twinning, including an internet hub; a European network for pedagogical support, in cooperation with Member States; promotion and dissemination actions; and any other necessary support action such as, for example, review of existing twinning schemes or production of an ad hoc partner search tool. Subsidies between 50 and 80 % are provided for support the promotion and dissemination actions undertaken by Member States (action line 3),
- subsidies between 50 and 80 % of the costs linked to information and communication actions, such as seminars, visits, joint reports, peer reviewing and similar dissemination and knowledge sharing actions (all action lines).

The delivery mechanisms provided for in the proposal follow broadly the usual Community approach to grants and co-funding on the basis of a detailed financial request. There will also be parts that are fully financed by the Community, such as the support network and the central web site for the school twinning action. Funding will be granted following calls for proposals and tenders.

The programme will be managed by the Commission, with possible assistance from a future Executive Agency, the creation of which is currently under study. The appropriation is intended to cover expenditure for studies, meetings of experts, information, conferences and publications directly linked to the objective of the programme, plus any other expenditure on technical and administrative assistance not involving public authority tasks.

**COUNCIL REGULATION (EC) No 2319/2003
of 17 December 2003**

amending Regulation (EEC) No 2075/92 on the common organisation of the market in raw tobacco

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions,

Whereas:

- (1) In accordance with Article 13(1) of Regulation (EEC) No 2075/92 ⁽³⁾, the Community Tobacco Fund is to be financed by deductions of 2 % and 3 % respectively from the premiums for the 2002 and 2003 harvests.
- (2) The reform of the common organisation of the market in raw tobacco, which also covers the Community Tobacco Fund, is currently being drawn up. The new rules are not due to take effect until 2005. A deduction percentage therefore needs to be set for 2004, and in the transitional context it should be maintained at the same level as in 2003.

(3) According to the conclusions of the report on utilisation of the Community Tobacco Fund presented by the Commission to the Council pursuant to Article 13(1) of Regulation (EEC) No 2075/92, a 3 % deduction will be sufficient to cover the fund's prospective expenditure.

(4) Regulation (EEC) No 2075/92 therefore needs to be amended,

HAS ADOPTED THIS REGULATION:

Article 1

Article 13(1) of Regulation (EEC) No 2075/92 is hereby replaced by the following:

- '1. A Community Tobacco Fund (hereafter "the Fund") shall be set up, financed by a deduction of:
- 2 % from the premium for the 2002 harvest, and
 - 3 % from the premium for the 2003 and 2004 harvests.'

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, 17 December 2003.

For the Council
The President
G. ALEMANN

⁽¹⁾ Opinion of 16 December 2003 (not yet published in the Official Journal).

⁽²⁾ Opinion of 10 December 2003 (not yet published in the Official Journal).

⁽³⁾ OJ L 215, 30.7.1992, p. 70. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

COUNCIL REGULATION (EC) No 2320/2003
of 17 December 2003
amending Regulation (EEC) No 1696/71 on the common organisation of the market in hops

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 37(2),

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions,

Whereas:

- (1) Article 12(5)(a) of Regulation (EEC) No 1696/71 ⁽³⁾ fixes the aid per hectare for hops produced in the Community for a period of eight years, from the 1996 to the 2003 harvests.
- (2) The assessment report that the Commission is obliged to present to the Council by 31 December 2003 pursuant to the second paragraph of Article 18 of Regulation (EEC) No 1696/71, will cover all provisions relating to the common organisation of the market, in particular the production aid scheme. That assessment can be accompanied by proposals. It is advisable in this context to provide for a detailed debate of the entire sector. In order to ensure a thorough debate, the period for which the aid has been fixed should be extended by one year.

- (3) A producer group can withhold up to 20 % of the aid to finance special measures for adjusting to the market and the amounts withheld can accumulate for a period of three years. As it is proposed to extend the aid scheme for a year, the maximum accumulation period should also be extended for a year.
- (4) Regulation (EEC) No 1696/71 should be amended as a result,

HAS ADOPTED THIS REGULATION:

Article 1

Article 12(5) of Regulation (EEC) No 1696/71 is hereby amended as follows:

1. point (a) is replaced by the following:
'(a) The aid per hectare shall be the same for all groups of varieties. For nine years from the 1996 harvest it shall amount to EUR 480/ha.'
2. point (d) is replaced by the following:
'(d) The aid withheld may be accumulated for a maximum period of four years; at the end of that period all aid withheld must have been spent.'

Article 2

This Regulation shall enter into force on the seventh 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.

Done at Brussels, 17 December 2003.

For the Council
The President
G. ALEMANN

⁽¹⁾ Opinion delivered on 18 November 2003 (not yet published in the Official Journal).

⁽²⁾ Opinion of 10 December 2003 (not yet published in the Official Journal).

⁽³⁾ OJ L 175, 4.8.1971, p. 1. Regulation as last amended by Regulation (EC) No 1514/2001 (OJ L 201, 26.7.2001, p. 8).

**COUNCIL REGULATION (EC) No 2321/2003
of 17 December 2003**

amending Regulation (EC) No 1098/98 introducing special temporary measures for hops

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1696/71 of 26 July 1971 on the common organisation of the market in hops ⁽¹⁾, and in particular Article 16a thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The first subparagraph of Article 2(1) of Regulation (EC) No 1098/98 ⁽²⁾ fixes the amount of compensation for the temporary resting or definitive grubbing up of hops in the Community for a period of six years, from the 1998 to the 2003 harvests.
- (2) Application of the special resting and grubbing up measures in this period has resulted in a 19 % reduction in the area under hops compared to 1997, the reference year.
- (3) The assessment report that the Commission must present to the Council by 31 December 2003 pursuant to the second paragraph of Article 18 of Regulation (EEC) No 1696/71 will cover all provisions relating to the common organisation of the market, in particular special measures. The assessment can be accompanied by proposals. It is advisable in this context to provide

for a detailed debate of the entire sector. In order to ensure that this debate takes place and noting the fact that market equilibrium in hops is still being sought, the period for which the amount of compensation has been fixed should be extended by one year.

- (4) Regulation (EC) No 1098/98 should be amended as a result,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1098/98 is hereby amended as follows:

1. in Article 2(1):
 - in the first subparagraph, '2003 harvest' is replaced by '2004 harvest',
 - in the second subparagraph, '2004 harvest' is replaced by '2005 harvest';
2. in the second subparagraph of Article 4, '2004 harvest' is replaced by '2005 harvest'.

Article 2

This Regulation shall enter into force on the seventh 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.

Done at Brussels, 17 December 2003.

For the Council
The President
G. ALEMANNIO

⁽¹⁾ OJ L 175, 4.8.1971, p. 1. Regulation as last amended by Regulation (EC) No 1514/2001 (OJ L 201, 26.7.2001, p. 8).

⁽²⁾ OJ L 157, 30.5.1998, p. 7. Regulation as amended by Regulation (EC) No 2151/2002 (OJ L 327, 4.12.2002, p. 1).

COUNCIL REGULATION (EC) No 2322/2003
of 17 December 2003
derogating from Regulation (EC) No 1251/1999 as regards the set-aside requirement for the 2004/05 marketing year

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The support system for producers of certain arable crops introduced by Regulation (EC) No 1251/1999⁽¹⁾, provides that, in order to qualify for area payments, producers are to set aside a certain proportion of their arable land.
- (2) The cereals market in the Community during the 2003/04 marketing year is characterised by low production due to severe drought in main production regions of the Community. This situation is expected to cause a significant reduction in closing stocks for 2003/04 on the Community market. A normal 2004 harvest would not be expected to lead to a significant increase in stocks. A poor harvest would expose the internal market to potentially serious risks.

- (3) For the 2004/05 marketing year, the rate for set-aside should therefore be fixed at a lower level than that set out in the second subparagraph of Article 6(1) of Regulation (EC) No 1251/1999,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from the second subparagraph of Article 6(1) of Regulation (EC) No 1251/1999, the basic rate of compulsory set-aside shall be 5 % for the 2004/05 marketing year.

Article 2

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.
2. It shall apply to set-aside for the 2004/05 marketing year.

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

Done at Brussels, 17 December 2003.

For the Council
The President
G. ALEMANNO

⁽¹⁾ OJ L 160, 26.6.1999, p. 1. Regulation last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

COUNCIL REGULATION (EC) No 2323/2003
of 17 December 2003
setting aid rates in the seeds sector for the 2004/05 marketing year

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the regions,

Whereas:

- (1) Article 3 of Council Regulation (EEC) No 2358/71 of 26 October 1971 on the common organisation of the market in seeds ⁽³⁾ has been abolished with effect from the 2005/06 marketing year by Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers ⁽⁴⁾. Accordingly, by way of derogation from Article 3(1) of Regulation (EEC) No 2358/71, any production aid for seeds should be set solely for the 2004/05 marketing year.

- (2) Since the situation on the European Union market and its probable development are not such as to ensure producers a fair income, production aid should be granted for the marketing year in question.

- (3) Article 3(2) of Regulation (EEC) No 2358/71 requires the aid rates to reflect, on the one hand, the need to ensure a balance between the volume of production required in the Community and the amount that can be marketed and, on the other hand, prices for these products on third-country markets.

- (4) Application of those criteria gives the aid rates for the 2004/05 marketing year set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Article 3(1) of Regulation (EEC) No 2358/71, aid rates in the seeds sector for the 2004/05 marketing year shall be as specified in the Annex hereto.

Article 2

This Regulation shall enter into force on the third 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.

Done at Brussels, 17 December 2003.

For the Council
The President
G. ALEMANNO

⁽¹⁾ Opinion of 16 December 2003 (not yet published in the Official Journal).

⁽²⁾ Opinion of 1 December 2003 (not yet published in the Official Journal).

⁽³⁾ OJ L 246, 5.11.1971, p. 1. Regulation as last amended by Regulation (EC) No 154/2002 (OJ L 25, 29.1.2002, p. 18).

⁽⁴⁾ OJ L 270, 21.10.2003, p. 1.

ANNEX

2004/05 MARKETING YEAR

Aid rates applicable in the Community

		(EUR/100 kg)
CN code	Description	Aid rate
	1. CERES	
1001 90 10	<i>Triticum spelta</i> L.	14,37
1006 10 10	<i>Oryza sativa</i> L.	
	— Long-grain varieties the grains of which are of a length exceeding 6,0 millimetres and of a length/width ratio of not less than 3	17,27
	— Other varieties the grains of which are of a length exceeding, not exceeding or equal to 6,0 millimetres and of a length/width ratio of less than 3	14,85
	2. OLEAGINEAE	
ex 1204 00 10	<i>Linum usitatissimum</i> L. (fibre flax)	28,38
ex 1204 00 10	<i>Linum usitatissimum</i> L. (linseed)	22,46
ex 1207 99 10	<i>Cannabis sativa</i> L. (varieties with a tetrahydrocannabinol content not exceeding 0,2 %)	20,53
	3. GRAMINEAE	
ex 1209 29 10	<i>Agrostis canina</i> L.	75,95
ex 1209 29 10	<i>Agrostis gigantea</i> Roth.	75,95
ex 1209 29 10	<i>Agrostis stolonifera</i> L.	75,95
ex 1209 29 10	<i>Agrostis capillaris</i> L.	75,95
ex 1209 29 80	<i>Arrhenatherum elatius</i> (L.) P. Beauv. ex J.S. and K.B. Presl.	67,14
ex 1209 29 10	<i>Dactylis glomerata</i> L.	52,77
ex 1209 23 80	<i>Festuca arundinacea</i> Schreb.	58,93
ex 1209 23 80	<i>Festuca ovina</i> L.	43,59
1209 23 11	<i>Festuca pratensis</i> Huds.	43,59
1209 23 15	<i>Festuca rubra</i> L.	36,83
ex 1209 29 80	<i>Festulolium</i>	32,36
1209 25 10	<i>Lolium multiflorum</i> Lam.	21,13
1209 25 90	<i>Lolium perenne</i> L.	30,99
ex 1209 29 80	<i>Lolium x boucheanum</i> Kunth	21,13
ex 1209 29 80	<i>Phleum Bertolinii</i> (DC)	50,96
1209 26 00	<i>Phleum pratense</i> L.	83,56
ex 1209 29 80	<i>Poa nemoralis</i> L.	38,88
1209 24 00	<i>Poa pratensis</i> L.	38,52
ex 1209 29 10	<i>Poa palustris</i> and <i>Poa trivialis</i> L.	38,88
	4. LEGUMINOSAE	
ex 1209 29 80	<i>Hedysarum coronarium</i> L.	36,47
ex 1209 29 80	<i>Medicago lupulina</i> L.	31,88
ex 1209 21 00	<i>Medicago sativa</i> L. (ecotypes)	22,10
ex 1209 21 00	<i>Medicago sativa</i> L. (varieties)	36,59
ex 1209 29 80	<i>Onobrichis viciifolia</i> Scop.	20,04
ex 0713 10 10	<i>Pisum sativum</i> L. (partim) (field peas)	0
ex 1209 22 80	<i>Trifolium alexandrinum</i> L.	45,76

(EUR/100 kg)		
CN code	Description	Aid rate
ex 1209 22 80	<i>Trifolium hybridum</i> L.	45,89
ex 1209 22 80	<i>Trifolium incarnatum</i> L.	45,76
1209 22 10	<i>Trifolium pratense</i> L.	53,49
ex 1209 22 80	<i>Trifolium repens</i> L.	75,11
ex 1209 22 80	<i>Trifolium repens</i> L. var. <i>giganteum</i>	70,76
ex 1209 22 80	<i>Trifolium resupinatum</i> L.	45,76
ex 0713 50 10	<i>Vicia faba</i> L. (partim) (field beans)	0
ex 1209 29 10	<i>Vicia sativa</i> L.	30,67
ex 1209 29 10	<i>Vicia villosa</i> Roth.	24,03

**COUNCIL REGULATION (EC) No 2324/2003
of 17 December 2003**

amending Regulation (EC) No 1037/2001 authorising the offer and delivery for direct human consumption of certain imported wines which may have undergone oenological processes not provided for in Regulation (EC) No 1493/1999

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, and in particular Article 45(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) By derogation from Article 45(1) of Regulation (EC) No 1493/1999, Regulation (EC) No 1037/2001 ⁽²⁾ authorises the import into the Community of American wines which have undergone certain oenological processes not provided for in the Community rules. That authorisation expires on 31 December 2003 in respect of the oenological processes referred to in paragraph 1(b) of the Annex to Regulation (EC) No 1037/2001.
- (2) Since the ongoing bilateral negotiations with the United States of America will not reach a conclusion before the end of the year, in order to avoid any trade disruptions, provision should be made to continue to authorise the

American oenological processes referred to in paragraph 1(b) of the Annex to Regulation (EC) No 1037/2001 until the entry into force of the agreement resulting from those negotiations, but until 31 December 2005 at the latest.

- (3) Regulation (EC) No 1037/2001 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In the second subparagraph of Article 1(1) of Regulation (EC) No 1037/2001, the date '31 December 2003' shall be replaced by '31 December 2005'.

Article 2

This Regulation shall enter into force on the third 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.

Done at Brussels, 17 December 2003.

For the Council
The President
G. ALEMANN

⁽¹⁾ OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Commission Regulation (EC) No 1795/2003 (OJ L 262, 14.10.2003, p. 13).

⁽²⁾ OJ L 145, 31.5.2001, p. 12.

**COUNCIL REGULATION (EC) No 2325/2003
of 17 December 2003**

amending Regulation (EC) No 2561/2001 aiming to promote the conversion of fishing vessels and of fishermen that were, up to 1999, dependent on the fishing agreement with Morocco

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions,

Whereas:

- (1) The Agreement on the relations as regards sea fishing between the European Community and the Kingdom of Morocco became null and void on 30 November 1999. Consequently, more than 400 fishing vessels and about 4 300 fishermen operating in that context were forced to stop their fishing activities at that date.
- (2) Council Regulation (EC) No 2561/2001 ⁽³⁾ introduced derogations from the provisions of Regulation (EC) No 2792/1999 ⁽⁴⁾ for shipowners and fishermen who were, up to 1999, dependent on the fishing agreement with Morocco, applicable to certain types of premiums and public aid granted by administrative decision between 1 July 2001 and 30 June 2003. The same Regulation introduced a specific action to supplement the measures taken in the context of Structural Fund assistance in the Member States concerned due to the non-renewal of the fisheries agreement with Morocco.
- (3) The fishermen affected by the non-renewal of that fisheries agreement may find themselves unemployed following conversion of their vessel to another activity in the same way as fishermen whose vessel has permanently stopped its activity. In order to ensure that all fishermen are treated equally, the provisions stipulating that individual lump sums may be paid to fishermen only provided the fishing vessel on which they were employed has permanently stopped its activities should be derogated from.

- (4) The minimum period of less than one year referred to in Article 12(4)(c) of Regulation (EC) No 2792/1999 during which the fisherman may not work as a fisherman again without being required to pay back the premium received pro rata temporis should be calculated from 1 January 2002, the date from which temporary cessation payments may no longer be paid, and not from the date on which the premium was actually paid.
- (5) In view of the deadlines currently in force, in order to be able to apply the abovementioned amendments, the time limits for the date of the administrative decision, the final date for eligibility of expenditure and the final date for presenting the request for payment of the balance should all be extended by 12 months,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2561/2001 is hereby amended as follows:

1. Article 2 shall be amended as follows:

- (a) in paragraph 1, point (d) shall be replaced by the following:

‘(d) in the case of an individual lump sum payment to a fisherman:

 - (i) the maximum eligible cost referred to in Article 12(3)(b) and (c) shall be increased by 20 %;
 - (ii) the requirement laid down in Article 12(3)(b) that beneficiaries must have been employed on a fishing vessel which has permanently ceased its activity within the meaning of Article 7 shall not apply;
 - (iii) the period of less than one year referred to in Article 12(4)(c) shall run from 1 January 2002;’

(b) paragraph 2 shall be replaced by the following:

‘2. The derogation rules laid down in paragraph 1 shall apply only to premiums and public aid that have been granted under an administrative decision by the authorities referred to in Article 6, taken between 1 July 2001 and 30 June 2003. This period shall be extended to 30 June 2004 for the premiums referred to in Article 12(3)(a), (b) and (c).’

⁽¹⁾ Opinion delivered on 4 December 2003 (not yet published in the Official Journal).

⁽²⁾ Opinion delivered on 29 October 2003 (not yet published in the Official Journal).

⁽³⁾ OJ L 344, 28.12.2001, p. 17. Regulation as amended by Article 6 of Regulation (EC) No 2372/2002 (OJ L 358, 31.12.2002, p. 81).

⁽⁴⁾ OJ L 337, 30.12.1999, p. 10. Regulation as last amended by Regulation (EC) No 2369/2002, (OJ L 358, 31.12.2002, p. 49).

2. in Article 5, paragraph 4 shall be replaced by the following:

'4. The expenses actually paid by the final beneficiary from 1 July 2001 shall be eligible for the Community contribution under this measure. The deadline for eligibility of the expenditure shall be 31 December 2003. That date shall be 31 December 2004 for the premiums referred to in Article 12(3)(a), (b) and (c).

The last date for submission to the Commission of the request for payment of the balance shall be 30 June 2004. That date shall be 30 June 2005 for the premiums referred to in Article 12(3)(a), (b) and (c).'

Article 2

This Regulation shall enter into force on the third 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.

Done at Brussels, 17 December 2003.

For the Council
The President
G. ALEMANNIO

**COUNCIL REGULATION (EC) No 2326/2003
of 19 December 2003**

fixing for the fishing year 2004 the guide prices and Community producer prices for certain fishery products pursuant to Regulation (EC) No 104/2000

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products ⁽¹⁾, and in particular Article 18(3) and Article 26(1) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Article 18(1) and Article 26(1) of Regulation (EC) No 104/2000 provide that a guide price and a Community producer price should be fixed for each fishing year in order to determine price levels for intervention on the market for certain fisheries products.
- (2) Article 18(1) of Regulation (EC) No 104/2000 requires the guide price to be fixed for each of the products and groups of products listed in Annexes I and II to that Regulation.
- (3) On the basis of the data currently available on the prices for the products concerned and the criteria referred to in Article 18(2) of Regulation (EC) No 104/2000, the guide prices should be increased, maintained or reduced for the fishing year 2004 depending on the species.
- (4) Regulation (EC) No 104/2000 requires the Community producer price to be fixed for each of the products listed in Annex III to that Regulation. It is, however, sufficient to establish the Community producer price for only one of the products listed in Annex III to Regulation (EC) No 104/2000, since the prices for the other products may be calculated by means of the conversion factors established by Commission Regulation (EEC) No 3510/82 ⁽²⁾.

(5) On the basis of the criteria laid down in the first and second indent of Article 18(2) and in Article 26(1) of Regulation (EC) No 104/2000, the Community producer price for the 2004 fishing year should be increased.

(6) Given the urgency of the matter, it is important to grant an exception to the six-week period mentioned in paragraph 1(3) of the Protocol on the role of national parliaments in the European Union annexed to the Treaty of Amsterdam,

HAS ADOPTED THIS REGULATION:

Article 1

For the fishing year 1 January to 31 December 2004, the guide prices as provided for in Article 18(1) of Regulation (EC) No 104/2000 shall be as set out in the Annex I to this Regulation.

Article 2

For the fishing year 1 January to 31 December 2004, the Community producer prices as provided for in Article 26(1) of Regulation (EC) No 104/2000 shall be as set out in Annex II to this Regulation.

Article 3

This Regulation shall enter into force on 1 January 2004.

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

Done at Brussels, 19 December 2003.

For the Council
The President
G. ALEMANNO

⁽¹⁾ OJ L 17, 21.1.2000, p. 22.

⁽²⁾ OJ L 368, 28.12.1982, p. 27; Regulation as last amended by Regulation (EEC) No 3899/92 (OJ L 392, 31.12.1992, p. 24).

ANNEX I

Annexes	Species Products listed in Annexes I and II to Regulation (EC) No 104/2000	Commercial presentation	Guide price (EUR/tonne)
I	1. Herring of the species <i>Clupea harengus</i>	Whole fish	267
	2. Sardines of the species <i>Sardina pilchardus</i>	Whole fish	581
	3. Dogfish (<i>Squalus acanthias</i>)	Whole fish or gutted fish with head	1 112
	4. Spotted dogfish (<i>Scyliorhinus</i> spp.)	Whole fish or gutted fish with head	759
	5. Redfish (<i>Sebastes</i> spp.)	Whole fish	1 177
	6. Cod of the species <i>Gadus morhua</i>	Whole fish or gutted fish with head	1 631
	7. Saithe (<i>Pollachius virens</i>)	Whole fish or gutted fish with head	766
	8. Haddock (<i>Melanogrammus aeglefinus</i>)	Whole fish or gutted fish with head	998
	9. Whiting (<i>Merlangius merlangus</i>)	Whole fish or gutted fish with head	923
	10. Ling (<i>Molva</i> spp.)	Whole fish or gutted fish with head	1 214
	11. Mackerel of the species <i>Scomber scombrus</i>	Whole fish	308
	12. Mackerel of the species <i>Scomber japonicus</i>	Whole fish	311
	13. Anchovy (<i>Engraulis</i> spp.)	Whole fish	1 245
	14. Plaice (<i>Pleuronectes platessa</i>)	Whole fish or gutted fish with head from 1.1.2004 to 30.4.2004	1 079
		Whole fish or gutted fish with head from 1.5.2004 to 31.12.2004	1 499
	15. Hake of the species <i>Merluccius merluccius</i>	Whole fish or gutted fish with head	3 731
	16. Megrim (<i>Lepidorhombus</i> spp.)	Whole fish or gutted fish with head	2 442
	17. Dab (<i>Limanda limanda</i>)	Whole fish or gutted fish with head	877
	18. Common flounder (<i>Platichthys flesus</i>)	Whole fish or gutted fish with head	530
	19. Albacore or longfinned tunas (<i>Thunnus alalunga</i>)	Whole fish	2 265
		Gutted fish with head	2 515
	20. Cuttlefish (<i>Sepia officinalis</i> and <i>Rossia macrosoma</i>)	Whole	1 637
	21. Monkfish (<i>Lophius</i> spp.)	Whole fish or gutted fish with head	2 926
		Without head	5 898
	22. Shrimp of the species <i>Crangon crangon</i>	Simply boiled in water	2 391
	23. Northern prawn (<i>Pandalus borealis</i>)	Simply boiled in water	6 411
Fresh or chilled		1 639	
24. Edible crab (<i>Cancer pagurus</i>)	Whole	1 766	
25. Norway lobster (<i>Nephrops norvegicus</i>)	Whole	5 337	
	Tails	4 279	
26. Sole (<i>Solea</i> spp.)	Whole fish or gutted fish with head	6 748	

Annexes	Species Products listed in Annexes I and II to Regulation (EC) No 104/2000	Commercial presentation	Guide price (EUR/tonne)
II	1. Greenland halibut (<i>Reinhardtius hippoglossoides</i>)	Frozen, in original packages containing the same products	1 956
	2. Hake of the genus <i>Merluccius</i> spp.	Frozen, whole, in original packages containing the same products	1 258
		Frozen, filleted, in original packages containing the same products	1 499
	3. Sea bream (<i>Dentex dentex</i> and <i>Pagellus</i> spp.)	Frozen, in lots or in original packages containing the same products	1 586
	4. Swordfish (<i>Xiphias gladius</i>)	Frozen, whole, in original packages containing the same products	4 019
	5. Cuttlefish (<i>Sepia officinalis</i>) (<i>Rossia macrosoma</i>) (<i>Sepiola rondeletti</i>)	Frozen, in original packages containing the same products	2 006
	6. Octopus (<i>Octopus</i> spp.)	Frozen, in original packages containing the same products	2 119
	7. Squid (<i>Loligo</i> spp.)	Frozen, in original packages containing the same products	1 168
	8. Squid (<i>Ommastrephes sagittatus</i>)	Frozen, in original packages containing the same products	961
	9. <i>Illex argentinus</i>	Frozen, in original packages containing the same products	848
10. Prawn of the family <i>Penaeidae</i> — Prawn of the species <i>Parapenaeus longirostris</i> — Other species of the family <i>Penaeidae</i>	Frozen, in original packages containing the same products	4 035	
	Frozen, in original packages containing the same products	8 142	

ANNEX II

Species Products listed in Annex III to Regulation (EC) No 104/2000	Commercial specifications	Community producer price (EUR/tonne)
Yellowfin tuna (<i>Thunnus albacares</i>)	Whole, weighing more than 10 kg each	1 219

The Community producer prices for the other products listed in Annex III to Regulation (EC) No 104/2000 shall be determined by means of the conversion factors referred to in Regulation (EEC) No 3510/82.

**REGULATION (EC) No 2327/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 December 2003**

**establishing a transitional points system applicable to heavy goods vehicles travelling through
Austria for 2004 within the framework of a sustainable transport policy**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 25 November 2003,

Whereas:

- (1) Article 11(2)(a) of Protocol 9 to the 1994 Act of Accession ⁽⁴⁾ stipulates that the ecopoint system will lapse on 31 December 2003.
- (2) Paragraph 58 of the conclusions of the Laeken European Council of 14 and 15 December 2001 requested that the ecopoint system be extended as a temporary solution. This extension is in keeping with policy on environmental protection in vulnerable areas such as the Alpine region. Paragraph 35 of the conclusions of the Copenhagen European Council of 12 and 13 December 2002 requested the Council to adopt, before the end of 2002, a Regulation on the interim solution for the transit of heavy goods vehicles through Austria 2004 to 2006.
- (3) This measure is required pending adoption of the framework proposal on charging for the use of infrastructure, as set out in the White Paper on European transport policy for 2010 which the Commission has declared it intends to present in 2003.
- (4) This measure is also justified by the need to protect the environment from the consequences of pollution caused by the transit of very high numbers of heavy goods vehicles.
- (5) The European Environment Agency notes that enlargement of the European Union is likely to result in a huge increase in transit traffic. The transitional points system

applicable to heavy goods vehicles travelling through Austria should therefore be extended with a view to enlargement to include the acceding countries.

- (6) The Convention on the protection of the Alps (Alpine Convention), signed and approved by the European Community ⁽⁵⁾, lays down various rules to reduce heavy goods traffic in the Alpine area. In particular, it provides that the volume of and dangers posed by intra-Alpine and transalpine traffic are to be reduced to a level which is not harmful to humans, animals and plants and their habitats, by switching more traffic, in particular freight traffic, to the railways in particular by providing appropriate infrastructure and incentives complying with market principles, without discrimination on grounds of nationality.
- (7) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁶⁾.
- (8) It is essential to find non-discriminatory solutions to reconcile the obligations deriving from the Treaty (including Articles 6, 51(1) and 71), for instance as regards free movement of services and goods and protection of the environment.
- (9) A transitional points system should therefore be established for the year 2004,

HAVE ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation the following definitions shall apply:

- (a) 'vehicle' means vehicle as defined in Article 2 of Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States ⁽⁷⁾;
- (b) 'international carriage' means international carriage as defined in Article 2 of Regulation (EEC) No 881/92;

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 230.

⁽²⁾ OJ C 221, 17.9.2002, p. 84.

⁽³⁾ Opinion of the European Parliament of 12 February 2003 (not yet published in the Official Journal), Council Common Position of 28 March 2003 (OJ C 214 E, 9.9.2003, p. 1) and Position of the European Parliament of 3 July 2003 (not yet published in the Official Journal). Legislative Resolution of the European Parliament of 18 December 2003 (not yet published in the Official Journal) and Council Decision of 22 December 2003.

⁽⁴⁾ OJ C 241, 29.8.1994, p. 361.

⁽⁵⁾ Council Decision 96/191/EC of 26 February 1996 (OJ L 61, 12.3.1996, p. 31).

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁷⁾ OJ L 95, 9.4.1992, p. 1. Regulation as amended by Regulation (EC) No 484/2002 of the European Parliament and of the Council (OJ L 76, 19.3.2002, p. 1).

- (c) 'transit traffic through Austria' means traffic through Austrian territory from a point of departure to a point of arrival, both of which lie outside Austria;
- (d) 'heavy goods vehicle' means all motor vehicles with a maximum authorised weight of more than 7,5 tonnes registered in a Member State and designed for the transport of freight and all trailer or semi-trailer combinations with a maximum authorised weight of more than 7,5 tonnes drawn by a motor vehicle with a maximum authorised vehicle weight not exceeding 7,5 tonnes registered in a Member State;
- (e) 'transit of goods by road through Austria' means transit traffic of heavy goods vehicles through Austria, whether such vehicles are loaded or empty;
- (f) 'bilateral journeys' means international journeys on routes carried out by a given vehicle where the point of departure or point of arrival is located in Austria and the respective point of arrival or point of departure is located in another Member State and where unloaded journeys are carried out in conjunction with these journeys.
- (d) the total NO_x emissions from heavy goods vehicles crossing Austria in transit shall be set according to the values given for the year concerned in Annex I;
- (e) the value of the total NO_x emissions attributable to heavy goods vehicles shall be determined on the basis of the former ecopoint system as laid down in Protocol 9 to the 1994 Act of Accession. Under that system, any heavy goods vehicle crossing Austria in transit shall require a number of points equivalent to its NO_x emissions (authorised under the conformity of production (COP) value or type-approval value). The method of calculation and administration of such points is described in Annex II;
- (f) Austria shall issue and make available in good time the points required for the administration of the transitional points system, pursuant to Annex II, for heavy goods vehicles crossing Austria in transit;
- (g) the annual total quota for NO_x emissions is given in Annex I and shall be managed and distributed among Member States by the Commission in accordance with the same principles as those applicable to the ecopoint system in 2003, pursuant to the provisions of Commission Regulation (EC) No 3298/94⁽³⁾;

Article 2

This Regulation shall apply to the international carriage of goods by road on journeys carried out within the territory of the Community. The transitional points system implies no direct limitation in the number of transits through Austria.

Article 3

1. For journeys which involve transit of goods by road through Austria, the regime established for journeys on own account and for journeys for hire or reward under the First Council Directive on the establishment of common rules for certain types of carriage of goods by road of 23 July 1962⁽¹⁾ and Regulation (EEC) No 881/92 shall apply subject to the provisions of this Article.

2. From 1 January 2004 to 31 December 2004, in order to encourage the use of environment-friendly heavy goods vehicles for transit traffic through Austria the following provisions shall apply:

- (a) the transit of heavy goods vehicles which, otherwise, would use five points or less shall not be subject to the transitional points system;
- (b) the transit of heavy goods vehicles using six, seven or eight points shall be subject to the transitional points system⁽²⁾;
- (c) the transit of heavy goods vehicles using more than eight points shall be prohibited, with the exception of the transit of such heavy goods vehicles registered in Greece and of the transit of certain highly specialised vehicles of high cost and with a long economic lifespan;

⁽¹⁾ OJ 70, 6.8.1962, p. 2005/62. Directive as last amended by Regulation (EEC) No 881/92 (OJ L 95, 9.4.1992, p. 1).

⁽²⁾ The available points for 2004 are given in Annex I.

- (h) the reallocation of points of the Community reserve shall be weighted according to the criteria set out in Article 8(2) of Regulation (EC) 3298/94 and, more particularly, according to the actual use made of the points allocated to Member States as well as to the specific needs of hauliers transiting through Austria on the route Lindau-Bregenz-St. Margrethen (Hörbranz-Transit).

3. If the 'Eurovignette' proposal on charging for the use of infrastructure is not adopted by 31 December 2004, all terms of paragraph 2 shall be extended for one further year, and, if that proposal is not adopted by 31 December 2005, for a second year at the most⁽⁴⁾. After 2006, no transitional points system shall be applied.

4. The Commission shall manage the transitional points system in accordance with the applicable provisions of Regulation (EC) No 3298/94. The Commission, acting in accordance with the procedure referred to in Article 5(2), shall adopt, if necessary, further measures concerning the procedures relating to the transitional points system, the distribution of points and technical issues concerning the application of this Article.

Article 4

1. As long as the provisions of Article 3(2) and, when appropriate, of Article 3(3) apply, the Member States, under their mutual cooperation arrangements, shall take any necessary measures compatible with the Treaty against misuse of the transitional points system.

⁽³⁾ Commission Regulation (EC) No 3298/94 of 21 December 1994 laying down detailed measures concerning the system of rights of transit (ecopoints) for heavy goods vehicles transiting through Austria (OJ L 341, 30.12.1994, p. 20). Regulation as last amended by Council Regulation (EC) No 2012/2000 (OJ L 241, 26.9.2000, p. 18).

⁽⁴⁾ The available points for 2005 and 2006 are given in Annex I.

2. The decisions of the Commission adopted pursuant to Article 5 shall be consistent with a sustainable transport policy devised for the Alpine region as a whole.

3. Hauliers with a Community authorisation issued by the competent authorities in Austria shall not be entitled to carry goods on international journeys where neither loading nor unloading takes place in Austria. All such journeys involving transit through Austria shall, however, be subject to the provisions of Article 3.

4. To the extent necessary, any monitoring methods including electronic systems relating to the implementation of Article 3 shall be decided in accordance with the procedure referred to in Article 5(2).

Article 5

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. The Committee shall adopt its Rules of Procedure.

Article 6

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, 22 December 2003.

For the European Parliament

The President

P. COX

For the Council

The President

A. MATTEOLI

ANNEX I

Points available for 2004, 2005 and 2006

Year	Points for EU-15
2004	6 593 487
2005	6 246 462
2006	5 899 436

ANNEX II

CALCULATION AND ADMINISTRATION OF THE POINTS

1. The following documents must be submitted by the driver of a heavy goods vehicle each time it crosses the Austrian border (in any direction):
 - (a) a document showing the COP value for NO_x emissions from the vehicle in question;
 - (b) a valid points card issued by the competent authority.

Concerning (a):

in the case of EURO 0, EURO 1, EURO 2, EURO 3-standards heavy goods vehicles registered after 1 October 1990, the document showing the COP value must be a certificate issued by the competent authority giving details of an official COP value for NO_x emissions or the type-approval certificate showing the date of approval and value established for type-approval purposes. In the latter case the COP value will be the type-approval value plus 10 %. Once such a value has been determined for a vehicle it cannot be changed during the vehicle's life.

In the case of heavy goods vehicles registered before 1 October 1990 and heavy goods vehicles for which no certificate is submitted, a COP value of 15,8 g/kWh will be set.

Concerning (b):

the points card/ecotag contains a certain number of points and is endorsed as follows on the basis of the COP value for the vehicles in question:

1. each g/kWh of NO_x, calculated according to point (a), counts as one point;
 2. NO_x emission values are rounded up to the next full point if the decimal is 0,5 or more, otherwise they are rounded down.
2. At three-month intervals the Commission, acting in accordance with the procedure referred to in Article 5(2), calculates the number of journeys and the average level of NO_x emissions from heavy goods vehicles and maintains statistical records broken down according to nationality.

**COUNCIL REGULATION (EC) No 2328/2003
of 22 December 2003**

introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion, as a result of those regions' remoteness

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 and Article 299(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

- (1) The fisheries sector in the outermost regions of the Community faces difficulties, which are aggravated in particular by the cost of transporting fishery products to the markets as a result of their remoteness and isolation.
- (2) As part of the Community's policy to assist its outermost regions, by Decisions 89/687/EEC ⁽³⁾, 91/314/EEC ⁽⁴⁾ and 91/315/EEC ⁽⁵⁾ the Council has set up programmes of options specific to the remote and insular nature of the French overseas departments (Poseidom), the Canary Islands (Poseican) and Madeira and the Azores (Poseima) respectively, which outline the measures to be applied taking account of the special characteristics of and constraints on those regions.
- (3) Article 299(2) of the Treaty recognises the particular handicaps affecting the economic and social situation of the outermost regions, made worse by their remoteness and insularity. The same also applies to the fishing industry.
- (4) The regions concerned are facing specific development problems, and in particular additional costs incurred in the marketing of certain products as a result of their remoteness.
- (5) With a view to maintaining the competitiveness of certain fishery products compared with that of similar products from other Community regions, the Community introduced measures in 1992 and 1993 to compensate for such additional costs in the fisheries sector. Those measures were then followed in 1994 and in the period 1995 to 1997 by the adoption of Regulations (EC) No 1503/94 ⁽⁶⁾ and (EC) No 2337/95 ⁽⁷⁾ and in the period 1998 to 2002 by the adoption of Regulations (EC) No 1587/98 ⁽⁸⁾ and (EC) No 579/2002 ⁽⁹⁾. From 2003 provision needs to be made for continuation of the scheme for offsetting the additional costs for certain fishery products as regards processing and marketing and, accordingly, measures should be adopted so that these measures may continue.
- (6) The non-industrial and inshore fishing industry is of social and economic importance in the outermost regions of the European Union.
- (7) For the sake of sound management of stocks fishing efforts must be rationalised, in particular in the light of the research of a high technical standard conducted in this area by various scientific institutions in the outermost regions.
- (8) The Community rules on the conservation and management of stocks must be observed in those regions, and in particular, in the case of the French department of Guiana, the rule prohibiting fishing for shrimp at a depth of less than 30 metres.
- (9) In order to promote the economic development of the outermost regions concerned, the Member States should be able to adjust the quantities and the Commission to adjust the amounts and quantities set for the various species from the same outermost region or between outermost regions of the same Member State, to take account of changes in marketing conditions and species' characteristics.
- (10) Where adjustment between species or within regions belonging to the same Member State has not led to full utilisation of the amounts available, the Commission should be able to adjust the amounts and quantities set for the various species between outermost regions of different Member States. In that event, adjustment should be without prejudice to the scale for allocating amounts available under this Regulation in subsequent years.

⁽¹⁾ Opinion of 4 December 2003 (not yet published in the Official Journal).

⁽²⁾ Opinion of 29 October 2003 (not yet published in the Official Journal).

⁽³⁾ OJ L 399, 30.12.1989, p. 39.

⁽⁴⁾ OJ L 171, 29.6.1991, p. 1.

⁽⁵⁾ OJ L 171, 29.6.1991, p. 10.

⁽⁶⁾ OJ L 162, 30.6.1994, p. 8.

⁽⁷⁾ OJ L 236, 5.10.1995, p. 2.

⁽⁸⁾ OJ L 208, 24.7.1998, p. 1.

⁽⁹⁾ OJ L 89, 5.4.2002, p. 1.

(11) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾,

- (b) EUR 250 per tonne of black scabbardfish for up to 1 600 tonnes a year;
- (c) EUR 1 080 per tonne of aquaculture products for up to 50 tonnes a year.

HAS ADOPTED THIS REGULATION:

Article 5

Canary Islands

In the case of the Canary Islands, the compensation shall be payable for the fishery products listed in Annex III. The amounts of the compensation and the quantities for the region shall be as follows:

- (a) EUR 950 per tonne of tuna marketed by air for up to 1 619 tonnes a year;
- (b) EUR 500 per tonne of tuna marketed by sea in the raw state for up to 453 tonnes a year;
- (c) EUR 250 per tonne of skipjack marketed by sea for up to 453 tonnes a year;
- (d) EUR 220 per tonne of skipjack marketed by sea in the raw state for up to 712 tonnes a year;
- (e) EUR 240 per tonne of sardines and mackerel for freezing for up to 347 tonnes a year;
- (f) EUR 268 per tonne of cephalopods and demersal species for up to 8 292 tonnes a year;
- (g) EUR 1 300 per tonne of aquaculture products for up to 1 157 tonnes a year.

Article 1

Purpose

This Regulation introduces a scheme to compensate for the additional costs incurred in the marketing of certain fishery products listed in Annexes I to V from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion (hereinafter referred to as 'the compensation') as a result of those regions' remoteness.

Article 2

Recipients

The recipients of the compensation shall be the producers, the owners or operators of vessels registered in the ports of the regions referred to in Article 1 and operating therein or associations of such operators, and the operators in the processing and marketing sector or associations of such operators, who incur the additional costs in marketing the products concerned as a result of the remoteness of those regions.

Article 3

Azores

In the case of the Azores, the compensation shall be payable for the fishery products listed in Annex I. The amounts of the compensation and the quantities for the region shall be as follows:

- (a) EUR 177 per tonne of tuna for up to 10 000 tonnes a year delivered to the local canning industry;
- (b) EUR 455 per tonne of species for marketing fresh for up to 2 000 tonnes a year;
- (c) EUR 148 per tonne of small pelagics and deep-sea species delivered to local industry or local producer associations or organisations for freezing or processing for up to 1 554 tonnes a year.

Article 4

Madeira

In the case of Madeira, the compensation shall be payable for the fishery products listed in Annex II. The amounts of the compensation and the quantities for the region shall be as follows:

- (a) EUR 230 per tonne of tuna for up to 4 000 tonnes a year delivered to the local canning industry;

Article 6

Guiana

In the case of Guiana, the compensation shall be payable for the fishery products listed in Annex IV. The amounts of the compensation and the quantities for the region shall be as follows:

- (a) EUR 1 100 per tonne of industrial shrimp fished for up to 3 300 tonnes a year;
- (b) EUR 1 100 per tonne of non-industrial white fish marketed fresh for up to 100 tonnes per year;
- (c) EUR 527 per tonne of non-industrial white fish marketed frozen for up to 500 tonnes per year.

Article 7

Réunion

In the case of Réunion, the compensation shall be payable for the fishery products listed in Annex V. The amounts of the compensation and the quantities for the region shall be EUR 1 400 per tonne of tuna, swordfish, marlin, sailfish, dolphinfish and shark, for up to 618 tonnes per year.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

*Article 8***Adjustment of amounts and quantities**

1. The Member States may adjust the quantities set for the various species in the framework of Articles 3 to 7 without increasing the overall annual funding provided for each Member State and without increasing the amounts provided for as compensation per tonne of species provided that the Commission raises no objections within a period of four weeks as from the notification of a request for adjustment duly justified by a Member State.

2. The Commission may, following the information received from the Member States concerned, adjust the amounts and the quantities set for the various species, in the light of their characteristics and their production and marketing conditions, within the overall financial provisions set out in Articles 3 to 7.

Such adjustment may be carried out within a region, between regions belonging to one Member State or between different Member States.

3. Should adjustment be carried out between different Member States, it shall be without prejudice to the scale for allocating amounts available and shall be carried out within the limits of the overall annual funding for the scheme as laid down by the budget authority.

4. The adjustment referred to in paragraphs 1, 2 and 3 shall take account of all the relevant factors, in particular the biological characteristics of the species, changes in additional costs and qualitative and quantitative aspects of production and marketing.

*Article 9***Detailed rules of application**

Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 10(2).

*Article 10***Committee**

1. The Commission shall be assisted by the Management Committee for Fishery Products (hereinafter referred to as 'the Committee').

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

Done at Brussels, 22 December 2003.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its internal Rules of Procedure.

*Article 11***Financing**

The measures provided for in this Regulation shall constitute intervention intended to stabilise the agricultural markets within the meaning of Article 2 of Regulation (EC) No 1258/1999⁽¹⁾. They shall be financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF).

*Article 12***Reporting**

By 1 June 2006 at the latest the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of the measures provided for in this Regulation, accompanied, if necessary, by proposals for appropriate adjustments needed to achieve the objectives laid down in this Regulation.

*Article 13***Transitional measures**

Requests to the Commission for adjustments pursuant to Article 2(6) of Regulation (EC) No 1587/98 on which no decision has been taken before the date of entry into force of this Regulation shall be subject to the procedure laid down in Article 8.

*Article 14***Entry into force**

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

It shall apply from 1 January 2003 until 31 December 2006.

For the Council

The President

A. MATTEOLI

⁽¹⁾ OJ L 160, 26.6.1999, p. 103.

ANNEX I

AZORES

(a) **Tuna**

Katsuwonus pelamis

Thunnus alalunga

Thunnus albacares

Thunnus obesus

Thunnus thynnus

(b) **Species for marketing fresh**

Phycis phycis

Beryx splendens

Pomatomus saltator

Sphyræna viridensis

Pagellus acame

Helicolenus dactylopterus dactylopterus

Cetrolabrus trutta

Labrus bergylta

Galeorhinus galeus

Pontinus kuhlii

Polyprion americanus

Coryphaena hippurus

Pseudocaranx dentex

Epigonus telescopus

Xiphias gladius

Serranus cabrilla

Serranus atricauda

Pagellus bogaraveo

Beryx decadactylus

Phycis blennoides

Seriola spp.

Loligo forbesi

Mora moro

Epinephelus guaza

Pagrus pagrus

Promethichthys prometeus

Lepidopus caudatus

Aphanopus carbo

Zeus faber, Zenopsis conchifer

Balistes carolinensis

Molva macrophthalma

Raja clavata

Scorpaena scrofa

Conger conger

Mullus surmelutus

Diplodus sargus

Sarda sarda

Sparisoma cretense

(c) **Small pelagics and deep-sea species**

Scomber japonicus

Trachurus picturatus

Sardina pilchardus

Chaecon affinis

Aphanopus carbo

ANNEX II

MADEIRA(a) **Tuna***Thunnus alalunga**Thunnus albacares**Thunnus Thynnus**Thunnus obesus**Katsuwonus pelamis*(b) **Black scabbardfish***Aphanopus carbo*(c) **Aquaculture products***Sparus aurata**Pagrus Pagrus**Pagellus Bogaraveo*

ANNEX III

CANARY ISLANDS

(a) **Tuna***Thunnus alalunga**Thunnus albacares**Thunnus thynnus thynnus**Thunnus obesus*(b) **Skipjack***Katsuwonus pelamis*(c) **Pilchard***Sardina pilchardus*(d) **Mackerel***Scomber spp.*(e) **Cephalopods and demersal species***Dentex dentex**Dentex gibbosus**Dentex macropthalmus**Diplodus sargus**Diplodus cervinus**Lithognathus mormyrus**Pagellus acarne**Pagellus bogaraveo**Pagellus erythrinus**Sparus aurata**Sparus caeruleostictus**Sparus auriga**Sparus pagrus**Spondyliosoma cantharus**Merluccius merluccius**Merluccius senegalensis**Merluccius polli**Phycis phycis**Lepidorhombus boscii**Lophius piscatorius**Dicologlossa cuneata**Solea vulgaris**Solea senegalensis**Sepia Officinalis**Sepia bertheloti**Sepia orbignyana**Loligo vulgaris**Loligo forbesi*

Octopus vulgaris
Todarodes sagittatus
Cynoglossus, spp
Allotheutis, spp.

(f) **Aquaculture products**

Sparus aurata
Sparus pagrus
Dicentrarchus labrax
Seriola spp.
Solea senegalensis

ANNEX IV

GUIANA

(a) **Shrimp**

Penaeus subtilis
Penaeus brasiliensis
Plesiopenaeus edwardsianus
Solenocra acuminata

(b) **Non-industrial white fish to be marketed fresh or frozen**

Cynoscion acoupa
Cynoscion virescens
Cynoscion steindachneri
Macrodon ancylodon
Plagioscion arenatus
Tarpon atlanticus
Megalopos atlanticus
Arius parkeri
Arius proops
Sphyrnidae
Carcharhinidae
Trachynotus cayennensis
Oligoplites saliens
Scomberomorus maculatus

ANNEX V

RÉUNION

(a) **Swordfish***Xiphias gladius*(b) **Tuna***Thunnus albacares**Thunnus alalunga**Thunnus obesus**Thunnus maccoyii**Euthynnus spp.**Katsuwonus spp.*(c) **Marlin/Makaire***Makaira mazara**Makaira indica**Tetrapterus audax*(d) **Shark***Carcharinus longimanus**Isurus oxyrinchus*(e) **Sailfish***Isiophorus*(f) **Dolphinfish***Coryphaena hippurus*

**COUNCIL REGULATION (EC) No 2329/2003
of 22 December 2003**

on the conclusion of the Fisheries Agreement between the European Community and the Republic of Mozambique

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) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The Community and the Republic of Mozambique have negotiated and initialled a Fisheries Agreement providing Community fishermen with fishing opportunities in the waters over which Mozambique has sovereignty or jurisdiction in respect of fisheries.
- (2) In addition, that Agreement provides for economic, financial, technical and scientific cooperation in the fisheries sector with a view to guaranteeing the conservation and sustainable exploitation of resources, as well as partnerships between undertakings aimed at developing in the common interest economic activities in the fisheries sector and related activities.
- (3) That Agreement should be approved.
- (4) The allocation of the fishing opportunities among the Member States should be defined,

HAS ADOPTED THIS REGULATION:

Article 1

The Fisheries Agreement between the European Community and the Republic of Mozambique (hereinafter referred to as 'the Agreement') is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Regulation.

Article 2

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

- | | | |
|---|----------|---|
| (a) demersal freezer trawlers designed to fish for deep-water shrimp: | — Spain | Total admissible catch (TAC) of 550 tonnes of deep-water shrimp (295 tonnes of by-catches, in accordance with the allocation by species provided for in the Protocol) |
| | — Greece | TAC of 150 tonnes of deep-water shrimp (80 tonnes of by-catches, in accordance with the allocation by species provided for in the Protocol) |

⁽¹⁾ Opinion delivered on 4 December 2003 (not yet published in the Official Journal).

- Italy TAC of 150 tonnes of deep-water shrimp (80 tonnes of by-catches, in accordance with the allocation by species provided for in the Protocol)
 - Portugal TAC of 150 tonnes of deep-water shrimp (80 tonnes of by-catches, in accordance with the allocation by species provided for in the Protocol)
- (b) freezer tuna seiners:
- Spain 17 vessels
 - France 18 vessels
- (c) surface longliners:
- Spain 8 vessels
 - France 1 vessel
 - Portugal 5 vessels

If licence applications from these Member States do not cover all the fishing opportunities fixed 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 this Agreement shall notify the Commission of the quantities of each stock caught within the Mozambican 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 ⁽¹⁾.

Article 4

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the Community ⁽²⁾.

Article 5

This Regulation shall enter into force on the seventh 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, 22 December 2003.

For the Council
The President
A. MATTEOLI

⁽¹⁾ OJ L 73, 15.3.2001, p. 8.

⁽²⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

FISHERIES AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE REPUBLIC OF MOZAMBIQUE

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

on the one hand, and

THE REPUBLIC OF MOZAMBIQUE, hereinafter referred to as 'Mozambique',

on the other hand,

together hereinafter referred to as 'the Parties',

CONSIDERING the close working relationship between the Community and Mozambique, particularly in the context of the Lomé Convention and the Cotonou Agreement, and their mutual desire to intensify that relationship,

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

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 long-term conservation and sustainable exploitation of living marine resources,

DESIROUS of establishing terms and conditions to govern the activities and cooperation conducted in the Parties' mutual interest in the fishing sector,

CONVINCED that such cooperation will reinforce their mutual interests and the achievement of their respective economic and social objectives,

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

HAVING DECIDED to promote cooperation in the fisheries sector and connected sectors,

HAVE AGREED AS FOLLOWS:

Article 1

This Agreement establishes the principles, rules and procedures governing:

- economic, financial, technical and scientific cooperation in the fisheries sector, with a view to guaranteeing the conservation and sustainable exploitation of fisheries resources, and developing the Mozambican fisheries sector,
- the conditions governing the access of Community fishing vessels to Mozambican waters,
- economic activities in the fisheries sector and in related activities.

Article 2

For the purposes of this Agreement:

- (a) 'Mozambican authorities' means the Ministry of Fisheries of the Republic of Mozambique;
- (b) 'Community authorities' means the Commission of the European Communities;
- (c) 'Community vessel' means a fishing vessel flying the flag of a Member State of the Community and registered in the Community;

(d) 'joint enterprise' means a commercial company set up in Mozambique by vessel owners or national enterprises from the Parties to carry on fishing or related activities;

(e) 'Joint Committee' means a committee made up of representatives of the Community and Mozambique to be responsible for monitoring the application and interpretation of this Agreement.

Article 3

1. Mozambique undertakes to authorise Community vessels to carry on fishing activities in its fishing zone in accordance with this Agreement, including the Protocol and Annex.

2. The fishing activities governed by this Agreement shall be subject to the laws and regulations in force in Mozambique.

Article 4

1. 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 Mozambique has jurisdiction.

2. The Mozambican authorities shall notify the Commission of the European Communities of any amendments to that legislation.

Article 5

1. The Community shall grant Mozambique financial compensation in accordance with the terms and conditions of access to the Mozambican fisheries defined in the Protocol and Annexes.
2. This financial compensation shall be granted annually to support the programmes and measures implemented by Mozambique in connection with the management and administration of fishing, the conservation and sustainable exploitation of fisheries resources and the development of the Mozambican fishing sector.

Article 6

1. Should serious events other than natural phenomena prevent fishing activities from being carried on in Mozambique's fishing zone, the Community may suspend payment of the financial compensation, following prior consultations between the two Parties.
2. Once the situation has returned to normal, payment of the financial compensation shall be resumed after the two Parties have consulted one another and agreed that the situation is such as to allow the normal exercise of fishing activities.
3. The validity of the licences granted to Community vessels under Article 8 shall be extended by a period equal to that during which fishing activities were suspended.

Article 7

1. The fishing activities carried on by Community vessels in Mozambican waters shall be subject to a licence scheme in accordance with the Mozambican legislation in force.
2. The procedure for obtaining a fishing licence for a vessel, the taxes applicable and the method of payment to be used by vessel owners are defined in the Annex to the Protocol.

Article 8

1. Should considerations relating to the conservation and protection of Mozambique's fisheries' resources result in the adoption of management measures which are liable to affect the fishing activities of Community vessels operating under this Agreement, the Parties shall consult one another with a view to adapting the Protocol and its Annexes.
2. In accordance with national legislation, fisheries control arrangements adopted by the Mozambican authorities with a view to preserving resources shall be based on objective, scientific criteria. Such arrangements shall not discriminate against Community vessels, without prejudice to the agreements concluded between developing countries within one geographical region and, in particular, the reciprocal fisheries agreements.

Article 9

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 provided for by this Agreement.
2. The Parties shall encourage exchanges of information on fishing techniques and gear, preservation methods and the industrial processing of fisheries products.
3. The two Parties shall endeavour to create conditions favourable to the promotion of relations between enterprises from the Parties in the technical, economic and commercial spheres.
4. The Parties shall undertake to consult one other, either directly or within the international organisations concerned, to ensure the management and conservation of living resources in the Indian Ocean, and to cooperate in the relevant scientific research.

Article 10

1. The Parties shall encourage the setting-up of joint enterprises in their mutual interest with a view to developing fishing and related activities in Mozambique.
2. The transfer of Community vessels to joint enterprises and the creation of joint enterprises in Mozambique shall be carried out in such a way as to comply systematically with the Mozambican and Community legislation in force.

Article 11

A Joint Committee shall be set up to monitor the application of this Agreement. The task of this Joint Committee shall consist mainly in:

1. monitoring the performance, interpretation and application of the Agreement and, in particular, the implementation of the programmes and measures referred to in Article 5 and described in the Protocol annexed hereto;
2. providing the necessary liaison for questions of mutual interest in the fisheries' sphere;
3. acting as a forum for the amicable settlement of any disputes to which the interpretation or application of the Agreement may give rise;
4. reassessing, where necessary, the level of fishing opportunities and, consequently, of financial compensation.

The Joint Committee shall meet at least once a year, in Mozambique and the Community alternately. It shall hold a special meeting at the request of either of the Parties.

Article 12

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied, under the conditions laid down in that Treaty and, on the other, to the territory of the Republic of Mozambique.

Article 13

1. This Agreement shall apply for a period of three years from the date of its entry into force; it shall be renewable for additional periods of three years, unless notice of termination is given in writing by either of the Parties at least six months before the date of expiry of the initial period or each additional period.
2. In the event of either of the Parties giving notice to terminate this Agreement, the parties shall enter into consultations.

Article 14

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

Article 15

This Agreement, drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each of these texts being equally authentic, shall enter into force on the date on which the Parties notify one another that their adoption procedures have been completed.

PROTOCOL

setting out the fishing opportunities and financial contribution provided for in the Fisheries Agreement between the European Community and the Republic of Mozambique

Article 1

From the entry into force of the Agreement and for a period of three years, the fishing opportunities granted under Article 3 of the Agreement shall be as follows:

- (a) demersal freezer trawlers fishing for deep-water shrimp (gamba): up to 1 000 t a year and 535 t of by-catches, broken down as follows:
- Dublin bay prawn: 100 t,
 - cephalopods: 75 t,
 - fish: 240 t,
 - crawfish: 0 t,
 - crab: 120 t,
- for a maximum of 10 vessels;
- (b) freezer tuna seiners: 35 vessels;
- (c) surface longliners: 14 vessels.

Article 2

1. The amount of financial compensation referred to in Article 5 of the Agreement, corresponding to the fishing opportunities referred to in Article 1 of this Protocol, shall be fixed at EUR 4 090 000 a year.

The financial compensation for fishing for tuna and related species shall amount to EUR 600 000 a year; it shall cover catches in Mozambican waters of 8 000 tonnes of tuna and related species. If the quantity caught each year by Community vessels in Mozambique's exclusive economic zone (EEZ) exceeds this weight, the amount referred to above shall be proportionately increased at the rate of EUR 75 per additional tonne. However, the total amount of financial compensation paid by the Community for fishing for tuna and related species shall be subject to an upper limit of EUR 1 800 000 a year.

The annual financial compensation for deep-water shrimp fishing and by-catches in Mozambican waters shall be fixed at EUR 3 490 000 for the quantities referred to in Article 1.

2. The financial compensation is intended to finance the measures referred to in Article 3 of this Protocol.

Article 3

1. The following measures shall be financed from the financial compensation, to the tune of EUR 4 090 000 a year, broken down as follows:

- (a) EUR 1 500 000 for monitoring marine fisheries;
- (b) EUR 1 000 000 for institutional development;
- (c) EUR 1 000 000 for research;
- (d) EUR 430 000 for training;
- (e) EUR 100 000 for quality control;
- (f) EUR 60 000 for participation in Joint Committee and other international meetings.

2. The above amounts are given as a guide and the Government of the Republic of Mozambique, represented by the Ministry of Fisheries and the Ministry of Planning and Finance, may amend them after informing the Commission of the European Communities in advance.

3. The measures and the annual amounts allocated thereto shall be decided on by the Ministry of Fisheries, which shall inform the Commission of the European Communities thereof.

4. The annual amounts referred to in paragraph 1, with the exception of those in points (d) and (f), shall be made available to the appropriate Mozambican authorities after the entry into force of the Protocol for the first year and on the anniversary date of the Protocol for the following years.

5. These amounts shall be paid, on the basis of the annual programme for their use, into foreign currency account No ..., which shall be held in the name of the Ministry of Planning and Finance with the Bank of Mozambique, the equivalent exchange value being transferred to bank account No ..., held in the name of the Fundo de Fomento Pesqueiro. The amounts referred to at (d) and (f) shall be paid as and when the Ministry of Fisheries requests them from the Commission of the European Communities for the purpose of covering the projected measures.

Article 4

The Ministry of Fisheries shall transmit to the delegation of the European Commission in Mozambique, no later than three months after the anniversary date of the Protocol, a draft detailed annual report on the implementation of the measures referred to in Article 3 and the results achieved. The report shall be examined and adopted by the two Parties within the Joint Committee.

The Commission of the European Communities reserves the right to request the Ministry of Fisheries for any additional information on the results of the measures carried out.

Following consultation between the Parties within the Joint Committee, the Commission of the European Communities may review the payments on the basis of the actual implementation of the corresponding measures. In this case, Mozambique may also review the fishing opportunities granted under this Protocol.

Article 5

Should the Community fail to make the payment provided for in Article 3, the Republic of Mozambique may suspend the application of this Protocol.

Article 6

This Protocol shall enter into force on 1 January 2004, after the two Parties have given notification that their respective approval procedures have been completed.

ANNEX

Conditions governing fishing activities in Mozambican waters by Community vessels

Any Community vessel authorised to fish in Mozambican waters under this Agreement shall be subject to the Mozambican legislation in force. In addition, the following rules and procedures shall apply.

1. Formalities to be followed in applying for and issuing licences for vessels fishing for tuna and related species and freezer bottom trawlers

The procedure to be followed in applying for and issuing licences authorising Community vessels to fish in Mozambican waters shall be as follows:

- (a) for each vessel, the European Commission, acting via its representative in Mozambique and through the agency of its delegation in that country, shall submit to the Mozambican authorities a licence application drawn up by the vessel owner wishing to carry on fishing activities under this Agreement; the application shall be submitted no later than 25 days before the start of the validity period mentioned therein. Applications shall be made using the forms provided for this purpose by Mozambique, specimens of which are given in Appendix 1 for tuna seiners and longliners, and in Appendices 1 and 2 for freezer bottom trawlers. They shall be accompanied by proof of payment of the advance payable by the vessel owner;

- (b) Licences shall be issued to a specific vessel owner for a specific vessel and shall not be transferable.

However, at the request of the European Commission, a vessel's licence may, in a case of *force majeure*, be replaced by a licence for another vessel with characteristics similar to those of the first vessel. Through the Commission delegation in Mozambique, the owner of the first vessel shall first return the cancelled licence to the Ministry of Fisheries.

The new licence shall indicate:

- the date of issue and the validity period,
- the fact that it cancels and replaces the licence of the previous vessel.

In such cases, no new advance shall be due;

- (c) Licences shall be sent by the Mozambican authorities to the Commission delegation in Mozambique.

2. Provisions applicable to tuna seiners and surface longliners

Owners of tuna seiners shall be represented by an agent in Mozambique.

Fishing licences shall be valid for a period of one year, from 1 January to 31 December of each year. They shall be renewed at the request of the vessel owner, who shall submit a fishing licence application form (Appendix 1) at least 30 days before the expiry of the licence.

Licences shall be kept on board at all times. Before the actual licence is received, a copy may be obtained by fax and shall be kept on board.

Fees shall be fixed at EUR 25 per tonne of tuna or related species fished in waters over which Mozambique has jurisdiction. If a Community fishing vessel exceeds the maximum catch laid down for each vessel, a duty of EUR 25 per tonne shall be payable.

Licences shall be issued subject to the payment to the Fundo de Fomento Pesqueiro of an annual advance of EUR 3 000 per tuna seiner and EUR 1 500 per surface longliner, which corresponds to the fees payable for catches of 120 tonnes and 60 tonnes respectively of tuna and related species in Mozambique's EEZ.

The Mozambican authorities shall communicate, before the entry into force of the Agreement, all information concerning the bank accounts to be used for the payment of the fees.

3. Declaration of catches and statement of fees payable in respect of tuna and related species

Tuna fishing vessels authorised to fish in Mozambique's fishing zone under the Agreement shall send information on their catches to the Ministry of Fisheries and a copy to the Commission Delegation in Mozambique, in accordance with the following arrangements:

- skippers of vessels fishing for tuna and related species shall fill in a form (declaration of catches), a specimen of which is given in Appendix 3, for each fisheries' period in Mozambique's fishing zone,

- this form shall be sent to the Ministry of Fisheries no later than 45 days after the fishing activities in Mozambique's fishing zone have ended; it shall be completed legibly and signed by the skipper of the vessel,
- forms shall be filled in for all vessels with a licence, even if they have not engaged in any fishing activities.

In the event of a failure to comply with these provisions, the Ministry of Fisheries shall reserve the right to suspend the licence of the offending vessel until the requisite formalities have been carried out. Where this occurs, the Commission Delegation in Mozambique shall be informed immediately.

The final statement of the fees due for the fishing year shall be drawn up at the end of each calendar year by the Commission of the European Communities on the basis of catch declarations made by the vessel owners for each vessel and confirmed by scientific institutions empowered to verify catch data, 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 Instituto Nacional de Investigação Pesqueira (IIP). The statement shall be forwarded to the Ministry of Fisheries and to the vessel owners at the same time.

Where appropriate, vessel owners shall make any additional payments to the Ministry of Fisheries no later than 30 days following notification of the final statement. However, where the sum due as set out in the final statement is less than the advance, the vessel owner shall not be reimbursed the difference.

4. Provisions applicable to freezer bottom trawlers

Owners of freezer bottom trawlers shall be represented by an agent in Mozambique.

Fishing licences shall be valid for a period of one year, from 1 January to 31 December. They shall be renewed at the request of the vessel owner, who shall submit a licence application form at least 30 days before the expiry of the licence.

Licences shall be kept on board at all times.

Fishing licence fees shall be fixed at EUR 600 per tonne of the quota.

Licences shall be issued subject to the advance payment to the Ministry of Fisheries of a fee of EUR 600 per tonne of the quota.

Mozambican legislation shall govern health inspection matters. For this purpose, Community vessel owners shall fill in the form attached hereto (Appendix 2) and shall make a written application for an international transit document.

The health inspection fees (health approval and international transit health certificate) shall be fixed at EUR 1 550 per vessel per year.

The health licence and health certificate shall be issued following the advance payment of the abovementioned fees to the Ministry of Fisheries.

The Ministry of Fisheries shall communicate all information concerning the bank accounts to be used for the payment of the fees.

5. Declaration of catches by freezer bottom trawlers

Trawlers authorised to fish in Mozambique's EEZ under this Agreement shall send information to the Ministry of Fisheries, via the Commission delegation in Mozambique, on the relevant catches and fishing effort. The form to be used for this purpose is set out in Appendices 4 and 5. The declarations in Appendix 4 shall cover 10-day periods and shall be transmitted on the 11th, 21st and last days of each month. The declarations in Appendix 5 shall be transmitted monthly.

6. Fisheries monitoring, health inspections and sampling operations

6.1. Community vessels fishing in Mozambique's EEZ shall admit on board fisheries inspectors, generally known as observers in Community practice, who shall be empowered in the context of their duties to:

- inspect vessels both at sea and in ports,
- check fishing licences, logs, catches on board, fishing gear,
- verify the position of vessels during fisheries operations,

- order any vessel to stop and carry out the manoeuvres required for inspection purposes,
 - order vessels to enter the nearest Mozambican port where a serious breach of the rules governing fishing activities is suspected.
- 6.2. Freezer bottom trawlers shall be subject to the health provisions laid down by the Mozambican legislation in force. They shall admit on board health inspectors empowered to:
- inspect vessels both at sea and in harbours,
 - check the vessels' health certificates and general sanitary conditions,
 - check crews' medical certificates,
 - check the hygiene conditions, and the state of health of the fish and the conditions in which it is stored.
- 6.3. Community vessels shall admit on board scientific staff, without powers of inspection, to be responsible for gathering data which will make it possible to monitor the state of exploitation of Mozambican fisheries resources, as well as environmental data. Such staff shall be empowered in particular to:
- carry out biological sampling operations and, in particular, measure and weigh the species caught,
 - gather oceanographic data (air and water temperatures, salinity, wind, currents, etc.),
 - gather fish samples for laboratory analyses.

- 6.4. Any Community vessel which has taken inspectors or scientific sampling staff on board shall be obliged to provide them with meals, accommodation and medical assistance of a standard at least equivalent to those enjoyed by the vessel's officers.

Where an inspector or member of the scientific sampling staff is put ashore at a place other than the port of embarkation, the vessel owner shall bear the cost of the return journey to the port of embarkation.

If an inspector or member of the scientific sampling staff fails to turn up at the place and time arranged, or within the next 12 hours, the vessel owner shall be released from the obligation to take that person on board.

- 6.5. The presence on board of the staff referred to above shall be strictly limited to the time deemed necessary by the Mozambican authorities to carry out their respective tasks.

7. **Satellite monitoring**

Community vessels fishing under the Agreement shall be subjected to satellite monitoring (VMS) in accordance with the fisheries rules laid down by Mozambican legislation and with Community legislation, and on the basis of the arrangements to be defined in a protocol agreed between the Parties.

Where an infringement is suspected, the Mozambican authorities may request the European Commission for information on the records relating to the satellite monitoring of Community vessels fishing in Mozambique's EEZ.

8. **Radio communications**

Where the skipper intends to take his vessel into Mozambique's fishing zone, he shall give notification thereof and transmit data relating to the catches on board at least 16 hours in advance, either via the Maputo radio station, or by telex or fax. When he gives notification that he intends to leave the area, he shall also declare the volume of the catches taken during the time spent in Mozambique's fishing zone.

The radio frequency and the telex and fax numbers to be used shall be indicated on the fishing licence.

9. **Fishing zones**

For tuna fishing vessels:

between parallels 10° 30' S and 26° 30' S, beyond 12 miles from the coast.

For trawlers:

between parallels 10° 30' S and 26° 30' S, beyond 12 miles from the coast and at depths of more than 150 metres.

10. **Taking on crews**

Freezer bottom trawlers authorised to fish in Mozambican waters under the Fisheries Agreement shall be obliged to take on a sufficient number of Mozambican seamen to make up half of their non-officer crew.

Such seamen's wages shall be paid by the vessel owners and shall include contributions to the social security schemes applicable to the seamen: life insurance, accident insurance, health insurance and welfare benefits.

11. Use of port facilities

The conditions governing the use of port facilities shall be established by the Mozambican port authorities.

12. Transshipment

Any transshipment involving a freezer bottom trawler shall be notified to the Mozambican fisheries authorities two business days in advance and shall be carried out in the ports of Beira or Maputo in the presence of the Mozambican fisheries and customs authorities.

Any freezer bottom trawler wishing to leave Mozambique's EEZ with its catches shall undergo a fisheries inspection, the certification procedure required for the transit of the goods and a customs check in the ports of Beira or Maputo, which shall be requested two business days in advance.

The transshipment, fisheries inspection or customs check in the ports of Beira or Maputo shall not affect the Community origin of the catches concerned.

13. Supply of services

Community vessel owners operating in Mozambique's EEZ shall be obliged to give preference to Mozambican services (dockers, handling, refuelling, consignment, etc.).

14. Procedure in the event of boarding

The Mozambican authorities shall inform the Commission delegation in Maputo in writing, within two business days at the latest, of the boarding within Mozambique's fishing zone of any Community fishing vessel operating under the Fisheries Agreement, specifying the circumstances of and the reasons for the boarding. The Commission delegation shall also be kept informed of developments in the proceedings initiated and of any administrative penalties decided on.

15. Infringements

Any infringement of Mozambican legislation or of this Protocol by a Community vessel shall be notified to the Commission delegation in Maputo, without prejudice to the sanctions applicable under the legislation concerned.

Appendix 1

REPUBLIC OF MOZAMBIQUE

MINISTRY OF AGRICULTURE AND FISHERIES
 NATIONAL FISHERIES DIRECTORATE
 FISHING LICENCE APPLICATION
 TO BE COMPLETED BY THE APPLICANT

NAME OF ENTERPRISE _____

ADDRESS _____

PO BOX _____ TELEPHONE _____ FAX _____

NAME (1) _____

IDENTITY CARD No _____ ISSUED AT (PLACE) _____

VALID UNTIL ____/____/____ RESIDENT AT _____

REQUESTS THE ISSUE OF A FISHING LICENCE (2)

TO OPERATE IN THE AREA OF _____

BASED IN THE PORT OF _____ PROVINCE OF _____

USING THE FOLLOWING FISHING GEAR: _____

FOR THE PURPOSE OF CATCHING _____

DETAILS OF THE VESSEL (3) (4)

1. NAME _____ FLAG _____ REGISTRATION No _____

2. PORT OF REGISTRATION _____ YEAR OF CONSTRUCTION _____ SHIPYARD/COUNTRY _____

3. TYPE OF HULL (5) _____ COLOUR OF SIDES _____ COLOUR OF SUPERSTRUCTURE _____

4. DIMENSIONS (IN METRES): TOTAL LENGTH _____ BREADTH _____ DEPTH _____ GROSS TONNAGE _____ TONNES

5. ELECTRONIC EQUIPMENT (6): HF RADIO _____ VHF RADIO _____ TRANSDUCER _____ SONAR _____

SATELLITE NAVIGATOR _____ GYROSCOPIC COMPASS _____ RADAR _____

6. CALL SIGN _____

7. MAIN ENGINE: MAKE _____ POWER _____ HP

8. FISHING GEAR: NUMBER OF WINCHES _____ CAPACITY _____ TONNES

OUTRIGGER TRAWL (6) _____ STERN TRAWL (6) _____ NUMBER OF GEARS _____

9. PRESERVATION OF THE FISH (6) (7)

FINISHED PRODUCTS: _____

PREPARATION WORK ROOM: Y/NAIR BLAST FREEZING: Y/N CAPACITY (tonnes/day) _____ TEMP. (° C) _____

PLATE FREEZING: Y/N CAPACITY (tonnes/day) _____ TEMP. (°C) _____

IN COLD CHAMBER: Y/N OF _____ TEMP. (°C) _____

COLD STORAGE: HOLD 1 — CAPACITY (tonnes) _____ TEMP. (°C) _____

HOLD 2 — CAPACITY (tonnes) _____ TEMP. (°C) _____

HOLD 3 — CAPACITY (tonnes) _____ TEMP. (°C) _____

CHILLING: ICE: Y/N REFRIGERATED CONTAINERS Y/N CAPACITY (tonnes) _____

INSULATED HOLD Y/N CAPACITY (tonnes) _____

REFRIGERATED HOLD Y/N CAPACITY (tonnes) _____ TEMP. (°C) _____

CHILLED SEA WATER: Y/N CAPACITY (tonnes) _____ TEMP. (°C) _____

FACILITIES FOR PRESERVING LIVE SPECIES: Y/N SPECIFY _____

DRINKING WATER: _____ m³ DESALINATORS: Y/N SANITARY FACILITIES: Y/N NUMBER: _____

AUXILIARY PROCESSING EQUIPMENT: GRADERS: Y/N SCALES: Y/N

GRINDERS: Y/N FISH WASHERS: Y/N FISH COOKERS: Y/N

OTHER: _____

 APPLICANTS SIGNATURE

TO BE COMPLETED BY THE BODY ISSUING THE FISHING LICENCE

ISSUE OF THE FISHING LICENCE AUTHORISED ON ____/____/____

NUMBER OF FISHING LICENCE ISSUED _____ VALID UNTIL _____

SPECIAL CONDITIONS _____

 SIGNATURE

NOTES

- (1) Name of enterprise's representative (manager etc.).
- (2) Indicate the type of fishing: industrial, semi-industrial, related fisheries activities.
- (3) Enclose three colour negatives showing one of the sides of the ship (the markings must be legible).
- (4) As indicated in the title deeds.
- (5) Indicate the material: steel, wood or glass fibre.
- (6) Mark the appropriate answers with a cross.
- (7) Attach a processing flow diagram.

Appendix 2

REPUBLIC OF MOZAMBIQUE
MINISTRY OF FISHERIES
FISHERIES INSPECTION DEPARTMENT
Application for HEALTH APPROVAL for a
_____ VESSEL ⁽¹⁾

Dear Sir, _____

I, the undersigned (owner/manager), _____ identity card No
issued at _____ on _____, wish to apply for health approval for the vessel described below and certify that the following information is correct.

NAME OF ENTERPRISE _____ REGISTRATION No AT MINISTRY OF FISHERIES _____

Address: _____ PO box _____

Telephone _____ Fax _____ E-mail _____

VESSEL NAME: _____ Vessel registration No at MINISTRY OF FISHERIES: _____

The processing activity for which the application is made relates to FISHERIES PRODUCTS in the following CATEGORIES ⁽²⁾: _____

INTENDED FOR MARKET(S) ⁽³⁾: _____

REGISTRATION No OF APPLICATION: _____/_____

Representative of the enterprise, _____ Received by: _____

_____, SPAP (Serviço Provincial de Administração Pesqueira): _____

NB: the documents to be enclosed with the application are indicated overleaf.

⁽¹⁾ Indicate the type of vessel:

- fishing vessel,
- vessel engaged in related activities,
- factory vessel (processing and packaging the product),
- freezer vessel or factory vessel processing on the spot (RIGQ (Regulation on the inspection and quality assurance of fisheries products), Article 40(2)).

⁽²⁾ Indicate the categories of products targeted:

- CATEGORY I: live, fresh or frozen bivalve molluscs,
- CATEGORY II: pasteurised, cooked or precooked, hot-smoked or breaded fisheries products, including products which have undergone acidification, with or without freezing, ready to eat without further cooking,
- CATEGORY III: canned products or products which are sterilised before being sold in hermetically-sealed containers,
- CATEGORY IV: salted and dried fisheries products,
- CATEGORY V: frozen products,
- CATEGORY VI: live crustaceans and fresh fish.

⁽³⁾ Indicate the market for which the products are destined:

- domestic market,
- European Union,
- other countries.

Conditions governing the grant of health approval for a vessel

The grant of health approval for the handling, processing, storage and transport of fisheries products is the responsibility of the Ministry of Fisheries and entails the following procedures:

1. This application form for health approval, which is addressed to the Minister for Fisheries, must be lodged with the provincial fisheries services of the province where the vessel's base port is located. It must indicate the full identity of the applicant and the overall aim of the project.

2. The form must also be accompanied by the following documents and information:

2.1. For fishing vessels or vessels carrying out related activities:

- medical certificates for all crew members and a copy of their stool and urine analyses, as well as the results of the screening tests for tuberculosis, salmonella, cholera vibrio or any other test required by the competent Fisheries Inspectorate authority
- fumigation certificate (issued by an approved body)
- indication on the vessel plan of the distribution of rat poison, the type of product used and the frequency for of applications
- description of good manufacturing practices (see details in enclosed form Fr 16/IP)
- hygiene rules applicable to facilities, equipment and persons (see details in enclosed form Fr 17/IP).....

2.2. In the case of freezer vessels and factory vessels, the following additional documents and information should be enclosed:

- flow diagram
- vessel plan
- flow diagram on vessel plan.....
- description of good manufacturing practices (see details in enclosed form Fr 16/IP)
- quality control and assurance system (see details in form Fr 16/IP).....
- type of packaging and labelling to be used
- production code
- number of staff members, with particulars of their training and work experience
- description of waste disposal system
- description of the system for the supply of drinking water, water rendered fit for drinking or clean sea water, with particulars of storage tanks, treatment systems and estimated consumption

2.3. In the case of freezer vessels or factory vessels carrying out processing on the spot, the following should also be enclosed:

- description of the waste water elimination system
- description of the arrangements for controlling staff access on board

NB: In accordance with Article 41(5) of the RIGQ (Regulation on the inspection and quality assurance of fisheries products), the period required for the grant of health approval is 30 days.

Ensure that applications are complete, since the time required to return incomplete applications is not included in the period mentioned.

When you request an inspection, ensure that the vessel is ready to sail, is clean and its papers are in order. The inspection should preferably be requested seven business days before the date on which you wish to receive the health approval.

Other vessel inspections are scheduled throughout the year under the regular fisheries inspection programme.

REPUBLIC OF MOZAMBIQUE
MINISTRY OF FISHERIES
FISHERIES INSPECTION DEPARTMENT

QUALITY CONTROL
(GUIDE)

FR: 16/IP
2002 Version
Approved by:

'HACCP'

Hazard-elimination system enabling risks to be reduced through verification/monitoring/self-monitoring, acceptability limits and corrective measures. The corresponding procedures must be described in writing, specifying the following:

HACCP procedure drawn up by: _____ Academic training: _____

Number of years' experience in the food industry: _____ Actual member of staff of the enterprise (yes/no): _____

Any enterprise wishing to export fisheries products must have an HACCP quality control system consisting in self-monitoring by product type and comprising the following main elements:

1. organisation chart of the production unit, with description of the responsibilities involved;
2. identification and description of products:
 - (a) composition (type and chemical composition), weight (and tolerances applicable), classification system (number and size or weight);
 - (b) preservation method (fresh, frozen, salted, etc.);
 - (c) processing method (description of good manufacturing practices);
 - (d) packaging, marking or labelling system, classification (attach three copies and copies of the stamps or stickers used);
 - (e) conditions in which the products are stored (raw materials and products) and distributed;
 - (f) shelf life;
 - (g) instructions for use (preparation method);
 - (h) preservation method to be used by the consumer;
 - (i) checks to assess whether the water is fit for drinking;
3. identification of the destination of the product (target group, destination market, wording on label);
4. production flow diagram and outline of flows on vessel plan;
5. identification of all potential hazards (microbiological, physical and chemical) and the probability of risks at each processing stage (processing flow diagram). Development of all the preventive measures liable to prevent or reduce the effects of the hazards identified;
6. identification of critical control points (CCPs) and critical points (CPs);
7. establishment of critical limits (e.g. time, levels, °C, etc.) for each CCP;
8. setting up of a monitoring system for each CCP (what, where, when, who, how);
9. establishment of corrective measures for cases where the hazard could not be avoided;
10. annual calibration of instruments (thermometers, scales, etc.) by an approved enterprise, the corresponding documentary evidence being filed so that it may be presented to the Fisheries Inspectorate for checking. The production unit must have its own 1 kg and 100 g standard weights so that it can monitor its scales and records. It must also have a reference thermometer;
11. establishment of verification procedures (responsibilities, frequency, forms, acceptability criteria);
12. drawing up of records and documentation (systems for recording and checking the efficiency of PH, GMPs and HACCP using simple forms). For example, the temperature in cold chambers and stores must be checked by means of automatic thermographs. Accordingly:

- establishments must have a thermometer for use throughout the processing operation. They must record the temperature and sensory quality of the raw material of all lots, particularly in the case of small-scale fisheries products. They must also record the temperature of the product during processing at least once a week, the task always being performed on the same day by the same person, and at the different stages (e.g. washing, grading, weighing after freezing). Establishments must also record the temperature in the reception, processing and packaging rooms halfway through the working day. This task must always be carried out at the same time and preferably by the same person. Finally, the freezer temperature and the temperature of the cold stores must be recorded daily,
- vessels must have a thermometer for the purpose of monitoring and recording the temperature of the holds at the time of unloading. They must also record the temperature of the holds once a week and that of the freezer chambers once a day throughout the fishing trip. The reading must be taken at the hottest time of the day and always by the same person.

NB: application of the HACCP system is based on the hygiene rules.

'TRADITIONAL METHOD'

- Paragraphs 1, 2, 3 and 4 are applicable.
- Method of monitoring the quality of the raw material and finished product (e.g. temperature, sensory quality, chemical and microbiological quality)

GOOD MANUFACTURING PRACTICES

- Type and quality of the raw material selected for processing. Quality control criteria applied, for example, to the RAW MATERIAL, the PRODUCT UNDERGOING PROCESSING and the FINISHED PRODUCT.

In the case of establishments:

- where the raw material comes mainly from small-scale or semi-industrial fishing and is preserved on ice, it must be analysed:
 - every day by the establishment's quality controller through sensory testing,
 - and at least once every four months by means of a physico-chemical and microbiological laboratory analysis of samples.

NB: prior to the laboratory analysis, the Fisheries Inspectorate should be called in to supervise the sampling (approximately five samples of raw material) and ensure that the samples are taken in accordance with the rules;

- products undergoing processing and finished products must also be analysed every four months (on the basis of five samples of each).

In the case of vessels:

- the quality controllers on board must take at least five samples of each type of product (raw material, product undergoing processing, finished product) every six months. The samples, weighing approximately 1 000 g, must be placed in clean plastic bags. In the event of any doubts, the Fisheries Inspectorate should be contacted.

Other:

- all products from the production units must also be tested for heavy metals (sampling once a year),
- where tuna, shark and related fish species are processed, sampling must be carried out at least twice a year to test for heavy metals and histamine,
- attention should be paid to the method of classifying samples: on the outside of the plastic bags used for collecting the samples, write the date and the vessel's name in permanent ink and mention whether the sample is a raw material, a product undergoing processing or a finished product.
- Processing method (full description of the production operation from raw material to finished product, including the infrastructure, equipment, materials, etc.). For example, in the case of hygiene/sanitary conditions, describe the Infrastructure, focusing on the area around the work rooms, the state of the sanitary facilities, the volume of the drinking water and the supply conditions, monitoring of the sewage and drainage systems, and the other points provided for in the RIGQ for vessels (Articles 39, 40 and 41), land-based establishments (Articles 28, 29, 30, 31 and 38), fishing ports and refrigerated warehouses (Articles 38, 42 and 43) and means of transport (Article 44).
- Ingredients used (name, concentration, stage at which they are used).

NB: *Application of statistical methods*

For the purpose of analysing the results of the different data on the self-monitoring system, statistical methods should be used (graphs, histograms, averages, standard deviations, etc.).

REPUBLIC OF MOZAMBIQUE MINISTRY OF FISHERIES FISHERIES INSPECTION DEPARTMENT	HYGIENE RULES (GUIDE)	FR: 17/IP 2002 version Approved by:
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LIST OF DATA TO BE SUPPLIED

The hygiene rules for vessels and land-based establishments which process or handle fisheries products must be established in writing and include the elements described below.

Hygiene rules drawn up by (name): _____ Academic training: _____

Number of years' experience in the food industry: _____ Actual member of staff of the enterprise (yes/no): _____

PLANT HYGIENE

- Areas to be cleaned (reception rooms, processing work rooms, sanitary facilities, canteen, kitchen, dormitories, locked storage areas for cleaning and disinfecting materials, storage areas for packaging materials, and cold chambers, etc.)
- Equipment and utensils which must remain clean
- Method and frequency of cleaning and disinfection (how? who? how frequently? what products and instruments are to be used?)
- Chemicals (e.g.: name of detergents and disinfectants, sodium metabisulphite, etc.), concentrations used, Ministry of Health approval
- Specific reference measures for waste management and the systematic extermination of rodents, insects and other vermin, fumigation system (to be applied every four to six months, the relevant documentary evidence being kept), arrangements to prevent domestic animals from gaining access
- Indication on the production unit plan of the distribution of rat poison, the type of product used and the frequency of application
- Water supply:
 - origin (public supply, desalinator, sea),
 - tanks (quantity stored and washing system to be checked every six months in the case of land-based establishments and at the start of the fishing trip in the case of vessels),
 - water pressure (from gravity or pumping),
 - chlorination (levels used: for processing, 2 ppm; for hand-washing, 2 to 5 ppm, for washing equipment and facilities, 50 to 150 ppm; establishments must have apparatus to enable them to measure and control chlorine levels daily),
 - laboratory checks on water quality: to be carried out every two months in the case of establishments and every four fishing trips in the case of industrial vessels, on the basis of samples taken from numbered taps indicated on the plan,
 - quantities allowed for processing operations, sanitary purposes, etc. in relation to the number of workers and the number of days the fishing trip is to last (in the case of establishments, approximately 5 000 litres plus 50 litres per worker; in the case of vessels, approximately 250 litres per day per 10 workers for one-day trips and approximately 1 000 litres per day per 20 workers for trips lasting more than one day)
- Supply/production of ice (quantity, origin of the water, type of ice and arrangements for checking whether the ice is of drinking-water quality through laboratory testing every four months in the case of establishments and every six months in the case of vessels).

PERSONAL HYGIENE

- General state of health (filing of medical certificates setting out the results of analyses to detect parasites in stools, tuberculosis tests based on sputum analyses or X-rays, urine analyses, tests for salmonella, cholera vibrio and other analyses which may be required, surveillance of wounds and recording of illnesses or symptoms such as diarrhoea, with details of the measures taken)

Clothing (e.g: overalls, boots, gloves, hood, boiler suit); information on the number of workers, the arrangements for washing clothes and, for example, sheets used on board, the number of times items are handed in each year, and the procedure for exchanging personal clothing and shoes for working clothes. The clothing described below is recommended.

In establishments

- Set of clothing No 1: for women, a plain dress or dungarees and, for men, dungarees (to be put on after showering in place of the clothes worn since leaving home), easy-to-wash moccasins where staff have to walk from the cloakrooms to the factory entrance
- Set of clothing No 2: for women and men, light-coloured overalls (to be worn over set of clothing No 1 on entering clean areas), plastic boots and socks (the main purpose of the socks is to prevent both lesions on the feet as a result of humidity and perspiration odours)
- Set of clothing No 3: possibly plastic fibre aprons in order to keep the overalls, hat, etc. clean.

On board vessels

Clothing worn on board must be plainer. It may consist of trousers and a seamless shirt made of a hard-wearing fabric, worn with moccasins.

- Body hygiene (e.g.: quantity and quality of the water on board, supply of soap and bath towels), rules on bathing and on areas for disinfecting and drying hands
- Rules on personal appearance (procedures for monitoring body hygiene and the cleanliness of clothing) and on checking the cleanliness of nails, hair, beard (monitoring procedures to be applied every two weeks), cuts and/or lesions and illnesses (procedures in the event of illness), etc.
- Rules on conduct at work (e.g. smoking, spitting, chewing or eating, sneezing or coughing), document setting out the rules, notices
- Rules on wearing accessories (jewellery, rings, watches, etc.)
- Presentation of the sanitary-inspection training programme for the year (documentation and implementing plan)

GENERAL

- Responsibility for specific tasks (name or position of the person responsible for cleaning and disinfecting, as well as for supervision)
- Arrangements for monitoring application of the hygiene rules (who? when? how?), monitoring procedures and acceptability thresholds. Mention may be made, for example, of the results of the swab contamination test (carried out by official laboratories),

which require the presence of the Fisheries Inspectorate and must be carried out:

- every six months in land-based establishments,
- at least once a year on board vessels, on their arrival.

If any contamination is detected, the application of PH, GMPs and HACCP must be reviewed.

Samples are to be collected as follows:

1. in establishments:

- during the following phases: (a) processing, (b) after washing with detergents (application of detergent followed by rinsing with water), and (c) after using disinfectant (application of the disinfectant solution, washing and drying of the area or equipment concerned), and
- at the following points: two workers' hands, two places in the sanitary facilities, one on the work table, one on the scales, one on a knife used for work purposes and one on a plastic container.

2. on board vessels:

- During the following phases: (a) on the vessel's arrival, prior to cleaning, (b) after washing with detergents (application of detergent followed by rinsing with water), and (c) after using disinfectant (application of the disinfectant solution, washing and drying of the area or equipment concerned), and
- at the following points: one place in the sanitary facilities, one on a work table, one on the scales, one on a knife used for work purposes and one on a plastic container.

In order to monitor the atmosphere, the open Petri box technique may also be used for a period of 30 minutes.

DIRECTIVE 2003/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 4 November 2003
on the prospectus to be published when securities are offered to the public or admitted to trading
and amending Directive 2001/34/EC
 (Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 44 and 95 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the European Central Bank ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

- (1) Council Directives 80/390/EEC of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing ⁽⁵⁾ and 89/298/EEC of 17 April 1989 coordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public ⁽⁶⁾ were adopted several years ago introducing a partial and complex mutual recognition mechanism which is unable to achieve the objective of the single passport provided for by this Directive. Those directives should be upgraded, updated and grouped together into a single text.
- (2) Meanwhile, Directive 80/390/EEC was integrated into Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities ⁽⁷⁾, which codifies several directives in the field of listed securities.
- (3) For reasons of consistency, however, it is appropriate to regroup the provisions of Directive 2001/34/EC which stem from Directive 80/390/EEC together with Directive 89/298/EEC and to amend Directive 2001/34/EC accordingly.
- (4) This Directive constitutes an instrument essential to the achievement of the internal market as set out in timetable form in the Commission communications 'Risk

capital action plan' and 'Implementing the framework for financial market: Action Plan' facilitating the widest possible access to investment capital on a Community-wide basis, including for small and medium-sized enterprises (SMEs) and start-ups, by granting a single passport to the issuer.

- (5) On 17 July 2000, the Council set up the Committee of Wise Men on the regulation of European securities markets. In its initial report of 9 November 2000 the Committee stresses the lack of an agreed definition of public offer of securities, with the result that the same operation is regarded as a private placement in some Member States and not in others; the current system discourages firms from raising capital on a Community-wide basis and therefore from having real access to a large, liquid and integrated financial market.
- (6) In its final report of 15 February 2001 the Committee of Wise Men proposed the introduction of new legislative techniques based on a four-level approach, namely framework principles, implementing measures, cooperation and enforcement. Level 1, the directive, should confine itself to broad, general 'framework' principles, while Level 2 should contain technical implementing measures to be adopted by the Commission with the assistance of a committee.
- (7) The Stockholm European Council of 23 and 24 March 2001 endorsed the final report of the Committee of Wise Men and the proposed four-level approach to make the regulatory process for Community securities legislation more efficient and transparent.
- (8) The resolution of the European Parliament of 5 February 2002 on the implementation of financial services legislation also endorsed the Committee of Wise Men's final report, on the basis of the solemn declaration made before Parliament the same day by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chairman of Parliament's Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process.

⁽¹⁾ OJ C 240 E, 28.8.2001, p. 272 and OJ C 20 E, 28.1.2003, p. 122.

⁽²⁾ OJ C 80, 3.4.2002, p. 52.

⁽³⁾ OJ C 344, 6.12.2001, p. 4.

⁽⁴⁾ Opinion of the European Parliament of 14 March 2002 (OJ C 47 E, 27.2.2003, p. 417), Council Common Position of 24 March 2003 (OJ C 125 E, 27.5.2003, p. 21) and Position of the European Parliament of 2 July 2003 (not yet published in the Official Journal). Decision of the Council of 15 July 2003.

⁽⁵⁾ OJ L 100, 17.4.1980, p. 1. Directive as last amended by Directive of the European Parliament and of the Council 94/18/EC (OJ L 135, 31.5.1994, p. 1).

⁽⁶⁾ OJ L 124, 5.5.1989, p. 8.

⁽⁷⁾ OJ L 184, 6.7.2001, p. 1.

- (9) According to the Stockholm European Council, Level 2 implementing measures should be used more frequently to ensure that technical provisions can be kept up to date with market and supervisory developments and deadlines should be set for all stages of Level 2.
- (10) The aim of this Directive and its implementing measures is to ensure investor protection and market efficiency, in accordance with high regulatory standards adopted in the relevant international fora.
- (11) Non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States are not covered by this Directive and thus remain unaffected by this Directive; the abovementioned issuers of such securities may, however, if they so choose, draw up a prospectus in accordance with this Directive.
- (12) Full coverage of equity and non-equity securities offered to the public or admitted to trading on regulated markets as defined by Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field⁽¹⁾, and not only securities which have been admitted to the official lists of stock exchanges, is also needed to ensure investor protection. The wide definition of securities in this Directive, which includes warrants and covered warrants and certificates, is only valid for this Directive and consequently in no way affects the various definitions of financial instruments used in national legislation for other purposes, such as taxation. Some of the securities defined in this Directive entitle the holder to acquire transferable securities or to receive a cash amount through a cash settlement determined by reference to other instruments, notably transferable securities, currencies, interest rates or yields, commodities or other indices or measures. Depositary receipts and convertible notes, e.g. securities convertible at the option of the investor, fall within the definition of non-equity securities set out in this Directive.
- (13) Issuance of securities having a similar type and/or class in the case of non-equity securities issued on the basis of an offering programme, including warrants and certificates in any form, as well as the case of securities issued in a continuous or repeated manner, should be understood as covering not only identical securities but also securities that belong in general terms to one category. These securities may include different products, such as debt securities, certificates and warrants, or the same product under the same programme, and may have different features notably in terms of seniority, types of underlying, or the basis on which to determine the redemption amount or coupon payment.
- (14) The grant to the issuer of a single passport, valid throughout the Community, and the application of the country of origin principle require the identification of the home Member State as the one best placed to regulate the issuer for the purposes of this Directive.
- (15) The disclosure requirements of the present Directive do not prevent a Member State or a competent authority or an exchange through its rule book to impose other particular requirements in the context of admission to trading of securities on a regulated market (notably regarding corporate governance). Such requirements may not directly or indirectly restrict the drawing up, the content and the dissemination of a prospectus approved by a competent authority.
- (16) One of the objectives of this Directive is to protect investors. It is therefore appropriate to take account of the different requirements for protection of the various categories of investors and their level of expertise. Disclosure provided by the prospectus is not required for offers limited to qualified investors. In contrast, any resale to the public or public trading through admission to trading on a regulated market requires the publication of a prospectus.
- (17) Issuers, offerors or persons asking for the admission to trading on a regulated market of securities which are exempted from the obligation to publish a prospectus will benefit from the single passport if they comply with this Directive.
- (18) The provision of full information concerning securities and issuers of those securities promotes, together with rules on the conduct of business, the protection of investors. Moreover, such information provides an effective means of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The appropriate way to make this information available is to publish a prospectus.
- (19) Investment in securities, like any other form of investment, involves risk. Safeguards for the protection of the interests of actual and potential investors are required in all Member States in order to enable them to make an informed assessment of such risks and thus to take investment decisions in full knowledge of the facts.

⁽¹⁾ OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).

- (20) Such information, which needs to be sufficient and as objective as possible as regards the financial circumstances of the issuer and the rights attaching to the securities, should be provided in an easily analysable and comprehensible form. Harmonisation of the information contained in the prospectus should provide equivalent investor protection at Community level.
- (21) Information is a key factor in investor protection; a summary conveying the essential characteristics of, and risks associated with, the issuer, any guarantor and the securities should be included in the prospectus. To ensure easy access to this information, the summary should be written in non-technical language and normally should not exceed 2 500 words in the language in which the prospectus was originally drawn up.
- (22) Best practices have been adopted at international level in order to allow cross-border offers of equities to be made using a single set of disclosure standards established by the International Organisation of Securities Commissions (IOSCO); the IOSCO disclosure standards⁽¹⁾ will upgrade information available for the markets and investors and at the same time will simplify the procedure for Community issuers wishing to raise capital in third countries. The Directive also calls for tailored disclosure standards to be adopted for other types of securities and issuers.
- (23) Fast-track procedures for issuers admitted to trading on a regulated market and frequently raising capital on these markets require the introduction at Community level of a new format of prospectuses for offering programmes or mortgage bonds and a new registration document system. Issuers may choose not to use those formats and therefore to draft the prospectus as a single document.
- (24) The content of a base prospectus should, in particular, take into account the need for flexibility in relation to the information to be provided about the securities.
- (25) Omission of sensitive information to be included in a prospectus should be allowed through a derogation granted by the competent authority in certain circumstances in order to avoid detrimental situations for an issuer.
- (26) A clear time limit should be set for the validity of a prospectus in order to avoid outdated information.
- (27) Investors should be protected by ensuring publication of reliable information. The issuers whose securities are admitted to trading on a regulated market are subject to an ongoing disclosure obligation but are not required to publish updated information regularly. Further to this obligation, issuers should, at least annually, list all relevant information published or made available to the public over the preceding 12 months, including information provided to the various reporting requirements laid down in other Community legislation. This should make it possible to ensure the publication of consistent and easily understandable information on a regular basis. To avoid excessive burdens for certain issuers, issuers of non-equity securities with high minimum denomination should not be required to meet this obligation.
- (28) It is necessary for the annual information to be provided by issuers whose securities are admitted to trading on a regulated market to be appropriately monitored by Member States in accordance with their obligations under the provisions of Community and national law concerning the regulation of securities, issuers of securities and securities markets.
- (29) The opportunity of allowing issuers to incorporate by reference documents containing the information to be disclosed in a prospectus — provided that the documents incorporated by reference have been previously filed with or accepted by the competent authority — should facilitate the procedure of drawing up a prospectus and lower the costs for the issuers without endangering investor protection.
- (30) Differences regarding the efficiency, methods and timing of the checking of the information given in a prospectus not only make it more difficult for undertakings to raise capital or to obtain admission to trading on a regulated market in more than one Member State but also hinder the acquisition by investors established in one Member State of securities offered by an issuer established in another Member State or admitted to trading in another Member State. These differences should be eliminated by harmonising the rules and regulations in order to achieve an adequate degree of equivalence of the safeguards required in each Member State to ensure the provision of information which is sufficient and as objective as possible for actual or potential securities holders.

⁽¹⁾ International disclosure standards for cross-border offering and initial listings by foreign issuers, Part I, International Organisation of Securities Commissions, September 1998.

- (31) To facilitate circulation of the various documents making up the prospectus, the use of electronic communication facilities such as the Internet should be encouraged. The prospectus should always be delivered in paper form, free of charge to investors on request.
- (32) The prospectus should be filed with the relevant competent authority and be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market, subject to European Union provisions relating to data protection.
- (33) It is also necessary, in order to avoid loopholes in Community legislation which would undermine public confidence and therefore prejudice the proper functioning of financial markets, to harmonise advertisements.
- (34) Any new matter liable to influence the assessment of the investment, arising after the publication of the prospectus but before the closing of the offer or the start of trading on a regulated market, should be properly evaluated by investors and therefore requires the approval and dissemination of a supplement to the prospectus.
- (35) The obligation for an issuer to translate the full prospectus into all the relevant official languages discourages cross-border offers or multiple trading. To facilitate cross-border offers, where the prospectus is drawn up in a language that is customary in the sphere of international finance, the host or home Member State should only be entitled to require a summary in its official language(s).
- (36) The competent authority of the host Member State should be entitled to receive a certificate from the competent authority of the home Member State which states that the prospectus has been drawn up in accordance with this Directive. In order to ensure that the purposes of this Directive will be fully achieved, it is also necessary to include within its scope securities issued by issuers governed by the laws of third countries.
- (37) A variety of competent authorities in Member States, having different responsibilities, may create unnecessary costs and overlapping of responsibilities without providing any additional benefit. In each Member State one single competent authority should be designated to approve prospectuses and to assume responsibility for supervising compliance with this Directive. Under strict conditions, a Member State should be allowed to designate more than one competent authority, but only one will assume the duties for international cooperation. Such an authority or authorities should be established as an administrative authority and in such a form that their independence from economic actors is guaranteed and conflicts of interest are avoided. The designation of a competent authority for prospectus approval should not exclude cooperation between that authority and other entities, with a view to guaranteeing efficient scrutiny and approval of prospectuses in the interest of issuers, investors, markets participants and markets alike. Any delegation of tasks relating to the obligations provided for in this Directive and in its implementing measures should be reviewed, in accordance with Article 31, five years after the date of entry into force of this Directive and should, except for publication on the Internet of approved prospectuses, and the filing of prospectuses as mentioned in Article 14, end eight years after the entry into force of this Directive.
- (38) A common minimum set of powers for the competent authorities will guarantee the effectiveness of their supervision. The flow of information to the markets required by Directive 2001/34/EC should be ensured and action against breaches should be taken by competent authorities.
- (39) For the purposes of carrying out their duties, cooperation between competent authorities of the Member States is required.
- (40) Technical guidance and implementing measures for the rules laid down in this Directive may from time to time be necessary to take into account developments on financial markets. The Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive and provided that the Commission acts in accordance with the principles set out in this Directive, after consulting the European Securities Committee established by Commission Decision 2001/528/EC ⁽¹⁾.
- (41) In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles:
- the need to ensure confidence in financial markets among small investors and small and medium-sized enterprises (SMEs) by promoting high standards of transparency in financial markets,
 - the need to provide investors with a wide range of competing investment opportunities and a level of disclosure and protection tailored to their circumstances,
 - the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against white-collar crime,
 - the need for a high level of transparency and consultation with all market participants and with the European Parliament and the Council,

⁽¹⁾ OJ L 191, 13.7.2001, p. 45.

- the need to encourage innovation in financial markets if they are to be dynamic and efficient,
 - the need to ensure systemic stability of the financial system by close and reactive monitoring of financial innovation,
 - the importance of reducing the cost of, and increasing access to, capital,
 - the need to balance, on a long-term basis, the costs and benefits to market participants (including SMEs and small investors) of any implementing measures,
 - the need to foster the international competitiveness of the Community's financial markets without prejudice to a much-needed extension of international cooperation,
 - the need to achieve a level playing field for all market participants by establishing Community legislation every time it is appropriate,
 - the need to respect differences in national financial markets where these do not unduly impinge on the coherence of the single market,
 - the need to ensure coherence with other Community legislation in this area, as imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.
- (42) The European Parliament should be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, this period may be shortened. If, within that period, a resolution is passed by the European Parliament, the Commission should re-examine the draft measures.
- (43) Member States should lay down a system of sanctions for breaches of the national provisions adopted pursuant to this Directive and should take all the measures necessary to ensure that these sanctions are applied. The sanctions thus provided for should be effective, proportional and dissuasive.
- (44) Provision should be made for the right of judicial review of decisions taken by Member States' competent authorities in respect of the application of this Directive.
- (45) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring the completion of a single securities market to lay down rules on a single passport for issuers. This Directive does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.
- (46) The assessment made by the Commission of the application of this Directive should focus in particular on the process of approval of prospectuses by the competent authorities of the Member States, and more generally on the application of the home-country principle, and whether or not problems of investor protection and market efficiency might result from this application; the Commission should also examine the functioning of Article 10.
- (47) For future developments of this Directive, consideration should be given to the matter of deciding which approval mechanism should be adopted to enhance further the uniform application of Community legislation on prospectuses, including the possible establishment of a European Securities Unit.
- (48) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (49) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose and scope

1. The purpose of this Directive is to harmonise requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.
2. This Directive shall not apply to:
 - (a) units issued by collective investment undertakings other than the closed-end type;
 - (b) non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies of which one or more Member States are members, by the European Central Bank or by the central banks of the Member States;
 - (c) shares in the capital of central banks of the Member States;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- (d) securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities;
- (e) securities issued by associations with legal status or non-profit-making bodies, recognised by a Member State, with a view to their obtaining the means necessary to achieve their non-profit-making objectives;
- (f) non-equity securities issued in a continuous or repeated manner by credit institutions provided that these securities:
- (i) are not subordinated, convertible or exchangeable;
 - (ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument;
 - (iii) materialise reception of repayable deposits;
 - (iv) are covered by a deposit guarantee scheme under Directive 94/19/EC of the European Parliament and of the Council on deposit-guarantee schemes ⁽¹⁾;
- (g) non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property or a part thereof and where the shares cannot be sold on without this right being given up;
- (h) securities included in an offer where the total consideration of the offer is less than EUR 2 500 000, which limit shall be calculated over a period of 12 months;
- (i) 'bostadsobligationer' issued repeatedly by credit institutions in Sweden whose main purpose is to grant mortgage loans, provided that
- (i) the 'bostadsobligationer' issued are of the same series;
 - (ii) the 'bostadsobligationer' are issued on tap during a specified issuing period;
 - (iii) the terms and conditions of the 'bostadsobligationer' are not changed during the issuing period;
 - (iv) the sums deriving from the issue of the said 'bostadsobligationer', in accordance with the articles of association of the issuer, are placed in assets which provide sufficient coverage for the liability deriving from securities;
- (j) non-equity securities issued in a continuous or repeated manner by credit institutions where the total consideration of the offer is less than EUR 50 000 000, which limit shall be calculated over a period of 12 months, provided that these securities:
- (i) are not subordinated, convertible or exchangeable;
 - (ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.

3. Notwithstanding paragraph 2(b), (d), (h), (i) and (j), an issuer, an offeror or a person asking for admission to trading on a regulated market shall be entitled to draw up a prospectus in accordance with this Directive when securities are offered to the public or admitted to trading.

Article 2

Definitions

1. For the purposes of this Directive, the following definitions shall apply:

- (a) 'securities' means transferable securities as defined by Article 1(4) of Directive 93/22/EEC with the exception of money market instruments as defined by Article 1(5) of Directive 93/22/EEC, having a maturity of less than 12 months. For these instruments national legislation may be applicable;
- (b) 'equity securities' means shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer;
- (c) 'non-equity securities' means all securities that are not equity securities;
- (d) 'offer of securities to the public' means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries;
- (e) 'qualified investors' means:
 - (i) legal entities which are authorised or regulated to operate in the financial markets, including: credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, collective investment schemes and their management companies, pension funds and their management companies, commodity dealers, as well as entities not so authorised or regulated whose corporate purpose is solely to invest in securities;
 - (ii) national and regional governments, central banks, international and supranational institutions such as the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;
 - (iii) other legal entities which do not meet two of the three criteria set out in paragraph (f);

⁽¹⁾ OJ L 135, 31.5.1994, p. 5.

- (iv) certain natural persons: subject to mutual recognition, a Member State may choose to authorise natural persons who are resident in the Member State and who expressly ask to be considered as qualified investors if these persons meet at least two of the criteria set out in paragraph 2;
- (v) certain SMEs: subject to mutual recognition, a Member State may choose to authorise SMEs which have their registered office in that Member State and who expressly ask to be considered as qualified investors;
- (f) 'small and medium-sized enterprises' means companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding EUR 43 000 000 and an annual net turnover not exceeding EUR 50 000 000;
- (g) 'credit institution' means an undertaking as defined by Article 1(1)(a) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions ⁽¹⁾;
- (h) 'issuer' means a legal entity which issues or proposes to issue securities;
- (i) 'person making an offer' (or 'offeror') means a legal entity or individual which offers securities to the public;
- (j) 'regulated market' means a market as defined by Article 1(13) of Directive 93/22/EEC;
- (k) 'offering programme' means a plan which would permit the issuance of non-equity securities, including warrants in any form, having a similar type and/or class, in a continuous or repeated manner during a specified issuing period;
- (l) 'securities issued in a continuous or repeated manner' means issues on tap or at least two separate issues of securities of a similar type and/or class over a period of 12 months;
- (m) 'home Member State' means:
- (i) for all Community issuers of securities which are not mentioned in (ii), the Member State where the issuer has its registered office;
 - (ii) for any issues of non-equity securities whose denomination per unit amounts to at least EUR 1 000, and for any issues of non-equity securities giving the right to acquire any transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised, provided that the issuer of the non-equity securities is not the issuer of the underlying securities or an entity belonging to the group of the latter issuer, the Member State where the issuer has its registered office, or where the securities were or are to be admitted to trading on a regulated market or where the securities are offered to the public, at the choice of the issuer, the offeror or the person asking for admission, as the case may be. The same regime shall be applicable to non-equity securities in a currency other than euro, provided that the value of such minimum denomination is nearly equivalent to EUR 1 000;
- (iii) for all issuers of securities incorporated in a third country, which are not mentioned in (ii), the Member State where the securities are intended to be offered to the public for the first time after the date of entry into force of this Directive or where the first application for admission to trading on a regulated market is made, at the choice of the issuer, the offeror or the person asking for admission, as the case may be, subject to a subsequent election by issuers incorporated in a third country if the home Member State was not determined by their choice;
- (n) 'host Member State' means the State where an offer to the public is made or admission to trading is sought, when different from the home Member State;
- (o) 'collective investment undertaking other than the closed-end type' means unit trusts and investment companies:
- (i) the object of which is the collective investment of capital provided by the public, and which operate on the principle of risk-spreading;
 - (ii) the units of which are, at the holder's request, repurchased or redeemed, directly or indirectly, out of the assets of these undertakings;
- (p) 'units of a collective investment undertaking' mean securities issued by a collective investment undertaking as representing the rights of the participants in such an undertaking over its assets;
- (q) 'approval' means the positive act at the outcome of the scrutiny of the completeness of the prospectus by the home Member State's competent authority including the consistency of the information given and its comprehensibility;
- (r) 'base prospectus' means a prospectus containing all relevant information as specified in Articles 5, 7 and 16 in case there is a supplement, concerning the issuer and the securities to be offered to the public or admitted to trading, and, at the choice of the issuer, the final terms of the offering.
2. For the purposes of paragraph 1(e)(iv) the criteria are as follows:
- (a) the investor has carried out transactions of a significant size on securities markets at an average frequency of, at least, 10 per quarter over the previous four quarters;
 - (b) the size of the investor's securities portfolio exceeds EUR 0,5 million;

⁽¹⁾ OJ L 126, 26.5.2000, p. 1. Directive as last amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).

(c) the investor works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment.

3. For the purposes of paragraphs 1(e)(iv) and (v) the following shall apply:

Each competent authority shall ensure that appropriate mechanisms are in place for a register of natural persons and SMEs considered as qualified investors, taking into account the need to ensure an adequate level of data protection. The register shall be available to all issuers. Each natural person or SME wishing to be considered as a qualified investor shall register and each registered investor may decide to opt out at any moment.

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure set out in Article 24(2), adopt implementing measures concerning the definitions referred to in paragraph 1, including adjustment of the figures used for the definition of SMEs, taking into account Community legislation and recommendations as well as economic developments and disclosure measures relating to the registration of individual qualified investors.

Article 3

Obligation to publish a prospectus

1. Member States shall not allow any offer of securities to be made to the public within their territories without prior publication of a prospectus.

2. The obligation to publish a prospectus shall not apply to the following types of offer:

- (a) an offer of securities addressed solely to qualified investors; and/or
- (b) an offer of securities addressed to fewer than 100 natural or legal persons per Member State, other than qualified investors; and/or
- (c) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 50 000 per investor, for each separate offer; and/or
- (d) an offer of securities whose denomination per unit amounts to at least EUR 50 000; and/or
- (e) an offer of securities with a total consideration of less than EUR 100 000, which limit shall be calculated over a period of 12 months.

However, any subsequent resale of securities which were previously the subject of one or more of the types of offer mentioned in this paragraph shall be regarded as a separate offer and the definition set out in Article 2(1)(d) shall apply for the purpose of deciding whether that resale is an offer of securities to the public. The placement of securities through financial intermediaries shall be subject to publication of a prospectus if none of the conditions (a) to (e) are met for the final placement.

3. Member States shall ensure that any admission of securities to trading on a regulated market situated or operating within their territories is subject to the publication of a prospectus.

Article 4

Exemptions from the obligation to publish a prospectus

1. The obligation to publish a prospectus shall not apply to offers of securities to the public of the following types of securities:

- (a) shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital;
- (b) securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Community legislation;
- (c) securities offered, allotted or to be allotted in connection with a merger, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Community legislation;
- (d) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- (e) securities offered, allotted or to be allotted to existing or former directors or employees by their employer which has securities already admitted to trading on a regulated market or by an affiliated undertaking, provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.

2. The obligation to publish a prospectus shall not apply to the admission to trading on a regulated market of the following types of securities:

- (a) shares representing, over a period of 12 months, less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market;
- (b) shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, if the issuing of such shares does not involve any increase in the issued capital;
- (c) securities offered in connection with a takeover by means of an exchange offer, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Community legislation;

- (d) securities offered, allotted or to be allotted in connection with a merger, provided that a document is available containing information which is regarded by the competent authority as being equivalent to that of the prospectus, taking into account the requirements of Community legislation;
- (e) shares offered, allotted or to be allotted free of charge to existing shareholders, and dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;
- (f) securities offered, allotted or to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is made available containing information on the number and nature of the securities and the reasons for and detail of the offer;
- (g) shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market;
- (h) securities already admitted to trading on another regulated market, on the following conditions:
- (i) that these securities, or securities of the same class, have been admitted to trading on that other regulated market for more than 18 months;
 - (ii) that, for securities first admitted to trading on a regulated market after the date of entry into force of this Directive, the admission to trading on that other regulated market was associated with an approved prospectus made available to the public in conformity with Article 14;
 - (iii) that, except where (ii) applies, for securities first admitted to listing after 30 June 1983, listing particulars were approved in accordance with the requirements of Directive 80/390/EEC or Directive 2001/34/EC;
 - (iv) that the ongoing obligations for trading on that other regulated market have been fulfilled;
 - (v) that the person seeking the admission of a security to trading on a regulated market under this exemption makes a summary document available to the public in a language accepted by the competent authority of the Member State of the regulated market where admission is sought;
 - (vi) that the summary document referred to in (v) is made available to the public in the Member State of the regulated market where admission to trading is sought in the manner set out in Article 14(2); and

- (vii) that the contents of the summary document shall comply with Article 5(2). Furthermore the document shall state where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to his ongoing disclosure obligations is available.

3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraphs 1(b), 1(c), 2(c) and 2(d), notably in relation to the meaning of equivalence.

CHAPTER II

DRAWING UP OF THE PROSPECTUS

Article 5

The prospectus

1. Without prejudice to Article 8(2), the prospectus shall contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. This information shall be presented in an easily analysable and comprehensible form.

2. The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market. It shall also include a summary. The summary shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities, in the language in which the prospectus was originally drawn up. The summary shall also contain a warning that:

- (a) it should be read as an introduction to the prospectus;
- (b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;
- (c) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and
- (d) civil liability attaches to those persons who have tabled the summary including any translation thereof, and applied for its notification, but only if the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

Where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination of at least EUR 50 000, there shall be no requirement to provide a summary except when requested by a Member State as provided for in Article 19(4).

3. Subject to paragraph 4, the issuer, offeror or person asking for the admission to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall divide the required information into a registration document, a securities note and a summary note. The registration document shall contain the information relating to the issuer. The securities note shall contain the information concerning the securities offered to the public or to be admitted to trading on a regulated market.

4. For the following types of securities, the prospectus can, at the choice of the issuer, offeror or person asking for the admission to trading on a regulated market consist of a base prospectus containing all relevant information concerning the issuer and the securities offered to the public or to be admitted to trading on a regulated market:

- (a) non-equity securities, including warrants in any form, issued under an offering programme;
- (b) non-equity securities issued in a continuous or repeated manner by credit institutions,
 - (i) where the sums deriving from the issue of the said securities, under national legislation, are placed in assets which provide sufficient coverage for the liability deriving from securities until their maturity date;
 - (ii) where, in the event of the insolvency of the related credit institution, the said sums are intended, as a priority, to repay the capital and interest falling due, without prejudice to the provisions of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions⁽¹⁾.

The information given in the base prospectus shall be supplemented, if necessary, in accordance with Article 16, with updated information on the issuer and on the securities to be offered to the public or to be admitted to trading on a regulated market.

If the final terms of the offer are not included in either the base prospectus or a supplement, the final terms shall be provided to investors and filed with the competent authority when each public offer is made as soon as practicable and if possible in advance of the beginning of the offer. The provisions of Article 8(1)(a) shall be applicable in any such case.

5. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the format of the prospectus or base prospectus and supplements.

Article 6

Responsibility attaching to the prospectus

1. Member States shall ensure that responsibility for the information given in a prospectus attaches at least to the issuer or its administrative, management or supervisory bodies, the offeror, the person asking for the admission to trading on a regulated market or the guarantor, as the case may be. The persons responsible shall be clearly identified in the prospectus by their names and functions or, in the case of legal persons, their names and registered offices, as well as declarations by them that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its import.

2. Member States shall ensure that their laws, regulation and administrative provisions on civil liability apply to those persons responsible for the information given in a prospectus.

However, Member States shall ensure that no civil liability shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus.

Article 7

Minimum information

1. Detailed implementing measures regarding the specific information which must be included in a prospectus, avoiding duplication of information when a prospectus is composed of separate documents, shall be adopted by the Commission in accordance with the procedure referred to in Article 24(2). The first set of implementing measures shall be adopted by 1 July 2004.

2. In particular, for the elaboration of the various models of prospectuses, account shall be taken of the following:

- (a) the various types of information needed by investors relating to equity securities as compared with non-equity securities; a consistent approach shall be taken with regard to information required in a prospectus for securities which have a similar economic rationale, notably derivative securities;

⁽¹⁾ OJ L 125, 5.5.2001, p. 15.

- (b) the various types and characteristics of offers and admissions to trading on a regulated market of non-equity securities. The information required in a prospectus shall be appropriate from the point of view of the investors concerned for non-equity securities having a denomination per unit of at least EUR 50 000;
- (c) the format used and the information required in prospectuses relating to non-equity securities, including warrants in any form, issued under an offering programme;
- (d) the format used and the information required in prospectuses relating to non-equity securities, in so far as these securities are not subordinated, convertible, exchangeable, subject to subscription or acquisition rights or linked to derivative instruments, issued in a continuous or repeated manner by entities authorised or regulated to operate in the financial markets within the European Economic Area;
- (e) the various activities and size of the issuer, in particular SMEs. For such companies the information shall be adapted to their size and, where appropriate, to their shorter track record;
- (f) if applicable, the public nature of the issuer.

3. The implementing measures referred to in paragraph 1 shall be based on the standards in the field of financial and non-financial information set out by international securities commission organisations, and in particular by IOSCO and on the indicative Annexes to this Directive.

Article 8

Omission of information

1. Member States shall ensure that where the final offer price and amount of securities which will be offered to the public cannot be included in the prospectus:

- (a) the criteria, and/or the conditions in accordance with which the above elements will be determined or, in the case of price, the maximum price, are disclosed in the prospectus; or

- (b) the acceptances of the purchase or subscription of securities may be withdrawn for not less than two working days after the final offer price and amount of securities which will be offered to the public have been filed.

The final offer price and amount of securities shall be filed with the competent authority of the home Member State and published in accordance with the arrangements provided for in Article 14(2).

2. The competent authority of the home Member State may authorise the omission from the prospectus of certain information provided for in this Directive or in the implementing measures referred to in Article 7(1), if it considers that:

- (a) disclosure of such information would be contrary to the public interest; or
- (b) disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead the public with regard to facts and circumstances essential for an informed assessment of the issuer, offeror or guarantor, if any, and of the rights attached to the securities to which the prospectus relates; or
- (c) such information is of minor importance only for a specific offer or admission to trading on a regulated market and is not such as will influence the assessment of the financial position and prospects of the issuer, offeror or guarantor, if any.

3. Without prejudice to the adequate information of investors, where, exceptionally, certain information required by implementing measures referred to in Article 7(1) to be included in a prospectus is inappropriate to the issuer's sphere of activity or to the legal form of the issuer or to the securities to which the prospectus relates, the prospectus shall contain information equivalent to the required information. If there is no such information, this requirement shall not apply.

4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraph 2.

*Article 9***Validity of a prospectus, base prospectus and registration document**

1. A prospectus shall be valid for 12 months after its publication for offers to the public or admissions to trading on a regulated market, provided that the prospectus is completed by any supplements required pursuant to Article 16.
2. In the case of an offering programme, the base prospectus, previously filed, shall be valid for a period of up to 12 months.
3. In the case of non-equity securities referred to in Article 5(4)(b), the prospectus shall be valid until no more of the securities concerned are issued in a continuous or repeated manner.
4. A registration document, as referred to in Article 5(3), previously filed, shall be valid for a period of up to 12 months provided that it has been updated in accordance with Article 10(1). The registration document accompanied by the securities note, updated if applicable in accordance with Article 12, and the summary note shall be considered to constitute a valid prospectus.

*Article 10***Information**

1. Issuers whose securities are admitted to trading on a regulated market shall at least annually provide a document that contains or refers to all information that they have published or made available to the public over the preceding 12 months in one or more Member States and in third countries in compliance with their obligations under Community and national laws and rules dealing with the regulation of securities, issuers of securities and securities markets. Issuers shall refer at least to the information required pursuant to company law directives, Directive 2001/34/EC and Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards ⁽¹⁾.
2. The document shall be filed with the competent authority of the home Member State after the publication of the financial statement. Where the document refers to information, it shall be stated where the information can be obtained.
3. The obligation set out in paragraph 1 shall not apply to issuers of non-equity securities whose denomination per unit amounts to at least EUR 50 000.
4. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission may, in accordance with the proce-

⁽¹⁾ OJ L 243, 11.9.2002, p. 1.

cedure referred to in Article 24(2), adopt implementing measures concerning paragraph 1. These measures will relate only to the method of publication of the disclosure requirements mentioned in paragraph 1 and will not entail new disclosure requirements. The first set of implementing measures shall be adopted by 1 July 2004.

*Article 11***Incorporation by reference**

1. Member States shall allow information to be incorporated in the prospectus by reference to one or more previously or simultaneously published documents that have been approved by the competent authority of the home Member State or filed with it in accordance with this Directive, in particular pursuant to Article 10, or with Titles IV and V of Directive 2001/34/EC. This information shall be the latest available to the issuer. The summary shall not incorporate information by reference.
2. When information is incorporated by reference, a cross-reference list must be provided in order to enable investors to identify easily specific items of information.
3. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the information to be incorporated by reference. The first set of implementing measures shall be adopted by 1 July 2004.

*Article 12***Prospectuses consisting of separate documents**

1. An issuer which already has a registration document approved by the competent authority shall be required to draw up only the securities note and the summary note when securities are offered to the public or admitted to trading on a regulated market.
2. In this case, the securities note shall provide information that would normally be provided in the registration document if there has been a material change or recent development which could affect investors' assessments since the latest updated registration document or any supplement as provided for in Article 16 was approved. The securities and summary notes shall be subject to a separate approval.
3. Where an issuer has only filed a registration document without approval, the entire documentation, including updated information, shall be subject to approval.

CHAPTER III

ARRANGEMENTS FOR APPROVAL AND PUBLICATION OF THE PROSPECTUS*Article 13***Approval of the prospectus**

1. No prospectus shall be published until it has been approved by the competent authority of the home Member State.

2. This competent authority shall notify the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be, of its decision regarding the approval of the prospectus within 10 working days of the submission of the draft prospectus.

If the competent authority fails to give a decision on the prospectus within the time limits laid down in this paragraph and paragraph 3, this shall not be deemed to constitute approval of the application.

3. The time limit referred to in paragraph 2 shall be extended to 20 working days if the public offer involves securities issued by an issuer which does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public.

4. If the competent authority finds, on reasonable grounds, that the documents submitted to it are incomplete or that supplementary information is needed, the time limits referred to in paragraphs 2 and 3 shall apply only from the date on which such information is provided by the issuer, the offeror or the person asking for admission to trading on a regulated market.

In the case referred to in paragraph 2 the competent authority should notify the issuer if the documents are incomplete within 10 working days of the submission of the application.

5. The competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that authority. Furthermore, this transfer shall be notified to the issuer, the offeror or the person asking for admission to trading on a regulated market within three working days from the date of the decision taken by the competent authority of the home Member State. The time limit referred to in paragraph 2 shall apply from that date.

6. This Directive shall not affect the competent authority's liability, which shall continue to be governed solely by national law.

Member States shall ensure that their national provisions on the liability of competent authorities apply only to approvals of prospectuses by their competent authority or authorities.

7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission may, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the conditions in accordance with which time limits may be adjusted.

*Article 14***Publication of the prospectus**

1. Once approved, the prospectus shall be filed with the competent authority of the home Member State and shall be made available to the public by the issuer, offeror or person asking for admission to trading on a regulated market as soon as practicable and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer.

2. The prospectus shall be deemed available to the public when published either:

- (a) by insertion in one or more newspapers circulated throughout, or widely circulated in, the Member States in which the offer to the public is made or the admission to trading is sought; or
- (b) in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the financial intermediaries placing or selling the securities, including paying agents; or
- (c) in an electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or
- (d) in an electronic form on the website of the regulated market where the admission to trading is sought; or
- (e) in electronic form on the website of the competent authority of the home Member State if the said authority has decided to offer this service.

A home Member State may require issuers which publish their prospectus in accordance with (a) or (b) also to publish their prospectus in an electronic form in accordance with (c).

3. In addition, a home Member State may require publication of a notice stating how the prospectus has been made available and where it can be obtained by the public.

4. The competent authority of the home Member State shall publish on its website over a period of 12 months, at its choice, all the prospectuses approved, or at least the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the issuer, or on the website of the regulated market.

5. In the case of a prospectus comprising several documents and/or incorporating information by reference, the documents and information making up the prospectus may be published and circulated separately provided that the said documents are made available, free of charge, to the public, in accordance with the arrangements established in paragraph 2. Each document shall indicate where the other constituent documents of the full prospectus may be obtained.

6. The text and the format of the prospectus, and/or the supplements to the prospectus, published or made available to the public, shall at all times be identical to the original version approved by the competent authority of the home Member State.

7. Where the prospectus is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities.

8. In order to take account of technical developments on financial markets and to ensure uniform application of the Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning paragraphs 1, 2, 3 and 4. The first set of implementing measures shall be adopted by 1 July 2004.

Article 15

Advertisements

1. Any type of advertisements relating either to an offer to the public of securities or to an admission to trading on a regulated market shall observe the principles contained in paragraphs 2 to 5. Paragraphs 2 to 4 shall apply only to cases where the issuer, the offeror or the person applying for admission to trading is covered by the obligation to draw up a prospectus.

2. Advertisements shall state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it.

3. Advertisements shall be clearly recognisable as such. The information contained in an advertisement shall not be inaccurate, or misleading. This information shall also be consistent with the information contained in the prospectus, if already published, or with the information required to be in the prospectus, if the prospectus is published afterwards.

4. In any case, all information concerning the offer to the public or the admission to trading on a regulated market disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with that contained in the prospectus.

5. When according to this Directive no prospectus is required, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings relating to offers of securities, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed. Where a prospectus is required to be published, such information shall be included in the prospectus or in a supplement to the prospectus in accordance with Article 16(1).

6. The competent authority of the home Member State shall have the power to exercise control over the compliance of advertising activity, relating to a public offer of securities or an admission to trading on a regulated market, with the principles referred to in paragraphs 2 to 5.

7. In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall, in accordance with the procedure referred to in Article 24(2), adopt implementing measures concerning the dissemination of advertisements announcing the intention to offer securities to the public or the admission to trading on a regulated market, in particular before the prospectus has been made available to the public or before the opening of the subscription, and concerning paragraph 4. The first set of implementing measures shall be adopted by the Commission by 1 July 2004.

Article 16

Supplements to the prospectus

1. Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement to the prospectus. Such a supplement shall be approved in the same way in a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original prospectus was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement.

2. Investors who have already agreed to purchase or subscribe for the securities before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two working days after the publication of the supplement, to withdraw their acceptances.

CHAPTER IV

CROSS-BORDER OFFERS AND ADMISSION TO TRADING*Article 17***Community scope of approvals of prospectuses**

1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that the competent authority of each host Member State is notified in accordance with Article 18. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses.

2. If there are significant new factors, material mistakes or inaccuracies, as referred to in Article 16, arising since the approval of the prospectus, the competent authority of the home Member State shall require the publication of a supplement to be approved as provided for in Article 13(1). The competent authority of the host Member State may draw the attention of the competent authority of the home Member State to the need for any new information.

*Article 18***Notification**

1. The competent authority of the home Member State shall, at the request of the issuer or the person responsible for drawing up the prospectus and within three working days following that request or, if the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus provide the competent authority of the host Member State with a certificate of approval attesting that the prospectus has been drawn up in accordance with this Directive and with a copy of the said prospectus. If applicable, this notification shall be accompanied by a translation of the summary produced under the responsibility of the issuer or person responsible for drawing up the prospectus. The same procedure shall be followed for any supplement to the prospectus.

2. The application of the provisions of Article 8(2) and (3) shall be stated in the certificate, as well as its justification.

CHAPTER V

USE OF LANGUAGES AND ISSUERS INCORPORATED IN THIRD COUNTRIES*Article 19***Use of languages**

1. Where an offer to the public is made or admission to trading on a regulated market is sought only in the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State.

2. Where an offer to the public is made or admission to trading on a regulated market is sought in one or more Member States excluding the home Member State, the prospectus shall be drawn up either in a language accepted by the competent authorities of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission, as the case may be. The competent authority of each host Member State may only require that the summary be translated into its official language(s).

For the purpose of the scrutiny by the competent authority of the home Member State, the prospectus shall be drawn up either in a language accepted by this authority or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission to trading, as the case may be.

3. Where an offer to the public is made or admission to trading on a regulated market is sought in more than one Member State including the home Member State, the prospectus shall be drawn up in a language accepted by the competent authority of the home Member State and shall also be made available either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, offeror, or person asking for admission to trading, as the case may be. The competent authority of each host Member State may only require that the summary referred to in Article 5(2) be translated into its official language(s).

4. Where admission to trading on a regulated market of non-equity securities whose denomination per unit amounts to at least EUR 50 000 is sought in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission to trading, as the case may be. Member States may choose to require in their national legislation that a summary be drawn up in their official language(s).

*Article 20***Issuers incorporated in third countries**

1. The competent authority of the home Member State of issuers having their registered office in a third country may approve a prospectus for an offer to the public or for admission to trading on a regulated market, drawn up in accordance with the legislation of a third country, provided that:

- (a) the prospectus has been drawn up in accordance with international standards set by international securities commission organisations, including the IOSCO disclosure standards;

(b) the information requirements, including information of a financial nature, are equivalent to the requirements under this Directive.

2. In the case of an offer to the public or admission to trading on a regulated market of securities, issued by an issuer incorporated in a third country, in a Member State other than the home Member State, the requirements set out in Articles 17, 18 and 19 shall apply.

3. In order to ensure uniform application of this Directive, the Commission may adopt implementing measures in accordance with the procedure referred to in Article 24(2), stating that a third country ensures the equivalence of prospectuses drawn up in that country with this Directive, by reason of its national law or of practices or procedures based on international standards set by international organisations, including the IOSCO disclosure standards.

CHAPTER VI

COMPETENT AUTHORITIES

Article 21

Powers

1. Each Member State shall designate a central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied.

However, a Member State may, if so required by national law, designate other administrative authorities to apply Chapter III.

These competent authorities shall be completely independent from all market participants.

If an offer of securities is made to the public or admission to trading on a regulated market is sought in a Member State other than the home Member State, only the central competent administrative authority designated by each Member State shall be entitled to approve the prospectus.

2. Member States may allow their competent authority or authorities to delegate tasks. Except for delegation of the publication on the Internet of approved prospectuses and the filing of prospectuses as mentioned in Article 14, any delegation of tasks relating to the obligations provided for in this Directive and in its implementing measures shall be reviewed, in accordance with Article 31 by 31 December 2008, and shall end on 31 December 2011. Any delegation of tasks to entities other than the authorities referred to in paragraph 1 shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out.

These conditions shall include a clause obliging the entity in question to act and be organised in such a manner as to avoid conflict of interest and so that information obtained from carrying out the delegated tasks is not used unfairly or to

prevent competition. In any case, the final responsibility for supervising compliance with this Directive and with its implementing measures and for approving the prospectus shall lie with the competent authority or authorities designated in accordance with paragraph 1.

Member States shall inform the Commission and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.

3. Each competent authority shall have all the powers necessary for the performance of its functions. A competent authority that has received an application for approving a prospectus shall be empowered at least to:

- (a) require issuers, offerors or persons asking for admission to trading on a regulated market to include in the prospectus supplementary information, if necessary for investor protection;
- (b) require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents;
- (c) require auditors and managers of the issuer, offeror or person asking for admission to trading on a regulated market, as well as financial intermediaries commissioned to carry out the offer to the public or ask for admission to trading, to provide information;
- (d) suspend a public offer or admission to trading for a maximum of 10 consecutive working days on any single occasion if it has reasonable grounds for suspecting that the provisions of this Directive have been infringed;
- (e) prohibit or suspend advertisements for a maximum of 10 consecutive working days on any single occasion if it has reasonable grounds for believing that the provisions of this Directive have been infringed;
- (f) prohibit a public offer if it finds that the provisions of this Directive have been infringed or if it has reasonable grounds for suspecting that they would be infringed;
- (g) suspend or ask the relevant regulated markets to suspend trading on a regulated market for a maximum of 10 consecutive working days on any single occasion if it has reasonable grounds for believing that the provisions of this Directive have been infringed;
- (h) prohibit trading on a regulated market if it finds that the provisions of this Directive have been infringed;
- (i) make public the fact that an issuer is failing to comply with its obligations.

Where necessary under national law, the competent authority may ask the relevant judicial authority to decide on the use of the powers referred to in points (d) to (h) above.

4. Each competent authority shall also, once the securities have been admitted to trading on a regulated market, be empowered to:

- (a) require the issuer to disclose all material information which may have an effect on the assessment of the securities admitted to trading on regulated markets in order to ensure investor protection or the smooth operation of the market;
- (b) suspend or ask the relevant regulated market to suspend the securities from trading if, in its opinion, the issuer's situation is such that trading would be detrimental to investors' interests;
- (c) ensure that issuers whose securities are traded on regulated markets comply with the obligations provided for in Articles 102 and 103 of Directive 2001/34/EC and that equivalent information is provided to investors and equivalent treatment is granted by the issuer to all securities holders who are in the same position, in all Member States where the offer to the public is made or the securities are admitted to trading;
- (d) carry out on-site inspections in its territory in accordance with national law, in order to verify compliance with the provisions of this Directive and its implementing measures. Where necessary under national law, the competent authority or authorities may use this power by applying to the relevant judicial authority and/or in cooperation with other authorities.

5. Paragraphs 1 to 4 shall be without prejudice to the possibility for a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

Article 22

Professional secrecy and cooperation between authorities

1. The obligation of professional secrecy shall apply to all persons who work or have worked for the competent authority and for entities to which competent authorities may have delegated certain tasks. Information covered by professional secrecy may not be disclosed to any other person or authority except in accordance with provisions laid down by law.

2. Competent authorities of Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties and making use of their powers. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and cooperate when an issuer has more than one home competent authority because of its various classes of securities, or where the approval of a prospectus has been transferred to the competent authority of another Member State pursuant to Article 13(5). They shall also closely cooperate when requiring suspension or prohibition of trading for securities traded in various Member States in order to ensure a level playing field between trading venues and protection of investors. Where

appropriate, the competent authority of the host Member State may request the assistance of the competent authority of the home Member State from the stage at which the case is scrutinised, in particular as regards a new type or rare forms of securities. The competent authority of the home Member State may ask for information from the competent authority of the host Member State on any items specific to the relevant market.

Without prejudice to Article 21, the competent authorities of Member States may consult with operators of regulated markets as necessary and, in particular, when deciding to suspend, or to ask a regulated market to suspend or prohibit trading.

3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

Article 23

Precautionary measures

1. Where the competent authority of the host Member State finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer or that breaches have been committed of the obligations attaching to the issuer by reason of the fact that the securities are admitted to trading on a regulated market, it shall refer these findings to the competent authority of the home Member State.

2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer persists in breaching the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures in order to protect investors. The Commission shall be informed of such measures at the earliest opportunity.

CHAPTER VII

IMPLEMENTING MEASURES

Article 24

Committee procedure

1. The Commission shall be assisted by the European Securities Committee, instituted by Decision 2001/528/EC (hereinafter referred to as 'the Committee').

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof and provided that the implementing measures adopted in accordance with this procedure do not modify the essential provisions of this Directive.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

4. Without prejudice to the implementing measures already adopted, on the expiry of a four-year period following the entry into force of this Directive the application of its provisions providing for the adoption of technical rules and decisions in accordance with the procedure referred to in paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, shall review them prior to the expiry of the four-year period.

Article 25

Sanctions

1. Without prejudice to the right of Member States to impose criminal sanctions and without prejudice to their civil liability regime, Member States shall ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible, where the provisions adopted in the implementation of this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

2. Member States shall provide that the competent authority may disclose to the public every measure or sanction that has been imposed for infringement of the provisions adopted pursuant to this Directive, unless the disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

Article 26

Right of appeal

Member States shall ensure that decisions taken pursuant to laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to appeal to the courts.

CHAPTER VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 27

Amendments

With effect from the date set out in Article 29, Directive 2001/34/EC is hereby amended as follows:

- Articles 3, 20 to 41, 98 to 101, 104 and 108(2)(c)(ii) shall be deleted;
- in Article 107(3), the first subparagraph shall be deleted;

3. in Article 108(2)(a), the words 'the conditions of establishment, the control and circulation of listing particulars to be published for admission' shall be deleted;

4. Annex I shall be deleted.

Article 28

Repeal

With effect from the date indicated in Article 29, Directive 89/298/EEC shall be repealed. References to the repealed Directive shall be construed as references to this Directive.

Article 29

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 2005. They shall forthwith inform the Commission thereof. When Member States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods for making such reference shall be laid down by Member States.

Article 30

Transitional provision

1. Issuers which are incorporated in a third country and whose securities have already been admitted to trading on a regulated market shall choose their competent authority in accordance with Article 2(1)(m)(iii) and notify their decision to the competent authority of their chosen home Member State by 31 December 2005.

2. By way of derogation from Article 3, Member States which have used the exemption in Article 5(a) of Directive 89/298/EEC may continue to allow credit institutions or other financial institutions equivalent to credit institutions which are not covered by Article 1(2)(j) of this Directive to offer debt securities or other transferable securities equivalent to debt securities issued in a continuous or repeated manner within their territory for five years following the date of entry into force of this Directive.

3. By way of derogation from Article 29, the Federal Republic of Germany shall comply with Article 21(1) by 31 December 2008.

Article 31

Review

Five years after the date of entry into force of this Directive, the Commission shall make an assessment of the application of this Directive and present a report to the European Parliament and the Council, accompanied where appropriate by proposals for its review.

*Article 32***Entry into force**

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

*Article 33***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 4 November 2003.

For the European Parliament

The President

P. COX

For the Council

The President

G. ALEMANNINO

ANNEX I

PROSPECTUS**I. Summary**

The summary shall provide in a few pages the most important information included in the prospectus, covering at least the following items:

- A. identity of directors, senior management, advisers and auditors
- B. offer statistics and expected timetable
- C. key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors
- D. information concerning the issuer
 - history and development of the issuer
 - business overview
- E. operating and financial review and prospects
 - research and development, patents and licences, etc.
 - trends
- F. directors, senior management and employees
- G. major shareholders and related-party transactions
- H. financial information
 - consolidated statement and other financial information
 - significant changes
- I. details of the offer and admission to trading
 - offer and admission to trading
 - plan for distribution
 - markets
 - selling shareholders
 - dilution (equity securities only)
 - expenses of the issue
- J. additional information
 - share capital
 - memorandum and articles of association
 - documents on display

II. Identity of directors, senior management, advisers and auditors

The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus as required by Article 5 of the Directive and those responsible for auditing the financial statements.

III. Offer statistics and expected timetable

The purpose is to provide key information regarding the conduct of any offer and the identification of important dates relating to that offer.

- A. Offer statistics
- B. Method and expected timetable

IV. Key information

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

- A. Selected financial data
- B. Capitalisation and indebtedness
- C. Reasons for the offer and use of proceeds
- D. Risk factors

V. Information on the company

The purpose is to provide information about the company's business operations, the products it makes or the services it provides, and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plant and equipment, as well as its plans for future capacity increases or decreases.

- A. History and development of the company
- B. Business overview
- C. Organisational structure
- D. Property, plant and equipment

VI. Operating and financial review and prospects

The purpose is to provide the management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

- A. Operating results
- B. Liquidity and capital resources
- C. Research and development, patents and licences, etc.
- D. Trends

VII. Directors, senior management and employees

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company.

- A. Directors and senior management
- B. Remuneration
- C. Board practices
- D. Employees
- E. Share ownership

VIII. Major shareholders and related-party transactions

The purpose is to provide information regarding the major shareholders and others that may control or have an influence on the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- A. Major shareholders
- B. Related-party transactions
- C. Interests of experts and advisers

IX. Financial information

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

- A. Consolidated statements and other financial information
- B. Significant changes

X. Details of the offer and admission to trading details

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

- A. Offer and admission to trading
- B. Plan for distribution
- C. Markets
- D. Holders of securities who are selling
- E. Dilution (for equity securities only)
- F. Expenses of the issue

XI. Additional information

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Share capital
 - B. Memorandum and articles of association
 - C. Material contracts
 - D. Exchange controls
 - E. Taxation
 - F. Dividends and paying agents
 - G. Statement by experts
 - H. Documents on display
 - I. Subsidiary information
-

ANNEX II

REGISTRATION DOCUMENT**I. Identity of directors, senior management, advisers and auditors**

The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

II. Key information about the issuer

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

- A. Selected financial data
- B. Capitalisation and indebtedness
- C. Risk factors

III. Information on the company

The purpose is to provide information about the company's business operations, the products it makes or the services it provides and the factors which affect the business. It is also intended to provide information regarding the adequacy and suitability of the company's properties, plants and equipment, as well as its plans for future capacity increases or decreases.

- A. History and development of the company
- B. Business overview
- C. Organisational structure
- D. Property, plants and equipment

IV. Operating and financial review and prospects

The purpose is to provide the management's explanation of factors that have affected the company's financial condition and results of operations for the historical periods covered by the financial statements, and management's assessment of factors and trends which are expected to have a material effect on the company's financial condition and results of operations in future periods.

- A. Operating results
- B. Liquidity and capital resources
- C. Research and development, patents and licences, etc.
- D. Trends

V. Directors, senior management and employees

The purpose is to provide information concerning the company's directors and managers that will allow investors to assess their experience, qualifications and levels of remuneration, as well as their relationship with the company.

- A. Directors and senior management
- B. Remuneration
- C. Board practices
- D. Employees
- E. Share ownership

VI. Major shareholders and related-party transactions

The purpose is to provide information regarding the major shareholders and others that may control or have an influence on the company. It also provides information regarding transactions the company has entered into with persons affiliated with the company and whether the terms of such transactions are fair to the company.

- A. Major shareholders
- B. Related-party transactions
- C. Interests of experts and advisers

VII. Financial information

The purpose is to specify which financial statements must be included in the document, as well as the periods to be covered, the age of the financial statements and other information of a financial nature. The accounting and auditing principles that will be accepted for use in preparation and audit of the financial statements will be determined in accordance with international accounting and auditing standards.

- A. Consolidated statements and other financial information
- B. Significant changes

VIII. Additional information

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Share capital
 - B. Memorandum and articles of association
 - C. Material contracts
 - D. Statement by experts
 - E. Documents on display
 - F. Subsidiary information
-

ANNEX III

SECURITIES NOTE**I. Identity of directors, senior management, advisers and auditors**

The purpose is to identify the company representatives and other individuals involved in the company's offer or admission to trading; these are the persons responsible for drawing up the prospectus and those responsible for auditing the financial statements.

II. Offer statistics and expected timetable

The purpose is to provide key information regarding the conduct of any offer and the identification of important dates relating to that offer.

- A. Offer statistics
- B. Method and expected timetable

III. Key information about the issuer

The purpose is to summarise key information about the company's financial condition, capitalisation and risk factors. If the financial statements included in the document are restated to reflect material changes in the company's group structure or accounting policies, the selected financial data must also be restated.

- A. Capitalisation and indebtedness
- B. Reasons for the offer and use of proceeds
- C. Risk factors

IV. Interests of experts

The purpose is to provide information regarding transactions the company has entered into with experts or advisers employed on a contingent basis.

V. Details of the offer and admission to trading

The purpose is to provide information regarding the offer and the admission to trading of securities, the plan for distribution of the securities and related matters.

- A. Offer and admission to trading
- B. Plan for distribution
- C. Markets
- D. Selling securities holders
- E. Dilution (for equity securities only)
- F. Expenses of the issue

VI. Additional information

The purpose is to provide information, most of which is of a statutory nature, that is not covered elsewhere in the prospectus.

- A. Exchange controls
 - B. Taxation
 - C. Dividends and paying agents
 - D. Statement by experts
 - E. Documents on display
-

ANNEX IV

SUMMARY NOTE

The summary note shall provide in a few pages the most important information included in the prospectus, covering at least the following items:

- identity of directors, senior management, advisers and auditors
 - offer statistics and expected timetable
 - key information concerning selected financial data; capitalisation and indebtedness; reasons for the offer and use of proceeds; risk factors
 - information concerning the issuer
 - history and development of the issuer
 - business overview
 - operating and financial review and prospects
 - research and development, patents and licences, etc.
 - trends
 - directors, senior management and employees
 - major shareholders and related-party transactions
 - financial information
 - consolidated statement and other financial information
 - significant changes
 - details on the offer and admission to trading
 - offer and admission to trading
 - plan for distribution
 - markets
 - selling shareholders
 - dilution (for equity securities only)
 - expenses of the issue
 - additional information
 - share capital
 - memorandum and articles of incorporation
 - documents available for inspection
-

DIRECTIVE 2003/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 17 November 2003
on the re-use of public sector information

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure set out in Article 251 of the Treaty ⁽⁴⁾,

Whereas:

- (1) The Treaty provides for the establishment of an internal market and of a system ensuring that competition in the internal market is not distorted. Harmonisation of the rules and practices in the Member States relating to the exploitation of public sector information contributes to the achievement of these objectives.
- (2) The evolution towards an information and knowledge society influences the life of every citizen in the Community, *inter alia*, by enabling them to gain new ways of accessing and acquiring knowledge.
- (3) Digital content plays an important role in this evolution. Content production has given rise to rapid job creation in recent years and continues to do so. Most of these jobs are created in small emerging companies.
- (4) The public sector collects, produces, reproduces and disseminates a wide range of information in many areas of activity, such as social, economic, geographical, weather, tourist, business, patent and educational information.

(5) One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of Community-wide services. Public sector information is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. Broad cross-border geographical coverage will also be essential in this context. Wider possibilities of re-using public sector information should *inter alia* allow European companies to exploit its potential and contribute to economic growth and job creation.

(6) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key document resource. Traditional practice in public sector bodies in exploiting public sector information has developed in very disparate ways. That should be taken into account. Minimum harmonisation of national rules and practices on the re-use of public sector documents should therefore be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the Community.

(7) Moreover, without minimum harmonisation at Community level, legislative activities at national level, which have already been initiated in a number of Member States in order to respond to the technological challenges, might result in even more significant differences. The impact of such legislative differences and uncertainties will become more significant with the further development of the information society, which has already greatly increased cross-border exploitation of information.

(8) A general framework for the conditions governing re-use of public sector documents is needed in order to ensure fair, proportionate and non-discriminatory conditions for the re-use of such information. Public sector bodies collect, produce, reproduce and disseminate documents to fulfil their public tasks. Use of such documents for other reasons constitutes a re-use. Member States' policies can go beyond the minimum standards established in this Directive, thus allowing for more extensive re-use.

⁽¹⁾ OJ C 227 E, 24.9.2002, p. 382.

⁽²⁾ OJ C 85, 8.4.2003, p. 25.

⁽³⁾ OJ C 73, 26.3.2003, p. 38.

⁽⁴⁾ Opinion of the European Parliament of 12 February 2003 (not yet published in the Official Journal), Council Common Position of 26 May 2003 (OJ C 159 E, 8.7.2003, p. 1) and Position of the European Parliament of 25 September 2003 (not yet published in the Official Journal), Council Decision of 27 October 2003.

- (9) This Directive does not contain an obligation to allow re-use of documents. The decision whether or not to authorise re-use will remain with the Member States or the public sector body concerned. This Directive should apply to documents that are made accessible for re-use when public sector bodies license, sell, disseminate, exchange or give out information. To avoid cross-subsidies, re-use should include further use of documents within the organisation itself for activities falling outside the scope of its public tasks. Activities falling outside the public task will typically include supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market. The definition of 'document' is not intended to cover computer programmes. The Directive builds on the existing access regimes in the Member States and does not change the national rules for access to documents. It does not apply in cases in which citizens or companies can, under the relevant access regime, only obtain a document if they can prove a particular interest. At Community level, Articles 41 (right to good administration) and 42 of the Charter of Fundamental Rights of the European Union recognise the right of any citizen of the Union and any natural or legal person residing or having its registered office in a Member State to have access to European Parliament, Council and Commission documents. Public sector bodies should be encouraged to make available for re-use any documents held by them. Public sector bodies should promote and encourage re-use of documents, including official texts of a legislative and administrative nature in those cases where the public sector body has the right to authorise their re-use.
- (10) The definitions of 'public sector body' and 'body governed by public law' are taken from the public procurement Directives (92/50/EEC⁽¹⁾, 93/36/EEC⁽²⁾ and 93/37/EEC⁽³⁾ and 98/4/EC⁽⁴⁾). Public undertakings are not covered by these definitions.
- (11) This Directive lays down a generic definition of the term 'document', in line with developments in the information society. It covers any representation of acts, facts or information — and any compilation of such acts, facts or information — whatever its medium (written on paper, or stored in electronic form or as a sound, visual or audiovisual recording), held by public sector bodies. A document held by a public sector body is a document where the public sector body has the right to authorise re-use.
- (12) The time limit for replying to requests for re-use should be reasonable and in line with the equivalent time for requests to access the document under the relevant access regimes. Reasonable time limits throughout the Union will stimulate the creation of new aggregated information products and services at pan-European level. Once a request for re-use has been granted, public sector bodies should make the documents available in a time-frame that allows their full economic potential to be exploited. This is particularly important for dynamic content (e.g. traffic data), the economic value of which depends on the immediate availability of the information and of regular updates. Should a licence be used, the timely availability of documents may be a part of the terms of the licence.
- (13) The possibilities for re-use can be improved by limiting the need to digitise paper-based documents or to process digital files to make them mutually compatible. Therefore, public sector bodies should make documents available in any pre-existing format or language, through electronic means where possible and appropriate. Public sector bodies should view requests for extracts from existing documents favourably when to grant such a request would involve only a simple operation. Public sector bodies should not, however, be obliged to provide an extract from a document where this involves disproportionate effort. To facilitate re-use, public sector bodies should make their own documents available in a format which, as far as possible and appropriate, is not dependent on the use of specific software. Where possible and appropriate, public sector bodies should take into account the possibilities for the re-use of documents by and for people with disabilities.
- (14) Where charges are made, the total income should not exceed the total costs of collecting, producing, reproducing and disseminating documents, together with a reasonable return on investment, having due regard to the self-financing requirements of the public sector body concerned, where applicable. Production includes creation and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable return on investment, consistent with applicable accounting principles and the relevant cost calculation method of the public sector body concerned, constitutes an upper limit to the charges, as any excessive prices should be precluded. The upper limit for charges set in this Directive is without prejudice to the right of Member States or public sector bodies to apply lower charges or no charges at all, and Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents.

⁽¹⁾ OJ L 209, 24.7.1992, p. 1. Directive as last amended by Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p. 1).

⁽²⁾ OJ L 199, 9.8.1993, p. 1. Directive as last amended by Commission Directive 2001/78/EC.

⁽³⁾ OJ L 199, 9.8.1993, p. 54. Directive as last amended by Commission Directive 2001/78/EC.

⁽⁴⁾ OJ L 101, 1.4.1998, p. 1.

- (15) Ensuring that the conditions for re-use of public sector documents are clear and publicly available is a precondition for the development of a Community-wide information market. Therefore all applicable conditions for the re-use of the documents should be made clear to the potential re-users. Member States should encourage the creation of indices accessible on line, where appropriate, of available documents so as to promote and facilitate requests for re-use. Applicants for re-use of documents should be informed of available means of redress relating to decisions or practices affecting them. This will be particularly important for SMEs which may not be familiar with interactions with public sector bodies from other Member States and corresponding means of redress.
- (16) Making public all generally available documents held by the public sector — concerning not only the political process but also the legal and administrative process — is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy. This objective is applicable to institutions at every level, be it local, national or international.
- (17) In some cases the re-use of documents will take place without a licence being agreed. In other cases a licence will be issued imposing conditions on the re-use by the licensee dealing with issues such as liability, the proper use of documents, guaranteeing non-alteration and the acknowledgement of source. If public sector bodies license documents for re-use, the licence conditions should be fair and transparent. Standard licences that are available online may also play an important role in this respect. Therefore Member States should provide for the availability of standard licences.
- (18) If the competent authority decides to no longer make available certain documents for re-use, or to cease updating these documents, it should make these decisions publicly known, at the earliest opportunity, via electronic means whenever possible.
- (19) Conditions for re-use should be non-discriminatory for comparable categories of re-use. This should, for example, not prevent the exchange of information between public sector bodies free of charge for the exercise of public tasks, whilst other parties are charged for the re-use of the same documents. Neither should it prevent the adoption of a differentiated charging policy for commercial and non-commercial re-use.
- (20) Public sector bodies should respect competition rules when establishing the principles for re-use of documents avoiding as far as possible exclusive agreements between themselves and private partners. However, in order to provide a service of general economic interest, an exclusive right to re-use specific public sector documents may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.
- (21) This Directive should be implemented and applied in full compliance with the principles relating to the protection of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data ⁽¹⁾.
- (22) The intellectual property rights of third parties are not affected by this Directive. For the avoidance of doubt, the term 'intellectual property rights' refers to copyright and related rights only (including *sui generis* forms of protection). This Directive does not apply to documents covered by industrial property rights, such as patents, registered designs and trademarks. The Directive does not affect the existence or ownership of intellectual property rights of public sector bodies, nor does it limit the exercise of these rights in any way beyond the boundaries set by this Directive. The obligations imposed by this Directive should apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Public sector bodies should, however, exercise their copyright in a way that facilitates re-use.
- (23) Tools that help potential re-users to find documents available for re-use and the conditions for re-use can facilitate considerably the cross-border use of public sector documents. Member States should therefore ensure that practical arrangements are in place that help re-users in their search for documents available for re-use. Assets lists, accessible preferably online, of main documents (documents that are extensively re-used or that have the potential to be extensively re-used), and portal sites that are linked to decentralised assets lists are examples of such practical arrangements.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

- (24) This Directive is without prejudice to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ⁽¹⁾ and Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ⁽²⁾. It spells out the conditions within which public sector bodies can exercise their intellectual property rights in the internal information market when allowing re-use of documents.
- (25) Since the objectives of the proposed action, namely to facilitate the creation of Community-wide information products and services based on public sector documents, to enhance an effective cross-border use of public sector documents by private companies for added-value information products and services and to limit distortions of competition on the Community market, cannot be sufficiently achieved by the Member States and can therefore, in view of the intrinsic Community scope and impact of the said action, 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 Directive does not go beyond what is necessary in order to achieve those objectives. This Directive should achieve minimum harmonisation, thereby avoiding further disparities between the Member States in dealing with the re-use of public sector documents,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Directive establishes a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by public sector bodies of the Member States.
2. This Directive shall not apply to:
 - (a) documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by law or by other binding rules in the Member State, or in the absence of such rules as defined in line with common administrative practice in the Member State in question;
 - (b) documents for which third parties hold intellectual property rights;

⁽¹⁾ OJ L 167, 22.6.2001, p. 10.

⁽²⁾ OJ L 77, 27.3.1996, p. 20.

- (c) documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of:
 - the protection of national security (i.e. State security), defence, or public security,
 - statistical or commercial confidentiality;
- (d) documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;
- (e) documents held by educational and research establishments, such as schools, universities, archives, libraries and research facilities including, where relevant, organisations established for the transfer of research results;
- (f) documents held by cultural establishments, such as museums, libraries, archives, orchestras, operas, ballets and theatres.

3. This Directive builds on and is without prejudice to the existing access regimes in the Member States. This Directive shall not apply in cases in which citizens or companies have to prove a particular interest under the access regime to obtain access to the documents.

4. This Directive leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular does not alter the obligations and rights set out in Directive 95/46/EC.

5. The obligations imposed by this Directive shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention and the TRIPS Agreement.

Article 2

Definitions

For the purpose of this Directive the following definitions shall apply:

1. 'public sector body' means the State, regional or local authorities, bodies governed by public law and associations formed by one or several such authorities or one or several such bodies governed by public law;
2. 'body governed by public law' means any body:
 - (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and
 - (b) having legal personality; and
 - (c) financed, for the most part by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;

3. 'document' means:
- (a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording);
 - (b) any part of such content;
4. 're-use' means the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use;
5. 'personal data' means data as defined in Article 2(a) of Directive 95/46/EC.

Article 3

General principle

Member States shall ensure that, where the re-use of documents held by public sector bodies is allowed, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV. Where possible, documents shall be made available through electronic means.

CHAPTER II

REQUESTS FOR RE-USE

Article 4

Requirements applicable to the processing of requests for re-use

1. Public sector bodies shall, through electronic means where possible and appropriate, process requests for re-use and shall make the document available for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a reasonable time that is consistent with the timeframes laid down for the processing of requests for access to documents.
2. Where no time limits or other rules regulating the timely provision of documents have been established, public sector bodies shall process the request and shall deliver the documents for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a timeframe of not more than 20 working days after its receipt. This timeframe may be extended by another 20 working days for extensive or complex requests. In such cases the applicant shall be notified within three weeks after the initial request that more time is needed to process it.

3. In the event of a negative decision, the public sector bodies shall communicate the grounds for refusal to the applicant on the basis of the relevant provisions of the access regime in that Member State or of the national provisions adopted pursuant to this Directive, in particular Article 1(2)(a), (b) and (c), or Article 3. Where a negative decision is based on Article 1(2)(b), the public sector body shall include a reference to the natural or legal person who is the rightholder, where known, or alternatively to the licensor from which the public sector body has obtained the relevant material.

4. Any negative decision shall contain a reference to the means of redress in case the applicant wishes to appeal the decision.

5. Public sector bodies covered under Article 1(2)(d), (e) and (f) shall not be required to comply with the requirements of this Article.

CHAPTER III

CONDITIONS FOR RE-USE

Article 5

Available formats

1. Public sector bodies shall make their documents available in any pre-existing format or language, through electronic means where possible and appropriate. This shall not imply an obligation for public sector bodies to create or adapt documents in order to comply with the request, nor shall it imply an obligation to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.

2. On the basis of this Directive, public sector bodies cannot be required to continue the production of a certain type of documents with a view to the re-use of such documents by a private or public sector organisation.

Article 6

Principles governing charging

Where charges are made, the total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.

*Article 7***Transparency**

Any applicable conditions and standard charges for the re-use of documents held by public sector bodies shall be pre-established and published, through electronic means where possible and appropriate. On request, the public sector body shall indicate the calculation basis for the published charge. The public sector body in question shall also indicate which factors will be taken into account in the calculation of charges for atypical cases. Public sector bodies shall ensure that applicants for re-use of documents are informed of available means of redress relating to decisions or practices affecting them.

*Article 8***Licences**

1. Public sector bodies may allow for re-use of documents without conditions or may impose conditions, where appropriate through a licence, dealing with relevant issues. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.

2. In Member States where licences are used, Member States shall ensure that standard licences for the re-use of public sector documents, which can be adapted to meet particular licence applications, are available in digital format and can be processed electronically. Member States shall encourage all public sector bodies to use the standard licences.

*Article 9***Practical arrangements**

Member States shall ensure that practical arrangements are in place that facilitate the search for documents available for re-use, such as assets lists, accessible preferably online, of main documents, and portal sites that are linked to decentralised assets lists.

CHAPTER IV

NON-DISCRIMINATION AND FAIR TRADING*Article 10***Non-discrimination**

1. Any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use.

2. If documents are re-used by a public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.

*Article 11***Prohibition of exclusive arrangements**

1. The re-use of documents shall be open to all potential actors in the market, even if one or more market players already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies holding the documents and third parties shall not grant exclusive rights.

2. However, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years. The exclusive arrangements established after the entry into force of this Directive shall be transparent and made public.

3. Existing exclusive arrangements that do not qualify for the exception under paragraph 2 shall be terminated at the end of the contract or in any case not later than 31 December 2008.

CHAPTER V

FINAL PROVISIONS*Article 12***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2005. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 13***Review**

1. The Commission shall carry out a review of the application of this Directive before 1 July 2008 and shall communicate the results of this review, together with any proposals for modifications of the Directive, to the European Parliament and the Council.

2. The review shall in particular address the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, as well as further possibilities of improving the proper functioning of the internal market and the development of the European content industry.

Article 14

Entry into force

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

Article 15

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 17 November 2003.

For the Parliament

P. COX

The President

For the Council

G. ALEMANNI

The President

DIRECTIVE 2003/105/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 16 December 2003****amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty in the light of the joint text approved by the Conciliation Committee on 22 October 2003 ⁽³⁾,

Whereas:

- (1) Directive 96/82/EC ⁽⁴⁾ aims at the prevention of major accidents which involve dangerous substances and the limitation of their consequences for man and the environment, with a view to ensuring high levels of protection throughout the Community in a consistent and effective manner.
- (2) In the light of recent industrial accidents and studies on carcinogens and substances dangerous for the environment carried out by the Commission at the Council's request, the scope of Directive 96/82/EC should be extended.
- (3) The cyanide spill that polluted the Danube following the accident at Baia Mare in Romania in January 2000 has demonstrated that certain storage and processing activities in mining, especially tailings disposal facilities, including tailing ponds or dams, have potential to produce very serious consequences. The Commission communications on the safe operation of mining activities and on the sixth environment action programme of the European Community have therefore highlighted the need for an extension of the scope of Directive 96/82/EC. In its resolution of 5 July 2001 ⁽⁵⁾ on the Commission Communication on the safe operation of mining activities, the European Parliament also welcomed the extension of the scope of that Directive to cover risks arising from storage and processing activities in mining.

(4) The proposal for a directive on the management of waste from the extractive industries may be a relevant framework for measures relating to those waste management facilities which present an accident risk but which are not covered by the present Directive.

(5) The 'fireworks accident' at Enschede in the Netherlands in May 2000 has demonstrated the major accident potential arising from storage and manufacture of pyrotechnic and explosive substances. The definition of such substances in Directive 96/82/EC should therefore be clarified and simplified.

(6) The explosion at a fertiliser plant in Toulouse in September 2001 has raised awareness of the accident potential arising from the storage of ammonium nitrate and ammonium nitrate-based fertilisers, in particular of material rejected during the manufacturing process or returned to the manufacturer (off-specs). The existing categories of ammonium nitrate and ammonium nitrate-based fertilisers in Directive 96/82/EC should therefore be reviewed with a view to include 'off-specs' material.

(7) Directive 96/82/EC should not be applied to sites of end-users where ammonium nitrate and ammonium nitrate-based fertilisers, which on delivery conformed to the specification in that Directive but subsequently have become degraded or contaminated, are temporarily present prior to removal for reprocessing or destruction.

(8) Studies carried out by the Commission in close cooperation with the Member States support extending the list of carcinogens with appropriate qualifying quantities and significantly lowering the qualifying quantities assigned to substances dangerous for the environment in Directive 96/82/EC.

(9) For establishments which subsequently fall within the scope of Directive 96/82/EC, it has been shown necessary to introduce minimum periods for notifications and the establishment of major accident prevention policies, safety reports and emergency plans.

(10) The experience and knowledge of relevant staff in the establishment can greatly assist in the drawing up of emergency plans, and all staff in an establishment and persons likely to be affected should be appropriately informed on safety measures and actions.

⁽¹⁾ OJ C 75 E, 26.3.2002, p. 357 and OJ C 20 E, 28.1.2003, p. 255.

⁽²⁾ OJ C 149, 21.6.2002, p. 13.

⁽³⁾ Opinion of the European Parliament of 3 July 2002 (OJ C 271 E, 12.11.2003, p. 315), Council common position of 20 February 2003 (OJ C 102 E, 29.4.2003, p. 1) and position of the European Parliament of 19 June 2003 (not yet published in the Official Journal). Legislative resolution of the European Parliament of 19 November 2003 (not yet published in the Official Journal) and decision of the Council of 1 December 2003.

⁽⁴⁾ OJ L 10, 14.1.1997, p. 13.

⁽⁵⁾ OJ C 65 E, 14.3.2002, p. 382.

- (11) The adoption of Council Decision 2001/792/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions ⁽¹⁾ highlights the need to facilitate reinforced cooperation in civil protection assistance interventions.
- (12) It is useful, in order to facilitate land-use planning, to draw up guidelines defining a database to be used for assessing the compatibility between the establishments covered by Directive 96/82/EC and the areas described in Article 12(1) of that Directive.
- (13) There should be an obligation on Member States to supply the Commission with minimum information concerning the establishments covered by Directive 96/82/EC.
- (14) It is appropriate at the same time to clarify certain passages in Directive 96/82/EC.
- (15) The measures provided for in this Directive have been the subject of a public consultation process involving interested parties.
- (16) Directive 96/82/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 96/82/EC is hereby amended as follows:

1. Article 4 is amended as follows:

(a) Points (e) and (f) are replaced by the following:

‘(e) the exploitation (exploration, extraction and processing) of minerals in mines, quarries, or by means of boreholes, with the exception of chemical and thermal processing operations and storage related to those operations which involve dangerous substances, as defined in Annex I;

(f) the offshore exploration and exploitation of minerals, including hydrocarbons;’

(b) The following point shall be added:

‘(g) waste land-fill sites, with the exception of operational tailings disposal facilities, including tailing ponds or dams, containing dangerous substances as defined in Annex I, in particular when used in connection with the chemical and thermal processing of minerals.’

2. Article 6 is amended as follows:

(a) The following indent is added in paragraph 1:

‘— for establishments which subsequently fall within the scope of this Directive, within three months after the date on which this Directive applies to the establishment concerned, as laid down in the first subparagraph of Article 2(1).’

(b) The following indent is inserted after the first indent of Article 6(4):

‘— modification of an establishment or an installation which could have significant repercussions on major accident hazards, or’.

3. The following paragraph is inserted in Article 7:

‘1a. For establishments which subsequently fall within the scope of this Directive, the document referred to in paragraph 1 shall be drawn up without delay, but at all events within three months after the date on which this Directive applies to the establishment concerned, as laid down in the first subparagraph of Article 2(1).’

4. Article 8(2)(b) is replaced by the following:

‘(b) provision is made for cooperation in informing the public and in supplying information to the authority responsible for the preparation of external emergency plans.’

5. Article 9 is amended as follows:

(a) The first subparagraph of paragraph 2 is replaced by the following:

‘2. The safety report shall contain at least the data and information listed in Annex II. It shall name the relevant organisations involved in the drawing up of the report. It shall also contain an updated inventory of the dangerous substances present in the establishment.’

(b) The following indent is inserted between the third and fourth indents of paragraph 3:

‘— for establishments which subsequently fall within the scope of this Directive, without delay, but at all events within one year after the date on which this Directive applies to the establishment concerned, as laid down in the first subparagraph of Article 2(1).’

(c) In paragraph 4, the reference to ‘the second, third, and fourth indents’ becomes ‘the second, third, fourth and fifth indents’ respectively.

(d) The following point is added to Article 9(6):

‘(d) The Commission is invited to review by 31 December 2006 in close cooperation with the Member States, the existing “Guidance on the Preparation of a Safety Report”.’

6. Article 11 is amended as follows:

(a) The following indent is added to points (a) and (b) of paragraph 1:

‘— for establishments which subsequently fall within the scope of this Directive, without delay, but at all events within one year after the date on which this Directive applies to the establishment concerned, as laid down in the first subparagraph of Article 2(1).’

⁽¹⁾ OJ L 297, 15.11.2001, p. 7.

(b) Paragraph 3 is replaced by the following:

'3. Without prejudice to the obligations of the competent authorities, Member States shall ensure that the internal emergency plans provided for in this Directive are drawn up in consultation with the personnel working inside the establishment, including long-term relevant subcontracted personnel, and that the public is consulted on external emergency plans when they are established or updated.'

(c) The following paragraph is inserted:

'4a. With regard to external emergency plans, Member States should take into account the need to facilitate enhanced cooperation in civil protection assistance in major emergencies.'

7. Article 12 is amended as follows:

(a) The second subparagraph of paragraph 1 is replaced by the following:

'Member States shall ensure that their land-use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long term, to maintain appropriate distances between establishments covered by this Directive and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular natural sensitivity or interest and, in the case of existing establishments, of the need for additional technical measures in accordance with Article 5 so as not to increase the risks to people.'

(b) The following paragraph is inserted:

'1a. The Commission is invited by 31 December 2006, in close cooperation with the Member States, to draw up guidelines defining a technical database including risk data and risk scenarios, to be used for assessing the compatibility between the establishments covered by this Directive and the areas described in paragraph 1. The definition of this database shall as far as possible take account of the evaluations made by the competent authorities, the information obtained from operators and all other relevant information such as the socioeconomic benefits of development and the mitigating effects of emergency plans.'

8. Article 13 is amended as follows:

(a) The first subparagraph of paragraph 1 is replaced by the following:

'1. Member States shall ensure that information on safety measures and on the requisite behaviour in the event of an accident is supplied regularly and in the most appropriate form, without their having to request it, to all persons and all establishments serving the

public (such as schools and hospitals) liable to be affected by a major accident originating in an establishment covered by Article 9.'

(b) Paragraph 6 is replaced by the following:

'6. In the case of establishments subject to the provisions of Article 9, Member States shall ensure that the inventory of dangerous substances provided for in Article 9(2) is made available to the public subject to the provisions of paragraph 4 of this Article and Article 20.'

9. The following paragraph is inserted in Article 19:

'1a. For establishments covered by this Directive, Member States shall supply the Commission with at least the following information:

(a) the name or trade name of the operator and the full address of the establishment concerned; and

(b) the activity or activities of the establishment.

The Commission shall set up and keep up to date a database containing the information supplied by the Member States. Access to the database shall be reserved to persons authorised by the Commission or the competent authorities of the Member States.'

10. Annex I is amended as set out in the Annex.

11. In Annex II, point IV part B is replaced by the following:

'B. Assessment of the extent and severity of the consequences of identified major accidents including maps, images or, as appropriate, equivalent descriptions, showing areas which are liable to be affected by such accidents arising from the establishment, subject to the provisions of Articles 13(4) and 20.'

12. In Annex III, point (c) is amended as follows:

(a) point (i) is replaced by the following:

'(i) organisation and personnel — the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organisation. The identification of training needs of such personnel and the provision of the training so identified. The involvement of employees and of subcontracted personnel working in the establishment.'

(b) point (v) is replaced by the following:

'(v) Planning for emergencies — adoption and implementation of procedures to identify foreseeable emergencies by systematic analysis, to prepare, test and review emergency plans to respond to such emergencies and to provide specific training for the staff concerned. Such training shall be given to all personnel working in the establishment, including relevant subcontracted personnel.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 2005. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 16 December 2003.

For the European Parliament

The President

P. COX

For the Council

The President

G. ALEMANN

ANNEX

Annex I to Directive 96/82/EC is hereby amended as follows:

1. The following points are added to the introduction:

- '6. For the purposes of this Directive, a gas is any substance that has an absolute vapour pressure equal to or greater than 101,3 kPa at a temperature of 20 ° C.
7. For the purposes of this Directive, a liquid is any substance that is not defined as a gas and that is not in the solid state at a temperature of 20 ° C and at a standard pressure of 101,3 kPa.'

2. In the table in Part 1:

(a) the entries relating to 'Ammonium nitrate' are replaced by the following:

'Ammonium nitrate (see note 1)	5 000	10 000
Ammonium nitrate (see note 2)	1 250	5 000
Ammonium nitrate (see note 3)	350	2 500
Ammonium nitrate (see note 4)	10	50'

(b) the following entries are inserted after the entries relating to 'Ammonium nitrate':

'Potassium nitrate (see note 5)	5 000	10 000
Potassium nitrate (see note 6)	1 250	5 000'

(c) the entry relating to 'The following CARCINOGENS' is replaced by the following:

'The following CARCINOGENS at concentrations above 5 % by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2- Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone	0,5	2'
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(d) the entry relating to 'Automotive petrol and other petroleum spirits' is replaced by the following:

'Petroleum products: (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams)	2 500	25 000'
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(e) (i) Notes 1 and 2 are replaced by the following:

'1. Ammonium nitrate (5 000/10 000): fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers containing ammonium nitrate with phosphate and/or potash) in which the nitrogen content as a result of ammonium nitrate is

- between 15,75 % (1) and 24,5 % (2) by weight, and either with not more than 0,4 % total combustible/organic materials or which fulfil the requirements of Annex II of Directive 80/876/EEC,
- 15,75 % (3) by weight or less and unrestricted combustible materials,

and which are capable of self-sustaining decomposition according to the UN Trough Test (see United Nations Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria, Part III, subsection 38.2).

2. Ammonium nitrate (1 250/5 000): fertiliser grade

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers in which the nitrogen content as a result of ammonium nitrate is

- more than 24,5 % by weight, except for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 %,
- more than 15,75 % by weight for mixtures of ammonium nitrate and ammonium sulphate,
- more than 28 % ⁽⁴⁾ by weight for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 %,

and which fulfil the requirements of Annex II of Directive 80/876/EEC.

3. Ammonium nitrate (350/2500): technical grade

This applies to:

- ammonium nitrate and preparations of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is
 - between 24,5 % and 28 % by weight, and which contain not more than 0,4 % combustible substances,
 - more than 28 % by weight, and which contain not more than 0,2 % combustible substances,
- aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80 % by weight.

4. Ammonium nitrate (10/50): "off-specs" material and fertilisers not fulfilling the detonation test

This applies to:

- material rejected during the manufacturing process and to ammonium nitrate and preparations of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in notes 2 and 3, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Notes 2 and 3;
- fertilisers referred to in note 1, first indent, and Note 2 which do not fulfil the requirements of Annex II of Directive 80/876/EEC.

5. Potassium nitrate (5 000/10 000): composite potassium-nitrate based fertilisers composed of potassium nitrate in prilled/granular form.

6. Potassium nitrate (1 250/5 000): composite potassium-nitrate based fertilisers composed of potassium nitrate in crystalline form.'

(ii) the note relating to polychlorodibenzofurans and polychlorodibenzodioxins becomes note 7.

(iii) the following footnotes appear below the table entitled 'International Toxic Equivalent Factors (ITEF) for the congeners of concern (NATO/CCMS)':

- '⁽¹⁾ 15,75 % nitrogen content by weight as a result of ammonium nitrate corresponds to 45 % ammonium nitrate.
- '⁽²⁾ 24,5 % nitrogen content by weight as a result of ammonium nitrate corresponds to 70 % ammonium nitrate.
- '⁽³⁾ 15,75 % nitrogen content by weight as a result of ammonium nitrate corresponds to 45 % ammonium nitrate.
- '⁽⁴⁾ 28 % nitrogen content by weight as a result of ammonium nitrate corresponds to 80 % ammonium nitrate.'

3. In Part 2:

(a) entries 4 and 5 are replaced by the following:

'4. EXPLOSIVE (see note 2) where the substance, preparation or article falls under UN/ADR Division 1.4	50	200
5. EXPLOSIVE (see note 2) where the substance, preparation or article falls under any of: UN/ADR Divisions 1.1, 1.2, 1.3, 1.5 or 1.6 or risk phrase R2 or R3	10	50'

(b) entry 9 is replaced by the following:

'9. DANGEROUS FOR THE ENVIRONMENT risk phrases:		
i) R50: "Very toxic to aquatic organisms" (including R50/53)	100	200
ii) R51/53: "Toxic to aquatic organisms; may cause long term adverse effects in the aquatic environment"	200	500'

(c) In the notes:

(i) Note 1 is replaced by the following:

'1. Substances and preparations are classified according to the following Directives and their current adaptation to technical progress:

Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances⁽¹⁾,

Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations ⁽²⁾.

In the case of substances and preparations which are not classified as dangerous according to either of the above directives, for example waste, but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely to possess, under the conditions found at the establishment, equivalent properties in terms of major-accident potential, the procedures for provisional classification shall be followed in accordance with the relevant article of the appropriate Directive.

In the case of substances and preparations with properties giving rise to more than one classification, for the purposes of this Directive the lowest qualifying quantities shall apply. However, for the application of the rule in Note 4, the qualifying quantity used shall always be the one corresponding to the classification concerned.

For the purposes of this Directive, the Commission shall establish and keep up to date a list of substances which have been classified into the above categories by a harmonised Decision in accordance with Directive 67/548/EEC.'

(ii) Note 2 is replaced by the following:

'2. An "explosive" means:

- a substance or preparation which creates the risk of an explosion by shock, friction, fire or other sources of ignition (risk phrase R2),
- a substance or preparation which creates extreme risks of explosion by shock, friction, fire or other sources of ignition (risk phrase R3), or
- a substance, preparation or article covered by Class 1 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (UN/ADR), concluded on 30 September 1957, as amended, as transposed by Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road ⁽³⁾.

Included in this definition are pyrotechnics, which for the purposes of this Directive are defined as substances (or mixtures of substances) designated to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions. Where a substance or preparation is classified by both UN/ADR and risk phrase R2 or R3, the UN/ADR classification shall take precedence over assignment of risk phrases.

Substances and articles of Class 1 are classified in any of the divisions 1.1 to 1.6 in accordance with the UN/ADR classification scheme. The divisions concerned are:

Division 1.1: "Substances and articles which have a mass explosion hazard (a mass explosion is an explosion which affects almost the entire load virtually instantaneously)."

Division 1.2: "Substances and articles which have a projection hazard but not a mass explosion hazard."

Division 1.3: "Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard:

- (a) combustion of which gives rise to considerable radiant heat; or
- (b) which burn one after another, producing minor blast or projection effects or both."

Division 1.4: "Substances and articles which present only a slight risk in the event of ignition or initiation during carriage. The effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire shall not cause virtually instantaneous explosion of virtually the entire contents of the package."

Division 1.5: "Very insensitive substances having a mass explosion hazard which are so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions of carriage. As a minimum requirement they shall not explode in the external fire test."

Division 1.6: "Extremely insensitive articles which do not have a mass explosion hazard. The articles contain only extremely insensitive detonating substances and demonstrate a negligible probability of accidental initiation or propagation. The risk is limited to the explosion of a single article."

Included in this definition are also explosive or pyrotechnic substances or preparations contained in articles. In the case of articles containing explosive or pyrotechnic substances or preparations, if the quantity of the substance or preparation contained is known, that quantity shall be considered for the purposes of this Directive. If the quantity is not known, then, for the purposes of this Directive, the whole article shall be treated as explosive.'

(iii) in note 3(b)(1), the second indent shall be replaced by the following:

- '— substances and preparations which have a flash point lower than 55 ° C and which remain liquid under pressure, where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards;'

(iv) note 3(c)(2) is replaced by the following:

- '2. gases which are flammable in contact with air at ambient temperature and pressure (risk phrase R12, second indent), which are in a gaseous or supercritical state, and'

(v) note 3(c)3 is replaced by the following:

- '3. flammable and highly flammable liquid substances and preparations maintained at a temperature above their boiling point.'

(vi) note 4 is replaced by the following:

- '4. In the case of an establishment where no individual substance or preparation is present in a quantity above or equal to the relevant qualifying quantities, the following rule shall be applied to determine whether the establishment is covered by the relevant requirements of this Directive.

This Directive shall apply if the sum

$$q_1/Q_{U1} + q_2/Q_{U2} + q_3/Q_{U3} + q_4/Q_{U4} + q_5/Q_{U5} + \dots \text{ is greater than or equal to } 1,$$

where q_x = the quantity of dangerous substance x (or category of dangerous substances) falling within Parts 1 or 2 of this Annex,

and Q_{UX} = the relevant qualifying quantity for substance or category x from column 3 of Parts 1 or 2.

This Directive shall apply, with the exception of Articles 9, 11 and 13, if the sum

$$q_1/Q_{L1} + q_2/Q_{L2} + q_3/Q_{L3} + q_4/Q_{L4} + q_5/Q_{L5} + \dots \text{ is greater than or equal to } 1,$$

where q_x = the quantity of dangerous substance x (or category of dangerous substances) falling within Parts 1 or 2 of this Annex,

and Q_{LX} = the relevant qualifying quantity for substance or category x from column 2 of Parts 1 or 2.

This rule shall be used to assess the overall hazards associated with toxicity, flammability, and eco-toxicity. It must therefore be applied three times:

- (a) for the addition of substances and preparations named in Part 1 and classified as toxic or very toxic, together with substances and preparations falling into categories 1 or 2;

- (b) for the addition of substances and preparations named in Part 1 and classified as oxidising, explosive, flammable, highly flammable, or extremely flammable, together with substances and preparations falling into categories 3, 4, 5, 6, 7a, 7b or 8;
- (c) for the addition of substances and preparations named in Part 1 and classified as dangerous for the environment (R50 (including R50/53) or R51/53), together with substances and preparations falling into categories 9(i) or 9(ii);

The relevant provisions of this Directive apply if any of the sums obtained by (a), (b) or (c) is greater than or equal to 1.'

(vii) the following footnotes appear at the end of the notes:

- ⁽¹⁾ OJ 196, 16.8.1967, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).
 - ⁽²⁾ OJ L 200, 30.7.1999, p. 1. Directive as amended by Commission Directive 2001/60/EC (OJ L 226, 22.8.2001, p. 5).
 - ⁽³⁾ OJ L 319, 12.12.1994, p. 7. Directive as last amended by Commission Directive 2003/28/EC (OJ L 90, 8.4.2003, p. 45).'
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DIRECTIVE 2003/108/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 8 December 2003
amending Directive 2002/96/EC on waste electrical and electronic equipment (WEEE)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

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

After consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) During the adoption procedure concerning Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) ⁽³⁾ concerns were raised about the possible financial implications of the wording of Article 9 of that Directive for producers of the equipment concerned.
- (2) At the meeting of the Conciliation Committee of 10 October 2002 on that Directive the European Parliament, Council and Commission expressed their intention in a Joint Declaration to examine the issues relating to Article 9 of Directive 2002/96/EC, concerning financing in respect of WEEE from users other than private households, at the earliest opportunity.
- (3) In accordance with the Joint Declaration, the Commission has examined the financial implications for producers following from the actual wording of Article 9 of Directive 2002/96/EC, and has found that the take-back obligation for WEEE put on the market in the past creates a retroactive liability for which no provision was made and which is likely to expose certain producers to serious economic risks.
- (4) In order to prevent such risks, the financial responsibility for the collection, treatment, re-use, recovery and recycling of WEEE from users other than private households put on the market before 13 August 2005 should be borne by producers when supplying new products replacing products of equivalent type or fulfilling the same functions. Where such waste is not replaced by new

products, the responsibility should be borne by those users. Member States, producers and users should have the possibility to make alternative arrangements.

- (5) Pursuant to Article 17 of Directive 2002/96/EC, Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive by 13 August 2004. In order to avoid having to amend Member States' legislation adopted by that date, this Directive should be adopted as soon as possible and implemented in Member States' legislation at the same time as Directive 2002/96/EC.
- (6) Directive 2002/96/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Article 9 of Directive 2002/96/EC shall be replaced by the following:

'Article 9

Financing in respect of WEEE from users other than private households

1. Member States shall ensure that, by 13 August 2005, the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households from products put on the market after 13 August 2005 is to be provided for by producers.

Member States shall ensure that, by 13 August 2005, for WEEE from products put on the market before 13 August 2005 (historical waste), the financing of the costs of management is as set out in the third and fourth subparagraphs.

For historical waste being replaced by new equivalent products or by new products fulfilling the same function, the financing of the costs shall be provided for by producers of those products when supplying them. Member States may, as an alternative, provide that users other than private households also be made, partly or totally, responsible for this financing.

For other historical waste, the financing of the costs shall be provided for by the users other than private households.

⁽¹⁾ OJ C 234, 30.9.2003, p. 91.

⁽²⁾ Opinion of the European Parliament of 21 October 2003 (not yet published in the Official Journal) and Council decision of 19 November 2003.

⁽³⁾ OJ L 37, 13.2.2003, p. 24.

2. Producers and users other than private households may, without prejudice to this Directive, conclude agreements stipulating other financing methods.'

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 13 August 2004. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 8 December 2003.

For the European Parliament

The President

P. COX

For the Council

The President

F. FRATTINI

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 3/2003 OF THE ACP-EC COUNCIL OF MINISTERS

of 11 December 2003

on the use of resources from the long-term development envelope of the ninth EDF for the creation of a Peace Facility for Africa

THE ACP-EC COUNCIL OF MINISTERS,

Having regard to the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, and in particular paragraph 8 of Annex I thereto,

Whereas:

- (1) By Decision No 10/2001 of the ACP-EC Committee of Ambassadors of 20 December 2001 on the use of unallocated resources from the 8th European Development Fund ⁽¹⁾ and Decision No 3/2002 of the ACP-EC Council of Ministers, of 23 December 2002 on the reallocation of unallocated resources as well as uncommitted interest subsidies from the Eighth European Development Fund ⁽²⁾, the ACP-EC Council of Ministers allocated resources to peace-building, conflict prevention and resolution for a total amount of EUR 75 million.
- (2) At the Summit of the African Union in Maputo from 4 to 12 July 2003, the African Heads of State took a 'Decision on the Establishment by the European Union of a Peace Support Operation Facility for the African Union'. In their decision, they specified that such a facility should be financed from resources allocated to each of them under the existing cooperation agreements with the European Union and be supplemented by an equivalent amount of unallocated European Development Fund resources.
- (3) In order to ensure rapid and efficient response to situations of violent conflict, the creation of a Peace Facility is appropriate.
- (4) To allow for the creation of a Peace Facility for Africa, in accordance with Article 11 of the ACP-EC Partnership Agreement, supplementary resources should be allocated to intra-ACP cooperation. Since the envelope for regional cooperation and integration as defined in para-

graph 3(b) of Annex I to the ACP-EC Partnership Agreement is exhausted, the necessary resources will therefore be transferred from allocations notified to individual ACP-countries under the long-term development envelope of the ninth EDF as defined in paragraph 3(a) of Annex I to the ACP-EC Partnership Agreement, as well as from unallocated resources of that envelope,

HAS DECIDED AS FOLLOWS:

Article 1

Peace support

1. A contribution of 1,5 % shall be taken from allocations that were notified to African ACP States in accordance with Article 1(b) of Annex IV to the ACP-EC Partnership Agreement. Such contribution will be taken from the uncommitted balance of the allocation referred to in Article 3(2)(b) of Annex IV to the ACP-EC Partnership Agreement, the so-called B-allocation. If the uncommitted balance of the B-allocation is insufficient, the remainder will be taken from the uncommitted balance of the allocation referred to in Article 3(2)(a) of Annex IV, the so-called A-allocation. A total amount of EUR 126,4 million shall thus be transferred from the respective country allocations to the intra-ACP allocation under the envelope for regional cooperation and integration and used for the creation of a Peace Facility for Africa. Individual contributions are specified in the last column of the table in the Annex to this Decision.

2. An amount of EUR 123,6 million shall be transferred from unallocated resources of the 9th EDF long-term development envelope to the intra-ACP allocation under the envelope for regional cooperation and integration, and used for the creation of a Peace Facility for Africa.

⁽¹⁾ OJ L 50, 21.2.2002, p. 62.

⁽²⁾ OJ L 59, 4.3.2003, p. 24.

*Article 2***Financing request**

In accordance with Article 13(2)(b) of Annex IV to the ACP-EC Partnership Agreement, the ACP Council of Ministers requests the Commission to finance a Peace Facility for Africa for a total amount of EUR 250 million.

*Article 3***Implementation**

The ACP States, the Member States and the Community shall be bound, each to the extent to which it is concerned, to take the measures necessary to implement this Decision.

*Article 4***Entry into force**

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 11 December 2003.

For the ACP-EC Council of Ministers

The President

Franco FRATTINI

ANNEX

Contributions from country allocations

Country	A-allocation	B-allocation	Total	Contribution
ANGOLA	117,0	29,0	146,0	2,2
BENIN	208,0	67,0	275,0	4,1
BOTSWANA	39,0	52,0	91,0	1,4
BURKINA FASO	275,0	76,0	351,0	5,3
BURUNDI	115,0	57,0	172,0	2,6
CAMEROON	159,0	71,0	230,0	3,5
CAPE VERDE	32,0	7,1	39,1	0,6
CENTR.AFR. REP.	86,0	21,0	107,0	1,6
CHAD	202,0	71,0	273,0	4,1
COMOROS	20,0	7,3	27,3	0,4
CONGO Republic	43,0	7,4	50,4	0,8
CONGO DR	171,0	34,0	205,0	3,1
COTE D'IVOIRE	182,0	82,0	264,0	4,0
DJIBOUTI	29,0	5,8	34,8	0,5
ERITREA	88,0	8,8	96,8	1,5
ETHIOPIA	384,0	154,0	538,0	8,1
GABON	34,0	45,0	79,0	1,2
GAMBIA	37,0	14,0	51,0	0,8
GHANA	231,0	80,0	311,0	4,7
GUINEA	158,0	63,0	221,0	3,3
GUINEA BISSAU	62,0	19,0	81,0	1,2
EQ. GUINEA	13,0	4,3	17,3	0,3
KENYA	170,0	55,0	225,0	3,4
LESOTHO	86,0	24,0	110,0	1,7
MADAGASCAR	267,0	60,0	327,0	4,9
MALAWI	276,0	69,0	345,0	5,2
MALI	294,0	81,0	375,0	5,6
MAURITIUS	33,0	1,6	34,6	0,5
MAURITANIA	104,0	87,0	191,0	2,9
MOZAMBIQUE	274,0	55,0	329,0	4,9
NAMIBIA	48,0	43,0	91,0	1,4
NIGER	212,0	134,0	346,0	5,2

Country	A-allocation	B-allocation	Total	Contribution
NIGERIA	222,0	44,0	266,0	4,0
RWANDA	124,0	62,0	186,0	2,8
SAO TOME & PR.	9,4	3,5	12,9	0,2
SENEGAL	178,0	104,0	282,0	4,2
SEYCHELLES	3,9	0,8	4,7	0,1
SIERRA LEONE	144,0	76,0	220,0	3,3
SUDAN	135,0	20,0	155,0	2,3
SWAZILAND	31,0	12,0	43,0	0,6
TANZANIA	290,0	65,0	355,0	5,3
UGANDA	246,0	117,0	363,0	5,4
ZAMBIA	240,0	111,0	351,0	5,3
ZIMBABWE	108,0	19,0	127,0	1,9
TOTAL	6 180,3	2 219,6	8 399,9	126,4

COUNCIL DECISION
of 17 December 2003

amending Decision 95/408/EC on the conditions for drawing up, for an interim period, provisional lists of third-country establishments from which Member States are authorised to import certain products of animal origin, fishery products or live bivalve molluscs, as regards the extension of its validity

(2003/912/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 95/408/EC of 22 June 1995 on the conditions for drawing up, for an interim period, provisional lists of third-country establishments from which Member States are authorised to import certain products of animal origin, fishery products or live bivalve molluscs ⁽¹⁾, and in particular Article 9 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Decision 95/408/EC expires on 31 December 2003.
- (2) The Commission proposal for a regulation of the European Parliament and of the Council laying down detailed rules for the organisation of official controls on products of animal origin intended for human consumption ⁽²⁾ (the Regulation for the organisation of official controls) provides for a new procedure for drawing up lists of establishments in third countries intended to replace the rules laid down in Decision 95/408/EC.
- (3) The validity of Decision 95/408/EC should be extended to bridge the gap between the expiry of that Decision and the entry into force of the Regulation for the organisation of official controls.

- (4) Decision 95/408/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 9 of Decision 95/408/EC '31 December 2003' shall be replaced by '31 December 2005'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 17 December 2003.

For the Council
The President
G. ALEMANNIO

⁽¹⁾ OJ L 243, 11.10.1995, p. 17. Decision as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽²⁾ OJ C 262 E, 29.10.2002, p. 449.

**COUNCIL DECISION
of 19 December 2003**

concerning the conclusion of an Agreement in the form of an Exchange of Letters concerning the provisional application of the trade and trade-related provisions of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part

(2003/913/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof, in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Pending the entry into force of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, signed on 25 June 2001, the Community and Egypt have undertaken to adopt procedures for the provisional application of its trade and trade-related provisions.
- (2) The trade and trade-related provisions provisionally applied will replace the relevant provisions of the Cooperation Agreement between the European Economic Community and the Arab Republic of Egypt ⁽¹⁾, signed on 18 January 1977 and the Agreement between the Member States of the European Coal and Steel Community and the Arab Republic of Egypt ⁽²⁾, signed in Brussels on 18 January 1977.
- (3) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾.
- (4) The Agreement in the form of an Exchange of Letters should therefore be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters concerning the provisional application of the trade and trade-related provisions of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, is hereby approved on behalf of the Community.

⁽¹⁾ OJ L 266, 27.9.1978, p. 2.

⁽²⁾ OJ L 316, 12.12.1979, p. 2.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

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

Article 2

The measures necessary for the implementation of the Agreement in the form of an Exchange of Letters including the Declarations, Annexes, Protocols and Exchange of Letters attached to the Association Agreement shall be adopted in accordance with the procedure referred to in Article 3(2).

Article 3

1. The Commission shall be assisted by a committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I, established by Article 16 of Regulation (EC) No 3448/1993 ⁽⁴⁾, by the Management Committee for Sugar established by Article 42 of Regulation (EC) No 1260/2001 ⁽⁵⁾, or, where appropriate, by the committees established by the corresponding provisions of other regulations on the common organisation of markets or by the Customs Code Committee established by Article 248a of Regulation (EEC) No 2913/92 ⁽⁶⁾.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its Rules of Procedure.

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 so as to bind the Community during the period of provisional application.

⁽⁴⁾ OJ L 318, 20.12.1993, p. 18; Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).

⁽⁵⁾ OJ L 178, 30.6.2001, p. 1; Regulation as amended by Commission Regulation (EC) No 680/2002 (OJ L 104, 20.4.2002, p. 26).

⁽⁶⁾ OJ L 302, 19.10.1992, p. 1; Regulation as last amended by Regulation (EC) No 2700/2000 (OJ L 311, 12.12.2000 p. 17).

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 19 December 2003.

For the Council
The President
G. ALEMANNNO

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

concerning the provisional application of the trade and trade-related provisions of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part

A. Letter from the Community

Brussels, ... December 2003

Sir,

I have the honour to refer to the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, signed in Luxembourg on 25 June 2001 (the 'Association Agreement').

Pending the entry into force of the Association Agreement, I have the honour to propose to you that the European Community and the Arab Republic of Egypt apply provisionally as from 1 January 2004, Articles 2, 6 to 28, 31, 33 to 37, 55, 82 to 84, 86 to 87, 90 and 91, the relevant Declarations ⁽¹⁾, Annexes 1 to 6, Protocols 1 to 5 and the Exchange of Letters concerning fresh cut flowers and flowers and flower buds falling within subheading 0603 10 of the Common Customs Tariff.

The Cooperation Council set up under the Cooperation Agreement between the European Economic Community and the Arab Republic of Egypt signed on 18 January 1977 shall perform *mutatis mutandis* its duties until the Association Council and the Association Committee provided for in Title VIII of the Association Agreement are created. It shall establish its Rules of Procedures and may create if appropriate, any committees and subcommittees to which it may delegate, in full or in part, any of its powers.

During the provisional application of the abovementioned Articles, and where appropriate, reference to the 'Association Council' and to the 'Association Committee' shall be construed as reference to the Cooperation Council and the committees established by it.

As regards provisions covered by this Agreement and the subsequent application of the Association Agreement, it is agreed that the date of entry into force of the Association Agreement shall be the date of entry into force of this Agreement.

For the first year of application, the volumes of tariff quotas shall be calculated as a pro rata of the basic volumes, taking into account the part of the period elapsed before the date of entry into force of this Agreement. As regards certain products listed in Protocol 1 to the Association Agreement, the following arrangements will apply: for products falling under CN code 0703 20 00, 0709 90 39, 0709 90 60, 0711 20 90, 0712 90 19, 0714 20 90, 1006, 1212 91, 1212 99 20, 1703, 2302, the concession granted should also apply to specific duties. These arrangements will remain in application upon the entry into force of the Association Agreement.

The provisions provisionally applied shall replace Articles 8 to 36, 43 to 46, 48 to 51 of the Cooperation Agreement between the European Economic Community and the Arab Republic of Egypt signed on 18 January 1977, including Annexes A, B, C, D, Protocol 2, and the relevant joint declarations, declarations and Exchanges of Letters; and the Agreement between the Member States of the European Coal and Steel Community and the Arab Republic of Egypt signed in Brussels on 18 January 1977.

I have the honour to propose that, if the above is acceptable to your Government, this letter and your confirmation shall together constitute an Agreement between the European Community and the Arab Republic of Egypt.

Please accept, Sir, the assurance of our highest consideration,

On behalf of the European Community

⁽¹⁾ Joint Declarations on Articles 14, 18, 34, 37 and Annex 6, and the Joint Declaration on the protection of data; Declarations by the European Community on Articles 11, 19, 21, 34.

B. Letter from Egypt

Brussels, ... December 2003

Sir,

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

I have the honour to refer to the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, signed in Luxembourg on 25 June 2001 (the "Association Agreement").

Pending the entry into force of the Association Agreement, I have the honour to propose to you that the European Community and the Arab Republic of Egypt apply provisionally as from 1 January 2004, Articles 2, 6 to 28, 31, 33 to 37, 55, 82 to 84, 86 to 87, 90 and 91, the relevant Declarations⁽¹⁾, Annexes 1 to 6, Protocols 1 to 5 and the Exchange of Letters concerning fresh cut flowers and flowers and flower buds falling within subheading 0603 10 of the Common Customs Tariff.

The Cooperation Council set up under the Cooperation Agreement between the European Economic Community and the Arab Republic of Egypt signed on 18 January 1977 shall perform *mutatis mutandis* its duties until the Association Council and the Association Committee provided for in Title VIII of the Association Agreement are created. It shall establish its Rules of Procedures and may create if appropriate, any committees and subcommittees to which it may delegate, in full or in part, any of its powers.

During the provisional application of the abovementioned Articles, and where appropriate, reference to the "Association Council" and to the "Association Committee" shall be construed as reference to the Cooperation Council and the committees established by it.

As regards provisions covered by this Agreement and the subsequent application of the Association Agreement, it is agreed that the date of entry into force of the Association Agreement shall be the date of entry into force of this Agreement.

For the first year of application, the volumes of tariff quotas shall be calculated as a pro rata of the basic volumes, taking into account the part of the period elapsed before the date of entry into force of this Agreement. As regards certain products listed in Protocol 1 to the Association Agreement, the following arrangements will apply: for products falling under CN code 0703 20 00, 0709 90 39, 0709 90 60, 0711 20 90, 0712 90 19, 0714 20 90, 1006, 1212 91, 1212 99 20, 1703, 2302, the concession granted should also apply to specific duties. These arrangements will remain in application upon the entry into force of the Association Agreement.

The provisions provisionally applied shall replace Articles 8 to 36, 43 to 46, 48 to 51 of the Cooperation Agreement between the European Economic Community and the Arab Republic of Egypt signed on 18 January 1977, including Annexes A, B, C, D, Protocol 2, and the relevant joint declarations, declarations and Exchanges of Letters; and the Agreement between the Member States of the European Coal and Steel Community and the Arab Republic of Egypt signed in Brussels on 18 January 1977.

I have the honour to propose that, if the above is acceptable to your Government, this letter and your letter confirmation shall together constitute an Agreement between the European Community and the Arab Republic of Egypt.'

I am able to confirm that the Government of the Arab Republic of Egypt is in agreement with the contents of your letter.

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

For the Government of the Arab Republic of Egypt

⁽¹⁾ Joint Declarations on Articles 14, 18, 34, 37 and Annex 6, and the Joint Declaration on the protection of data; Declarations by the European Community on Articles 11, 19, 21, 34.

**COUNCIL DECISION
of 22 December 2003**

on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Kingdom of Morocco concerning reciprocal liberalisation measures and the replacement of Protocols 1 and 3 to the EC-Morocco Association Agreement

(2003/914/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with the first sentence of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Article 16 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part⁽¹⁾, which has been in force since 1 March 2000, provides that the Community and Morocco will gradually implement greater liberalisation of their reciprocal trade in agricultural products.
- (2) Article 18 of the Euro-Mediterranean Agreement provides that from 1 January 2000 the Community and the Kingdom of Morocco will assess the situation with a view to determining the liberalisation measures to be applied by the Parties with effect from 1 January 2001.
- (3) The Community and the Kingdom of Morocco have agreed to replace Protocols 1 and 3 to the Euro-Mediterranean Agreement by means of an agreement in the form of an Exchange of Letters. That agreement should therefore be approved.
- (4) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽²⁾,

⁽¹⁾ OJ L 70, 18.3.2000, p. 1.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

Article 1

The Agreement in the form of an Exchange of Letters between the European Community and the Kingdom of Morocco concerning reciprocal liberalisation measures and the replacement of Protocols 1 and 3 to the EC-Morocco Association Agreement in the Annex hereto 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 Commission shall adopt the detailed rules for implementing Protocols 1 and 3 in accordance with the procedure laid down in Article 3.

Article 3

1. The Commission shall be assisted by the Management Committee for Sugar established by Article 42 of Regulation (EC) No 1260/2001⁽³⁾ or, as the case may be, by the committees established by the corresponding provisions of other regulations on the common organisation of markets or by the Customs Code Committee established by Article 248a of Regulation (EEC) No 2913/92⁽⁴⁾.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period referred to in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its own rules of procedure.

Article 4

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

⁽³⁾ OJ L 178, 30.6.2001, p. 1; Regulation as last amended by Commission Regulation (EC) No 680/2002 of 19 April 2002 (OJ L 104, 20.4.2002, p. 26).

⁽⁴⁾ OJ L 302, 19.10.1992, p. 1; Regulation as last amended by Regulation (EC) No 2700/2000 of 12 December 2000 (OJ L 311, 12.12.2000, p. 17).

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 22 December 2003.

For the Council
The President
G. ALEMANNNO

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS**between the European Community and the Kingdom of Morocco concerning reciprocal liberalisation measures and the replacement of the agricultural protocols to the EC-Morocco Association Agreement***A. Letter from the European Community*

Brussels, ...

Sir,

I have the honour to refer to the negotiations which have been held under Article 16 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, which has been in force since 1 March 2000, and which provides that the Community and Morocco will gradually implement greater liberalisation of their reciprocal trade in agricultural products.

The negotiations to that end were held in accordance with Article 18(1) of the Euro-Mediterranean Agreement, which provides that from 1 January 2000 the Community and Morocco will assess the situation with a view to determining the liberalisation measures to be applied by the parties with effect from 1 January 2001.

On the conclusion of the negotiations the two Parties agreed to the following:

1. Protocols 1 and 3 to the Association Agreement shall be replaced by the protocols annexed hereto.
2. In the first paragraph of Article 18 of the Association Agreement, the dates '1 January 2000' and '1 January 2001' shall be replaced by '1 January 2007' and '1 January 2008'.
3. The Agreement in the form of an Exchange of Letters between the Community and the Kingdom of Morocco annexed to the Association Agreement, relating to Article 1 of Protocol 1 and concerning imports into the Community of fresh cut flowers and flower buds falling within subheading 0603 10 of the common customs tariff is hereby repealed.
4. This Agreement shall apply from 1 January 2004, except for Articles 2, 4 and 5 of Protocol 1, which shall apply to tomatoes from 1 October 2003.

I should be obliged if you would confirm that your Government is in agreement with the contents of this letter.

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

On behalf of the Council of the European Union

B. Letter from Morocco

Rabat, ...

Sir,

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

I have the honour to refer to the negotiations which have been held under Article 16 of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, which has been in force since 1 March 2000, and which provides that the Community and Morocco will gradually implement greater liberalisation of their reciprocal trade in agricultural products.

The negotiations to that end were held in accordance with Article 18(1) of the Euro-Mediterranean Agreement, which provides that from 1 January 2000 the Community and Morocco will assess the situation with a view to determining the liberalisation measures to be applied by the parties with effect from 1 January 2001.

On the conclusion of the negotiations the two Parties agreed to the following:

1. Protocols 1 and 3 to the Association Agreement shall be replaced by the protocols annexed hereto.
2. In the first paragraph of Article 18 of the Association Agreement, the dates "1 January 2000" and "1 January 2001" shall be replaced by "1 January 2007" and "1 January 2008".
3. The Agreement in the form of an Exchange of Letters between the Community and the Kingdom of Morocco annexed to the Association Agreement, relating to Article 1 of Protocol 1 and concerning imports into the Community of fresh cut flowers and flower buds falling within subheading 0603 10 of the common customs tariff is hereby repealed.
4. This Agreement shall apply from 1 January 2004, except for Articles 2, 4 and 5 of Protocol 1, which shall apply to tomatoes from 1 October 2003.

I should be obliged if you would confirm that your Government is in agreement with the contents of this letter.'

I have the honour to inform you that the Kingdom of Morocco is in agreement.

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

For the Kingdom of Morocco

PROTOCOL No 1

on the arrangements applying to imports into the Community of agricultural products originating in Morocco

Article 1

1. The products listed in Annex 1.A, originating in Morocco, shall be admitted for import into the Community in accordance with the conditions set out below and in that Annex.

2. Import duties shall be either eliminated or reduced by the percentage indicated for each product in column (a) of Annex 1.A.

Where the common customs tariff provides for the application of *ad valorem* customs duties and a specific customs duty for certain products marked with an asterisk in column (a) or (c), the rates of reduction shown in column (a) and in column (c), as referred to in paragraph 3, shall apply only to the *ad valorem* customs duty.

3. The customs duties for certain products shall be eliminated within the limits of the tariff quotas shown against them in column (b) of Annex 1.A.

For the quantities imported in excess of the quotas, the common customs duties shall be reduced at the rates indicated in column (c) of that Annex.

For the first year of application of the Agreement, except for tomatoes falling within CN code 0702 00 00, the volumes of the tariff quotas for which the quota period began before the entry into application of this agreement shall be calculated as a pro rata of the basic volumes, taking into account the part of the period which elapsed before the date of entry into force of this Agreement.

4. For some of the products listed in Annex 1.A and indicated in column (d), the quotas shall be increased from 1 January 2004 to 1 January 2007 on the basis of four equal instalments, each corresponding to 3 % of the quota amounts.

5. If the Community reduces the most-favoured-nation duties it applies, the phasing-out of tariffs as indicated in columns (a) and (c) shall apply to the said reduced duties.

Article 2

1. For fresh or chilled tomatoes falling within CN code 0702 00 00, for each period from 1 October to 31 May, hereinafter called 'marketing years', under the following tariff quotas and subject to paragraph 2 below:

(tonnes)	marketing years			
	2003/04	2004/05	2005/06	2006/07 and after
Basic monthly quotas				
October	10 000	10 000	10 000	10 000
November	26 000	26 000	26 000	26 000
December	30 000	30 000	30 000	30 000
January	30 000	30 000	30 000	30 000
February	30 000	30 000	30 000	30 000
March	30 000	30 000	30 000	30 000
April	15 000	15 000	15 000	15 000
May	4 000	4 000	4 000	4 000
Total	175 000	175 000	175 000	175 000
Additional quota (from 1 November to 31 May)				
Line A	15 000	25 000	35 000	45 000
Line B	15 000	5 000	15 000	25 000

- (a) *ad valorem* customs duties shall be eliminated,
- (b) the entry price level from which specific duties will be reduced to zero, hereinafter called the 'agreed entry price', shall be EUR 461 per tonne.

2. When the total quantity of tomatoes originating in Morocco released for free circulation in the Community during a given marketing year does not exceed the sum of the basic monthly quotas and the additional quota applicable for that marketing year, the additional quota for the following marketing year shall be that indicated at line A in paragraph 1 above. Where that condition is not met during a given marketing year, the additional quota for the following year shall be that indicated at line B in paragraph 1 above. However, a maximum tolerance of 1 % shall be accepted for the purpose of assessing whether this condition has been met.

3. Morocco undertakes to ensure that no more than 30 % of this additional quota is used during any one month.

4. Drawings on the basic monthly tariff quotas shall be stopped on 15 January for the months from October to December each marketing year and on the second working day after 1 April for the months from January to March. The following working day, the Commission shall determine the unused quantities under the basic monthly quotas concerned, and these shall be transferred to the additional quota for that marketing year. From the above dates, all retroactive applications under one of the basic monthly tariff quotas which has been closed and any unused quantities to be returned to those quotas shall be taken from or placed in the additional tariff quota for the marketing year concerned.

Article 3

For the products listed below, the agreed entry price level from which specific duties will be reduced to zero during the periods indicated shall be those set out below, and the *ad valorem* customs duties shall be eliminated for the quantities and periods fixed in this Article.

Products:	Quantity (tonnes)	Period	Agreed entry price
Cucumbers CN 0707 00 05	5 600	01.11 – 31.05	EUR 449
Artichokes CN 0709 10 00	500	01.11 – 31.12	EUR 571
Courgettes CN 0709 90 70	20 000	01.10 – 31.01	EUR 424
		01.02 – 31.03	EUR 413
		01.04 – 20.04	EUR 424
Fresh oranges CN ex 0805 10	300 000	01.12 – 31.05	EUR 264
Fresh clementines CN ex 0805 20 10	130 000	01.11 — end of February	EUR 484

Article 4

For the products referred to in Articles 2 and 3:

- if the entry price of a particular consignment is 2 %, 4 %, 6 % or 8 % below the agreed entry price, the specific customs duty under the quota shall be 2 %, 4 %, 6 % or 8 % of the agreed entry price;
- if the entry price of a particular consignment is below 92 % of the agreed entry price, the specific customs duty bound in the WTO shall apply;
- these agreed entry prices shall be reduced in the same proportions and at the same pace as the entry prices bound in the WTO.

Article 5

1. The aim of the specific arrangements provided for in Articles 2 and 3 of this Protocol shall be to preserve the level of Morocco's traditional exports to the Community and to avoid disturbing Community markets.

2. In order to ensure that the aim described in the first paragraph and Articles 2 and 3 is fully achieved and to improve market stability and continuity of supply, the two Parties shall hold consultations during the second quarter of each year, or at any time if one of the Parties so requests, no more than three working days after such a request.

Consultations shall cover trade during the previous marketing year and the outlook for the coming marketing year, in particular the market situation, production forecasts, estimated production and export prices and possible market developments.

Where necessary, the Parties shall take the necessary steps to ensure that the aim described in the first paragraph of this Article and in Articles 2 and 3 is fully achieved.

3. Without prejudice to other provisions of this Agreement, if, given the particular sensitivity of the agricultural markets, imports of products originating in Morocco which are the subject of concessions granted under this Protocol cause serious disturbance to Community markets within the meaning of Article 25 of the Agreement, both Parties shall hold consultations immediately to find an appropriate solution. Pending such solution, the Community may take the measures it deems necessary.

Article 6

Wine originating in Morocco bearing a registered designation of origin shall be accompanied by a certificate indicating the origin in accordance with the model in Annex I.B to this Protocol or by a V I 1 or V I 2 document annotated in accordance with Article 25 of Regulation (EC) No 883/2001 on the certificates and analyses required for imports of wine, grape juice and grape must.

ANNEX 1A

CN code ⁽¹⁾	Description of the goods ⁽²⁾	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
0101 90 19	Horses other than for slaughter	100			
ex 0204	Meat of sheep or goats, fresh, chilled or frozen, other than meat of domestic sheep	100			
0205 00	Meat of horses, asses, mules or hinnies, fresh, chilled or frozen	100			
0208	Other meat and edible offal, fresh, chilled or frozen	100			
ex 0602	Other live plants (including their roots), cuttings and slips; mushroom spawn, other than roses	100			
ex 0602 40	Roses, grafted or not, other than cuttings	100			
0603 10	Cut flowers and flower buds, fresh	100	3 000	—	Article 1(4)
0603 10 10	Roses, from 15 October to 31 May				
0603 10 20	Carnations, from 15 October to 31 May				
0603 10 40	Gladioli, from 15 October to 31 May				
0603 10 50	Chrysanthemums, from 15 October to 31 May				
0603 10 30	Orchids, from 15 October to 14 May	100	2 000	—	Article 1(4)
0603 10 80	Other, from 15 October to 14 May				
ex 0701 90 50 ex 0701 90 90	New potatoes, from 1 December to 30 April	100	120 000	40	Article 1(4)
0702 00 00	Tomatoes, fresh or chilled, from 1 October to 31 May			60 (*) ⁽³⁾	Article 2
0702 00 00	Tomatoes, fresh or chilled, from 1 June to 30 September	60 (*)			
ex 0703 10 11	Onions, fresh or chilled, from 15 February to 15 May	100	8 000	60	Article 1(4)
0703 10 19 0709 90 90	Wild onions (<i>Muscari comosum</i>) from 15 February to 15 May				

CN code (1)	Description of the goods (2)	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
0703 10 90	Shallots, fresh or chilled	100	1 000	—	Article 1(4)
0703 20 00	Garlic, fresh or chilled				
0703 90 00	Leeks and other alliaceous vegetables, fresh or chilled				
ex 0704	Cabbages, cauliflowers, kale, kohlrabi and other similar edible brassicas, fresh or chilled, excluding Chinese cabbage	100	500	—	Article 1(4)
ex 0704 90 90	Chinese cabbage, fresh or chilled	100	200	—	Article 1(4)
0705 11 00	Cabbage lettuce (head lettuce), fresh or chilled	100	200	—	Article 1(4)
0705 19 00	Lettuce (<i>Lactuca sativa</i>), fresh or chilled (excluding head lettuce)	100	600	—	Article 1(4)
0705 29 00	Chicory (<i>Chicorium</i> spp.), with the exception of witloof chicory (<i>Chicorium intybus</i> var. <i>foliosum</i>) fresh or chilled				
0706 10 00	Carrots and turnips, fresh or chilled				
0706 90	Salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled				
0707 00 05	Cucumbers, fresh or chilled, from 1 November to 31 May				Article 3
0707 00 05	Cucumbers, fresh or chilled, 1 June to 31 October	100 (*)			
0707 00 90	Gherkins, fresh or chilled	100	100	—	Article 1(4)
0708 10 00	Peas (<i>Pisum sativum</i>), fresh or chilled, from 1 October to 30 April	100			
0708 20 00	Beans (<i>Vigna</i> spp. <i>Phaseolus</i> spp.), fresh or chilled, from 1 November to 31 May	100			
0709 10 00	Artichokes, fresh or chilled, from 1 November to 31 December			30 (*)	Article 3
0709 10 00	Artichokes, fresh or chilled, from 1 to 31 October and from 1 January to 31 March	100 (*)			
0709 20 00	Asparagus, fresh or chilled, from 1 October to 31 May	100			
0709 30 00	Aubergines (eggplants), fresh or chilled, from 1 December to 30 April	100			

CN code (1)	Description of the goods (2)	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
0709 40 00	Celery other than celeriac, fresh or chilled	100	9 000	—	Article 1(4)
ex 0709 51 00	Mushrooms of the genus <i>Agaricus</i> , fresh or chilled, excluding cultivated mushrooms				
0709 59 10	Chanterelles, fresh or chilled				
0709 59 30	Flap mushrooms, fresh or chilled				
ex 0709 59 90	Other edible mushrooms, fresh or chilled, other than cultivated mushrooms				
0709 70 00	Spinach, New Zealand spinach and orache spinach (garden spinach), fresh or chilled				
0709 60 10	Sweet peppers and pimentos, fresh or chilled	100			
0709 60 99	Other fruits of the genus <i>Capsicum</i> or <i>Pimenta</i> , fresh or chilled, from 15 November to 30 June	100			
0709 90 10	Salad vegetables, other than lettuce (<i>Lactuca sativa</i>) and chicory (<i>Chicorium</i> spp.), fresh or chilled	100			
0709 90 31	Olives, fresh or chilled, for uses other than the production of oil (*)	100			
0709 90 39	Other olives, fresh or chilled	100			
0709 90 40	Capers, fresh or chilled	100			
0709 90 60	Sweet corn, fresh or chilled	100			
0709 90 70	Courgettes, fresh or chilled, from 1 October to 20 April				Article 3
0709 90 70	Courgettes, fresh or chilled, from 21 April to 31 May	60 (*)			
ex 0709 90 90	Okra, fresh or chilled, from 15 February to 15 June	100			
ex 0710	Frozen vegetables other than peas and other fruits of the genus <i>Capsicum</i> or <i>Pimenta</i>	100	10 000		Article 1(4)
ex 0710 21 00 0710 29 00	Peas, uncooked or cooked by steaming or boiling in water, frozen	100			
0710 80 59	Fruits of the genus <i>Capsicum</i> or <i>Pimenta</i> , uncooked or cooked by steaming or boiling in water, frozen (excluding sweet peppers)	100			

CN code ⁽¹⁾	Description of the goods ⁽²⁾	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
0711 20 10	Olives, provisionally preserved, but unsuitable in that state for consumption, for uses other than the production of oil ⁽⁴⁾	100			
0711 30 00	Capers, provisionally preserved but unsuitable in that state for consumption	100			
0711 40 00 0711 51 00 0711 59 00 0711 90 30 0711 90 50 0711 90 80 0711 90 90	Cucumbers and gherkins, mushrooms, truffles, sweet corn, onions, other vegetables (excluding pimentos) and mixtures of vegetables, provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for consumption	100	600	—	Article 1(4)
0711 90 10	Fruits of the genus Capsicum or Pimenta, excluding sweet peppers and pimentos, provisionally preserved but unsuitable in that state for consumption	100			
ex 0712	Dried vegetables, excluding onions and olives	100	2 000	—	Article 1(4)
ex 0713 50 00	Broad beans and horse beans, for sowing	100			
ex 0713 50 00 0713 90 90	Broad beans, horse beans and other leguminous vegetables, other than for sowing	100			
0804 10 00	Dates in immediate packings of a net capacity not exceeding 35 kg	100			
0804 20	Figs	100			
0804 40 00	Avocados	100			
ex 0805 10	Fresh oranges, from 1 December to 31 May			80 (*)	Article 3
ex 0805 10	Fresh oranges, from 1 June to 30 November	100			
ex 0805 10 80	Oranges, other than fresh	100			
ex 0805 20 10	Fresh clementines, from 1 November to the end of February			80 (*)	Article 3
ex 0805 20 10	Fresh clementines, from 1 March to 31 October	100 (*)			
ex 0805 20 30 ex 0805 20 50 ex 0805 20 70 0805 20 90	Mandarins (including tangerines and satsumas), fresh; wilkings and similar citrus hybrids, fresh	100 (*)			
0805 40 00	Grapefruit, fresh or dried	100			
ex 0805 50 10	Fresh lemons	100 (*)			
ex 0805 50	Lemons and limes, other than fresh	100 (*)			

CN code (1)	Description of the goods (2)	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
ex 0806 10 10	Table grapes, fresh, from 1 November to 31 July	100 (*)			
0807 11 00	Watermelons, fresh, from 1 January to 15 June	100			
0807 19 00	Other melons, fresh, from 15 October to 31 May	100			
0808 20 90	Quinces, fresh	100	1 000	50	
0809 10 00	Apricots, fresh	100 (*) (5)	3 500	—	Article 1(4)
0809 20	Cherries, fresh				
0809 30	Peaches, including nectarines, fresh				
0809 40 05	Plums, fresh, from 1 November to 30 June	100 (*)			
0810 10 00	Strawberries fresh, from 1 November to 31 March	100			
0810 20 10	Raspberries, fresh, from 15 May to 15 July	100			
0810 50 00	Kiwi fruit, fresh, from 1 January to 30 April	100	250	—	Article 1(4)
ex 0810 90 95	Pomegranates, fresh	100			
ex 0810 90 95	Prickly pears and medlars, fresh	100			
ex 0811	Fruit, not cooked by steaming or boiling in water, frozen, not containing added sugar	100			
ex 0812 90 20	Oranges, finely shredded, provisionally preserved	100			
ex 0812 90 99	Other citrus fruit, finely shredded, provisionally preserved	100			
0813 10 00	Apricots, dried	100			
0813 40 10	Peaches, including nectarines, dried	100			
0813 40 50	Papaws (papayas), dried	100			
0813 40 95	Other fruit, dried	100			
0813 50 12 0813 50 15	Mixtures of dried fruit, other than prunes	100			
0904 12 00	Pepper, crushed or ground	100			
0904 20 90	Fruits of the genus Capsicum or Pimenta, crushed or ground	100			
0910	Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices	100			

CN code ⁽¹⁾	Description of the goods ⁽²⁾	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
1209 91 90	Other vegetable seeds ⁽⁶⁾	100			
1209 99 99	Other seeds or fruit for sowing ⁽⁶⁾	100			
1211 90 30	Tonquin beans	100			
1212 10	Locust beans, including locust bean seeds	100			
ex 1302 20	Pectic substances and pectinates	25			
1509	Olive oil and its fractions, whether or not refined, but not chemically modified	100	3 500	—	Article 1(4)
1510	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading No 1509				
ex 2001 10 00	Cucumbers, prepared or preserved by vinegar or acetic acid, without added sugar	100			
ex 2001 10 00	Gherkins, prepared or preserved by vinegar or acetic acid	100	10 000 (net weight drained)	—	Article 1(4)
ex 2001 90 93	Onions, prepared or preserved by vinegar or acetic acid, without added sugar	100			
2001 90 20	Fruit of genus Capsicum, other than sweet peppers and pimentos, prepared or preserved by vinegar or acetic acid	100			
ex 2001 90 50	Mushrooms, prepared or preserved by vinegar or acetic acid, without added sugar	100			
ex 2001 90 65	Olives, prepared or preserved by vinegar or acetic acid, without added sugar	100			
ex 2001 90 70	Sweet peppers or pimentos, prepared or preserved by vinegar or acetic acid, without added sugar	100			
ex 2001 90 75	Salad beetroot, prepared or preserved by vinegar or acetic acid, without added sugar	100			
ex 2001 90 85	Red cabbage, prepared or preserved by vinegar or acetic acid, without added sugar	100			
ex 2001 90 96	Other vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid, not containing sugar	100			
2002 10 10	Tomatoes, peeled	100			
2002 90	Tomatoes, prepared or preserved otherwise than by vinegar or acetic acid (other than tomatoes whole or in pieces)	100	2 000	—	Article 1(4)

CN code (1)	Description of the goods (2)	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
2003 10 20 2003 10 30	Mushrooms of the genus <i>Agaricus</i> , prepared or preserved otherwise than by vinegar or acetic acid	100			
2003 20 00	Truffles, prepared or preserved otherwise than by vinegar or acetic acid	100			
2003 90 00	Other mushrooms, prepared or preserved otherwise than by vinegar or acetic acid	100			
2004 10 99	Other potatoes, prepared or preserved otherwise than by vinegar or acetic acid, frozen	100			
ex 2004 90 30	Capers and olives, prepared or preserved otherwise than by vinegar or acetic acid, frozen	100			
2004 90 50	Peas (<i>Pisum sativum</i>) and green beans, prepared or preserved otherwise than by vinegar or acetic acid, frozen	100	10 500	20	Article 1(4)
2005 40 00	Peas (<i>Pisum Sativum</i>), prepared or preserved otherwise than by vinegar or acetic acid, not frozen				
2005 59 00	Other beans, prepared or preserved otherwise than by vinegar or acetic acid, not frozen				
2004 90 98	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen	100			
2005 10 00	Homogenised vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen:	100			
2005 20 20	Potatoes, thinly sliced, fried or baked, whether or not salted or flavoured, in airtight packings, suitable for direct consumption	100			
2005 20 80	Other potatoes, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			
2005 51 00	Beans, shelled, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			
2005 60 00	Asparagus, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			
2005 70	Olives, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			

CN code (1)	Description of the goods (2)	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
2005 90 10	Fruit of the genus Capsicum, other than sweet peppers or pimentos, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			
2005 90 30	Capers, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			
2005 90 50	Artichokes, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			
2005 90 60	Carrots, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			
2005 90 70	Mixtures of vegetables, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			
2005 90 80	Other vegetables, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	100			
2007 10 91	Homogenised preparations of tropical fruit	100			
2007 10 99	Other homogenised preparations	100			
2007 91 90	Citrus fruit, other	100			
2007 99 91	Apple purée, including compotes	100			
2007 99 98	Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, other	100			
2008 30 51 2008 30 71 ex 2008 30 90	Grapefruit segments	80			
ex 2008 30 55	Mandarins (including tangerines and satsumas), finely shredded; clementines, wilkings and other similar citrus hybrids, finely shredded — in immediate packings of a net content exceeding 1 kg	100			
ex 2008 30 75	— in immediate packings of a net content not exceeding 1 kg	80			
ex 2008 30 59 2008 30 79	Oranges and lemons, finely shredded	80			
ex 2008 30 90	Citrus fruit, finely shredded	80			
ex 2008 30 90	Citrus pulp	40			

CN code (1)	Description of the goods (2)	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
2008 50 61 2008 50 69	Apricots, otherwise prepared or preserved, without added spirit but containing added sugar, in immediate packings of a net content exceeding 1 kg	100	10 000	20	Article 1(4)
2008 50 71 2008 50 79	Apricots, otherwise prepared or preserved, without added spirit, containing added sugar, in immediate packings of a net content not exceeding 1 kg	100	5 000	—	Article 1(4)
ex 2008 50 92 2008 50 94	Apricot halves, otherwise prepared or preserved, without either added spirit or added sugar, in immediate packings of 4,5 kg or more	100			
ex 2008 50 92 2008 50 94	Apricot pulp, otherwise prepared or preserved, without either added spirit or added sugar, in immediate packings of 4,5 kg or more	100	10 000	50	Article 1(4)
ex 2008 50 99	Apricots, otherwise prepared or preserved, without either added spirit or added sugar, in immediate packings of a net content of less than 4,5 kg	100	7 200	50	Article 1 § 4
2008 70 99	Peach and nectarine halves, otherwise prepared or preserved, without either added spirit or added sugar, in immediate packings of a net content of less than 4,5 kg				
ex 2008 70 92 ex 2008 70 94	Peach and nectarine halves, otherwise prepared or preserved, without either added spirit or added sugar, in immediate packings of a net content of 4,5 kg or more	50			
2008 92 51 2008 92 59 2008 92 72 2008 92 74 2008 92 76 2008 92 78	Mixtures of fruits, without added spirit, containing added sugar	100	100	55	Article 1(4)
2009 11 2009 12 00 2009 19	Orange juice	100 (*)	50 000	70 (*)	Article 1(4)
2009 21 00 2009 29 11 2009 29 19 2009 29 91 2009 29 99	Grapefruit juice	100 (*)	1 000	70 (*)	Article 1(4)
2009 39 11 2009 39 19	Juice of all other citrus fruit	100 (*)			

CN code ⁽¹⁾	Description of the goods ⁽²⁾	Rate of reduction of MFN customs duty (%)	Tariff quota (tonnes net weight)	Reduction of the MFN customs duty beyond the current tariff quotas (%)	Special provisions
		a	b	c	d
ex 2009 31 11 ex 2009 31 19 ex 2009 39 31 ex 2009 39 39	Juice of all other citrus fruit, other than lemon juice	100			
ex 2204	Wine of fresh grapes	100	95 200 hl	—	Article 1(4)
ex 2204 21 79 ex 2204 21 80 ex 2204 21 83 ex 2204 21 84	Wines bearing one of the following designations of origin: Berkane, Saïs, Beni M'Tir, Gerrouane, Zemmour and Zennata, in containers holding 2 litres or less, of an actual alcoholic strength not exceeding 15 % vol.	100	56 000 hl	—	Article 1(4)
ex 2302	Brans, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants, other than maize or rice	100			

(*) The rate of reduction applies only to the *ad valorem* customs duty.

(1) CN codes corresponding to Regulation (EC) No 1832/2002 (OJ L 290, 28.10.2002, p. 1).

(2) Without prejudice to the rules for the interpretation of the combined nomenclature, the description of the products is deemed to be indicative only, the preferential scheme being determined, for the purposes of this Annex, by the coverage of the CN codes. Where ex CN codes are indicated, the preferential scheme is to be determined by application of the CN code and corresponding description taken together.

(3) Application of this concession is suspended until the date provided for in Article 18 of this Agreement for the application of new liberalisation measures.

(4) Entry under this subheading is subject to the conditions laid down in the relevant Community provisions (see Articles 291 to 300 of Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p. 1) and subsequent amendments).

(5) For fresh cherries, the rate of reduction shall apply to the minimum specific customs duty.

(6) This concession applies only to those seeds covered by the provisions of the directives on the marketing of seeds and plants.

ANNEX 1B

1. Exporter (name, full address, country):	2. Number	00000	
	3. Name of the authority guaranteeing the designation of origin:		
4. Consignee (name, full address, country):	5. CERTIFICATE OF DESIGNATION OF ORIGIN		
	7. Designation of origin		
6. Means of transport:			
8. Place of unloading :			
9. Marks and numbers, number and kind of packages		10. Gross weight	11. Litres
12. Litres (in words):			
13. Stamp of issuing body:			
14. Customs stamp:		(See translation, box 15)	
15. We hereby certify that the wine described in this certificate is wine produced within the wine district of and is considered by Moroccan legislation as entitled to the designation of origin '.....'. The alcohol added to this wine is of vinous origin.			
16. ⁽¹⁾			

⁽¹⁾ Additional information: for use of the exporting country.

PROTOCOL No 3
concerning the arrangements applicable to imports into Morocco of agricultural products originating in the Community

Article 1

1. The import duties on imports into Morocco of products originating in the Community as listed in the Annex hereto shall be as set in column (a) of the Annex. The successive reductions provided for in this Agreement shall be made by the percentages indicated in columns (c), (e), (g), (i) and (k) for the quantities covered by the tariff quotas indicated in columns (b), (d), (f), (h) and (j).

2. Without prejudice to paragraph 3, if any erga omnes tariff reduction is applied after this Agreement has been signed, the reduced duty shall replace the duties indicated in column (a) of the Annex for the purposes of paragraph 1 as from the date when that reduction is applied.

3. For products falling within CN code ex 1001 90 99 as referred to in the Annex, the duty indicated in column (a) of the Annex shall be that applied on 1 October 2003 and shall remain at or below that level for the purposes of calculating the tariff reduction.

If the duty concerned is reduced on an erga omnes basis after that date, the percentage indicated in columns (c), (e), (g), (i) and (k) shall be adjusted according to the following rules:

- if the duty is reduced on an erga omnes basis, the percentage shall be increased by 0,275 % per percentage point of reduction;
- if the duty is subsequently increased on an erga omnes basis, the percentage shall be reduced by 0,275 % per percentage point of increase;
- if the duty is again adjusted either upwards or downwards, the percentage resulting from the application of the previous indents shall be adjusted using the relevant formula.

Article 2

1. For cereals falling within CN code ex 1001 90 99, the tariff quota shall be fixed as stipulated in the footnote on page 2 of the Annex on the basis of Moroccan output during the current year, as estimated and published by the Moroccan authorities during May. The quota will be adapted if necessary at the end of July in the light of a communication from the

Moroccan authorities fixing the definitive volume of Moroccan output. However, the result of any such adjustment must be adjusted by common accord between the Parties either upwards or downwards by 5 % depending on the outcome of the consultations referred to in paragraph 2.

The above tariff quota shall not apply during June and July. During the consultations provided for in the following paragraph, the Parties shall agree to consider whether to extend the timetable in the light of the forecasts for the Moroccan market. However, any extension may not go beyond 31 August.

2. For the purposes of managing the provisions set out in paragraph 1, and in order to ensure supplies to the Moroccan market as well as the stability and continuity of that market and to stabilise prices on the Moroccan market and preserve traditional trade flows, the following cooperation arrangements shall apply in the cereals sector.

Before the beginning of each marketing year, no later than the second half of May, the parties shall hold consultations.

The purpose of these consultations will be to discuss the market situation for cereals including, in particular, production forecasts for Moroccan common wheat, the situation of stocks, consumption, producer and export prices and possible market development as well as possibilities of adapting supply to demand.

3. If, after the entry into force of this Agreement, Morocco grants a larger tariff reduction on cereals falling within CN code ex 1001 90 99 to a third country under an international agreement, Morocco undertakes to grant the same tariff reduction to the Community as an autonomous measure.

Article 3

Without prejudice to other provisions of this Agreement, if, given the particular sensitivity of the agricultural markets, imports of products originating in the Community which are the subject of concessions granted under this Protocol, cause serious disturbance to the Moroccan market within the meaning of Article 25 of the Agreement, both Parties shall hold consultations immediately to find an appropriate solution. Pending such solution, Morocco may take the measures it deems necessary.

ANNEX

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduct- ion in customs duties (%)	Quota (tonnes)	Reduct- ion in customs duties (%)						
			a	b	c	d	e	f	g	h	i	j
ex 0102 10	Pure-bred bovine animals for breeding (excluding cows)	2,5	5 000	100,0	5 000	100,0	5 000	100,0	5 000	100,0	5 000	100,0
0105 11	Fowls of the species Gallus domesticus, weighing not more than 185 g	2,5	600	100,0	600	100,0	600	100,0	600	100,0	600	100,0
ex 0202 20	Beef and veal cuts with bone in, frozen, excluding 'compensated' quarters	254,0	4 000	82,3	4 000	82,3	4 000	82,3	4 000	82,3	4 000	82,3
0207 12	Fowls of the species Gallus domesticus, not cut in pieces, frozen	110,0	200	27,3	200	27,3	200	27,3	200	27,3	200	27,3
ex 0207 27 10	Boneless turkey cuts, frozen, ground	60,0	770	36,7	770	36,7	840	40,0	910	43,3	1 000	46,7
0207 27 30	Whole turkey wings, with or without tips, frozen											
0207 27 50	Turkey breasts and cuts thereof, with bone in, frozen											
0207 27 60	Turkey drumsticks and cuts thereof, with bone in, frozen	110,0	60	13,6	70	13,6	80	18,2	90	22,7	100	27,3
0207 27 70	Turkey legs and cuts thereof, with bone in, frozen, other than drumsticks and cuts thereof											
0207 27 80	Other turkey cuts, with bone in, frozen											
0401 30	Cream, of a fat content by weight exceeding 6 %	109,0	1 000	88,5	1 000	88,5	1 000	88,5	1 000	88,5	1 000	88,5

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduct- ion in customs duties (%)	Quota (tonnes)	Reduct- ion in customs duties (%)						
			a	b	c	d	e	f	g	h	i	j
0402 10 11	Milk and cream in powder, granules or other solid form, of a fat content by weight not exceeding 1.5 %, not containing added sugar or other sweeteners, in immediate packings of a net content not exceeding 2.5 kg	109,0	4 000	72,5	4 000	72,5	4 300	72,5	4 600	72,5	4 800	72,5
0402 10 19	Milk and cream in powder, granules or other solid form, of a fat content by weight not exceeding 1.5 %, not containing added sugar or other sweeteners, in immediate packings of a net content exceeding 2.5 kg	60,0		100,0		100,0		100,0		100,0		100,0
0402 21 11	Milk and cream in powder, granules or other solid form, of a fat content by weight exceeding 1.5 %, not containing added sugar or other sweeteners, in immediate packings of a net content not exceeding 2.5 kg	109,0	3 200	20,2	3 200	20,2	3 200	20,2	3 200	20,2	3 200	20,2
0402 21 19	Milk and cream in powder, granules or other solid form, of a fat content by weight exceeding 11 % but not exceeding 27 %, not containing added sugar or other sweeteners, in immediate packings of a net content exceeding 2.5 kg											
0402 21 91	Milk and cream in powder, granules or other solid form, of a fat content by weight exceeding 27 %, not containing added sugar or other sweeteners, in immediate packings of a net content not exceeding 2.5 kg											
0402 21 99	Milk and cream in powder, granules or other solid form, of a fat content by weight exceeding 27 %, not containing added sugar or other sweeteners, in immediate packings of a net content exceeding 2.5 kg											

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduct- ion in customs duties (%)	Quota (tonnes)	Reduct- ion in customs duties (%)						
			a	b	c	d	e	f	g	h	i	j
0402 91 31	Milk and cream, concentrated, not containing added sugar or other sweeteners, of a fat content by weight exceeding 8 % but not exceeding 10 %, in immediate packings of a net content not exceeding 2.5 kg (excluding milk and cream in powder, granules or other solid form, of a fat content by weight exceeding 1.5 %)	109,0	2 600	24,8	2 600	24,8	2 600	29,4	2 600	33,9	2 600	38,6
0402 91 59	Milk and cream, concentrated, not containing added sugar or other sweeteners, of a fat content by weight exceeding 10 % but not exceeding 45 %, in immediate packings of a net content exceeding 2.5 kg (excluding milk and cream in powder, granules or other solid form, of a fat content by weight exceeding 1.5 %)											
0402 91 99	Milk and cream, concentrated, not containing added sugar or other sweeteners, of a fat content by weight exceeding 45 %, in immediate packings of a net content exceeding 2.5 kg (excluding milk and cream in powder, granules or other solid form, of a fat content by weight exceeding 1.5 %)											
0402 99	Milk and cream, concentrated, containing added sugar or other sweeteners	109,0	1 000	90,9	1 000	90,9	1 000	90,9	1 000	90,9	1 000	90,9
0403 90 11 0403 90 19 0403 90 31 0403 90 39 0403 90 51 0403 90 59	Buttermilk, curdled milk and cream, kephir and other fermented or acidified milk and cream, not flavoured nor containing added fruit, nuts or cocoa	109,0	300	74,3	300	74,3	300	76,1	300	78,0	300	79,8
0404 10	Whey and modified whey, whether or not concentrated or containing added sugar or other sweeteners	17,5	1 000	100,0	1 000	100,0	1 000	100,0	1 000	100,0	1 000	100,0

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduct- ion in customs duties (%)	Quota (tonnes)	Reduct- ion in customs duties (%)						
			a	b	c	d	e	f	g	h	i	j
0405 10	Butter	32,5	8 200	69,2	8 200	69,2	8 500	69,2	8 700	69,2	9 000	69,2
0405 20 00	Dairy spreads	50,0		80,0		80,0		80,0		80,0		
0405 90 00	Other oils and fats derived from milk	17,5		42,8		42,8		42,8		42,8		
0406 20	Grated or powdered cheese, of all kinds	75,0	100	41,3	100	41,3	100	49,3	100	57,3	100	65,3
0406 30	Processed cheese, not grated or powdered	75,0	100	41,3	100	41,3	100	49,3	100	57,3	100	65,3
0406 40	Blue-veined cheese	75,0	100	41,3	100	41,3	100	49,3	100	57,3	100	65,3
ex 0406 90	Other cheese, excluding cheese for processing falling within CN code 0406 90 01	75,0	1 000	52,0	1 000	52,0	1 000	57,0	1 000	62,0	1 000	68,0
0406 90 01	Other cheese for processing	17,5	300	100,0	300	100,0	300	100,0	300	100,0	300	100,0
0407 00 19	Poultry eggs, for hatching (excluding turkey or goose eggs)	52,0	200	100,0	200	100,0	200	100,0	200	100,0	200	100,0
0408 99 80	Birds' eggs, not in shell, fresh, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweeteners, suitable for human consumption (excluding dried eggs and egg yolks)	50,0	60	50,0	60	50,0	70	50,0	80	50,0	90	50,0
0409 00 00	Natural honey	50,0	100	30,0	100	30,0	100	30,0	100	30,0	100	30,0
0504 00 00	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof	32,5	1 000	100,0	1 000	100,0	1 200	100,0	1 400	100,0	1 600	100,0
		50										
		52										

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)
			a	b	c	d	e	f	g	h	i	j
0601	Bulbs, tubers, tuberous roots, corms, crowns and rhizomes, dormant, in growth or in flower; chicory plants and roots other than roots of heading No 1212	17,5	200	100,0	200	100,0	200	100,0	200	100,0	200	100,0
		32,5										
		50										
0602 20	Edible fruit or nut trees, shrubs and bushes, whether or not grafted; vine slips, grafted or rooted	2,5	500	100,0	500	100,0	500	100,0	500	100,0	500	100,0
		17,5										
		50										
0602 90 30	Vegetable and strawberry plants	17,5	1 150	100,0	1 150	100,0	1 300	100,0	1 450	100,0	1 600	100,0
0602 90 45	Outdoor rooted cuttings and young plants of trees, shrubs and bushes (excluding fruit, nut and forest trees)	50,0	100	100,0	100	100,0	100	100,0	100	100,0	100	100,0
0602 90 99	Other live indoor plants (excluding rooted cuttings, young plants and flowering plants with buds or flowers)	17,5	300	42,9	300	42,9	400	57,1	500	71,4	600	100,0
0701 10 00	Seed potatoes, fresh or chilled	40,0	50 000	37,5	50 000	37,5	50 000	37,5	50 000	37,5	50 000	37,5
0703 20 00	Garlic, fresh or chilled	50,0	1 000	100,0	1 000	100,0	1 150	100,0	1 300	100,0	1 500	100,0
0712 90 50 0712 90 90	Carrots and other vegetables and mixtures of vegetables, dried, whole, cut, sliced, broken or in powder, but not further prepared	50,0	150	50,0	150	50,0	150	50,0	150	50,0	150	50,0

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)
			a	b	c	d	e	f	g	h	i	j
0713 10 10	Peas (<i>Pisum sativum</i>), dried, shelled, for sowing	17,5	450	100,0	450	100,0	450	100,0	450	100,0	450	100,0
0713 10 90	Peas (<i>Pisum sativum</i>), dried, shelled, whether or not skinned or split (excluding peas for sowing)	50,0	350	24,0	350	24,0	350	28,0	350	32,0	350	36,0
0713 33 90	Kidney beans (<i>Phaseolus vulgaris</i>), dried, shelled, whether or not skinned or split (excluding beans for sowing)	50,0	150	50,0	150	50,0	150	50,0	150	50,0	150	50,0
ex 0713 50 00	Broad beans (<i>Vicia faba</i> var. <i>major</i>) and horse beans (<i>Vicia faba</i> var. <i>equina</i> , <i>Vicia faba</i> var. <i>minor</i>), dried, shelled, for sowing	25,0	4 200	40,0	4 200	50,0	4 200	60,0	4 200	70,0	4 200	80,0
0713 90 90	Other dried leguminous vegetables, shelled, whether or not skinned or split, other than for sowing	50,0	3 600	20,0	3 600	20,0	3 600	26,0	3 600	30,0	3 600	42,0
0802 12 90	Almonds, fresh or dried, shelled (excluding bitter almonds)	50,0	100	100,0	100	100,0	100	100,0	100	100,0	100	100,0
0802 22 00	Hazelnuts or filberts (<i>Corylus</i> spp.), fresh or dried, shelled, whether or not peeled	50,0	100	100,0	100	100,0	100	100,0	100	100,0	100	100,0
0802 90	Other nuts, fresh or dried, whether or not shelled or peeled	50,0	100	100,0	100	100,0	100	100,0	100	100,0	100	100,0
0804 40 00	Avocados, fresh or dried	52,0	100	23,1	100	23,1	100	28,8	100	32,7	100	44,2
0806 20	Grapes, dried	52,0	100	23,1	100	23,1	100	28,8	100	32,7	100	44,2
ex 0808 10	Apples, fresh, from 1 February to 30 April	52,0	2 000	100,0	2 000	100,0	2 000	100,0	2 000	100,0	2 000	100,0
0808 20 50	Pears, fresh, from 1 February to 30 April	52,0	300	100,0	300	100,0	300	100,0	300	100,0	300	100,0
0810 50 00	Kiwi fruit, fresh	50,0	100	50,0	100	50,0	100	50,0	100	50,0	100	50,0

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)
			a	b	c	d	e	f	g	h	i	j
0813 20 00	Prunes, dried	52,0	100	100,0	100	100,0	100	100,0	100	100,0	100	100,0
1001 10 00	Durum wheat, from 1 December to 31 March	75 (^a)	5 000	25,0	5 000	25,0	5 000	25,0	5 000	25,0	5 000	25,0
ex 1001 90 99	Spelt, common wheat and meslin other than for sowing	135 (^a)	1 060 000 (²) Article 2	38,0	1 060 000 (²) Article 2	38,0	1 060 000 (²) Article 2	38,0	1 060 000 (²) Article 2	38,0	1 060 000 (²) Article 2	38,0
1003 00 10	Barley for sowing	36,0	2 000	100,0	2 000	100,0	2 000	100,0	2 000	100,0	2 000	100,0
ex 1003 00 90	Barley (other than for sowing and for malting), from 1 December to 31 March	35 (^b)	100 000	20,0	100 000	20,0	100 000	20,0	100 000	20,0	100 000	20,0
ex 1003 00 90	Barley for malting	35 (^b)	10 000	100,0	10 000	100,0	12 000	100,0	14 000	100,0	16 000	100,0
1004 00 00	Oats	2,5	800	100,0	800	100,0	800	100,0	800	100,0	800	100,0
		25										
		30										
1005 10	Maize seed	2,5	1 000	100,0	1 000	100,0	1 000	100,0	1 000	100,0	1 000	100,0
1005 90 00	Maize other than seed	35 (^b)	2 000	(³)	2 000	(³)	2 000	(³)	2 000	(³)	2 000	(³)
1006 10 10	Paddy rice for sowing	2,5	1 000	100,0	1 000	100,0	1 000	100,0	1 000	100,0	1 000	100,0
1006 30	Semi-milled or wholly milled rice, whether or not polished or glazed	140 (^c)	200	100,0	200	100,0	200	100,0	200	100,0	200	100,0

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduct- ion in customs duties (%)	Quota (tonnes)	Reduct- ion in customs duties (%)						
			a	b	c	d	e	f	g	h	i	j
1007 00 90	Grain sorghum (excluding hybrid grain sorghum for sowing)	25 (^d)	3 000	100,0	3 000	100,0	3 000	100,0	3 000	100,0	3 000	100,0
1107 10 19 1107 10 99	Malt, not roasted, in a form other than flour	40,0	5 000	25,0	5 000	25,0	5 000	25,0	5 000	25,0	5 000	25,0
1108 12 00	Maize (corn) starch	32,5	800	23,1	800	23,1	800	23,1	800	23,1	800	23,1
1108 13 00	Potato starch	32,5	500	23,1	500	23,1	500	23,1	500	23,1	500	23,1
ex 1205 90 00	Rape or colza seed, whether or not broken, for crushing	2,5	1 250	100,0	1 250	100,0	1 500	100,0	1 750	100,0	2 000	100,0
1206 00 10	Sunflower seed, for sowing	2,5	250	100,0	250	100,0	250	100,0	250	100,0	250	100,0
ex 1206 00 99	Sunflower seeds, whether or not broken (excluding seed for sowing, shelled seeds and seeds in grey and white striped shells) for crushing	2,5	2 500	100,0	2 500	100,0	3 000	100,0	3 500	100,0	4 000	100,0
1207 50 90	Mustard seeds, whether or not broken (excluding seed for sowing)	25,0	150	100,0	150	100,0	150	100,0	150	100,0	150	100,0
1209 10 00	Sugarbeet seed, for sowing	2,5	1 000	100,0	1 000	100,0	1 000	100,0	1 000	100,0	1 000	100,0
1209 21 00	Lucerne (alfalfa) seed, for sowing	2,5	100	100,0	100	100,0	100	100,0	100	100,0	100	100,0

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)
			a	b	c	d	e	f	g	h	i	j
1209 91	Vegetable seeds, for sowing	2,5	1 200	100,0	1 200	100,0	1 200	100,0	1 200	100,0	1 200	100,0
1212 10 10 1212 10 91	Locust beans and locust-bean seeds, not shelled, crushed or ground	32,5	200	100,0	200	100,0	200	100,0	200	100,0	200	100,0
1213 00 00	Cereal straw and husks, unprepared, whether or not chopped, ground, pressed or in the form of pellets	25-40	1 150	100,0	1 150	100,0	1 150	100,0	1 150	100,0	1 150	100,0
1214	Swedes, mangolds, fodder roots, hay, lucerne (alfalfa), clover, sainfoin, forage kale, lupins, vetches and similar forage products, whether or not in the form of pellets	2,5	61 000	100,0	61 000	100,0	61 000	100,0	61 000	100,0	61 000	100,0
1507 10 90	Soya oil, crude, whether or not degummed (excluding soya oil for technical or industrial uses other than the manufacture of foodstuffs for human consumption)	2,5	30 000	100,0	30 000	100,0	30 000	100,0	30 000	100,0	30 000	100,0
ex 1507 90	Soya oil and its fractions, whether or not refined, packaged	25,0	100	100,0	100	100,0	100	100,0	100	100,0	100	100,0
ex 1508 90	Ground-nut oil and its fractions, whether or not refined, packaged											
1509 10 90	Olive oil, virgin, other than lampante virgin olive oil	52,05	500	32,7	500	32,7	500	32,7	500	32,7	500	32,7
1512 11 91	Sunflower-seed oil, crude, (excluding oil for technical or industrial uses other than the manufacture of foodstuffs for human consumption)	2,5	4 000	100,0	4 000	100,0	4 000	100,0	4 000	100,0	4 000	100,0

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduct- ion in customs duties (%)	Quota (tonnes)	Reduct- ion in customs duties (%)						
			a	b	c	d	e	f	g	h	i	j
1514 11	Rape or colza oil, crude	2,5	12 500	100,0	12 500	100,0	15 000	100,0	17 500	100,0	20 000	100,0
ex 1514 19 90	Low erucic acid rape or colza oils (fixed oils with an erucic acid content of less than 2 %) and their fractions, whether or not refined, but not chemically modified, (excluding crude oil and oil for technical or industrial uses other than the manufacture of foodstuffs for human consumption), packaged	25,0	600	100,0	600	100,0	600	100,0	600	100,0	600	100,0
1515 11	Linseed oil, crude	2,5	125	100,0	125	100,0	125	100,0	125	100,0	125	100,0
1515 90 40 1515 90 59	Other vegetable oils, crude	2,5	50	100,0	50	100,0	50	100,0	75	100,0	100	100,0
1515 90 60 1515 90 99	Other vegetable oils and their fractions	25,0	150	100,0	150	100,0	150	100,0	150	100,0	150	100,0
ex 2002 90	Tomatoes, prepared or preserved otherwise than by vinegar or acetic acid (other than tomatoes whole or in pieces) in packings of more than 1 kg	50,0	100	100,0	100	100,0	100	100,0	100	100,0	100	100,0
2003 10 2003 90	Mushrooms, prepared or preserved otherwise than by vinegar or acetic acid	50,0	200	70,0	200	70,0	200	80,0	200	90,0	200	100,0
2004 10 10	Potatoes, cooked, frozen	25,0	1 000	60,0	1 000	60,0	1 000	60,0	1 000	60,0	1 000	60,0
2005 40 00 2005 51 00	Peas (<i>Pisum sativum</i>) and beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.), prepared or preserved otherwise than by vinegar or acetic acid, not frozen	50,0	100	50,0	100	50,0	100	50,0	100	50,0	100	50,0

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduct- ion in customs duties (%)	Quota (tonnes)	Reduct- ion in customs duties (%)						
			a	b	c	d	e	f	g	h	i	j
2005 70 10 2005 70 90	Olives, prepared or preserved otherwise than by vinegar or acetic acid, not frozen	50,0	100	10,0	100	10,0	100	20,0	100	20,0	100	30,0
ex 2007 10 10 2007 10 91 ex 2007 10 99 2007 99 20 2007 99 31 2007 99 35 ex 2007 99 39 2007 99 51 2007 99 55 ex 2007 99 58 2007 99 91 2007 99 93 ex 2007 99 98	Jams, jellies, marmalades, purées and pastes of fruit other than citrus fruit, strawberries and apricots	50,0	150	20,0	150	20,0	200	30,0	250	40,0	300	50,0
2008 19 13 2008 19 19	Almonds and pistachios, roasted, and nuts and other seeds, including mixtures, prepared or preserved, in immediate packings of a content of less than 1 kg	50,0	100	20,0	100	20,0	100	30,0	100	40,0	100	50,0
2008 70 61 2008 70 71 2008 70 79	Peaches including nectarines, prepared or preserved, not containing added spirit but containing added sugar	50,0	150	20,0	150	20,0	150	30,0	150	40,0	150	50,0
2009 79 19 2009 79 99	Apple juice, unfermented, not containing added spirit, concentrated	50,0	300	100,0	300	100,0	300	100,0	300	100,0	300	100,0
ex 2009 80 79 2009 80 88 2009 80 99	Fruit or vegetable juices, unfermented, concentrated	50,0	500	70,0	500	70,0	580	80,0	660	90,0	730	100,0

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)	Quota (tonnes)	Reduction in customs duties (%)
			a	b	c	d	e	f	g	h	i	j
2009 90 59 2009 90 98	Mixtures of fruit juices, including grape must, and juices of vegetables (other than apples, pears, citrus fruit, pineapples and tropical fruit), without added sugar	50,0	100	100,0	100	100,0	100	100,0	100	100,0	100	100,0
2204 10	Sparkling wine	52,0	3 000 hl	23,1	3 000 hl	23,1	3 000 hl	32,7	3 000 hl	42,3	3 000 hl	53,8
2204 21	Other wine of fresh grapes, in containers holding 2 litres or less	52,0	6 000 hl	23,1	6 000 hl	23,1	6 000 hl	32,7	6 000 hl	42,3	6 000 hl	53,8
2204 29	Other wine of fresh grapes, in containers holding more than 2 litres	52,0	12 000 hl	23,1	12 000 hl	23,1	12 000 hl	32,7	12 000 hl	42,3	12 000 hl	53,8
2302 30 10 2302 30 90	Bran, sharps and other residues, whether or not in the form of pellets, derived from the milling, sifting or other working of wheat	2,5	3 000	100,0	3 000	100,0	3 500	100,0	4 200	100,0	5 000	100,0
2302 40 10 2302 40 90	Bran, sharps and other residues, whether or not in the form of pellets, derived from the milling, sifting or other working of other cereals	2,5	12 500	100,0	12 500	100,0	15 000	100,0	17 500	100,0	20 000	100,0
2303 20 11 2303 20 18	Beet pulp	2,5	40 000	100,0	40 000	100,0	50 000	100,0	60 000	100,0	72 000	100,0
2303 20 90	Bagasse and other waste of sugar manufacture (excluding beet pulp)	32,5	5 000	100,0	5 000	100,0	5 000	100,0	5 000	100,0	5 000	100,0
2309 10	Dog or cat food, put up for retail sale	32,5	1 000	38,5	1 000	38,5	1 000	38,5	1 000	38,5	1 000	38,5

CN Code (¹)	Product description	Customs duties on imports (%)	2003		2004		2005		2006		2007 and following years	
			Quota (tonnes)	Reduct- ion in customs duties (%)	Quota (tonnes)	Reduct- ion in customs duties (%)						
			a	b	c	d	e	f	g	h	i	j
ex 2309 90	Other preparations of a kind used in animal feeding (only anticoccidials on a base, choline 70, prepared foods for fishes, antibiotics, milk replacers, dried melassed beet pulp, residues from the manufacture of starch, other than premixes)	17,5	6 000	100,0	6 000	100,0	9 000	100,0	12 000	100,0	15 000	100,0
ex 2309 90 99	Premixes of a kind used in animal feeding	52,0	1 000	51,9	1 000	51,9	1 000	51,9	1 000	51,9	1 000	51,9
2401 10 60 2401 10 70 2401 20 90	Sun-cured, oriental-type tobacco, not stemmed/stripped Dark air-cured tobacco, not stemmed/stripped Tobacco partly or wholly stemmed/stripped but not further worked	17,5	200	100,0	200	100,0	300	100,0	400	100,0	500	100,0

(^a) This rate shall be applied to the value category MAD 1 000/tonne or less; the value category more than MAD 1 000/tonne is subject to an import duty of 2.5 %.

(^b) This rate shall be applied to the value category MAD 800/tonne or less; the value category more than MAD 800/tonne is subject to an import duty of 2 %.

(^c) This rate shall be applied to the value category MAD 3 000/tonne or less; the value category more than MAD 3 000/tonne is subject to an import duty of 16 %.

(^d) This rate shall be applied to the value category MAD 800/tonne or less; the value category more than MAD 800/tonne is subject to an import duty of 16 %.

(^e) This rate shall be applied to the customs value. Where the declared value is less than MAD 3 500/tonne, an additional import duty of 123 % shall be applied to the difference between the threshold fixed (MAD 3 500/tonne) and the declared value.

(^f) Without prejudice to the rules for the interpretation of the combined nomenclature, the description of the products is deemed to be indicative only, the preferential scheme being determined, for the purposes of this Annex, by the coverage of the corresponding CN code in Regulation (EC) No 1832/2002 (OJ L 290, 28.10.2002, p. 1). Where ex CN codes are indicated, the preferential scheme is to be determined by application of the CN code and corresponding description taken together.

(^g) If Moroccan production of common wheat (P) exceeds 2.1 million tonnes, this quota (Q) will be reduced in accordance with the formula: $Q \text{ (millions of tonnes)} = 2.59 - 0.73 * P \text{ (millions of tonnes)}$, with a minimum of 400 000 for Moroccan production of 3 000 000 tonnes or more.

(^h) The preferential rate applicable is 2.5 %.

Joint Declaration

The Parties hereby agree to review the situation regarding the tariff preferences established in Protocol 3, in particular for the following products: animal and vegetable oils and fats falling within CN codes 1515 19 10, 1515 90 60, 1515 90 99, 1516 10 90, 1516 20 95, 1516 20 96 and 1516 20 98 and beet sugar falling within CN code 1701 12 90, in accordance with the objective provided for in Article 16 of the Association Agreement.

Joint Declaration

The Parties note that this Agreement shall be applied by the Kingdom of Morocco by means of a tendering procedure for import licences for the purposes of managing the preferential quotas.

If the tendering arrangements are changed or if a system of direct payments is introduced, the Parties agree to hold consultations under Article 20 of the Association Agreement.

COUNCIL DECISION
of 22 December 2003
on the provisional application of a bilateral Agreement between the European Community and the Republic of Belarus on trade in textile products

(2003/915/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with Article 300(2), first sentence thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Commission has negotiated on behalf of the Community a bilateral Agreement to extend for one year the existing bilateral Agreement and protocols on trade in textile products with the Republic of Belarus, with quantitative limits adjusted to take into account annual growth rates and the enlargement of the European Union.
- (2) Subject to their possible conclusion at a later date, the bilateral Agreement should be signed on behalf the Community.
- (3) The bilateral Agreement should be applied on a provisional basis as from 1 January 2004, pending the completion of procedures required for their conclusion, subject to reciprocal provisional application by the Republic of Belarus,

HAS DECIDED AS FOLLOWS:

Article 1

Subject to possible conclusion at a later date, the President of the Council is hereby authorised to designate the persons empowered to sign on behalf of the European Community the Agreement in the form of an Exchange of Letters between the European Community and the Republic of Belarus amending the Agreement between the European Community and the Republic of Belarus on trade in textile products initialled in Brussels on 1 April 1993, as last amended by an Agreement in the form of an Exchange of Letters initialled on 11 November 1999 ('the bilateral Agreement').

Article 2

The bilateral Agreement shall be applied on a provisional basis, pending its formal conclusion and subject to reciprocal provisional application of the bilateral Agreement by the Republic of Belarus ⁽¹⁾, from 1 January 2004.

The text of the bilateral Agreement is attached to this Decision.

Article 3

1. In case Belarus fails to fulfil its obligations under paragraph 2.5 of the bilateral Agreement, the quota for 2004 will be reduced to the levels applicable in 2003.

2. The decision to implement paragraph 1 shall be taken in accordance with the procedures referred to in Article 17 of Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries ⁽²⁾.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

It shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 22 December 2003.

For the Council

The President

G. ALEMANNO

⁽¹⁾ The date from which provisional application will become effective will be published in the *Official Journal of the European Union*, C series.

⁽²⁾ OJ L 275, 8.11.1993, p. 1. Regulation as last amended by Regulation (EC) No 138/2003 (OJ L 23, 28.1.2003, p. 1).

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

between the European Community and the Republic of Belarus amending the agreement between the European Community and the Republic of Belarus on trade in textile products initialled in Brussels on 1 April 1993, as last amended by an agreement in the form of an Exchange of Letters initialled on 11 November 1999

A. Letter from the Council of the European Union

Sir,

1. I have the honour to refer to the Agreement between the European Community and the Republic of Belarus on trade in textile products initialled on 1 April 1993, as last amended and extended by the Agreement in the form of an Exchange of Letters initialled on 11 November 1999 (hereinafter referred to as the 'Agreement').
2. In view of the expiry of the Agreement on 31 December 2003 and in accordance with Article 19(1) of the Agreement, the European Community and the Republic of Belarus agree to extend the duration of the Agreement, for a further period of one year, subject to the following amendments and conditions:
 - 2.1. Annex I which sets out the products referred to in Article 1 of the Agreement is replaced by Appendix 1 to this Letter.
 - 2.2. The text of Article 19(1) second and third sentences, of the Agreement shall be replaced by the following:

'It shall be applicable until 31 December 2004.'
 - 2.3. Annex II, which sets out the quantitative restrictions for exports from the Republic of Belarus to the European Community, is replaced by Appendix 2 to this Letter.
 - 2.4. The Annex to Protocol C which sets out the quantitative restrictions for exports from the Republic of Belarus to the European Community after OPT operations in the Republic of Belarus is replaced for the period of 1 January 2004 to 31 December 2004 by Appendix 3 to this Letter.
 - 2.5. Imports into Belarus of textile and clothing products of European Community origin shall be subject in 2004 to custom duties not exceeding those provided for 2003 in Appendix 4 of the Agreement in the form of an Exchange of Letters between the European Community and the Republic of Belarus initialled on 11 November 1999.

In the case of non-application of these rates the Community will have the right to reintroduce for the period of the Agreement remaining unexpired on a pro rata basis the levels for quantitative restrictions applicable for 2003 as specified in the Exchange of Letters initialled on 11 November 1999.

3. Should the Republic of Belarus become a Member of the World Trade Organisation before the date of expiry of the Agreement the restrictions in force shall be phased out in the framework of the WTO Agreement on Textiles and Clothing and Belarus' Protocol of accession to the WTO. In addition, the provisions of Articles 2, paragraphs 2 and 3, 3, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, Protocol A, Protocol B, Protocol C, Agreed Minute No 1, Agreed Minute No 2, Agreed Minute No 3, Agreed Minute No 4 and Agreed Minute No 6 shall continue to be applicable as administrative arrangements within the meaning of Article 2(17) of the WTO Agreement on Textiles and Clothing.
4. I should be obliged if you could kindly confirm the acceptance of your Government of the foregoing. Should this be the case, this Agreement in the form of an Exchange of Letters shall enter into force on the first day of the month following the day on which the Parties have notified each other that the legal procedures necessary to this end have been completed. In the meantime, it shall be applied provisionally from 1 January 2004 on the condition of reciprocity.

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

For the Council of the European Union

Appendix 1

Annex I to the Agreement between the European Community and Belarus on trade in textile products initialled on 1 April 1993, containing the category and goods descriptions for textiles products, is replaced by Annex I to Regulation (EC) No 3030/93 ⁽¹⁾. It is understood that without prejudice to the rules for the interpretation of the combined nomenclature, the wording of the description of goods is considered to be of indicative value only, since the products covered by each category are determined within that Annex by CN codes. Where there is an 'ex' symbol in front of a CN code, the products covered in each category are determined by the scope of the CN code and by that of the corresponding description.

⁽¹⁾ OJ L 357, 31.12.2002, p. 91.

Appendix 2

ANNEX II

Belarus	Category	Unit	Quota 2004 as from 1 January 2004	Quota 2004 as from 1 May 2004
Group IA	1	tonnes	1 480	1 532
	2	tonnes	3 765	4 334
	3	tonnes	218	225
Group IB	4	1 000 pieces	1 073	1 135
	5	1 000 pieces	954	1 012
	6	1 000 pieces	838	854
	7	1 000 pieces	830	843
	8	1 000 pieces	953	1 062
Group IIA	9	tonnes	346	347
	20	tonnes	306	307
	22	tonnes	387	473
	23	tonnes	242	243
	39	tonnes	218	219
Group IIB	12	1 000 pairs	5 611	5 675
	13	1 000 pieces	2 533	2 574
	15	1 000 pieces	959	969
	16	1 000 pieces	175	176
	21	1 000 pieces	839	850
	24	1 000 pieces	732	764
	26/27	1 000 pieces	1 012	1 023
	29	1 000 pieces	351	352
	73	1 000 pieces	296	302
Group IIIA	83	tonnes	170	173
	33	tonnes	366	370
	36	tonnes	1 174	1 178
	37	tonnes	440	441
Group IIIB	50	tonnes	142	186
	67	tonnes	322	323
	74	1 000 pieces	342	346
Group IV	90	tonnes	188	189
	115	tonnes	83	83
	117	tonnes	973	1 210
	118	tonnes	426	427

Appendix 3

ANNEX to Protocol C

Category	Unit	1 January 2004	1 May 2004
4	1 000 pieces	4 420	4 432
5	1 000 pieces	6 167	6 179
6	1 000 pieces	7 524	7 526
7	1 000 pieces	5 582	5 586
8	1 000 pieces	1 858	1 966
12	1 000 pieces	4 163	4 163
13	1 000 pieces	412	419
15	1 000 pieces	3 225	3 228
16	1 000 pieces	736	736
21	1 000 pieces	2 402	2 403
24	1 000 pieces	509	526
26/27	1 000 pieces	2 598	2 598
29	1 000 pieces	1 221	1 221
73	1 000 pieces	4 678	4 679
83	tonnes	622	622
74	1 000 pieces	816	816

B. Letter from the Government of the Republic of Belarus

Sir,

I have the honour to refer to the Agreement between the European Community and the Republic of Belarus on trade in textile products initialled on 1 April 1993, as last amended and extended by the Agreement in the form of an Exchange of Letters initialled on 11 November 1999 (hereinafter referred to as the 'Agreement'). I hereby acknowledge receipt of your letter of ... which reads as follows:

'Sir,

1. I have the honour to refer to the Agreement between the European Community and the Republic of Belarus on trade in textile products initialled on 1 April 1993, as last amended and extended by the Agreement in the form of an Exchange of Letters initialled on 11 November 1999 (hereinafter referred to as the "Agreement").
2. In view of the expiry of the Agreement on 31 December 2003 and in accordance with Article 19 (1) of the Agreement, the European Community and the Republic of Belarus agree to extend the duration of the Agreement, for a further period of one year, subject to the following amendments and conditions:
 - 2.1. Annex I which sets out the products referred to in Article 1 of the Agreement is replaced by Appendix 1 to this Letter.
 - 2.2. The text of Article 19(1) second and third sentences, of the Agreement shall be replaced by the following:

"It shall be applicable until 31 December 2004."
 - 2.3. Annex II, which sets out the quantitative restrictions for exports from the Republic of Belarus to the European Community, is replaced by Appendix 2 to this Letter.
 - 2.4. The Annex to Protocol C which sets out the quantitative restrictions for exports from the Republic of Belarus to the European Community after OPT operations in the Republic of Belarus is replaced for the period of 1 January 2004 to 31 December 2004 by Appendix 3 to this Letter.
 - 2.5. Imports into Belarus of textile and clothing products of European Community origin shall be subject in 2004 to custom duties not exceeding those provided for 2003 in Appendix 4 of the Agreement in the form of an Exchange of Letters between the European Community and the Republic of Belarus initialled on 11 November 1999.

In the case of non-application of these rates the Community will have the right to reintroduce for the period of the Agreement remaining unexpired on a pro rata basis the levels for quantitative restrictions applicable for 2003 as specified in the Exchange of Letters initialled on 11 November 1999.

3. Should the Republic of Belarus become a Member of the World Trade Organisation before the date of expiry of the Agreement the restrictions in force shall be phased out in the framework of the WTO Agreement on Textiles and Clothing and Belarus' Protocol of accession to the WTO. In addition, the provisions of Articles 2, paragraphs 2 and 3, 3, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, Protocol A, Protocol B, Protocol C, Agreed Minute No 1, Agreed Minute No 2, Agreed Minute No 3, Agreed Minute No 4 and Agreed Minute No 6 shall continue to be applicable as administrative arrangements within the meaning of Article 2(17) of the WTO Agreement on Textiles and Clothing.
4. I should be obliged if you could kindly confirm the acceptance of your Government of the foregoing. Should this be the case, this Agreement in the form of an Exchange of Letters shall enter into force on the first day of the month following the day on which the Parties have notified each other that the legal procedures necessary to this end have been completed. In the meantime, it shall be applied provisionally from 1 January 2004 on the condition of reciprocity.

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

I have the honour to confirm that my Government is in agreement with the content of your letter.

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

For the Government of the Republic of Belarus

COUNCIL DECISION
of 22 December 2003
amending Decision 2001/131/EC concluding the consultation procedure with Haiti under Article 96 of the ACP-EC Partnership Agreement

(2003/916/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the ACP-EC Partnership Agreement ⁽¹⁾, which entered into force on 1 April 2003, and in particular Article 96 thereof,

Having regard to the Internal Agreement between the representatives of the governments of the Member States, meeting within the Council, on measures to be taken and procedures to be followed for the implementation of the ACP-EC Partnership Agreement ⁽²⁾, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) On the basis of Decision 2001/131/EC ⁽³⁾, the provision of financial aid to Haiti is partially suspended as 'appropriate measures' pursuant to Article 96(2)(c) of the ACP-EC Partnership Agreement.
- (2) The Decision 2001/131/EC expires on 31 December 2003 and requires a review of the measures before this date.
- (3) Democratic principles are still not upheld in Haiti. However, actions to support democratization, the strengthening of the rule of law and the electoral process deserve to be supported, and in particular in support of the mission with which the Organisation of American States was entrusted by its Resolutions No 806, No 822 and No 1959. Actions to strengthen civil society and the private sector, to fight poverty, to give humanitarian and emergency assistance and those of direct benefit to the Haitian people should be further implemented,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2001/131/EC is hereby amended as follows:

1. In the second and third paragraphs of Article 3, the date of 31 December 2003 shall be replaced by '31 December 2004';
 - (i) in the second subparagraph '31 December 2003' shall be replaced by '31 December 2004';
 - (ii) the third subparagraph shall be replaced by the following:

'It shall be reviewed regularly and at least within six months.'
2. The Annex shall be replaced by the text appearing in the Annex to this Decision.

Article 2

This Decision shall take effect the day of its adoption.

This Decision shall be published in the *Official Journal of the European Union*

Done at Brussels, 22 December 2003.

For the Council

The President

G. ALEMANNIO

⁽¹⁾ OJ L 317, 15.12.2000, p. 3. Agreement as amended by Decision No 1/2003 (OJ L 141, 7.6.2003, p. 25).

⁽²⁾ OJ L 317, 15.12.2000, p. 376.

⁽³⁾ OJ L 48, 17.2.2001, p. 31. Decision as last amended by Decision 2003/53/EC (OJ L 20, 24.1.2003, p. 23).

ANNEX

Letter to be addressed to the Government of Haiti

Dear Sir,

The European Union attaches great importance to Article 9 of the ACP-EC Partnership Agreement. Democratic principles and the rule of law, on which the ACP-EC partnership is founded, are essential elements of the Agreement and thus form the cornerstone of our relations.

By letter of 31 January 2001, the Union expressed its regret that no satisfactory solution to remedy the violation of the Haitian electoral law had been found. It informed you of the appropriate measures taken as foreseen in Article 96(2)(c) of the ACP-EC Partnership Agreement. In its letters of 23 January 2002 and 24 January 2003, the Union reviewed its decision of 29 January 2001 in order to allow the cooperation instruments affected by these measures to be gradually reactivated subject to the achievement of objectives as regards the electoral process.

Today, after almost three years of political crisis, the Union considers that democratic principles are still not upheld in Haiti. Nevertheless, the Union recognizes that numerous international and local efforts are contributing towards the search for a solution to this crisis, and in particular those of the Organisation of American States (OAS) and of the Caribbean Community (CARICOM), and it reaffirms its wish to support these efforts. Accordingly, within the framework of OAS Resolution No 822, the Government of Haiti has committed itself to giving increased priority to the restoration of a climate of security and of confidence in the country, including the completion of inquiries into all politically motivated crimes and the strengthening of the disarmament programmes. The European Union continues strongly to urge the Government rapidly to translate this commitment into concrete actions and to undertake all the steps enshrined in OAS resolution 822 leading to free and fair national and local elections. Furthermore, the European Union is gravely concerned by the continuing deterioration in the socioeconomic situation in Haiti and reaffirms its intent to continue cooperation for the direct benefit of the Haitian people.

In the light of these elements, the Council of the European Union reviewed its decision of 10 January 2003 and decided to review the appropriate measures referred to in Article 96(2)(c) of the Agreement as follows:

- (a) The re-direction of the remaining funds under the eighth European Development Fund (EDF) to programmes that are of direct benefit to the Haitian people, to strengthen civil society and the private sector, and to support democratisation, the strengthening of the rule of law and the electoral process, will be continued;
- (b) Decisions on the notification of the 9th EDF allocation, programming and signature of the relevant National Indicative Programme will be taken on the basis of the implementation of OAS resolution 822 and in particular the stipulations regarding the legislative and local elections process including the formation of the Provisional Electoral Council (CEP-Conseil Electoral Provisoire) the formation by the CEP of the Electoral Guarantees Commission and the holding of national elections.

Noting the call by the OAS in its resolution 822 for the normalization of cooperation and the donors' meeting held in Washington in December 2003, the European Union was represented at that meeting and participated in the review of the situation in Haiti. In this overall context it is considered that regional programmes from the Caribbean Regional Indicative Programme, which involve direct benefit to the Haitian people and whose benefits are shared by other countries, are not affected by the above measures. Trade Cooperation and trade-related preferences are not affected by these measures.

The Union will follow closely further developments in the democratisation process, in particular the achievement of the steps towards national and local elections. The Union is ready to review its Decision if there are encouraging developments. It reiterates its readiness to engage in enhanced political dialogue.

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

For the Commission

For the Council
