Official Journal

of the European Union

ISSN 1725-2555

L 97

Volume 47

1 April 2004

English edition

Legislation

Contents

Price: EUR 22

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Contents (continued)

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(1) Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 600/2004

of 22 March 2004

laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources

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],

Whereas:

(1) The Convention on the Conservation of Antarctic Marine Living Resources, (Convention), was approved by the Community by Decision 81/691/EEC [2] and entered into force in the Community on 21 May 1982.

(2) The Convention provides a framework for regional cooperation in the conservation and management of Antarctic marine living resources through the establishment of a Commission for the Conservation and Management of Antarctic Marine Living Resources, (CCAMLR), and the adoption by the CCAMLR of conservation measures which become binding on the Contracting Parties.

(3) The CCAMLR has adopted certain measures for the conservation and management of fish stocks which lay down, among other things, technical rules that apply to certain fishing activities in the area covered by the Convention. The measures include stipulations concerning the use of certain types of fishing gear, the banning of certain types of equipment regarded as harmful to the environment, the reduction of the harmful effect of fishing on species such as seabirds and marine mammals and the activities of scientific observers on board fishing vessels for the purpose of collecting data. These measures are binding on the Community and should therefore be implemented.

(4) Some of the technical measures adopted by the CCAMLR have been transposed by Council Regulation (EEC) No 3943/90 of 19 December 1990 on the application of the system of observation and inspection established under Article XXIV of the Convention on the Conservation of Antarctic Marine Living Resources [3], and by Council Regulation (EC) No 66/98 of 18 December 1997 laying down certain conservation and control measures applicable to fishing activities in the Antarctic [4].

(5) The adoption by the CCAMLR of new conservation measures and the updating of those already in force since the above Regulations were adopted means that the latter should be amended later.

(6) In order to ensure that Community rules are clearer, the measures for the control of fishing activities and those falling within the technical field should be transposed separately. For that reason, Regulations (EEC), No 3943/90 and (EC) No 66/98 should be repealed by Council Regulation (EC) No 601/2004 of 22 March 2004 laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources [5], and the Community arrangements should be supplemented by this Regulation. This is without prejudice to the inclusion of certain technical measures specific to certain exploratory fisheries in the Regulations adopted by the Community annually on the fishing possibilities allocated to Community vessels and the conditions associated with them (the annual 'TACs and quotas' Regulations).

(7) The measures necessary for the implementation of this Regulation and for bringing the Annexes into line with the regular amendments to the technical measures adopted by the CCAMLR pursuant to the Convention 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],

[1] Opinion delivered on 16 December 2003 (not yet published in the Official Journal).
[2] OJ L 252, 5.9.1981, p. 26.
[3] OJ L 379, 31.12.1990, p. 45.
[4] OJ L 6, 10.1.1998, p. 1. Regulation as last amended by Regulation (EC) No 2742/1999 (OJ L 341, 31.12.1999, p. 1).
[5] See page 16 of this Official Journal.
[6] OJ L 184, 17.7.1999, p. 23.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

1. This Regulation lays down technical measures concerning the activities of Community fishing vessels which take and keep on board marine organisms taken from marine living resources in the area covered by the Convention on the Conservation of Antarctic Marine Living Resources, (Convention).

2. This Regulation shall apply without prejudice to the provisions of the Convention and shall operate in furtherance of the objectives and principles and the provisions of the final act of the conference at which it was adopted.

Article 2

Definitions

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

(a) 'Convention area': means the area of application of the Convention as defined in Article I thereof;

(b) 'Antarctic convergence': means a line joining the following points along parallels of latitude and meridians of longitude: 50° S, 0° — 50° S, 30° E — 45° S, 30° E — 45° S, 80° E — 55° S, 80° E — 55° S, 150° E — 60° S, 150° E — 60°S, 50° W — 50° S, 50° W — 50° S, 0°;

(c) 'Community fishing vessel': means a fishing vessel flying the flag of a Community Member State and registered in the Community, which takes and keeps on board marine organisms taken from marine living resources in the Convention area;

(d) 'fine-scale rectangle': means an area of 0,5° latitude by 1° longitude from the northwest angle of the statistical sub-area or division. A rectangle is defined by the latitude of its most northerly limit and the longitude of its nearest 0° limit;

(e) 'new fishery': means a fishery for a species using a particular fishing method in a FAO Antarctic statistical sub-area, for which:

(i) information on distribution, abundance, population, potential yield and stock identity from comprehensive research/surveys or exploratory fishing have never been submitted to the CCAMLR; or

(ii) catch and effort data have never been submitted to the CCAMLR; or

(iii) catch and effort data from the two most recent seasons in which fishing took place have never been submitted to the CCAMLR;

(f) 'exploratory fishery': means a fishery that was previously classified as a 'new fishery' defined in paragraph (e). An exploratory fishery shall continue to be classified as such until sufficient information is available:

(i) to evaluate the distribution, abundance and population of the target species, leading to an estimate of the fishery's potential yield;

(ii) to review the fishery's potential impacts on dependent and related species, and

(iii) to allow the CCAMLR's Scientific Committee to formulate and provide advice on appropriate harvest catch levels, as well as on effort levels and fishing gear where appropriate.

CHAPTER II

FISHING GEAR

Article 3

Permitted fishing gear in specific fisheries

1. The fishery for *Dissostichus eleginoides* in FAO statistical sub-area 48.3 shall be conducted by vessels using longlines and pots only.

2. The fishery for *Dissostichus eleginoides* in FAO statistical division 58.5.2 shall be conducted by vessels using trawls or longlines only.

3. The fishery for *Champsocephalus gunnari* in FAO statistical sub-area 48.3 shall be conducted by vessels using trawls only. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in that sub-area is prohibited.

4. The fishery for *Champsocephalus gunnari* in FAO statistical sub-area 58.5.2 shall be conducted by vessels using trawls only.

5. For the purpose of the fishery referred to in paragraph 4, the area open to the fishery is defined as that portion of FAO statistical division 58.5.2 that lies within the area enclosed by a line:

(a) starting at the point where the meridian of longitude 72° 15' E intersects the Australia-France Maritime Delimitation Agreement Boundary then south along the meridian to its intersection with the parallel of latitude 53° 25' S;

(b) then east along that parallel to its intersection with the meridian of longitude 74° E;

(c) then northeasterly along the geodesic to the intersection of the parallel of latitude 52°40' S and the meridian of longitude 76° E;

(d) then north along the meridian to its intersection with the parallel of latitude 52° S;

(e) then northwesterly along the geodesic to the intersection of the parallel of latitude 51° S with the meridian of longitude 74°30' E; and

(f) then southwesterly along the geodesic to the point of commencement.

6. The fishery for crab in FAO statistical sub-area 48.3 shall be conducted by vessels using pots only.

Article 4

Mesh sizes

1. No trawl, Danish seine or similar net, any part of which is composed of meshes of a size smaller than the minimum mesh sizes laid down in Annex I, shall be used when engaging in directed fishing for the species or groups of species below:

(a) *Champsocephalus gunnari*

(b) *Dissostichus eleginoides*

(c) *Gobionotothen gibberifrons*

(d) *Lepidonotothen squamifrons*

(e) *Notothenia rossii*

(f) *Notothenia kempi*.

2. The use of any means or device which would obstruct or diminish the size of the meshes is prohibited.

Article 5

Control of mesh sizes

For the nets referred to in Article 4, the minimum mesh size provided for in Annex I shall be determined in accordance with the rules laid down in Annex II.

Article 6

Crab fisheries in FAO statistical sub-area 48.3

1. The crab fishery shall be limited to sexually mature male crabs — all female and undersized male crabs caught shall be released unharmed. In the case of *Paralomis spinosissima* and *Paralomis formosa*, males with a minimum carapace width of 94 mm and 90 mm, respectively, may be retained in the catch.

2. Crabs processed at sea shall be frozen as crab sections so that the size of the crabs can be determined later from the sections.

Article 7

Use and disposal of plastic packaging bands on Community fishing vessels

1. The use by Community fishing vessels of plastic packaging bands to secure bait boxes is prohibited.

The use of other packaging bands for other purposes on fishing vessels which do not use on-board incinerators (closed systems) is prohibited.

2. Any packaging bands, once removed from packages, shall be cut so that they do not form a continuous loop and burned at the earliest opportunity in the on-board incinerator.

3. All plastic residue shall be stored on board a vessel until reaching port and in no case discarded at sea.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 20(2).

Article 8

Incidental mortality of seabirds in the course of longline fishing

1. Longline fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water. For vessels using the Spanish method of longline fishing, weights shall be released before line tension occurs; weights of at least 8,5 kg mass shall be used, spaced at intervals of no more than 40 m, or weights of at least 6 kg mass shall be used, spaced at intervals of no more than 20 m. Only thawed bait shall be used.

2. Without prejudice to paragraph 7, longlines shall be set at night only (i.e. during the hours of darkness between the times of nautical twilight).

Where possible, the setting of lines shall be completed at least three hours before sunrise.

During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

3. Without prejudice to paragraph 8, the discharging of offal overside is prohibited while longlines are being set. The discharging of offal during the haul shall be avoided as far as possible. Where discharging during the haul is unavoidable it shall take place only on the opposite side of the vessel to where longlines are set or hauled. Prior to discharging, fish hooks should be removed from offal and fish heads.

Vessels shall be so configured that they dispose of on-board offal processing facilities or adequate capacity to retain offal on board, or the ability to discharge offal on the opposite side of the vessel to that where longlines are hauled.

4. Every effort shall be made to ensure that sea birds captured alive during longlining are released alive and that where possible hooks are removed without jeopardising the life of the bird.

5. A streamer line designed to discourage sea birds from settling on baits during deployment of longlines shall be towed. A detailed description of the streamer line and its method of deployment is given in Annex III. Details of the construction relating to the number and placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the model shown in Annex III. Details of the device dragged in the water in order to create tension in the line may also be varied.

6. Other variations in the design of streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that the conditions laid down in paragraphs 1 to 5 and paragraph 7 are met.

7. The prohibition to set longlines at day provided for in paragraph 2 shall not apply to fishing in FAO statistical subareas 48.6 south of 60° S, 88.1, 88.2 and division 58.4.2 provided the following conditions are fulfilled:

(a) on the issue of the licence for this fishery, the vessel concerned can demonstrate to the competent authorities:

(i) its ability to comply fully with either of the exploratory protocols for the setting of longlines set out in Annex IV. Member States shall report to the CCAMLR on the results of technical controls carried out to this end on each licensed vessel;

(ii) the arrangements made to ensure the presence of the scientific observers it is required to carry on board in accordance with Article 14(2);

(b) the vessel concerned demonstrates a consistent minimum line sink rate of 0,3 m/s during its fishing operations;

(c) the vessel concerned does not catch more that two seabirds. Any vessel catching a total of three seabirds shall immediately revert to night setting.

8. By derogation to paragraph 3, there shall be no offal discharge in the fisheries referred to in paragraph 7.

9. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 20(2).

Article 9

Incidental mortality of seabirds and marine mammals in the course of trawl fishing

1. In the course of trawl fishing, the use of net monitor cables is prohibited.

2. Community fishing vessels shall at all times arrange the location and level of lighting so as to minimise illumination directed out from the vessel, consistent with the safe operation of the vessel.

3. The discharging at sea of offal shall be prohibited during the shooting and hauling of trawl gear.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 20(2).

CHAPTER III

CONDUCT OF FISHING ACTIVITIES

Article 10

Movement of vessels in relation to their level of by-catch

1. In the case of fisheries other than new or exploratory fisheries, Community fishing vessels shall move in relation to the level of their by-catches in accordance with Annex V, point A.

2. In the case of new and exploratory fisheries, Community fishing vessels shall move in relation to the level of their by-catches in accordance with Annex V, point B.

Article 11

Special measures applicable to the exploratory fisheries for *Dissostichus* spp.

1. Community fishing vessels participating in the exploratory fishery for Dissostichus spp. using the trawl or longline methods in the Convention area, except for such fisheries where the CCAMLR has given specific exemptions, shall operate in accordance with the rules set out in paragraphs 3 to 6.

2. For the purposes of this Article, a haul comprises a single deployment of the trawl net. In longline fisheries, a haul comprises the setting of one or more lines in a single location.

3. Fishing shall take place over as large a geographical and bathymetric range as possible. To this end, fishing in any fine-scale rectangle shall cease when the reported catch reported in accordance with Article 12 of Regulation (EC) No 601/2004 reaches 100 tonnes and that rectangle shall be closed to fishing for the remainder of the season. Fishing in any fine-scale rectangle shall be restricted to one vessel at any one time.

4. In order to give effect to paragraph 3:

(a) the precise geographic position of a haul in trawl fisheries shall be determined by the mid-point of the path between the start-point and end-point of the haul;

(b) the precise geographic position of a haul in longline fisheries shall be determined by the centre-point of the line or lines deployed;

(c) the fine-scale rectangle in which a vessel is deemed to be fishing will be that in which the precise geographic position of a haul lies;

(d) the vessel will be deemed to be fishing in any fine-scale rectangle from the beginning of the setting process until the completion of the hauling of all lines in that fine-scale rectangle.

5. Each haul of a longline shall have, except in exceptional circumstances beyond the control of the vessel (such as ice and weather conditions), a soak time not exceeding 48 hours, measured from the completion of the setting process to the beginning of the hauling process.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 20(2).

Article 12

Special measures applicable to the fishery for *Champsocephalus gunnari* in FAO statistical sub-area 48.3

1. Fishing for *Champsocephalus gunnari* shall be prohibited within 12 nautical miles of the coast of South Georgia during the period between 1 March and 31 May (spawning period).

2. Where any haul contains more than 100 kg of *Champsocephalus gunnari*, and more than 10 % of the *Champsocephalus gunnari* by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least five nautical miles distant. The fishing vessel shall not return to any point within five nautical miles of the location where the catch of small *Champsocephalus gunnari* exceeds 10 % for a period of at least five days. The location where the incidental catch of small *Champsocephalus gunnari* exceeds 10 % is defined as the path followed by the fishing vessel from the point at which the fishing gear is first deployed to the point at which the fishing gear is retrieved by the fishing vessel.

3. When a vessel has caught a total of 20 seabirds, it shall cease fishing and shall be excluded from further participation in the fishery in that season.

4. Vessels participating in this fishery during the period 1 March to 31 May shall carry out not less than 20 research trawls as described in Annex VI.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 20(2).

CHAPTER IV

SCIENTIFIC OBSERVATION ON BOARD VESSELS OPERATING IN THE CONVENTION AREA

Article 13

Object and scope

The scientific observation system adopted by the CCAMLR under Article XXIV of the Convention shall apply, in accordance with this Chapter, to Community fishing vessels carrying on fishing and research operations in the Convention area.

Article 14

Activities subject to scientific observation

1. During each fishing period Community fishing vessels shall carry on board at least one scientific observer and, where possible, one additional scientific observer when fishing for:

(a) *Champsocephalus gunnari* in FAO statistical sub-area 48.3 and division 58.5.2;

(b) crab in FAO statistical sub-area 48.3;

(c) *Dissostichus eleginoides* in FAO statistical sub-areas 48.3 and 48.4 and division 58.5.2; or

(d) *Martialia hyadesi* in FAO statistical sub-area 48.3.

2. Community fishing vessels shall also carry on board at least two scientific observers, one of whom shall be a CCAMLR Scientific observer designated in accordance with Article 15, when participating in an exploratory fishery as referred to in Article 11 of this Regulation or in another exploratory fishery authorised in accordance with Article 7 of Regulation (EC) No 601/2004.

3. By way of derogation from paragraph 2, vessels participating in exploratory fisheries for *Dissostichus* spp. in FAO statistical divisions 48.3.a) and 48.3.b) shall carry on board at least one CCAMLR scientific observer and, where possible, one additional scientific observer.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 20(2).

Article 15

Scientific observers

1. Member States shall designate scientific observers authorised to carry out the tasks associated with the implementation of the observation system adopted by the CCAMLR in accordance with this Regulation.

2. The duties and tasks of scientific observers carried on board vessels are set out in Annex VII.

3. Scientific observers shall be nationals of the Member State which designates them. They shall comply with the customs and rules in force on the vessel on which they make their observations.

4. Scientific observers shall be familiar with the harvesting and scientific research activities to be observed, the provisions of the Convention and the measures adopted under the Convention, and shall have received adequate training to carry out their duties competently. They shall, in addition, be able to communicate in the language of the flag State of the vessels on which they carry out their activities.

5. Scientific observers shall carry a document, issued by the Member State which designates them in a form approved by the CCAMLR, identifying them as CCAMLR scientific observers.

6. Scientific observers shall present to the CCAMLR, through the Member State which designates them, and at the latest one month after the end of the observation period or after the return of the observers to their country of origin, a report on each observation visit carried out using the observation formats approved by the CCAMLR Scientific Committee. A copy shall be transmitted to the flag State of the vessel concerned and to the Commission.

7. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 20(2).

Article 16

Arrangements on the placing of observers on board vessels

1. The placing of scientific observers on board Community fishing vessels conducting fishing or scientific research operations shall take place in accordance with the bilateral arrangements concluded to that end with another CCAMLR member.

2. The bilateral arrangements referred to in paragraph 1 shall be based on the following principles:

(a) Scientific observers shall be accorded the status of ship's officer while on board. Accommodation and meals provided for observers while on board shall correspond to that status.

(b) The flag Member State shall ensure that vessel operators provide scientific observers on board vessels flying its flag with every assistance in carrying out their duties. Among other things, scientific observers shall have free access to the vessel's data and operations in order to be able to carry out their duties as required by the CCAMLR.

(c) The flag Member State shall take appropriate action to ensure the safety and well-being of scientific observers in carrying out their duties on board vessels flying its flag, to provide medical care for them and to safeguard their freedom and dignity.

(d) Action shall be taken to enable scientific observers to transmit and receive messages using the vessel's communications equipment and with the assistance of the operator. All reasonable costs incurred in making these communications shall normally be met by the CCAMLR member which designated the scientific observers (hereinafter called the designating country).

(e) Arrangements involving the transportation and boarding of scientific observers shall be organised so as to minimise interference with harvesting and research operations.

(f) The scientific observers shall provide the masters concerned with a copy of their reports, if they so wish.

(g) Designating countries shall ensure that their scientific observers carry insurance satisfactory to the CCAMLR Members concerned.

(h) Designating countries shall be responsible for the transportation of scientific observers to and from the places of embarkation.

(i) Save as otherwise agreed, equipment, clothing and salary and any allowances for scientific observers shall, normally, be the responsibility of the designating country while accommodation and meals on board shall be that of the vessel of the host country.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 20(2).

Article 17

Reporting of information

1. Member States which have designated scientific observers shall provide the CCAMLR with details of the observation programmes at the earliest opportunity and not later than the conclusion of each bilateral arrangement referred to in Article 11. The following information shall be provided for each observer:

(a) date of conclusion of the arrangement;

(b) name and flag of the vessel taking on board observers;

(c) Member State responsible for designating observers;

(d) fishing area (CCAMLR statistical area, sub-area, division);

(e) type of data collected by observers and submitted to the CCAMLR Secretariat (by-catch, target species, biological data, etc.);

(f) expected dates set for the start and end of the observation programme; and

(g) expected date set for the return of observers to their country of origin.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 20(2).

CHAPTER V

FINAL PROVISIONS

Article 18

Amendment of annexes

Annexes I to VII shall be amended in line with the conservation measures that become binding on the Community, in accordance with the procedure referred to in Article 20(3).

Article 19

Implementation

The measures necessary for the implementation of Articles 7, 8, 9, 11, 12, 14, 15, 16 and 17 shall be adopted in accordance with the procedure referred to in Article 20(2).

Article 20

Committee procedure

1. The Commission shall be assisted by the Committee set up under Article 30 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ([1]).

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/EEC shall be set at one month.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EEC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EEC shall be set at one month.

4. The Committee shall adopt its Rules of Procedure.

Article 21

Entry into force

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, 22 March 2004.

For the Council

The President

J. WALSH

([1]) OJ L 358, 31.12.2002, p. 59.

ANNEX I

MINIMUM MESH SIZE WITHIN THE MEANING OF ARTICLE 4(1)

Species	Type of net	Minimum mesh size
Notothenia rossii	Trawls, Danish seines and similar nets	120 mm
Dissostichus eleginoides	Trawls, Danish seines and similar nets	120 mm
Goibionotothen gibberifrons	Trawls, Danish seines and similar nets	80 mm
Notothenia kempi	Trawls, Danish seines and similar nets	80 mm
Lepidonotothen squamifrons	Trawls, Danish seines and similar nets	80 mm
Champsocephalus gunnari	Trawls, Danish seines and similar nets	90 mm

ANNEX II

RULES FOR DETERMINING MINIMUM MESH SIZES WITHIN THE MEANING OF ARTICLE 5

A. **Description of gauges**

1. The gauges to be used for determining mesh size shall be 2 mm thick, flat, of durable material and capable of retaining their shape. They shall have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper specified above. They shall have a hole at the narrowest extremity.

2. Each gauge shall be inscribed on its face with the width in millimetres both on the parallel-sided section, if any, and of the tapering section. In the case of the latter, the width shall be inscribed at intervals of 1 mm and shall be indicated at regular intervals.

B. **Use of the gauge**

1. The net shall be stretched in the direction of the long diagonal of the meshes.

2. A gauge as described in paragraph A shall be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.

3. The gauge shall be inserted into the mesh opening either manually or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

C. **Selection of meshes to be measured**

1. The portion of net to be measured shall form a series of 20 consecutive meshes running in the direction of the long axis of the net.

2. Meshes situated less than 50 cm from lacings, ropes or codline shall not be measured. This distance shall be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. Nor shall any mesh be measured which has been mended or broken or has attachments to the net fixed at that mesh.

3. By way of derogation from 1, the meshes to be measured need not be consecutive if the conditions set out in 2 apply.

4. Nets shall be measured only when wet and unfrozen.

D. **Measurements of each mesh**

The size of each mesh shall be the width of the gauge at the point where the gauge is stopped when it is used in accordance with paragraph B.

E. **Determination of the mesh size of the net**

The mesh size of the net shall be the arithmetical mean, in millimetres, of the measurements of the total number of meshes selected and measured as provided for in paragraphs C and D, the arithmetical mean being rounded up to the nearest millimetre.

The total number of meshes to be measured is specified in paragraph F.

F. **Sequence of inspection procedure**

1. The inspector shall measure one series of 20 meshes, selected in accordance with paragraph C, inserting the gauge manually without using a weight or dynamometer.

   The mesh size of the net shall then be determined in accordance with paragraph E.

   If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, two additional series of 20 meshes selected in accordance with paragraph C shall be measured.

   The mesh size shall then be recalculated in accordance with paragraph E, taking into account the 60 meshes already measured. Without prejudice to 2 this shall be the mesh size of the net.

2. If the master of the vessel contests the mesh size determined in accordance with 1, such measurement shall not be considered for the determination of the mesh size and the net shall be remeasured, using a weight or dynamometer attached to the gauge; the choice of weight or dynamometer shall be left to the discretion of the inspector. The weight shall be fixed (using a hook) to the hole in the narrowest extremity of the gauge. The dynamometer may either be fixed to the hole in the narrowest extremity of the gauge or be applied at the widest extremity of the gauge. The accuracy of the weight or dynamometer shall be certified by the appropriate national authority.

   For nets of a mesh size of 35 mm or less as determined in accordance with 1, a force of 19,61 newtons (equivalent to a mass of two kilograms) shall be applied and a force of 49,03 newtons (equivalent to a mass of five kilograms), shall be applied for other nets.

   For the purposes of determining the mesh size in accordance with paragraph E, only one series of 20 meshes shall be measured wherever a weight or dynamometer is used.

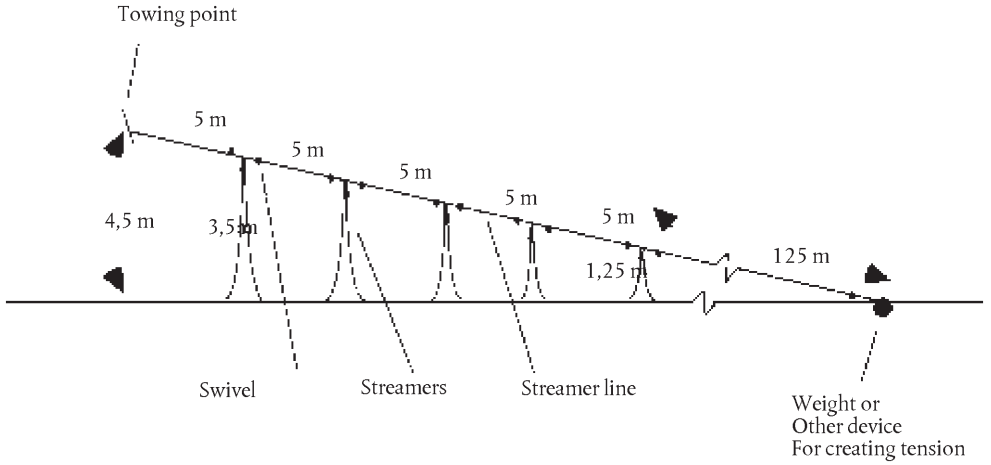
ANNEX III

DETAILED DESCRIPTION OF THE STREAMER LINE REFERRED TO IN ARTICLE 8(5) AND METHOD OF DEPLOYMENT

1. The streamer line is to be suspended at the stern from a point approximately 4,5 m above the water and such that the line is directly above the point where the baits hit the water.

2. The streamer line is to be approximately 3 mm diameter, have a minimum length of 150 m and have a device at the end to create tension so that the main line streams directly behind the vessel even in cross winds.

3. At 5 m intervals commencing from the point of attachment to the vessel five branch streamers each comprising two strands of approximately 3 mm diameter cord should be attached. The length of the streamer should range between approximately 3,50 m nearest the vessel to approximately 1,25 m for the fifth streamer. When the streamer line is deployed the branch streamers should reach the sea surface and periodically dip into it when the vessel heaves. Swivels should be placed in the streamer line at the towing point, before and after the point of attachment of each branch streamer and immediately before any weight placed on the end of the streamer line. Each branch streamer should also have a swivel at its attachment to the streamer line.



ANNEX IV

EXPERIMENTAL PROTOCOLS FOR THE SETTING OF LONGLINES REFERRED TO IN ARTICLE 8(7)

PROTOCOL A

A1. The vessel shall, under observation by a scientific observer:

(a) set a minimum of five longlines with a minimum of four time depth recorders (TDR) on each line;

(b) place TDRs at random on the longline within and between sets;

(c) calculate an individual sink rate for each TDR when returned to the vessel, where:

(i) the sink rate shall be measured as an average of the time taken to sink from the surface (0 m) to 15 m; and

(ii) this sink rate shall be at a minimum rate of 0,3 m/s;

(d) if the minimum sink rate (0,3 m/s) is not achieved at all 20 sample points, repeat the test until such time as a total of 20 tests with a minimum sink rate of 0,3 m/s are recorded; and

(e) all equipment and fishing gear used in the tests is to be the same as that to be used in the Convention area.

A2. During fishing, for a vessel to maintain the exemption from night-time setting requirements, continuous line sink monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(a) seek to place a TDR on every longline set during the observer's shift;

(b) every seven days place all available TDRs on a single longline to determine any sink rate variation along the line;

(c) place TDRs at random on the longline within and between sets;

(d) calculate an individual rate for each TDR when returned to the vessel; and

(e) measure the sink rate as an average of the time taken to sink from the surface (0 m) to 15 m.

A3. The vessel shall:

(a) ensure the average sink rate is at a minimum of 0,3 m/s;

(b) report daily to the fishery manager; and

(c) ensure that data collected from line sink trials is recorded in the approved format and submitted to the fishery manager at the end of the season.

PROTOCOL B

B1. The vessel shall, under observation by a scientific observer:

(a) set a minimum of five longlines of the maximum length to be used in the Convention area with a minimum of four bottle tests (see paragraphs B5 to B9) on the middle one-third of the longline;

(b) place test bottles at random on the longline within and between sets, noting that all tests should be applied halfway between weights;

(c) calculate an individual sink rate for each bottle test where the sink rate shall be measured as the time taken for the longline to sink from the surface (0 m) to 10 m;

(d) this sink rate shall be at a minimum rate of 0,3 m/s;

(e) if the minimum sink rate is not achieved at all 20 sample points (four tests on five lines), continue testing until such time as a total of 20 tests with a minimum sink rate of 0,3 m/s are recorded; and

(f) all equipment and fishing gear used in the tests is to be to the same specifications as that to be used in the Convention area.

B2. During fishing, for a vessel to maintain the exemption provided for in Article 7(8), regular line sink rate monitoring shall be undertaken by the CCAMLR scientific observer. The vessel shall cooperate with the CCAMLR observer who shall:

(a) aim to conduct a bottle test on every longline set during the observer's shift, noting that the test should be undertaken on the middle one-third of the line;

(b) every seven days place at least four test bottles on a single longline to determine any sink rate variation along the line;

(c) place test bottles at random on the longline within and between sets, noting that all bottles should be attached halfway between weights;

(d) calculate an individual sink rate for each bottle test; and

(e) measure the line sink rate as the time taken for the line to sink from the surface (0 m) to 10 m.

B3. The vessel shall whilst operating under this exemption:

(a) ensure that all longlines are weighted to achieve a minimum line sink rate of 0,3 m/s at all times;

(b) report daily to its national agency on the achievement of this target; and

(c) ensure that data collected from line sink rate monitoring are recorded in the approved format and submitted to the relevant national agency at the end of the season.

B4. A bottle test is to be conducted as described below.

Bottle set-up

B5. 10 m of 2 mm multifilament nylon snood twine, or equivalent, is securely attached to the neck of a 750 ml plastic bottle ([1]) (buoyancy about 0,7 kg) with a longline clip attached to the other end. The length measurement is taken from the attachment point (terminal end of the clip) to the neck of the bottle, and should be checked by the observer every few days.

B6. Reflective adhesive tape should be wrapped around the bottle to allow it to be observed at night. A piece of water-proof paper with a unique identifying number large enough to be read from a few metres away should be placed inside the bottle.

Test

B7. The bottle is emptied of water, the stopper is left open and the twine is wrapped around the body of the bottle for setting. The bottle with the encircled twine is attached to the longline ([2]), midway between weights (the attachment point).

B8. The observer records the time at which the attachment point enters the water as t1 in seconds ([3]). The time at which the bottle is observed to be pulled completely under is recorded as t2 in seconds. The result of the test is calculated as follows:

Line sink rate = 10/(t2 - t1)

B9. The result should be 0,3 m/s or more. These data are to be recorded in the space provided in the electronic observer logbook.

([1]) A plastic water bottle that has a hard plastic screw-on stopper is needed. The stopper of the bottle is left open so that the bottle will fill with water after being pulled under water. This allows the plastic bottle to be re-used rather than being crushed by water pressure.
([2]) On autolines attach to the backbone; on the Spanish longline system attach to the hookline.
([3]) Binoculars will make this process easier to view, especially in foul weather.

ANNEX V

RULES CONCERNING BY-CATCHES IN THE FISHERIES CARRIED OUT IN THE CONVENTION AREA

A. **Regulated fisheries**

1. If, in the course of the directed fishery for *Dissostichus eleginoides* in FAO statistical sub-area 48.3, the by-catch of any species is one tonne or more in any one haul or set, the fishing vessel shall move to another fishing location not closer than five nautical miles distant. The fishing vessel shall not return to any point within a radius of five nautical miles of the location where the by-catch exceeded one tonne, for a period of at least five days.

2. If, in the course of the directed fishery for *Champsocephalus gunnari* in FAO statistical sub-area 48.3, the by-catch in any one haul of any of the following species: *Chaenocephalus aceratus*, *Gobionotothen gibberifrons*, *Lepidonotothen squamifrons*, *Notothenia rossii*, or *Pseudochaenichthys georgianus*,

   (a) is greater than 100 kg and exceeds five percent of the total catch of all fish by weight,

   or

   (b) is two tonnes or more, then

   the fishing vessel shall move to another location at least five nautical miles distant. It shall not return to any point within a radius of five nautical miles of the location where the by-catch of the above species exceeded five percent for a period of at least five days.

3. If, in the course of the directed fishery for *Dissostichus eleginoides* or *Champsocephalus gunnari* in FAO statistical division 58.5.2, the by-catch in any one haul of *Channichthys rhinoceratus*, *Lepidonotothen squamifrons*, *Macrourus* spp., or skates and rays, is two tonnes or more, the fishing vessel shall not fish using that method of fishing at any point within five nautical miles of the location where the by-catch of the above species exceeded two tonnes for a period of at least five days.

   If, in the course of the above fisheries, the by-catch in any one haul of any other by-catch species for which limits have been imposed under Community rules is one tonne or more, the fishing vessel shall not fish using that method of fishing at any point within five nautical miles of the location where the by-catch of the above species exceeded one tonne for a period of at least five days.

4. If, in the course of the directed fishery for *Electrona carlsbergi* in FAO statistical sub-area 48.3, the by-catch in any one haul of a species other than the target species:

   (a) is greater than 100 kg and exceeds five percent of the total catch of all fish by weight,

   or

   (b) is two tonnes or more, then

   the fishing vessel shall move to another location at least five nautical miles distant. It shall not return to any point within a radius of five nautical miles of the location where the by-catch of species other than the target species exceeded five percent for a period of at least five days.

5. The location where the by-catch exceeds the quantities referred to in points 1 to 4 is defined as the path followed by the fishing vessel from the point at which the fishing gear is first deployed from the fishing vessel to the point at which the fishing gear is retrieved by the fishing vessel.

B. **New and exploratory fisheries**

1. If the by-catch of any one species is equal to or greater than one tonne in any one haul or set, then the fishing vessel shall move to another location at least five nautical miles distant. It shall not return to any point within a radius of five nautical miles of the location where the by-catch exceeded one tonne for a period of at least five days. The location where the by-catch exceeded one tonne is defined as the path followed by the fishing vessel from the point at which the fishing gear is first deployed from the fishing vessel to the point at which the fishing gear is retrieved by the fishing vessel.

2. For the purposes of paragraph 1:

   (a) by-catch is constituted by catches of any species other than the target species;

   (b) *Macrourus* spp. and skates and rays should each be counted as a single species.

ANNEX VI

RESEARCH HAULS IN THE FISHERY FOR CHAMPSOCEPHALUS GUNNARI IN FAO STATISTICAL SUB-AREA 48.3 DURING THE SPAWNING SEASON

1. Twelve research hauls shall be carried out in the Shag Rocks/Black Rocks area. These shall be distributed between the four sectors illustrated in Figure 1: four each in the NW and SE sectors, and two each in the NE and SW sectors. A further eight research hauls shall be conducted on the north-western shelf of South Georgia over water less than 300 m deep, as illustrated in Figure 1.

2. Each research haul must be at least five nautical miles distant from all others. The spacing of stations is intended to be such that both areas are adequately covered in order to provide information about the length, sex, maturity and weight composition of *Champsocephalus gunnari*.

3. If concentrations of fish are located en route to South Georgia, they should be fished in addition to the research hauls.

4. The duration of research hauls must be of a minimum of 30 minutes with the net at fishing depth. During the day, the net must be fished close to the bottom.

5. The catch of all research hauls shall be sampled by the international scientific observer on board. Samples should aim to comprise at least 100 fish, sampled using standard random sampling techniques. All fish in the sample should be at least examined for length, sex and maturity determination, and where possible weight. More fish should be examined if the catch is large and time permits.

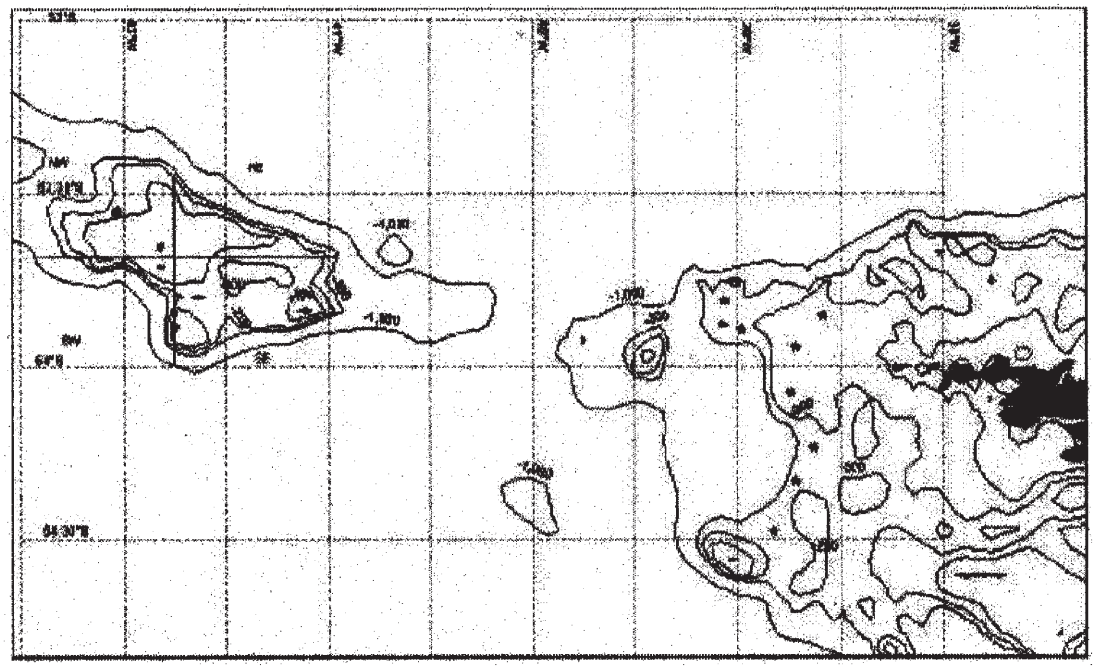


Figure 1:

Distribution of 20 exploratory fishing hauls on *Champsocephalus gunnari* at Shag Rocks (12) and South Georgia (8) from 1 March to 31 May. Haul locations around South Georgia (stars) are illustrative.

ANNEX VII

FUNCTIONS AND TASKS OF SCIENTIFIC OBSERVERS ON BOARD VESSELS ENGAGED IN SCIENTIFIC RESEARCH OR HARVESTING OF MARINE LIVING RESOURCES IN THE CONVENTION AREA REFERRED TO IN ARTICLE 15(2)

A. The function of scientific observers on board vessels engaged in scientific research or harvesting of marine living resources is to observe and report on the operation of fishing activities in the Convention area with the objectives and principles of the Convention in mind.

B. In fulfilling this function, scientific observers will undertake the following tasks using the observation formats approved by the CCAMLR Scientific Committee:

(a) record details of the vessel's operation (e.g. partition of time between searching, fishing, transit etc., and details of hauls);

(b) take samples of catches to determine biological characteristics;

(c) record biological data by species caught;

(d) record by-catches, their quantity and other biological data;

(e) record entanglement and incidental mortality of sea birds and mammals;

(f) record the procedure by which declared catch weight is measured and collect data relating to the conversion factor between green weight and final product in the event that catch is recorded on the basis of weight of processed product;

(g) prepare reports of their observations using the observation formats approved by the Scientific Committee and submit them to their respective authorities;

(h) submit copies of reports to masters of vessels;

(i) assist, if requested, the master of the vessel in the catch recording and reporting procedures;

(j) undertake other tasks as may be decided by mutual agreement of the parties concerned to the bilateral agreement applicable;

(k) collect and report factual data on sightings of fishing vessels in the Convention area, including vessel type identification, position and activity; and

(l) collect information on fishing gear loss and waste disposal by fishing vessels at sea.

COUNCIL REGULATION (EC) No 601/2004

of 22 March 2004

laying down certain control measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources and repealing Regulations (EEC) No 3943/90, (EC) No 66/98 and (EC) No 1721/1999

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],

Whereas:

(1) The Convention on the conservation of Antarctic marine living resources, (Convention), was approved by the Community by Council Decision 81/691/EEC [2], and entered into force in the Community on 21 May 1982.

(2) The Convention provides a framework for regional cooperation in the conservation and management of Antarctic marine living resources through the establishment of a Commission for the conservation and management of Antarctic marine living resources, hereinafter (CCAMLR), and the adoption by the CCAMLR of conservation measures which become binding on the Contracting Parties.

(3) The Community, as a Contracting Party to the Convention, should ensure that the conservation measures adopted by the CCAMLR are applied to Community fishing vessels.

(4) The measures concerned include numerous rules and provisions for the control of fishing activities in the Convention area which must be incorporated in Community law as special provisions within the meaning of Article 1(3) of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy [3], and supplementing the provisions thereof.

(5) Some of those special provisions have been transposed into Community law by Council Regulation (EEC) No 3943/90 of 19 December 1990 on the application of the system of observation and inspection established under Article XXIV of the Convention on the conservation of Antarctic marine living resources [4], by Council Regulation (EC) No 66/98 of 18 December 1997 laying down certain conservation and control measures applicable to fishing activities in the Antarctic [5], and by Council Regulation (EC) No 1721/1999 of 29 July 1999 laying down certain control measures in respect of vessels flying the flag of non-Contracting Parties to the Convention on the conservation of Antarctic marine living resources [6].

(6) With a view to implementing the new conservation measures adopted by the CCAMLR, those Regulations should be repealed and replaced by a single Regulation bringing together the special provisions for the control of fishing activities arising from the Community's obligations as a Contracting Party to the Convention.

(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 [7],

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

1. This Regulation lays down general rules and conditions for the application by the Community of:

[1] Opinion delivered on 16.12.2003 (not yet published in the Official Journal).
[2] OJ L 252, 5.9.1981, p. 26.
[3] OJ L 261, 20.10.1993, p.1. Regulation as last amended by Regulation (EC) No 1954/2003 (OJ L 289, 7.11.2003, p. 1).
[4] OJ L 379, 31.12.1990, p. 45.
[5] OJ L 6, 10.1.1998, p.1. Regulation as last amended by Regulation (EC) No 2742/1999 (OJ L 341, 31.12.1999, p. 1).
[6] OJ L 203, 3.8.1999, p. 14.
[7] OJ L 184, 17.7.1999, p. 23.

(a) control measures applicable to fishing vessels flying the flag of a Contracting Party to the Convention for the conservation of Antarctic marine living resources, (Convention), operating in the Convention area in waters located beyond the limits of national jurisdictions;

(b) a system to promote compliance by vessels flying the flag of a non-Contracting Party to the Convention with conservation measures laid down by the Commission for the conservation of Antarctic marine living resources, (CCAMLR).

2. This Regulation shall apply without prejudice to the provisions of the Convention and shall operate in furtherance of its objectives and principles and the provisions of the final act of the conference at which it was adopted.

Article 2

Definitions

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

(a) 'Convention area': means the area of application of the Convention as defined in Article 1 thereof;

(b) 'Antarctic convergence': means a line joining the following points along parallels of latitude and meridians of longitude: 50 °S, 0° — 50 °S, 30 °E — 45 °S, 30 °E — 45 °S, 80 °E — 55 °S, 80 °E — 55 °S, 150 °E — 60 °S, 150 °E — 60 °S, 50 °W — 50 °S, 50 °W — 50 °S, 0°;

(c) 'Community fishing vessel': means a fishing vessel flying the flag of a Community Member State and registered in the Community which takes and keeps on board marine organisms taken from marine living resources in the Convention area.

(d) 'VMS system': means a satellite-based vessel monitoring system installed on board Community fishing vessels in accordance with Article 3 of Regulation (EEC) No 2847/93;

(e) 'new fishery': means a fishery for a species using a particular fishing method in a FAO Antarctic statistical subarea, for which:

(i) information on distribution, abundance, population, potential yield and stock identity from comprehensive research/surveys or exploratory fishing have never been submitted to the CCAMLR; or

(ii) catch and effort data have never been submitted to the CCAMLR; or

(iii) catch and effort data from the two most recent seasons in which fishing took place have never been submitted to the CCAMLR;

(f) 'exploratory fishery': means a fishery that was previously classified as a 'new fishery' as defined in paragraph (e). An exploratory fishery shall continue to be classified as such until sufficient information is available:

(i) to evaluate the distribution, abundance and population of the target species, leading to an estimate of the fishery's potential yield;

(ii) to review the fishery's potential impacts on dependent and related species, and

(iii) to allow the CCAMLR's Scientific Committee to formulate and provide advice on appropriate harvest catch levels, as well as on effort levels and fishing gear where appropriate;

(g) 'CCAMLR inspector': an inspector designated by a Contracting Party to the Convention to implementing the control system referred to in Article 1(1);

(h) 'CCAMLR system of inspection': means the document bearing that name, adopted by the CCAMLR, concerning the control and inspection at sea of vessels flying the flag of a Contracting Party to the Convention;

(i) 'non-Contracting Party vessel': means a fishing vessel which flies the flag of a non-Contracting Party to the Convention and which has been sighted engaging in fishing activities in the Convention area;

(j) 'Contracting Party': means a contracting party to the Convention;

(k) 'Contracting Party vessel': means a fishing vessel which flies the flag of a Contracting Party to the Convention;

(l) 'sighting': means any sighting of a vessel flying the flag of a non-Contracting Party to the Convention by a vessel flying the flag of a Contracting Party to the Convention and operating in the Convention area, or by an aircraft registered in a Contracting Party to the Convention, and overflying the Convention area, or by a CCAMLR inspector;

(m) 'IUU activities' means illegal, unregulated and unreported fishing activities in the Convention area;

(n) 'IUU vessel': means any vessel engaged in illegal, unregulated and unreported fishing activities in the Convention area.

CHAPTER II

ACCESS TO FISHING ACTIVITIES IN THE CONVENTION AREA

Article 3

Special fishing permit

1. Only Community fishing vessels holding a special fishing permit issued by their flag Member State in accordance with Regulation (EC) No 1627/94 [1] shall be authorised, in accordance with the conditions laid down in the permit, to fish, retain on board, tranship and land fishery resources from the Convention area.

2. The Member States shall transmit to the Commission, by computer transmission, within three days from the date of issue of the permit referred to in paragraph 1, the following information concerning the vessel covered by the permit:

(a) the name of the vessel concerned;

(b) the period for which it is authorised to fish in the Convention area, with the dates on which fishing activities start and end;

(c) the fishing area or areas;

(d) the target species;

(e) the gear used.

The Commission shall transmit such information to the CCAMLR Secretariat without delay.

3. The information transmitted to the Commission by the Member States shall include the internal fleet register number as provided for in Article 1 of Commission Regulation (EC) No 2090/98 of 30 September 1998 concerning the fishing vessel register of the Community [2], together with details of the home port and the names of the owner or charterer of the vessel, and shall be accompanied by the notification that the master of the vessel has been informed of the measures in force for the area or areas where the vessel will be fishing in the Convention area.

4. Paragraphs 1, 2 and 3 shall apply subject to the special provisions provided for in Articles 5, 6, 7 and 8.

5. Member States shall not issue a special fishing permit to vessels intending to engage in longline fisheries in the Convention area that do not comply with the provisions of Article 8(3), second subparagraph, of Council Regulation (EC) No 600/2004 of 22 March 2004 laying down certain technical measures applicable to fishing activities in the area covered by the Convention on the conservation of Antarctic marine living resources [3].

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 4

General rules of conduct

1. The special fishing permit referred to in Article 3, or an authenticated copy thereof, shall be carried on board fishing vessels and shall be available at all times for inspection by a CCAMLR inspector.

2. Each Member State shall ensure that all Community fishing vessels flying its flag notify it of their entry to and exit from all ports, their entry to and exit from the Convention area and their movements between FAO statistical subareas and divisions.

3. Member States shall verify the information referred to in paragraph 2 against data received through the VMS systems operating on board Community fishing vessels. They shall transmit such information to the Commission by computer transmission within two days from the date of its receipt. The Commission shall transmit the information without delay to the CCAMLR Secretariat.

4. In the event of a technical breakdown of the VMS system on board a Community fishing vessel, the flag Member State shall notify the CCAMLR as soon as possible, with a copy to the Commission, of the name of the vessel, and the time, date and position of the vessel when the VMS system ceased to function. As soon as the VMS system is again operational the flag Member State shall inform the CCAMLR thereof without delay.

Article 5

Access to crab fisheries

1. The flag Member States shall notify the Commission of the intention of a Community fishing vessel to fish for crab in FAO statistical subarea 48.3. Notification shall be made four months in advance of the date set for the start of the fishery and shall include the internal fleet register number and the research and fishing operations plan of the vessel concerned.

2. The Commission shall examine the notification, check that it complies with the applicable rules and inform the Member State of its findings. The Member State may issue the special fishing permit upon receipt of the findings of the Commission or within 10 working days from the date of notification of the findings. The Commission shall notify the CCAMLR accordingly, at the latest three months in advance of the date set for the start of the fishery.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

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[1] OJ L 171, 6.7.1994, p. 7.
[2] OJ L 266, 1.10.1998, p. 27. Regulation repealed by Regulation (EC) No 26/2004 (OJ L 5, 9.1.2004, p. 25).
[3] See page 1 of this Official Journal.

Article 6

Access to new fisheries

1. Fishing in a new fishery in the Convention area shall be prohibited except where it has been authorised in accordance with paragraphs 2 to 5.

2. Only those vessels that are equipped and configured so that they can comply with all relevant conservation measures adopted by the CCAMLR shall be eligible to participate in a new fishery. Vessels which appear on the CCAMLR IUU vessel list referred to in Article 29 shall not be eligible to participate in a new fishery.

3. The flag Member State shall notify the Commission not later than four months in advance of the annual meeting of the CCAMLR of the intention of a Community fishing vessel to develop a new fishery in the Convention area.

The notification shall be accompanied by as much of the following information as the Member State is able to provide:

(a) the nature of the proposed fishery, including target species, methods of fishing, the proposed region and any minimum level of catches required to develop a viable fishery;

(b) biological information from comprehensive research/survey cruises, such as distribution, abundance, population data and information on stock identity;

(c) details of dependent and associated species and the likelihood of such species being affected in any way at all by the proposed fishery;

(d) information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield.

4. The Commission shall transmit to the CCAMLR for consideration the information provided in accordance with paragraph 3, together with any other relevant information at its disposal.

5. Where the CCAMLR approves a new fishery, that fishery shall be authorised:

(a) by the Commission in cases where the CCAMLR has not adopted any conservation measure with regard to the new fishery, or

(b) by the Council, acting by a qualified majority on a proposal from the Commission, in all other cases.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 7

Access to exploratory fisheries

1. Exploratory fishery in the Convention area shall be prohibited except where it has been authorised in accordance with paragraphs 2 to 7.

2. Only vessels that are equipped and configured so that they can comply with all relevant conservation measures adopted by the CCAMLR shall be eligible for participation in an exploratory fishery.

Vessels which appear on the CCAMLR IUU vessel list referred to in Article 29 shall not be eligible to participate in an exploratory fishery.

3. Each Member State participating in an exploratory fishery or intending to authorise a vessel to participate in one shall prepare a research and fishery operations plan which it shall transmit directly to the CCAMLR before a date set by the CCAMLR, with a copy to the Commission.

The plan shall contain as much of the following information as the Member State is able to provide:

(a) a description of how the Member State's activities are to comply with the data collection plan developed by the CCAMLR Scientific Committee;

(b) the nature of the exploratory fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forthcoming season;

(c) biological information from comprehensive research or survey cruises, such as distribution, abundance, population data, and information on stock identity;

(d) details of dependent and related species and the likelihood of such species being adversely affected in any way at all by the proposed fishery;

(e) information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield.

4. Each Member State participating in an exploratory fishery shall submit annually to the CCAMLR, with a copy to the Commission, before the expiry of the deadline agreed within the CCAMLR the data specified in the data collection plan developed by the Scientific Committee for the fishery concerned.

Where the data specified in the data collection plan have not been submitted to the CCAMLR for the most recent season in which fishing took place, continued exploratory fishing by the Member State which failed to submit its data shall be prohibited until the relevant data have been submitted to the CCAMLR, with a copy to the Commission, and the CCAMLR Scientific Committee has been given an opportunity to review the data.

5. Before a Member State authorises its vessels to participate in an exploratory fishery that is already in progress, that Member shall notify the CCAMLR not less than three months in advance of the annual meeting of the CCAMLR. The notifying Member State shall not authorise its vessels to participate in the exploratory fishery until the conclusion of that meeting.

6. The name, type, size, registration number and radio call sign of each vessel participating in the exploratory fishery shall be notified directly by Member States to the CCAMLR Secretariat, with a copy to the Commission, at least three months in advance of the date of the beginning of each fishing voyage.

7. Fishing capacity and effort shall be subject to a precautionary limit set at a level not exceeding that necessary to obtain the information specified in the data collection plan and required to make the evaluations referred to in Article 2(f).

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 8

Access to scientific research

1. Member States whose vessels intend to conduct scientific research where the estimated catch is expected to be less than 50 tonnes of finfish, including not more than 10 tonnes of *Dissostichus* spp., and less than 0,1 % of a given catch limit for krill, squid and crab, shall submit directly to the CCAMLR, with a copy to the Commission, the following data:

(a) the name of the vessel concerned;

(b) its external identification mark;

(c) the division and subarea in which the research is to be conducted;

(d) the estimated dates of entering and leaving the Convention area;

(e) the purpose of the research;

(f) the fishing equipment likely to be used.

2. The Community vessels referred to in paragraph 1 shall be exempt from conservation measures relating to mesh size regulations, prohibition of types of gear, closed areas, fishing seasons and size limits, and reporting system requirements other than those provided for in Article 9(6), and Article 16(1).

3. Member States whose vessels intend to conduct scientific research where the estimated total catch is expected to be more than 50 tonnes, or more than 10 tonnes of *Dissostichus* spp. or more than 0,1 % of a given catch limit for krill, squid and crab, shall submit to the CCAMLR for review, with a copy to the Commission, a research programme in accordance with standardised guidelines and formats adopted by the CCAMLR's Scientific Committee, at least six months in advance of the planned starting date for the research. The planned fishing for research purposes shall not proceed until the review process is completed by the CCAMLR and its decision notified.

4. Member States shall report to the CCAMLR, with a copy to the Commission, catch and effort data for each haul resulting from any scientific research subject to paragraphs 1, 2 and 3. A summary of the results shall be provided by the Member State to the CCAMLR, with a copy to the Commission, within 180 days of the date of completion of the research. A full report of the results of the research shall be provided to the CCAMLR by the Member State, with a copy to the Commission, within 12 months of the date of completion of the research.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

CHAPTER III

DATA REPORTING SYSTEM

SECTION 1

CATCH AND EFFORT REPORT

Article 9

Catch and effort report

1. Community fishing vessels shall be subject to three catch and effort reporting systems corresponding to the reporting periods as referred to in Articles 10, 11 and 12 for the different species and the FAO statistical areas, subareas and divisions concerned.

2. The catch and effort report shall contain the following information for the period in question:

(a) the name of the vessel concerned;

(b) its external identification mark;

(c) the total catch of the relevant species;

(d) the total number of days and hours fished;

(e) the catches of all species and by-catch species kept on board during the reporting period;

(f) in the case of longline fisheries, the number of hooks.

3. The masters of Community fishing vessels shall submit a catch and effort report to the competent authorities of the flag Member State at the latest within one day from the date of the end of the relevant reporting period referred to in Articles 10, 11 and 12.

4. The Member States shall notify the Commission, by computer transmission, at the latest within three days from the date of the end of each reporting period, of the catch and effort report transmitted by each fishing vessel flying their flag and registered in the Community. Each catch and effort report shall specify the reporting period of the catch concerned.

5. The Commission shall transmit to the CCAMLR, at the latest within five days from the date of the end of each reporting period, the catch and effort reports received in accordance with paragraph 3.

6. The catch and effort reporting systems shall apply to species taken for scientific research purposes, whenever the catch within a given period exceeds five tonnes, except where more specific regulations apply to the particular species.

7. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 10

Monthly catch and effort reporting system

1. For the purposes of the monthly catch and effort reporting system, the reporting period shall be a calendar month.

2. This system shall apply to:

(a) the fishery for *Electrona carlsbergi* in FAO statistical subarea 48.3;

(b) the fishery for *Euphausia superba* in FAO statistical area 48 and in FAO statistical divisions 58.4.2 and 58.4.1.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 11

The 10-day catch and effort reporting system

1. For the purposes of the 10-day catch and effort reporting system, each calendar month shall be divided into three reporting periods, designated by the letters A, B and C and running from day one to day 10, day 11 to day 20 and day 21 to the last day of the month.

2. This system shall apply to:

(a) the fisheries for *Champsocephalus gunnari* and *Dissostichus eleginoides* and other deep-water species in FAO statistical division 58.5.2;

(b) the exploratory fishery for the squid *Martialia hyadesi* in FAO statistical subarea 48.3;

(c) the fishery for the crab *Paralomis* spp. (order *Decapoda*, suborder *Reptantia*) in FAO statistical sub-area 48.3, other than that operated during the first phase of the CCAMLR exploratory fishery scheme for that species and subarea.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 12

Five-day catch and effort reporting system

1. For the purposes of the five-day catch and effort reporting system, each calendar month shall be divided into six reporting periods, designated by the letters A, B, C, D, E and F and running from day one to day five, day six to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25 and day 26 to the last day of the month.

2. This system shall apply for each fishing season to:

(a) the fishery for *Champsocephalus gunnari* in FAO statistical sub-area 48.3;

(b) the fishery for *Dissostichus eleginoides* in FAO statistical sub-areas 48.3 and 48.4;

(c) the exploratory fisheries for *Dissostichus eleginoides* in all the Convention Area, by fine-scale rectangles as defined in Article 2(d) of Regulation (EC) No 600/2004.

3. Following notification by the CCAMLR of the closure of a fishery in the event of failure to transmit the catch and effort report referred to in this Article, the vessel or vessels concerned shall cease operating immediately in the fishery in question and shall be authorised to resume fishing only where the report or, as appropriate, an explanation of the technical difficulties justifying the failure to present a report has been sent to the CCAMLR.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

SECTION 2

MONTHLY FINE-SCALE DATA REPORTING SYSTEMS FOR TRAWL, LONGLINE AND POT FISHERIES

Article 13

Monthly fine-scale catch and effort data reporting system

1. Community fishing vessels shall transmit to the competent authorities of the Member State whose flag they fly, for each fishing season, by the 15th day of the month following that in which fishing takes place, fine-scale catch and effort data for the month concerned, concerning, as appropriate, trawling, longlining or pot fishing, for the following species and areas:

(a) *Champsocephalus gunnari* in FAO statistical division 58.5.2 and subarea 48.3;

(b) *Dissostichus eleginoides* in FAO statistical subareas 48.3 and 48.4;

(c) *Dissostichus eleginoides* in FAO statistical division 58.5.2;

(d) *Electrona carlsbergi* in FAO statistical subarea 48.3;

(e) *Martialia hyadesi* in FAO statistical subarea 48.3;

(f) *Paralomis* spp. (order *Decapoda*, sub-order *Reptantia*) in FAO statistical subarea 48.3, other than that fished during the first phase of the CCAMLR exploratory fishery scheme for that species and subarea.

2. In the case of the fisheries referred to in paragraph 1, points (b) and (f), the data shall be reported for each laying of pots, and in other cases for each haul.

3. All catches of target and by-catch species shall be reported for individual species. The data shall include the numbers of seabirds and marine mammals of each species caught and released or killed.

4. Member States shall transmit the data referred to in paragraphs 1, 2 and 3 to the Commission at the end of each calendar month. The Commission shall transmit that data to the CCAMLR without delay.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 14

Monthly fine-scale biological data reporting system

1. Community fishing vessels shall transmit to the competent authorities of the Member State whose flag they fly, under the same conditions and for the same fisheries as those referred to in Article 13, representative samples of length composition measurements of the target species and by-catch species taken in the fishery.

2. Length measurements of fish shall be of total length rounded down to the nearest centimetre and representative samples of length composition shall be taken from a single fine-scale grid rectangle (0,5° latitude by 1° longitude). Where a vessel moves from one fine-scale rectangle to another during the course of a month, separate length compositions shall be submitted for each rectangle.

3. In the case of data concerning the fishery referred to in Article 13(1)(d), a representative sample shall comprise not less than 500 fish.

4. At the end of each month Member States shall transmit the notifications received to the Commission, which shall transmit them to the CCAMLR without delay.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 15

Closure of a fishery on grounds of failure to submit a report

Where the CCAMLR notifies a Member State that a fishery has been closed on account of failure to submit a report as provided for in Articles 13 and 14, the Member State concerned shall ensure that its vessels participating in that fishery cease fishing immediately.

SECTION 3

ANNUAL REPORTING OF CATCHES

Article 16

Total catch data

1. Without prejudice to Article 15 of Regulation (EEC) No 2847/93, Member States shall notify the Commission, by 31 July each year, of the total catches for the preceding year taken by Community fishing vessels flying their flag, broken down by vessel.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 17

Aggregated data for krill fisheries

1. Community fishing vessels that have participated in krill fisheries in the Convention area shall transmit, by 1 January each year to the competent authorities of the Member State whose flag they fly, the fine-scale catch and effort data for the previous fishing season.

2. Member States shall aggregate the fine-scale catch and effort data by 10 × 10 nautical mile rectangle and 10-day period, and transmit these data to the Commission by latest 1 March each year.

3. For the purposes of the fine-scale catch and effort data, the calendar month shall be divided into three 10-day reporting periods: day one to day 10, day 11 to day 20 and day 21 to the last day of the month. These 10-day reporting periods shall be referred to as periods A, B and C.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 18

Data for catches of crab in FAO statistical subarea 48.3

1. Community fishing vessels fishing for crab in FAO statistical subarea 48.3 shall transmit to the Commission, by 25 September each year, data concerning fishing activities and the catches of crab taken before 31 August of that year. The Commission shall transmit these data to the CCAMLR by 30 September each year.

2. The data concerning catches taken from 31 August each year shall be transmitted to the Commission within two months from the date of the closure of the fishery. The Commission shall transmit these data to the CCAMLR no later than three months following the closure of the fishery.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 19

Fine-scale catch and effort data for the exploratory squid fishery in FAO statistical subarea 48.3

1. Community fishing vessels fishing for squid (*Martialia hyadesi*) in FAO statistical subarea 48.3 shall transmit to the Commission, by 25 September each year, the fine-scale catch and effort data for that fishery. The data shall include the numbers of seabirds and marine mammals of each species caught and released or killed. The Commission shall transmit these data to the CCAMLR by 30 September each year.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

CHAPTER IV

CONTROL AND INSPECTION

SECTION 1

CONTROL AND INSPECTION AT SEA

Article 20

Scope

This Chapter shall apply to Community fishing vessels and fishing vessels flying the flag of another Contracting Party to the Convention.

Article 21

CCAMLR inspectors designated by the Member States to carry out inspections at sea

1. The Member States may designate CCAMLR inspectors who may be placed on board any Community fishing vessel or, by arrangement with another Contracting Party, on board a vessel of the latter, engaged in or about to be engaged in the harvesting of marine living resources or in scientific research activities related to fisheries resources in the Convention area.

2. CCAMLR inspectors shall inspect vessels flying the flag of a Contracting Party other than the Community and its Member States in the Convention area for compliance with the applicable conservation measures adopted by the CCAMLR and, in the case of Community fishing vessels, for compliance with any Community conservation or control measures relating to fisheries resources applying to those vessels.

3. CCAMLR inspectors shall be familiar with the fishing and scientific research activities to be inspected, the provisions of the Convention and the conservation measures adopted under it. The Member States shall certify the qualifications of each inspector they designate.

4. Inspectors shall be nationals of the Member State which designates them and, while carrying out inspection activities, shall be subject solely to the jurisdiction of that Member State. They shall be accorded the status of ship's officer while on board and shall be able to communicate in the language of the flag State of the vessels on which they carry out their activities.

5. Each CCAMLR inspector shall carry an identity document approved or provided by the CCAMLR and issued by the designating Member State. That document shall indicate that the inspector has been designated to carry out inspections in accordance with the CCAMLR observation and inspection system.

6. Member States shall transmit the names of the inspectors they designate, with a copy to the Commission, to the CCAMLR Secretariat within 14 days of their designation.

7. Member States shall cooperate with each other and with the Commission in the application of the system.

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 22

Determining the activities that may be subject to inspection

Research activities and the harvesting of marine living resources in the Convention area may be subject to inspection. Those activities shall be presumed where a CCAMLR inspector finds that the activities of a fishing vessel meet one or more of the following four criteria and there is no information to the contrary:

(a) fishing gear is in use, has recently been in use or is ready to be used, including:

  (i) nets, lines or pots are in the water;

  (ii) trawl nets and doors are rigged;

  (iii) baited hooks, baited pots or traps or thawed bait are ready for use;

  (iv) logbook indicates recent fishing or fishing commencing;

(b) fish which occur in the Convention area are being processed or have recently been processed, including:

  (i) fresh fish or fish waste are stowed on board;

  (ii) fish are being frozen;

  (iii) operational or product information is available in this respect;

(c) fishing gear from the vessel is in the water, including:

  (i) fishing gear bears the vessel's markings;

  (ii) fishing gear matching that on board the vessel;

  (iii) the logbook indicates that gear is in the water;

(d) fish (or their products) which occur in the Convention area are stowed on board.

Article 23

Marking of vessels carrying inspectors

1. Vessels carrying CCAMLR inspectors shall fly a special flag or pennant approved by the CCAMLR to indicate that the inspectors on board are carrying out inspection duties in accordance with the CCAMLR inspection system.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 24

Inspection procedures at sea

1. Any Community vessel present in the Convention area for the purpose of harvesting or conducting scientific research on marine living resources shall, when given the appropriate signal in the International Code of Signals by a vessel carrying a CCAMLR inspector, in accordance with Article 23, stop or take other such actions as necessary to facilitate the safe and prompt transfer of the inspector to the vessel, except where the vessel is actively engaged in harvesting operations, in which case it shall do so as soon as practicable.

2. The master of the vessel shall permit the inspector, who may be accompanied by assistants, to board the vessel. On boarding a vessel, an inspector shall present the document referred to in Article 21(5). Inspectors shall be provided appropriate assistance by the master of the vessel in carrying out their duties, including access as necessary to communications equipment.

3. The inspection shall be carried out so that the vessel is subject to the minimum interference and inconvenience. Inquiries shall be limited to the ascertainment of facts in relation to compliance with the CCAMLR conservation measures applicable to the flag State concerned.

4. Inspectors shall have the authority to inspect catches, nets and other fishing gear as well as harvesting and scientific research activities, and shall have access to records and reports of catch and location data insofar as necessary to carry out their functions. Inspectors may take photographs and/or video footage as necessary to document any alleged breach of CCAMLR conservation measures in force.

5. CCAMLR inspectors shall affix an identification mark approved by the CCAMLR to any net or other fishing gear which appears to have been used in breach of the CCAMLR conservation measures in force. They shall record this fact in the report referred to in Article 25(3) and (4).

6. If a vessel refuses to stop or otherwise facilitate transfer of an inspector, or if the master or crew of a vessel interferes with the authorised activities of an inspector, the inspector involved shall prepare a detailed report, including a full description of all the circumstances, and provide the report to the designating State to be transmitted in accordance with the relevant provisions of Article 25.

Interference with an inspector or failure to comply with reasonable requests made by an inspector in the performance of his duties shall be treated by the flag Member State as if the inspector were an inspector of that Member State.

The flag Member State shall report on actions taken under this paragraph in accordance with Article 26.

7. Before leaving the vessel that has been inspected, the CCAMLR inspector shall give the master of that vessel a copy of the completed inspection report referred to in Article 25.

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 25

Inspection report

1. Inspections at sea carried out in accordance with Article 24 shall be the subject of an inspection report in the form approved by the CCAMLR drawn up as follows:

(a) CCAMLR inspectors shall report on any alleged breach of the conservation measures in force. Inspectors shall allow the master of the vessel being inspected to comment, on the inspection report form, about any aspect of the inspection;

(b) inspectors shall sign the inspection report form. The master of the inspected vessel shall be invited to sign the inspection report form to acknowledge receipt of the report.

2. The CCAMLR inspector shall provide a copy of the inspection form together with photographs and video footage to the designating Member State not later than 15 days from the date of his return to port.

3. The designating Member State shall transmit a copy of the inspection form not later than 15 days from the date of its receipt, together with two copies of photographs and video footage to the CCAMLR.

The Member State shall also transmit one copy of the report together with copies of photographs and video footage to the Commission no later than seven days from the date of its receipt together with any supplementary report or information transmitted subsequently to the CCAMLR regarding the inspection report.

4. Any Member State which receives an inspection report or any supplementary reports or information, including reports under Article 24(6), concerning a vessel flying its flag shall transmit a copy to the CCAMLR and shall also transmit a copy to the Commission without delay, enclosing a copy of any comments and/or observations it may have transmitted to the CCAMLR following receipt of such reports or information.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

Article 26

Infringement procedure

1. Where, as a result of inspection activities carried out in accordance with the CCAMLR inspection system, there is evidence of breach of the measures adopted under the Convention, the flag Member State shall ensure that appropriate measures are taken against the natural or legal persons responsible for the breach of the measures adopted under the Convention in accordance with Article 25 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy [1].

2. The flag Member State shall, within 14 days from the date of the laying of charges or the initiation of proceedings relating to a prosecution, inform the CCAMLR and the Commission, and keep them informed of the progress of the proceedings and their outcome.

3. The flag Member State shall at least once a year report in writing to the CCAMLR, on the outcome of the proceedings as referred to in paragraph 1 and the penalties imposed. If the proceedings have not been completed, a progress report shall be made. When proceedings have not been launched, or have been unsuccessful, the report shall contain an explanation. The flag Member State shall transmit a copy of the report to the Commission.

4. Penalties provided for by flag Member States in respect of infringements of CCAMLR conservation measures shall be sufficiently severe as to effectively ensure compliance with those measures and to discourage infringements, and shall seek to deprive offenders of any economic benefit accruing from their illegal activities.

5. The flag Member State shall ensure that any of its vessels which have been found to have contravened a CCAMLR conservation measure do not carry out fishing operations within the Convention area until they have complied with the penalties imposed.

[1] OJ L 358, 31.12.2002, p. 59.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

SECTION 2

CONTROL AND INSPECTION IN PORT

Article 27

Control and inspection in port

1. Member States shall undertake inspection of all fishing vessels carrying *Dissostichus* spp. which enter their ports.

The inspections shall seek to establish that:

(a) the catch to be landed or transshipped:
   (i) is accompanied by the catch document for *Dissostichus* required under Council Regulation (EC) No 1035/2001 of 22 May 2001 establishing a catch documentation scheme for *Dissostichus* spp. ([1]); and
   (ii) it corresponds to the information contained in the document;

(b) where the vessel has engaged in harvesting activities in the Convention area, that they are in compliance with the CCAMLR conservation measures.

2. To facilitate the inspections, the Member States shall require the vessels concerned to provide advance notice of their entry into port and to declare in writing that they have not engaged in or supported illegal, unregulated and unreported fishing activities in the Convention area. Entry into port shall be refused, save in emergencies, to vessels which fail to declare that they have not taken part in illegal, unregulated and unreported fishing activities or which fail to make a declaration.

In the case of vessels authorised to enter port, the competent authorities in the port Member State shall carry out their inspections as rapidly as possible and at the latest within 48 hours following entry into port.

Inspections shall impose no undue burdens on the vessel or its crew, and shall be guided by the relevant provisions of the CCAMLR system of inspection.

3. Where there is evidence that the vessel has fished in breach of the CCAMLR conservation measures, the competent authorities in the port Member State shall not authorise the landing or transhipment of the catch.

The port Member State shall notify the flag State of its findings and cooperate with it in carrying out an investigation into the alleged breach and, where appropriate, applying the penalties provided for under national law.

4. Member States shall notify the CCAMLR at the earliest opportunity of any vessel referred to in paragraph 1 to which access to port or authorisation to land or transhipment *Dissostichus* spp. has been refused. The Member States shall simultaneously transmit a copy of that information to the Commission.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 37(2).

CHAPTER V

VESSELS ENGAGED IN ILLEGAL, UNREGULATED AND UNREPORTED (IUU) FISHING IN THE CONVENTION AREA

SECTION 1

CONTRACTING PARTY VESSELS

Article 28

IUU activities carried out by Contracting Party vessels

1. For the purposes of this section, a Contracting Party vessel may be presumed to have carried out IUU activities that have undermined the effectiveness of the CCAMLR conservation measures where it has:

(a) engaged in fishing activities in the Convention area without the special fishing permit referred to in Article 3 or, in the case of a vessel which is not a Community fishing vessel, a licence issued in accordance with the relevant CCAMLR conservation measures, or in violation of the conditions of such permit or licence;

(b) failed to record or to declare its catches made in the Convention area in accordance with the reporting system applicable to the fisheries they engaged in, or made false declarations;

(c) fished during closed fishing periods or in closed areas in contravention of CCAMLR conservation measures;

(d) used prohibited gear in contravention of applicable CCAMLR conservation measures;

(e) transhipped or participated in joint fishing operations with vessels appearing on the CCAMLR IUU vessel list;

(f) engaged in fishing activities contrary to any other CCAMLR conservation measures in a manner that undermines the attainment of the objectives of the Convention as set out in Article XXII of the Convention; or

(g) engaged in fishing activities in waters adjacent to islands within the Convention area over which the existence of State sovereignty is recognised by all Contracting Parties in a manner that undermines the attainment of the objectives of the CCAMLR conservation measures.

([1]) OJ L 145, 31.05.2001, p. 1. Regulation as amended by Regulation (EC) No 669/2003 (OJ L 97, 15.4.2003, p. 1).

2. In the case of Community fishing vessels, references to CCAMLR conservation measures in paragraph 1 shall be understood as references to the relevant provisions of Regulation (EC) No 600/2004, the provisions of Regulation (EC) No 1035/2001, or the provisions of the Regulation fixing each year the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required, implementing such measures.

Article 29

Identification of vessels engaged in IUU activities

1. Member States that obtain suitably documented information regarding vessels that fall under one or more of the criteria set out in Article 28, on the basis, *inter alia*, of the application of Articles 19 to 26, shall transmit this information to the Commission by latest 20 April, of the year following that in which the documented vessel activities have taken place.

The Commission shall immediately, and by latest 30 April, transmit to the CCAMLR the information received from Member States.

2. The Commission shall transmit to the Member States, immediately upon receipt from the CCAMLR, the draft list of Contracting Party vessels presumed to have carried out IUU activities.

The Member State or Member States whose vessels appear on the draft list shall transmit to the Commission by latest 1 June, their comments, as appropriate, including verifiable VMS data and other supporting information showing that the vessels listed have not engaged in fishing activities in contravention of CCAMLR conservation measures nor had the possibility of being engaged in fishing activities in the Convention area. The Commission shall transmit such comments and supplementary information to the CCAMLR by latest 30 June.

3. Upon receipt of the draft list referred to in paragraph 2, Member States shall monitor closely the vessels listed in order to track their activities and detect any possible change of name, flag or ownership thereof.

4. The Commission shall transmit to the Member States, immediately upon receipt from the CCAMLR, the list of Contracting Party vessels appearing in the provisional IUU vessel list. Member States shall submit to the Commission any additional comments or information regarding the listed vessels, at least two months in advance of the following CCAMLR Annual Meeting. The Commission shall immediately transmit such additional comments and information to the CCAMLR.

5. The Commission shall notify member States each year the IUU vessel list adopted by the CCAMLR.

Article 30

Measures in respect of Contracting Party vessels

1. Member States shall take all necessary measures in accordance with national and Community law, in order that:

(a) no special fishing permit referred to in Article 3 is issued to Community fishing vessels appearing in the IUU vessel list to fish in the Convention Area;

(b) no licence or special fishing permit is issued to vessels appearing in the IUU vessel list to fish in waters under their sovereignty or jurisdiction;

(c) their flag is not granted to vessels appearing in the IUU vessel list;

(d) vessels appearing in the IUU vessel list that enter their ports voluntarily are inspected in port in accordance with Article 27.

2. The following activities shall be prohibited

(a) by derogation of Article 11 of Regulation (EEC) 2847/93, for Community fishing vessels, support vessels, motherships and cargo vessels, to participate in any transhipment or joint fishing operations with vessels appearing on the IUU vessel list;

(b) for vessels appearing in the IUU vessel list that enter ports voluntarily, to land or tranship therein;

(c) to charter vessels appearing on the IUU vessel list;

(d) to import *Dissostichus* spp. from vessels appearing in the IUU vessel list;

3. Member States shall not validate the export or re-export documents accompanying a shipment of *Dissostichus* spp. under the relevant provisions of Regulation (EC) 1035/2001 when the shipment concerned is declared to have been caught by any vessel included in the IUU vessel list.

4. The Commission shall collect and exchange with other Contracting Parties or cooperating non-Contracting Parties, entities or fishing entities, any appropriate information which is suitably documented with a view to detect, control and prevent the use of false import/export certificates regarding fish from vessels appearing in the IUU vessel list.

SECTION 2

NON-CONTRACTING PARTY VESSELS

Article 31

Measures in respect of Contracting Party nationals

Member States shall cooperate and take all necessary measures in accordance with national and Community law, in order to:

(a) ensure that nationals subject to their jurisdiction do not support or engage in IUU fishing, including engagement on board vessels appearing in the IUU list referred to in Article 29;

(b) identify those nationals who are the operators or beneficial owners of vessels involved in IUU fishing.

Member States shall ensure that penalties for IUU fishing applied to nationals under their jurisdiction are of sufficient severity to effectively prevent, deter and eliminate IUU fishing and to deprive offenders of the benefits accruing from such illegal activity.

Article 32

IUU activities carried out by non-Contracting Party vessels

1. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention area or which has been denied port access, landing or transhipment in accordance with Article 27 shall be presumed to have carried out IUU activities that have undermined the effectiveness of the CCAMLR conservation measures.

2. In the case of transhipment activities inside or outside the Convention area, involving the participation of a sighted non-Contracting Party vessel, the presumption that the effectiveness of the CCAMLR conservation measures has been undermined shall apply to any other non-Contracting Party vessel which was engaged in those activities with that vessel.

Article 33

Inspection of non-Contracting Party vessels

1. Member States shall ensure that each non-Contracting Party vessel as referred to in Article 32 that enters their ports is inspected by their competent authorities in accordance with Article 27.

2. Vessels inspected pursuant to paragraph 1 shall not be allowed to land or tranship any fish species subject to CCAMLR conservation measures which it may be holding on board except where the vessel establishes that the fish were caught in compliance with such measures and the requirements under the Convention.

Article 34

Information on non-Contracting Party vessels

1. A Member State which sights the non-Contracting Party vessel or denies it port access, landing or transhipment under Articles 32 and 33 shall attempt to inform the vessel that it is presumed to be undermining the objective of the Convention and that this information will be transmitted to all Contracting Parties, to CCAMLR, and to the flag State of the vessel.

2. Member States shall immediately transmit to the Commission the information regarding sightings, denial of port access, landings or transhipments, and the results of all inspections conducted in their ports, and any subsequent action they have taken in respect of the vessel concerned. The Commission shall transmit this information immediately to the CCAMLR.

3. Member States may at any time submit to the Commission for immediate transmission to CCAMLR any additional information, which may be relevant for the identification of non-Contracting Party vessels that might be carrying out IUU fishing activities in the Convention Area.

4. The Commission shall notify to the Member States each year the non-Contracting Party vessels appearing in the IUU vessel list adopted by CCAMLR.

Article 35

Measures in respect of non-Contracting Party vessels

Article 30(1), (2) and (3) shall apply *mutatis mutandis* to the non-Contracting Party vessels listed in the IUU vessel list referred to in Article 34(4).

CHAPTER VI

FINAL PROVISIONS

Article 36

Implementation

The measures necessary for implementing Articles 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 21, 23, 24, 25, 26, and 27 shall be adopted in accordance with the procedure referred to in Article 37(2).

Article 37

Committee procedure

1. The Commission shall be assisted by the Committee set up under Article 30 of Regulation (EC) No 2371/2002.

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 38

Repeal

1. Regulations (EEC) No 3943/1990, (EC) No 66/98, and (EC) No 1721/1999 are hereby repealed.

2. References made to the repealed Regulations shall be construed as being made to this Regulation.

Article 39

Entry into force

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, 22 March 2004.

For the Council

The President

J. WALSH

COUNCIL REGULATION (EC) No 602/2004

of 22 March 2004

amending Regulation (EC) No 850/98 as regards the protection of deepwater coral reefs from the effects of trawling in an area north west of Scotland

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],

Whereas:

(1) Article 2 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy [2] provides that the common fisheries policy is to apply a precautionary approach in taking measures to minimise the impact of fishing activities on marine ecosystems.

(2) Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms [3] establishes restrictions on the use of demersal towed gears.

(3) According to recent scientific reports, and in particular the reports of the International Council for the Exploration of the Sea, aggregations of deepwater corals (*Lophelia pertusa*) have been found and mapped in detail in an area north west of Scotland falling within the jurisdiction of the United Kingdom. Those aggregations, known as the 'Darwin Mounds', appear to be in good conservation status but show signs of damage owing to bottom-trawling operations.

(4) Scientific reports show that those types of aggregations constitute habitats that host important and highly diverse biological communities. The habitats are considered in many fora as requiring priority protection. In particular, the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) has recently included deepwater coral reefs in a list of endangered habitats.

(5) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora includes reefs within the natural habitats of Community interest whose conservation requires the designation of special areas of conservation [4]. The United Kingdom has formally expressed its intention to designate the Darwin Mounds as a special area of conservation with a view to protecting that type of habitat in fulfilment of its obligations provided for by the said directive.

(6) According to the scientific evidence, recovery from damage to coral produced by trawl gear towed through the bottom is either impossible or very difficult and slow. It is therefore appropriate to prohibit the use of bottom trawls and similar gear in the area surrounding the Darwin Mounds.

(7) Regulation (EC) No 850/98 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 30 of Regulation (EC) No 850/98, the following paragraph 4 shall be added:

'4. Vessels shall be prohibited from using any bottom trawl or similar towed nets operating in contact with the bottom of the sea in the area bounded by a line joining the following coordinates:

Latitude 59°54 N	Longitude 6°55 W
Latitude 59°47 N	Longitude 6°47 W
Latitude 59°37 N	Longitude 6°47 W
Latitude 59°37 N	Longitude 7°39 W
Latitude 59°45 N	Longitude 7°39 W
Latitude 59°54 N	Longitude 7°25 W.'

Article 2

This Regulation shall enter into force on 23 August 2004.

[1] Opinion of 10 February 2004 (not yet published in the Official Journal).
[2] OJ L 358, 31.12.2002, p. 59.
[3] OJ L 125, 27.4.1998, p. 1. Regulation as last amended by Regulation (EC) No 973/2001 (OJ L 137, 19.5.2001, p. 1).
[4] OJ L 206, 22.7.1992, p. 7. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

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

Done at Brussels, 22 March 2004.

For the Council
The President
J. WALSH

COMMISSION REGULATION (EC) No 603/2004

of 31 March 2004

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], and in particular Article 4(1) thereof,

Whereas:

(1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

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

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 April 2004.

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

Done at Brussels, 31 March 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to the Commission Regulation of 31 March 2004 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	94,3
	204	39,5
	212	120,5
	999	84,8
0707 00 05	052	107,5
	068	105,0
	096	88,7
	204	19,6
	220	135,1
	999	91,2
0709 90 70	052	110,7
	204	108,2
	999	109,5
0805 10 10, 0805 10 30, 0805 10 50	052	40,6
	204	43,8
	212	56,9
	220	41,8
	400	44,9
	624	58,8
	999	47,8
0805 50 10	052	47,5
	400	51,0
	999	49,3
0808 10 20, 0808 10 50, 0808 10 90	060	50,7
	388	80,8
	400	118,6
	404	100,3
	508	75,1
	512	69,4
	524	77,7
	528	74,3
	720	73,8
	804	101,1
	999	82,2
0808 20 50	388	68,9
	512	73,1
	528	63,0
	720	35,3
	999	60,1

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 604/2004
of 29 March 2004
on the communication of information on tobacco from the 2000 harvest onwards

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco [1], as last amended by Regulation (EC) No 2319/2003 [2], and in particular Article 21 thereof,

Whereas:

(1) Commission Regulation (EC) No 2636/1999 of 14 December 1999 on the communication of information on tobacco from the 2000 harvest onwards and repealing Regulation (EEC) No 1771/93 [3] has been substantially amended several times [4]. In the interests of clarity and rationality the said Regulation should be codified.

(2) The information to be communicated under Regulation (EEC) No 2075/92 and the regulations adopted for its application should be laid down.

(3) In the interests of efficient administration, this information should be grouped and a timetable established for its submission.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Tobacco,

HAS ADOPTED THIS REGULATION:

Article 1

The Member States shall communicate the information set out in Annexes I, II and III in accordance with the time limits given therein.

The information shall be provided for each harvest and for each group of varieties.

Article 2

The Member States shall take the measures necessary to ensure that the economic operators concerned provide them with the information required within the relevant time limits.

Article 3

Information on stocks held by first processing enterprises shall be communicated in accordance with Annex III.

Article 4

Regulation (EC) No 2636/1999 is repealed.

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

Article 5

This Regulation shall enter into force on the 20th 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, 29 March 2004.

For the Commission
The President
Romano PRODI

[1] OJ L 215, 30.7.1992, p. 70.
[2] OJ L 345, 31.12.2003, p. 17.
[3] OJ L 323, 15.12.1999, p. 4.
[4] See Annex IV.

ANNEX I

Information to be communicated to the Commission by 31 July of the year of harvest concerned at the latest

Harvest: ..... Declarant Member State: .....

Group of varieties: .....

	Member State of production (declarant)	Member State of production Name:	Member State of production Name:	Member State of production Name:
1. CULTIVATION CONTRACTS				
1.1 Number of cultivation contracts recorded				
1.2 Quantity of tobacco (in tonnes) of the moisture content referred to in Annex IV of Regulation (EC) No 2848/98 covered by the contracts (1)				
1.3 Total area covered by the contracts (in hectares)				
2. PRODUCERS				
2.1 Total number of producers				
2.2 Number of producers belonging to a producer group recognised pursuant to Regulation (EC) No 2848/98				
3. FIRST PROCESSING ENTERPRISES				
3.1 Number of first processing enterprises concluding cultivation contracts				
4. PRICES				
4.1 Maximum price per kilogram agreed in the cultivation contracts, in relevant currency excluding taxes and other levies. Indicate the reference quality	(in national currency)	(2)	(2)	(2)
4.2 Minimum price per kilogram agreed in the cultivation contracts, in relevant currency excluding taxes and other levies. Indicate the reference quality				

(1) This information may be amended before 30 June of the year following that of harvest in order to take account of quantities covered by amendments of contracts carried out pursuant to Article 9(5) of Regulation (EC) No 2848/98.

(2) For contracts between two Member States, specify the currency in which they were concluded.

ANNEX II

Infomation to be communicated monthly to the Commission from 30 September of the year of harvest concerned

Cumulative figures for the harvest concerned.
Summary to be communicated to the Commission no lather than 30 June of the year following the year of harvest.

Harvest: ..... Declarant Member State: .....

Group of varieties: .....

Situation on the last day of the month preceding this communication. Month concerned:.....

	Member State of production (declarant)	Member State of production Name:	Member State of production Name:	Member State of production Name:
1. Quantity delivered (in tonnes)				
1.1. Total quantity of raw tobacco of the minimum quality standard and moisture content referred to in Annex IV to Regulation (EC) No 2848/98 delivered to first processing enterprises				
1.2 Total quantity of raw tobacco of the minimum quality standard and moisture content referred to in Annex IV to Regulation (EC) No 2848/98 delivered to first processing enterprises by producer groups				
2. Actual quantity of raw tobacco (in tonnes) of the minimum quality standard delivered before adjustment of the weight on the basis of the moisture content				
3. Estimated quantity remaining to be delivered (in tonnes)				
4. Average price (per kg), weighted (2) by the quantities delivered, excluding taxes and other levies, paid by the first processing enterprises	(in national currecy)	(1)	(1)	(1)

(1) For contracts between two Member States, specify the currency in which they were concluded.
(2) Calculation method: (sum QL × PP)/QT = weighted average price.
QL stands for the quantity delivered per lot and PP the purchase price for of the group concerned. QT is the total amount of a group og varieties delivered to the first processing enterprises.

ANNEX III

Information to be communicated to the Commission by the final day of the month following the end of each quarter at the latest [1]

Movement of stocks (in tonnes) held by the first processors

Declarant Member State: .....

Date of declaration: .....

Group of varieties	Harvest concerned	Quantities released to the Community market during the previous quarter	Quantities released to markets of third countries during the previous quarter	Stock position on the final day of the previous quarter

[1] The deadlines are:

— 30 April for the quarter from 1 January to 31 March,

— 31 July for the quarter from 1 April to 30 June,

— 31 October for the quarter from 1 July to 30 September,

— 31 January for the quarter from 1 October to 31 December.

ANNEX IV

Repealed Regulation with its successive amendments

Commission Regulation (EC) No 2636/1999	(OJ L 323, 15.12.1999, p. 4)
Commission Regulation (EC) No 1639/2000	(OJ L 187, 26.7.2000, p. 39)
Commission Regulation (EC) No 384/2001	(OJ L 57, 27.2.2001, p. 16).

ANNEX V

CORRELATION TABLE

Regulation (EC) No 2636/1999	This Regulation
Articles 1, 2 and 3	Articles 1, 2 and 3
Article 4	—
—	Article 4
Article 5	Article 5
Annexes I, II and III	Annexes I, II and III
—	Annex IV
—	Annex V

COMMISSION REGULATION (EC) No 605/2004

of 31 March 2004

derogating for 2004 from Regulation (EC) No 1518/2003 regarding the date of issue of export licences in the pigmeat sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat [1], and in particular Article 8(2), Article 13(12) and Article 22 thereof,

Whereas:

(1) Article 3(3) of Commission Regulation (EC) No 1518/2003 of 28 August 2003 laying down detailed rules for implementing the system of export licences in the pigmeat sector [2], provides that export licences are to be issued on the Wednesday following the week during which the licence applications have been lodged, provided that no special measures have since been taken by the Commission.

(2) In view of the public holidays in 2004 and the irregular publication of the *Official Journal of the European Union* during those holidays, the period for reflection will be too brief to guarantee proper administration of the market and should be extended.

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

HAS ADOPTED THIS REGULATION:

Article 1

As an exception to Article 3(3) of Regulation (EC) No 1518/2003, export licences shall be issued on the dates set out in the table below, provided that none of the special measures referred to in paragraph 4 of that Article are taken before the dates concerned.

Period for submission of licence applications	Dates of issue
from 5 to 9 April 2004	15 April 2004
from 24 to 28 May 2004	3 June 2004
from 25 to 29 October 2004	5 November 2004

Article 2

This Regulation shall enter into force on the third 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, 31 March 2004.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 282, 1.11.1975, p. 1. Regulation as last amended by Regulation (EC) No 1365/2000 (OJ L 156, 29.6.2000, p. 5).
[2] OJ L 217, 29.8.2003, p. 35. Regulation as amended by Regulation (EC) No 130/2004 (OJ L 19, 27.1.2004, p. 14).

COMMISSION REGULATION (EC) No 606/2004

of 31 March 2004

derogating from Regulation (EC) No 174/1999 as regards the term of validity of export licences in the milk and milk products sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], and in particular Article 31(14) thereof,

Whereas:

(1) Article 6 of Commission Regulation (EC) No 174/1999 of 26 January 1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products [2] lays down the term of validity of export licences.

(2) Commission Regulation (EC) No 67/2004 of 15 January 2004 derogating from Regulation (EC) No 174/1999 as regards the term of validity of export licences in the milk and milk products sector [3] has limited the validity period of export licences up to 30 April 2004. As the measures required for the management of export refunds in the new situation of the market in milk products that will be created by the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the Community on 1 May 2004 are not yet fully in place, it is necessary to provide for continuity of applications for export licences after 31 March 2004 and to maintain the limit on their validity period. However, in order not to compromise the successful functioning of the new tender system provided for in Commission Regulation (EC) No 580/2004 of 26 March 2004 establishing a tender procedure concerning export refunds for certain milk products [4], this limitation should not apply to export licences issued in this context.

(3) The potential impact of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia on 1 May 2004, subject to the entry into force of the Act of Accession of 2003 on the Community milk market and the need to monitor developments in the Community and world markets should be taken into account. It is therefore appropriate to derogate from Regulation (EC) No 174/1999 and to provide that the term of validity of export licences for milk products for which an application has been lodged from 15 April 2004 on should be limited to 30 June 2004.

(4) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. By way of derogation from Article 6 of Regulation (EC) No 174/1999, the term of validity of export licences with advance fixing of the refund, which are applied for in the period from 1 to 14 April 2004, in respect of the products referred to in points (a) to (d) of that Article, shall expire on 30 April 2004.

2. However, the term of validity of export licences with advance fixing of the refund, applied for in accordance with Article 2 of Regulation (EC) 580/2004 shall expire on 30 June 2004.

Article 2

By way of derogation from Article 6 of Regulation (EC) No 174/1999, the term of validity of export licences with advance fixing of the refund, which are applied for from 15 April 2004, in respect of the products referred to in points (a) to (d) of that Article, shall expire on 30 June 2004.

Article 3

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

[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).
[2] OJ L 20, 27.1.1999, p. 8. Regulation as last amended by Regulation (EC) No 1948/2003 (OJ L 287, 5.11.2003, p. 13).
[3] OJ L 10, 16.1.2004, p. 13.
[4] OJ L 90, 27.3.2004, p. 58.

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

Done at Brussels, 31 March 2004.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 607/2004

of 31 March 2004

providing for reallocation of import rights under Regulation (EC) No 1146/2003 and derogating from that Regulation

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], and in particular Article 32(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 1146/2003 of 27 June 2003 opening and providing for the administration of an import tariff quota for frozen beef intended for processing (1 July 2003 to 30 June 2004) [2] provides for the opening of a tariff quota from 1 July 2003 to 30 June 2004 for 50 700 tonnes of frozen beef intended for processing. Article 9 of that Regulation provides for the reallocation of unused quantities on the basis of the actual utilisation of import rights for A-products and B-products respectively by the end of February 2004.

(2) An operator submitted an application for import rights for 225 tonnes of beef for the production of A-products under Article 5(2) of Regulation (EC) No 1146/2003. As a result of an administrative error by the competent Danish authority, the application from that operator, forwarded to the Commission in accordance with Article 5(3), concerned 40 tonnes only. The national administration discovered the error only on completion of the procedure for the allocation of import rights referred to in Article 5(4) and notified the Commission accordingly. In order that the operator who submitted the application correctly should not be put at a disadvantage, the necessary measures should be taken to permit the competent Danish authority to remedy the administrative error in an appropriate way. Consequently, by derogation from Article 9 of the above Regulation steps should be taken, firstly, to reduce the overall quantity established in accordance with paragraph 1 of that Article by a quantity corresponding to the difference between the import rights which the operator could legitimately have hoped to receive on the basis of his application and the import rights which he actually received and, secondly, to provide that the competent Danish authority may allocate import rights to the operator concerned on the basis of the application which he submitted under Article 5 of Regulation (EC) No 1146/2003.

(3) Taking account of this error has resulted in an administrative delay. The deadlines for application and communication referred to in Article 9(4) should be extended therefore.

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

HAS ADOPTED THIS REGULATION:

Article 1

By derogation from Article 9 of Regulation (EC) No 1146/2003, the competent Danish authority is hereby authorised to allocate import rights for 72,199 tonnes of beef to the operator who submitted an application for import rights for 225 tonnes of beef but who, as a result of an error, was taken into consideration in respect of 40 tonnes only under Article 5 of Regulation (EC) No 1146/2003.

Article 2

1. The quantities to be allocated in accordance with Article 9(1) of Regulation (EC) No 1146/2003 amount to 406,58 tonnes.

2. The breakdown referred to in Article 9(2) of Regulation (EC) No 1146/2003 shall be as follows:

— 321,20 tonnes intended for A-products,

— 85,38 tonnes intended for B-products.

Article 3

By derogation from Article 9(4) of Regulation (EC) No 1146/2003, the date for application shall be 7 April 2004 and the date for communication shall be 16 April 2004.

Article 4

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

[1] OJ L 160, 26.6.1999 p. 21. Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).
[2] OJ L 160, 28.6.2003, p. 59.

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

Done at Brussels, 31 March 2004.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 608/2004

of 31 March 2004

concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [1], as amended by Directive 2003/89/EC [2], and in particular Article 4(2) and Article 6(7) thereof,

Whereas:

(1) Phytosterols, phytosterol esters, phytostanols and phytostanol esters reduce serum cholesterol levels but may also reduce the β-carotene levels in blood serum. Member States and the Commission therefore consulted the Scientific Committee on Food (SCF) about the effects of consumption of phytosterols, phytosterol esters, phytostanols and phytostanol esters from multiple sources.

(2) The Scientific Committee on Food (SCF) in its opinion 'General view on the long-term effects of the intake of elevated levels of phytosterols from multiple dietary sources, with particular attention to the effects on β-carotene' of 26 September 2002 confirmed the need to label phytosterols, phytosterol esters, phytostanols and phytostanol esters as specified in Commission Decision 2000/500/EC of 24 July 2000 on authorising the placing on the market of 'yellow fat spreads with added phytosterol esters' as a novel food or novel food ingredient under Regulation (EC) No 258/97 of the European Parliament and of the Council [3]. The SCF also indicated that there was no evidence of additional benefits at intakes higher than 3 g/day and that high intakes might induce undesirable effects and that it was therefore prudent to avoid plant sterol intakes exceeding 3 g/day.

(3) Products containing phytosterols/phytostanols should thus be presented in single portions containing either maximum 3 g or maximum 1 g of phytosterols/phytostanols, calculated as free phytosterols/phytostanols. Where this is not the case, there should be a clear indication of what constitutes a standard portion of the food, expressed in g or ml, and of the amount of phytosterols/phytostanols, calculated as free phytosterols/phytostanols, contained in such a portion. In all events, the composition and labelling of products should be such as to allow users to easily restrict their consumption to maximum 3 g/day of phytosterols/phytostanols through the use of either one portion containing maximum 3 g, or three portions containing maximum 1 g.

(4) In order to facilitate consumer understanding it appears appropriate to replace on the label the word 'phyto' with the word 'plant'.

(5) Decision 2000/500/EC allows the addition of certain phytosterol esters to yellow fat spreads. It sets out specific labelling requirements in order to ensure that the product reaches its target group, namely people who want to lower their blood cholesterol levels.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to foods and food ingredients with added phytosterols, phytosterol esters, phytostanols or phytostanol esters.

Article 2

For labelling purposes, phytosterol, phytosterol ester, phytostanol and phytostanol ester shall be designated respectively by the terms 'plant sterol', 'plant sterol ester', 'plant stanol' or 'plant stanol ester' or their plural form, as appropriate.

Without prejudice to the other requirements of Community or national law concerning the labelling of foodstuffs, the labelling of foods or food ingredients with added phytosterols, phytosterol esters, phytostanols or phytostanol esters shall contain the following:

1. in the same field of vision as the name under which the product is sold there shall appear, easily visible and legible, the words: 'with added plant sterols/plant stanols';

2. the amount of added phytosterols, phytosterol esters, phytostanols or phytostanol esters content (expressed in % or as g of free plant sterols/plant stanols per 100 g or 100 ml of the food) shall be stated on the list of ingredients;

[1] OJ L 109, 6.5.2000, p. 29.
[2] OJ L 308, 25.11.2003, p. 15.
[3] OJ L 200, 8.8.2000, p. 59.

3. there shall be a statement that the product is intended exclusively for people who want to lower their blood cholesterol level;
4. there shall be a statement that patients on cholesterol lowering medication should only consume the product under medical supervision;
5. there shall be an easily visible and legible statement that the product may not be nutritionally appropriate for pregnant and breastfeeding women and children under the age of five years;
6. advice shall be included that the product is to be used as part of a balanced and varied diet, including regular consumption of fruit and vegetables to help maintain carotenoid levels;
7. in the same field of vision as the particular required under point 3 above, there shall be a statement that the consumption of more than 3 g/day of added plant sterols/plant stanols should be avoided;
8. there shall be a definition of a portion of the food or food ingredient concerned (preferably in g or ml) with a statement of the plant sterol/plant stanol amount that each portion contains.

Article 3

Foods and food ingredients with added phytostanol esters already on the market in the Community or 'yellow fat spreads with added phytosterol esters' that were authorised by Commission Decision 2000/500/EC produced from six months after entry into force of this Regulation shall comply with the labelling provisions of Article 2.

Article 4

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

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

Done at Brussels, 31 March 2004.

For the Commission
David BYRNE
Member of the Commission

COMMISSION REGULATION (EC) No 609/2004
of 31 March 2004
fixing the production refund on white sugar used in the chemical industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], and in particular Article 7(5) thereof,

Whereas:

(1) Pursuant to Article 7(3) of Regulation (EC) No 1260/2001, production refunds may be granted on the products listed in Article 1(1)(a) and (f) of that Regulation, on syrups listed in Article 1(1)(d) thereof and on chemically pure fructose covered by CN code 1702 50 00 as an intermediate product, that are in one of the situations referred to in Article 23(2) of the Treaty and are used in the manufacture of certain products of the chemical industry.

(2) Commission Regulation (EC) No 1265/2001 of 27 June 2001 laying down detailed rules for the application of Council Regulation (EC) No 1260/2001 as regards granting the production refund on certain sugar products used in the chemical industry [2] lays down the rules for determining the production refunds and specifies the chemical products the basic products used in the manufacture of which attract a production refund. Articles 5, 6 and 7 of Regulation (EC) No 1265/2001 provide that the production refund applying to raw sugar, sucrose syrups and unprocessed isoglucose is to be derived from the refund fixed for white sugar in accordance with a method of calculation specific to each basic product.

(3) Article 9 of Regulation (EC) No 1265/2001 provides that the production refund on white sugar is to be fixed at monthly intervals commencing on the first day of each month. It may be adjusted in the intervening period where there is a significant change in the prices for sugar on the Community and/or world markets. The application of those provisions results in the production refund fixed in Article 1 of this Regulation for the period shown.

(4) As a result of the amendment to the definition of white sugar and raw sugar in Article 1(2)(a) and (b) of Regulation (EC) No 1260/2001, flavoured or coloured sugars or sugars containing any other added substances are no longer deemed to meet those definitions and should thus be regarded as 'other sugar'. However, in accordance with Article 1 of Regulation (EC) No 1265/2001, they attract the production refund as basic products. A method should accordingly be laid down for calculating the production refund on these products by reference to their sucrose content.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The production refund on white sugar referred to in Article 4 of Regulation (EC) No 1265/2001 shall be equal to 45,414 EUR/100 kg net.

Article 2

This Regulation shall enter into force on 1 April 2004.

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

Done at Brussels, 31 March 2004.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).
[2] OJ L 178, 30.6.2001, p. 63.

COMMISSION REGULATION (EC) No 610/2004
of 31 March 2004
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1],

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector [2], and in particular Article 4(1) thereof,

Whereas:

(1) Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.

(2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.

(3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.

(4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.

(5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.

(6) Application of the second subparagraph of Article 4(1) of Regulation (EC) No 1503/96 results in an adjustment of the import duties that have been fixed as from 15 May 2003 by Commission Regulation (EC) No 832/2003 [3] as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be adjusted in compliance with Article 4 of Regulation (EC) No 1503/96 and fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 1 April 2004.

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

Done at Brussels, 31 March 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).
[2] OJ L 189, 30.7.1996, p. 71. Regulation as last amended by Regulation (EC) No 2294/2003 (OJ L 340, 24.12.2003, p. 12).
[3] OJ L 120, 15.5.2003, p. 15.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties [5]				
	Third countries (except ACP and Bangladesh) [3]	ACP [1] [2] [3]	Bangladesh [4]	Basmati India and Pakistan [6]	Egypt [8]
1006 10 21	[7]	69,51	101,16		158,25
1006 10 23	[7]	69,51	101,16		158,25
1006 10 25	[7]	69,51	101,16		158,25
1006 10 27	[7]	69,51	101,16		158,25
1006 10 92	[7]	69,51	101,16		158,25
1006 10 94	[7]	69,51	101,16		158,25
1006 10 96	[7]	69,51	101,16		158,25
1006 10 98	[7]	69,51	101,16		158,25
1006 20 11	191,31	62,62	91,32		143,48
1006 20 13	191,31	62,62	91,32		143,48
1006 20 15	191,31	62,62	91,32		143,48
1006 20 17	228,15	75,51	109,74	0,00	171,11
1006 20 92	191,31	62,62	91,32		143,48
1006 20 94	191,31	62,62	91,32		143,48
1006 20 96	191,31	62,62	91,32		143,48
1006 20 98	228,15	75,51	109,74	0,00	171,11
1006 30 21	358,83	113,20	164,51		269,12
1006 30 23	358,83	113,20	164,51		269,12
1006 30 25	358,83	113,20	164,51		269,12
1006 30 27	[7]	133,21	193,09		312,00
1006 30 42	358,83	113,20	164,51		269,12
1006 30 44	358,83	113,20	164,51		269,12
1006 30 46	358,83	113,20	164,51		269,12
1006 30 48	[7]	133,21	193,09		312,00
1006 30 61	358,83	113,20	164,51		269,12
1006 30 63	358,83	113,20	164,51		269,12
1006 30 65	358,83	113,20	164,51		269,12
1006 30 67	[7]	133,21	193,09		312,00
1006 30 92	358,83	113,20	164,51		269,12
1006 30 94	358,83	113,20	164,51		269,12
1006 30 96	358,83	113,20	164,51		269,12
1006 30 98	[7]	133,21	193,09		312,00
1006 40 00	[7]	41,18	[7]		96,00

[1] The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 2286/2002 (OJ L 348, 21.12.2002, p. 5) and amended Commission Regulation (EC) No 638/2003 (OJ L 93, 10.4.2003, p. 3).

[2] In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

[3] The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

[4] The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

[5] No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

[6] For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR/t 250 applies (Article 4a of amended Regulation (EC) No 1503/96).

[7] Duties fixed in the Common Customs Tariff.

[8] The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(1)	228,15	416,00	191,31	358,83	(1)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	312,48	242,23	373,35	443,10	—
(b) fob price (EUR/tonne)	—	—	—	348,73	418,48	—
(c) Sea freight (EUR/tonne)	—	—	—	24,62	24,62	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(1) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 611/2004
of 31 March 2004
fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1],

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector [2], and in particular Article 2(1) thereof,

Whereas:

(1) Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Pursuant to Article 10(3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

(3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector.

(4) The import duties are applicable until new duties are fixed and enter into force.

(5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.

(6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in Annex I to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10(2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 1 April 2004.

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

Done at Brussels, 31 March 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

[1] OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).
[2] OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1110/2003 (OJ L 158, 27.6.2003, p. 12).

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty [1] (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	19,42
1005 10 90	Maize seed other than hybrid	23,89
1005 90 00	Maize other than seed [2]	23,89
1007 00 90	Grain sorghum other than hybrids for sowing	19,42

[1] For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:
— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or
— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

[2] The importer may benefit from a flat-rate reduction of EUR 24 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 15 March 2004 to 31 March 2004)

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2 (14 %)	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	145,00 (***)	99,98	168,06 (****)	158,06 (****)	138,06 (****)	106,83 (****)
Gulf premium (EUR/t)	—	7,98	—	—	—	—
Great Lakes premium (EUR/t)	20,66	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).
(**) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).
(***) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).
(****) Fob Duluth.

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:
Freight/cost: Gulf of Mexico to Rotterdam: 33,83 EUR/t; Great Lakes to Rotterdam: 39,43 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 8 March 2004

authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to ratify, in the interest of the European Community, the Protocol amending that Convention, or to accede to it

(2004/294/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c), Article 67, in conjunction with the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament [1],

Whereas:

(1) The Protocol amending the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the Paris Convention) was negotiated with a view to improving compensation for victims of damage caused by nuclear accidents. It provides for increasing liability amounts and extending the system of nuclear third party liability to environmental damage.

(2) In accordance with the Council's negotiating directives of 13 September 2002, the Commission negotiated the Protocol of amendment to the Paris Convention for matters falling within the jurisdiction of the European Community. However, the Council's negotiating directives did not provide for negotiating a clause allowing the accession of the Community to the Protocol.

(3) The Protocol was finally adopted by the Contracting Parties to the Paris Convention. The text of the Protocol complies with the Council's negotiating directives.

(4) The Community has exclusive jurisdiction with regard to amending Article 13 of the Paris Convention where such amendment would affect the rules laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2]. The Member States retain their jurisdiction for matters covered by the Protocol which do not affect Community law. Given the subject matter and the aim of the Protocol of amendment, acceptance of the provisions of the Protocol which come under Community jurisdiction cannot be dissociated from the provisions which come under the jurisdiction of the Member States.

(5) The Protocol of amendment to the Paris Convention is particularly important, in the light of the interests of the Community and its Member States, because it improves compensation for damage caused by nuclear accidents.

(6) The Protocol was signed by the Member States which are Contracting Parties to the Paris Convention, on behalf of the European Community, on 12 February 2004, subject to its possible conclusion at a later date, in accordance with Council Decision 2003/882/EC of [3].

(7) The Paris Convention and its Protocol of amendment are not open to participation by regional organisations. As a result, the Community is not in a position to sign or ratify the Protocol, or to accede to it. Under these circumstances, it is justified, on a very exceptional basis, that the Member States ratify or accede to the Protocol in the interest of the Community.

[1] Assent of 26 February 2004 (not yet published in the Official Journal).

[2] OJ L 12, 16.1.2001, p. 1.

[3] OJ L 338, 23.12.2003, p. 32.

(8) However, three of the Member States, namely Austria, Ireland and Luxembourg, are not Parties to the Paris Convention. Given that the Protocol amends the Paris Convention, that Regulation (EC) No 44/2001 authorises the Member States bound by that Convention to continue to apply the rules on jurisdiction provided for in it and that the Protocol does not substantially amend the rules on jurisdiction of the Convention, it is objectively justified that this Decision should be addressed only to those Member States that are Parties to the Paris Convention. Accordingly, Austria, Ireland and Luxembourg will continue to base themselves on the Community rules contained in Regulation (EC) No 44/2001 and to apply them in the area covered by the Paris Convention and by the Protocol amending that Convention.

(9) The Member States which are Contracting Parties to the Paris Convention, should therefore ratify the Protocol amending the Paris Convention, or accede to it, in the interest of the European Community, subject to the conditions laid down in this Decision. Such ratification or accession is without prejudice to the position of Austria, Ireland and Luxembourg.

(10) Consequently, the provisions of the Protocol, as regards the European Community, will be applied only by those Member States which are currently Contracting Parties to the Paris Convention and is without prejudice to the position of Austria, Ireland and Luxembourg.

(11) The United Kingdom and Ireland are bound by Council Regulation (EC) No 44/2001 and are therefore taking part in the adoption of this Decision.

(12) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision, and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

1. Without prejudice to the Community's powers, the Member States which are currently Contracting Parties to the Paris Convention shall ratify the Protocol amending the Paris Convention, or accede to it, in the interest of the European Community. Such ratification or accession shall be without prejudice to the position of Austria, Ireland and Luxembourg.

2. The text of the Protocol amending the Paris Convention is attached to this Decision.

3. For the purposes of this Decision, the term 'Member State' shall mean all Member States with the exception of Austria, Denmark, Ireland and Luxembourg.

Article 2

1. Member States which are Contracting Parties to the Paris Convention shall take the necessary steps to deposit simultaneously their instruments of ratification of the Protocol, or accession to it, with the Secretary-General of the Organisation for Economic Cooperation and Development within a reasonable time and, if possible, before 31 December 2006.

2. Member States which are Contracting Parties to the Paris Convention shall exchange information with the Commission within the Council before 1 July 2006 on the date on which they expect their parliamentary procedures required for ratification or accession to be completed. The date and arrangements for simultaneous deposit shall be determined on that basis.

Article 3

When ratifying or acceding to the Protocol amending the Paris Convention, Member States shall inform the Secretary-General of the Organisation for Economic Cooperation and Development in writing that ratification or accession has taken place in accordance with this Decision.

Article 4

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 8 March 2004.

For the Council

The President

D. AHERN

PROTOCOL

to amend the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 2960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982

THE GOVERNMENTS of the Federal Republic of Germany, the Kingdom of Belgium, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the French Republic, the Hellenic Republic, the Italian Republic, the Kingdom of Norway, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland, the Republic of Slovenia, the Kingdom of Sweden, the Swiss Confederation and the Republic of Turkey;

CONSIDERING that it is desirable to amend the Convention on Third Party Liability in the Field of Nuclear Energy, concluded at Paris on 29 July 1960 within the framework of the Organisation for European Economic Cooperation, now the Organisation for Economic Cooperation and Development, as amended by the Additional Protocol signed at Paris on 28 January 1964 and by the Protocol signed at Paris on 16 November 1982;

HAVE AGREED as follows:

I.

The Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, shall be amended as follows:

A. Subparagraphs (i) and (ii) of paragraph (a) of Article 1 shall be replaced by the following:

'(i) "A nuclear incident" means any occurrence or series of occurrences having the same origin which causes nuclear damage.

(ii) "Nuclear installation" means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; installations for the disposal of nuclear substances; any such reactor, factory, facility or installation that is in the course of being decommissioned; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation (hereinafter referred to as the "Steering Committee") shall from time to time determine; any Contracting Party may determine that two or more nuclear installations of one operator which are located on the same site shall, together with any other premises on that site where nuclear fuel or radioactive products or waste are held, be treated as a single nuclear installation.'

B. Four new subparagraphs (vii), (viii), (ix) and (x), shall be added to paragraph (a) of Article 1 as follows:

'(vii) "Nuclear damage" means:

1. loss of life or personal injury;

2. loss of or damage to property;

and each of the following to the extent determined by the law of the competent court

3. economic loss arising from loss or damage referred to in subparagraph 1 or 2 in so far as not included in those subparagraphs, if incurred by a person entitled to claim in respect of such loss or damage;

4. the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in subparagraph 2;

5. loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in subparagraph 2;

6. the costs of preventive measures, and further loss or damage caused by such measures,

in the case of subparagraphs 1 to 5, to the extent that the loss or damage arises out of or results from ionising radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear substances coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter.

(viii) "Measures of reinstatement" means any reasonable measures which have been approved by the competent authorities of the State where the measures were taken, and which aim to reinstate or restore damaged or destroyed components of the environment, or to introduce, where reasonable, the equivalent of these components into the environment. The legislation of the State where the nuclear damage is suffered shall determine who is entitled to take such measures.

(ix) "Preventive measures" means any reasonable measures taken by any person after a nuclear incident or an event creating a grave and imminent threat of nuclear damage has occurred, to prevent or minimise nuclear damage referred to in subparagraphs (a)(vii) 1 to 5, subject to any approval of the competent authorities required by the law of the State where the measures were taken.

(x) "Reasonable measures" means measures which are found under the law of the competent court to be appropriate and proportionate, having regard to all the circumstances, for example:

1. the nature and extent of the nuclear damage incurred or, in the case of preventive measures, the nature and extent of the risk of such damage;

2. the extent to which, at the time they are taken, such measures are likely to be effective; and

3. relevant scientific and technical expertise.'

C. Article 2 shall be replaced by the following:

'*Article 2*

(a) This Convention shall apply to nuclear damage suffered in the territory of, or in any maritime zones established in accordance with international law of, or, except in the territory of a non-Contracting State not mentioned under (ii) to (iv) of this paragraph, on board a ship or aircraft registered by,

(i) a Contracting Party;

(ii) a non-Contracting State which, at the time of the nuclear incident, is a Contracting Party to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for that Party, and to the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, provided however, that the Contracting Party to the Paris Convention in whose territory the installation of the operator liable is situated is a Contracting Party to that Joint Protocol;

(iii) a non-Contracting State which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zones established by it in accordance with international law; or

(iv) any other non-Contracting State which, at the time of the nuclear incident, has in force nuclear liability legislation which affords equivalent reciprocal benefits, and which is based on principles identical to those of this Convention, including, *inter alia*, liability without fault of the operator liable, exclusive liability of the operator or a provision to the same effect, exclusive jurisdiction of the competent court, equal treatment of all victims of a nuclear incident, recognition and enforcement of judgements, free transfer of compensation, interests and costs.

(b) Nothing in this Article shall prevent a Contracting Party in whose territory the nuclear installation of the operator liable is situated from providing for a broader scope of application of this Convention under its legislation.'

D. Article 3 shall be replaced by the following:

'*Article 3*

(a) The operator of a nuclear installation shall be liable, in accordance with this Convention, for nuclear damage other than:

(i) damage to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located; and

(ii) damage to any property on that same site which is used or to be used in connection with any such installation,

upon proof that such damage was caused by a nuclear incident in such installation or involving nuclear substances coming from such installation, except as otherwise provided for in Article 4.

(b) Where nuclear damage is caused jointly by a nuclear incident and by an incident other than a nuclear incident, that part of the damage which is caused by such other incident, shall, to the extent that it is not reasonably separable from the nuclear damage caused by the nuclear incident, be considered to be nuclear damage caused by the nuclear incident. Where nuclear damage is caused jointly by a nuclear incident and by an emission of ionizing radiation not covered by this Convention, nothing in this Convention shall limit or otherwise affect the liability of any person in connection with that emission of ionizing radiation.'

E. Paragraphs (c) and (d) of Article 4 shall be renumbered as paragraphs (d) and (e) respectively and a new paragraph (c) shall be added to read as follows:

'(c) The transfer of liability to the operator of another nuclear installation pursuant to paragraphs (a)(i) and (ii) and (b)(i) and (ii) of this Article may only take place if that operator has a direct economic interest in the nuclear substances that are in the course of carriage.'

F. Paragraphs (b) and (d) of Article 5 shall be replaced by the following:

'(b) Where, however, nuclear damage is caused by a nuclear incident occurring in a nuclear installation and involving only nuclear substances stored therein incidentally to their carriage, the operator of the nuclear installation shall not be liable where another operator or person is liable pursuant to Article 4.

(c) If nuclear damage gives rise to liability of more than one operator in accordance with this Convention, the liability of these operators shall be joint and several, provided that where such liability arises as a result of nuclear damage caused by a nuclear incident involving nuclear substances in the course of carriage in one and the same means of transport, or, in the case of storage incidental to the carriage, in one and the same nuclear installation, the maximum total amount for which such operators shall be liable shall be the highest amount established with respect to any of them pursuant to Article 7. In no case shall any one operator be required, in respect of a nuclear incident, to pay more than the amount established with respect to him pursuant to Article 7.'

G. Paragraphs (c) and (e) of Article 6 shall be replaced by the following:

'(c) (i) Nothing in this Convention shall affect the liability:

1. of any individual for nuclear damage caused by a nuclear incident for which the operator, by virtue of Article 3(a) or Article 9, is not liable under this Convention and which results from an act or omission of that individual done with intent to cause damage;

2. of a person duly authorised to operate a reactor comprised in a means of transport for nuclear damage caused by a nuclear incident when an operator is not liable for such damage pursuant to Article 4(a)(iii) or (b)(iii).

(ii) The operator shall incur no liability outside this Convention for nuclear damage caused by a nuclear incident.'

'(e) If the operator proves that the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the competent court may, if national law so provides, relieve the operator wholly or partly from his obligation to pay compensation in respect of the damage suffered by such person.'

H. Article 7 shall be replaced by the following:

'*Article 7*

(a) Each Contracting Party shall provide under its legislation that the liability of the operator in respect of nuclear damage caused by any one nuclear incident shall not be less than EUR 700 000 000.

(b) Notwithstanding paragraph (a) of this Article and Article 21(c), any Contracting Party may,

(i) having regard to the nature of the nuclear installation involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for that installation, provided that in no event shall any amount so established be less than EUR 70 000 000; and

(ii) having regard to the nature of the nuclear substances involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for the carriage of nuclear substances, provided that in no event shall any amount so established be less than EUR 80 000 000.

(c) Compensation for nuclear damage caused to the means of transport on which the nuclear substances involved were at the time of the nuclear incident shall not have the effect of reducing the liability of the operator in respect of other nuclear damage to an amount less than either EUR 80 000 000, or any higher amount established by the legislation of a Contracting Party.

(d) The amount of liability of operators of nuclear installations in the territory of a Contracting Party established in accordance with paragraph (a) or (b) of this Article or with Article 21(c), as well as the provisions of any legislation of a Contracting Party pursuant to paragraph (c) of this Article shall apply to the liability of such operators wherever the nuclear incident occurs.

(e) A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit, provided that the maximum amount thus increased shall not exceed the maximum amount of liability of operators of nuclear installations situated in its territory.

(f) The provisions of paragraph (e) of this Article shall not apply:

(i) to carriage by sea where, under international law, there is a right of entry in cases of urgent distress into the ports of such Contracting Party or a right of innocent passage through its territory; or

(ii) to carriage by air where, by agreement or under international law, there is a right to fly over or land on the territory of such Contracting Party.

(g) In cases where the Convention is applicable to a non-Contracting State in accordance with Article 2(a)(iv), any Contracting Party may establish in respect of nuclear damage amounts of liability lower than the minimum amounts established under this Article or under Article 21(c) to the extent that such State does not afford reciprocal benefits of an equivalent amount.

(h) Any interest and costs awarded by a court in actions for compensation under this Convention shall not be considered to be compensation for the purposes of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this Article.

(i) The sums mentioned in this Article may be converted into national currency in round figures.

(j) Each Contracting Party shall ensure that persons suffering damage may enforce their rights to compensation without having to bring separate proceedings according to the origin of the funds provided for such compensation.'

I. Article 8 shall be replaced by the following:

'*Article 8*

(a) The right of compensation under this Convention shall be subject to prescription or extinction if an action is not brought,

(i) with respect to loss of life and personal injury, within thirty years from the date of the nuclear incident;

(ii) with respect to other nuclear damage, within ten years from the date of the nuclear incident.

(b) National legislation may, however, establish a period longer than that set out in subparagraph (i) or (ii) of paragraph (a) of this Article, if measures have been taken by the Contracting Party within whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period set out in subparagraph (i) or (ii) of paragraph (a) of this Article and during such longer period.

(c) If, however, a longer period is established in accordance with paragraph (b) of this Article, an action for compensation brought within such period shall in no case affect the right of compensation under this Convention of any person who has brought an action against the operator,

(i) within a thirty year period in respect of personal injury or loss of life;

(ii) within a ten year period in respect of all other nuclear damage.

(d) National legislation may establish a period of not less than three years for the prescription or extinction of rights of compensation under the Convention, determined from the date at which the person suffering nuclear damage had knowledge, or from the date at which that person ought reasonably to have known of both the nuclear damage and the operator liable, provided that the periods established pursuant to paragraphs (a) and (b) of this Article shall not be exceeded.

(e) Where the provisions of Article 13(f)(ii) are applicable, the right of compensation shall not, however, be subject to prescription or extinction if, within the time provided for in paragraphs (a), (b) and (d) of this Article,

(i) prior to the determination by the Tribunal referred to in Article 17, an action has been brought before any of the courts from which the Tribunal can choose; if the Tribunal determines that the competent court is a court other than that before which such action has already been brought, it may fix a date by which such action has to be brought before the competent court so determined; or

(ii) a request has been made to a Contracting Party concerned to initiate a determination by the Tribunal of the competent court pursuant to Article 13(f)(ii) and an action is brought subsequent to such determination within such time as may be fixed by the Tribunal.

(f) Unless national law provides to the contrary, any person suffering nuclear damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this Article may amend his claim in respect of any aggravation of the nuclear damage after the expiry of such period, provided that final judgement has not been entered by the competent court.'

J. Article 9 shall be replaced by the following:

'*Article 9*

The operator shall not be liable for nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war, or insurrection.'

K. Article 10 shall be replaced by the following text:

'*Article 10*

(a) To cover the liability under this Convention, the operator shall be required to have and maintain insurance or other financial security of the amount established pursuant to Article 7(a) or 7(b) or Article 21(c) and of such type and terms as the competent public authority shall specify.

(b) Where the liability of the operator is not limited in amount, the Contracting Party within whose territory the nuclear installation of the liable operator is situated shall establish a limit upon the financial security of the operator liable, provided that any limit so established shall not be less than the amount referred to in Article 7(a) or 7(b).

(c) The Contracting Party within whose territory the nuclear installation of the liable operator is situated shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the insurance or other financial security is not available or sufficient to satisfy such claims, up to an amount not less than the amount referred to in Article 7(a) or Article 21(c).

(d) No insurer or other financial guarantor shall suspend or cancel the insurance or other financial security provided for in paragraph (a) or (b) of this Article without giving notice in writing of at least two months to the competent public authority or, in so far as such insurance or other financial security relates to the carriage of nuclear substances, during the period of the carriage in question.

(e) The sums provided as insurance, reinsurance, or other financial security may be drawn upon only for compensation for nuclear damage caused by a nuclear incident.'

L. Article 12 shall be replaced by the following:

'*Article 12*

Compensation payable under this Convention, insurance and reinsurance premiums, sums provided as insurance, reinsurance, or other financial security required pursuant to Article 10, and interest and costs referred to in Article 7(h), shall be freely transferable between the monetary areas of the Contracting Parties.'

M. Article 13 shall be replaced by the following:

'*Article 13*

(a) Except as otherwise provided in this Article, jurisdiction over actions under Articles 3, 4 and 6(a) shall lie only with the courts of the Contracting Party in whose territory the nuclear incident occurred.

(b) Where a nuclear incident occurs within the area of the exclusive economic zone of a Contracting Party or, if such a zone has not been established, in an area not exceeding the limits of an exclusive economic zone were one to be established, jurisdiction over actions concerning nuclear damage from that nuclear incident shall, for the purposes of this Convention, lie only with the courts of that Party, provided that the Contracting Party concerned has notified the Secretary-General of the Organisation of such area prior to the nuclear incident. Nothing in this paragraph shall be interpreted as permitting the exercise of jurisdiction or the delimitation of a maritime zone in a manner which is contrary to the international law of the sea.

(c) Where a nuclear incident occurs outside the territory of the Contracting Parties, or where it occurs within an area in respect of which no notification has been given pursuant to paragraph (b) of this Article, or where the place of the nuclear incident cannot be determined with certainty, jurisdiction over such actions shall lie with the courts of the Contracting Party in whose territory the nuclear installation of the operator liable is situated.

(d) Where a nuclear incident occurs in an area in respect of which the circumstances of Article 17(d) apply, jurisdiction shall lie with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article 17 as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.

(e) The exercise of jurisdiction under this Article as well as the notification of an area made pursuant to paragraph (b) of this Article shall not create any right or obligation or set a precedent with respect to the delimitation of maritime areas between States with opposite or adjacent coasts.

(f) Where jurisdiction would lie with the courts of more than one Contracting Party by virtue of paragraph (a), (b) or (c) of this Article, jurisdiction shall lie,

(i) if the nuclear incident occurred partly outside the territory of any Contracting Party and partly in the territory of a single Contracting Party, with the courts of that Contracting Party; and

(ii) in any other case, with the courts determined, at the request of a Contracting Party concerned, by the Tribunal referred to in Article 17 as being the courts of that Contracting Party which is most closely related to and affected by the consequences of the incident.

(g) The Contracting Party whose courts have jurisdiction shall ensure that in relation to actions for compensation of nuclear damage:

(i) any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto; and

(ii) any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment.

(h) The Contracting Party whose courts have jurisdiction under this Convention shall ensure that only one of its courts shall be competent to rule on compensation for nuclear damage arising from any one nuclear incident, the criteria for such selection being determined by the national legislation of such Contracting Party.

(i) Judgements entered by the competent court under this Article after trial, or by default, shall, when they have become enforceable under the law applied by that court, become enforceable in the territory of any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgements.

(j) If an action is brought against a Contracting Party under this Convention, such Contracting Party may not, except in respect of measures of execution, invoke any jurisdictional immunities before the court competent in accordance with this Article.'

N. Paragraph (b) of Article 14 shall be replaced by the following:

'(b) "National law" and "national legislation" mean the law or the national legislation of the court having jurisdiction under this Convention over claims arising out of a nuclear incident, excluding the rules on conflict of laws relating to such claims. That law or legislation shall apply to all matters both substantive and procedural not specifically governed by this Convention.'

O. Paragraph (b) of Article 15 shall be replaced by the following:

'(b) In so far as compensation for nuclear damage is in excess of the 700 million euros referred to in Article 7(a), any such measure in whatever form may be applied under conditions which may derogate from the provisions of this Convention.'

P. A new Article 16a shall be added after Article 16 as follows:

'Article 16a

This Convention shall not affect the rights and obligations of a Contracting Party under the general rules of public international law.'

Q. Article 17 shall be replaced by the following:

'Article 17

(a) In the event of a dispute arising between two or more Contracting Parties concerning the interpretation or application of this Convention, the parties to the dispute shall consult with a view to settling the dispute by negotiation or other amicable means.

(b) Where a dispute referred to in paragraph (a) is not settled within six months from the date upon which such dispute is acknowledged to exist by any party thereto, the Contracting Parties shall meet in order to assist the parties to the dispute to reach a friendly settlement.

(c) Where no resolution to the dispute has been reached within three months of the meeting referred to in paragraph (b), the dispute shall, upon the request of any party thereto, be submitted to the European Nuclear Energy Tribunal established by the Convention of 20 December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy.

(d) Disputes concerning the delimitation of maritime boundaries are outside the scope of this Convention.'

R. Article 18 shall be replaced by the following:

'*Article 18*

(a) Reservations to one or more of the provisions of this Convention may be made at any time prior to ratification, acceptance or approval of, or accession to, this Convention or prior to the time of notification under Article 23 in respect of any territory or territories mentioned in the notification, and shall be admissible only if the terms of these reservations have been expressly accepted by the Signatories.

(b) Such acceptance shall not be required from a Signatory which has not itself ratified, accepted or approved this Convention within a period of twelve months after the date of notification to it of such reservation by the Secretary-General of the Organisation in accordance with Article 24.

(c) Any reservation admitted in accordance with this Article may be withdrawn at any time by notification addressed to the Secretary-General of the Organisation.'

S. Article 19 shall be replaced by the following:

'*Article 19*

(a) This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Organisation.

(b) This Convention shall come into force upon the deposit of instruments of ratification, acceptance or approval by not less than five of the Signatories. For each Signatory ratifying, accepting or approving thereafter, this Convention shall come into force upon the deposit of its instrument of ratification, acceptance or approval.'

T. Article 20 shall be replaced by the following:

'*Article 20*

Amendments to this Convention shall be adopted by mutual agreement of all the Contracting Parties. They shall come into force when ratified, accepted or approved by two-thirds of the Contracting Parties. For each Contracting Party ratifying, accepting or approving thereafter, they shall come into force at the date of such ratification, acceptance or approval.'

U. A new paragraph (c) shall be added to Article 21 to read as follows:

'(c) Notwithstanding Article 7(a), where a Government which is not a Signatory to this Convention accedes to this Convention after 1 January 1999, it may provide under its legislation that the liability of the operator in respect of nuclear damage caused by any one nuclear incident may be limited, for a maximum period of five years from the date of the adoption of the Protocol of 12 February 2004 to amend this Convention, to a transitional amount of not less EUR 350 000 000 in respect of a nuclear incident occurring within that period.'

V. Paragraph (c) of Article 22 shall be renumbered as paragraph (d) and a new paragraph (c) shall be added to read as follows:

'(c) The Contracting Parties shall consult each other at the expiry of each five year period following the date upon which this Convention comes into force, upon all problems of common interest raised by the application of this Convention, and in particular, to consider whether increases in the liability and financial security amounts under this Convention are desirable.'

W. Paragraph (b) of Article 23 shall be replaced by the following:

'(b) Any Signatory or Contracting Party may, at the time of signature, ratification, acceptance or approval of, or accession to, this Convention or at any later time, notify the Secretary-General of the Organisation that this Convention shall apply to those of its territories, including the territories for whose international relations it is responsible, to which this Convention is not applicable in accordance with paragraph (a) of this Article and which are mentioned in the notification. Any such notification may, in respect of any territory or territories mentioned therein, be withdrawn by giving 12 months notice to that effect to the Secretary-General of the Organisation.'

X. Article 24 shall be replaced with the following:

'*Article 24*

The Secretary-General of the Organisation shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval, accession or withdrawal, of any notification under Articles 13(b) and 23, of decisions of the Steering Committee under Article 1(a)(ii), 1(a)(iii) and 1(b), of the date on which this Convention comes into force, of the text of any amendment thereto and the date on which such amendment comes into force, and of any reservation made in accordance with Article 18.'

Y. The term 'damage' appearing in the following articles shall be replaced by the term 'nuclear damage':
Article 4(a) and (b),
Article 5(a) and (c),
Article 6(a), (b), (d), (f) and (h).

Z. In the first sentence of Article 4 of the French text the word 'stockage' shall be replaced by the word 'entreposage', and in this same Article the word 'transportées' is replaced by the words 'en cours de transport'. In paragraph (h) of Article 6 of the English text, the word 'workmen's' shall be replaced by the word 'workers'.

AA. Annex II of the Convention shall be deleted.

II.

(a) The provisions of this Protocol shall, as between the Parties thereto, form an integral part of the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the 'Convention'), which shall be known as the 'Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004'.

(b) This Protocol shall be subject to ratification, acceptance or approval. An instrument of ratification, acceptance or approval shall be deposited with the Secretary-General of the Organisation for Economic Cooperation and Development.

(c) The Signatories of this Protocol who have already ratified or acceded to the Convention express their intention to ratify, accept or approve this Protocol as soon as possible. The other Signatories of this Protocol undertake to ratify, accept or approve it at the same time as they ratify the Convention.

(d) This Protocol shall be open for accession in accordance with the provisions of Article 21 of the Convention. Accessions to the Convention will be accepted only if they are accompanied by accession to this Protocol.

(e) This Protocol shall come into force in accordance with the provisions of Article 20 of the Convention.

(f) The Secretary-General of the Organisation for Economic Cooperation and Development shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, acceptance, approval or accession to this Protocol.

COUNCIL DECISION

of 22 March 2004

authorising Italy to apply a measure derogating from Article 21 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes

(2004/295/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [1], and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Pursuant to Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce or extend special measures for derogation from that Directive in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

(2) By letter registered with the Secretariat-General of the Commission on 31 October 2003, the Italian Government requested authorisation to apply special tax measures to the waste sector.

(3) The other Member States were informed of Italy's request on 28 November 2003.

(4) The derogation in question is intended to allow Italy to designate the recipient of specific types of supplies in the waste sector, as the person liable to pay the tax. In accordance with Article 17(2)(a) of Directive 77/388/EEC, the recipient of the supplies of waste will be able to deduct the tax due for such supplies. This should minimise the problems faced by tax authorities in collecting the VAT in that sector, without having any effect on the amount of tax due.

(5) The requested measure is to be considered first and foremost as a measure to prevent certain types of tax evasion in the waste recycling sector, such as the non-payment of invoiced VAT by traders engaged in the collection, sorting and basic transformation of waste material, who subsequently become untraceable. The measure also has the effect of simplifying the work of the tax authorities.

(6) The measure is proportionate to the objectives pursued, since it is not intended to apply to all taxable operations in the sector concerned but only to specific operations which pose considerable problems of tax evasion.

(7) On 7 June 2000 the Commission published a strategy to improve the operation of the VAT system in the short term, in which it undertook to rationalise the large number of derogations currently in force. In some cases, however, this rationalisation could involve extending certain particularly effective derogations to all Member States.

(8) The Commission's recent contacts with certain national administrations and representatives of the sector suggest that special rules specifically adapted to the sector might be necessary to ensure fairer taxation of the traders concerned across the Community. The Commission intends to prepare a proposal for a special scheme applying to the waste recycling sector.

(9) Consequently, this derogation should expire on the date of entry into force of a special scheme for the application of VAT to the recycled waste sector, but not later than 31 December 2005.

(10) The derogation has no adverse impact on the European Communities' own resources accruing from VAT, nor does it have any effect on the amount of VAT charged at the final stage,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21(1)(a) of Directive 77/388/EEC, as worded in Article 28(g) thereof, the Italian Republic is hereby authorised, to designate the recipients of the supplies of goods and services referred to in Article 2 of this Decision as the persons liable to pay VAT.

Article 2

The recipient of the supply of goods or services may be designated as the person liable to pay VAT in the following instances:

— supplies and associated operations of ferrous waste and scrap, as well as of glass, paper and board, rags, bone and leather, rubber and plastic, including the supplies of those materials after they have undergone certain processing such as cleaning, polishing, selection, cutting or casting into ingots,

[1] OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/15/EC (OJ L 52, 21.2.2004, p. 61).

— supplies and associated operations of ferrous and non-ferrous semi-processed products, such as pig iron, refined copper and copper alloys and crude nickel and aluminium.

Article 3

This Decision shall expire on the date of entry into force of a special scheme for the application of VAT to the recycled waste sector amending Directive 77/388/EEC, but not later than 31 December 2005.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 22 March 2004.

For the Council

The President

B. COWEN

COUNCIL RECOMMENDATION
of 30 March 2004
on the appointment of a member of the Executive Board of the European Central Bank

(2004/296/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 112(2)(b) and 122(4) thereof, and to Articles 11.2 and 43.3 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank,

HEREBY RECOMMENDS THAT:

Mr José Manuel GONZÁLEZ-PÁRAMO be appointed a member of the Executive Board of the European Central Bank for a term of office of eight years with effect from 1 June 2004.

This recommendation shall be submitted for a decision to the Heads of State or Government of the Member States of the European Community whose currency is the euro, after consulting the European Parliament and the Governing Council of the European Central Bank.

This recommendation shall be published in the *Official Journal of the European Union*.

Done at Brussels, 30 March 2004.

For the Council
The President
M. McDOWELL

COMMISSION

COMMISSION DECISION

of 29 March 2004

authorising the Czech Republic, Estonia, Lithuania, Hungary, Poland and Slovakia to postpone the application of certain provisions of Council Directives 2002/53/EC and 2002/55/EC with regard to the marketing of seeds of certain varieties

(notified under document number C(2004) 962)

(Text with EEA relevance)

(2004/297/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, and in particular Article 2(3) thereof,

Having regard to the Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, and in particular Article 42 thereof,

Whereas:

(1) Pursuant to Article 42 of the Act of Accession, the Commission may adopt transitional measures if these transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the Community veterinary and phytosanitary rules. Those rules include the rules in respect of marketing of seeds.

(2) Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species [1] and Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed [2] provide that seeds of varieties of plant species covered by Directives as referred to in Article 1(1) of Directive 2002/53/EC or by Article 2(1)(b) of Directive 2002/55/EC may be marketed only if the requirements of Article 4(1) and Articles 7 and 11 of those two directives have been met.

(3) Marketing of seed of certain varieties would have to be banned in the Czech Republic, Estonia, Lithuania, Hungary, Poland and Slovakia from the date of accession, unless a derogation from those provisions could be granted.

(4) In order to enable those countries to take and to implement the measures necessary to ensure that the varieties in question have been accepted in accordance with the principles of the Community system, they should be allowed to postpone for a period of three years following the date of accession the application of Directives 2002/53/EC and 2002/55/EC with regards to the marketing in their territories of seeds of varieties listed in their respective catalogues, in accordance with principles other than those of the abovementioned directives.

(5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Agricultural, Horticultural and Forestry Seeds and Plants,

HAS ADOPTED THIS DECISION:

Article 1

By derogation from Article 4(1), Article 7 and Article 11 of Directives 2002/53/EC and 2002/55/EC, the Czech Republic, Estonia, Lithuania, Hungary, Poland and Slovakia may postpone for a period of three years following the date of accession the application of the said directives with regard to the marketing in their territory of seeds of varieties listed in their respective national catalogues of varieties of agricultural plant species and of vegetable plant species, which have not been officially accepted in accordance with the provisions of those Directives.

[1] OJ L 193, 20.7.2002, p. 1. Directive as last amended by Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ L 268, 18.10.2003, p. 1).

[2] OJ L 193, 20.7.2002, p. 33. Directive as last amended by Regulation (EC) No 1829/2003.

During that period, such seeds shall only be marketed in the territory of the respective Member States concerned. Any label or document, official or otherwise, which is affixed to or accompanies the seed lot under the provisions of this Decision shall clearly indicate that the seed is intended to be marketed exclusively in the territory of the country concerned.

Article 2

This Decision shall apply subject to and as from the date of the entry into force of the Treaty of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 29 March 2004.

For the Commission

David BYRNE

Member of the Commission

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION
of 16 July 2003
on a Compensation Scheme for Express Bus Operators
(Norway)

(2004/298/EC)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area ([1]), in particular to Articles 49, 61 to 63 and to Annex XIII ([2]) thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ([3]), in particular to Article 24 and Article 1 of Protocol 3 thereof,

Having regard to the Authority's Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement ([4]), in particular to Chapters 5, 6 and 15 thereof,

Having regard to the Authority's decision to open the formal investigation procedure ([5]),

Having called on interested parties to submit their comments, pursuant to the provisions laid down in Chapter 5 of the Authority's State Aid Guidelines ([6]), and having regard to their comments,

([1]) Hereinafter referred to as the 'EEA Agreement'.

([2]) In particular, to the Acts referred to in point 4, Chapter I 'Inland Transport' of Annex XIII to the EEA Agreement (i.e. Council Regulation (EEC) No 1191/69 of 26 June 1969 on action by the Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L 156, 28.6.1969, p. 1), as amended, in particular, by Council Regulation (EEC) No 1893/91 of 20 June 1991 (OJ L 169, 29.6.1991, p. 1); the legal act referred to in point 32, Chapter II 'Road Transport' (i.e. Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ L 74, 20.3.1992, p. 1), as amended by Council Regulation (EC) No 11/98 of 11 December 1997 amending Regulation (EEC) No 684/92 on common rules for the international carriage of passengers by coach and bus (OJ L 4, 8.1.1998, p. 1) and the legal act referred to in point 33 a, Chapter II 'Road Transport' (i.e. Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ L 251, 29.8.1992, p. 1), as replaced by the legal act referred to in point 33 b, Chapter II 'Road Transport' (i.e. Council Regulation (EC) No 12/98 of 11 December 1997 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ L 4, 8.1.1998, p. 10).

([3]) Hereinafter referred to as the 'Surveillance and Court Agreement'.

([4]) Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, adopted and issued by the EFTA Surveillance Authority on 19 January 1994, published in OJ L 231, 1994, EEA Supplements 03.09.94 No. 32, last amended by the Authority's Decision No. 264/02/COL of 18 December 2002, not yet published; hereafter referred to as the 'Authority's State Aid Guidelines'.

([5]) Decision of 18 December 2000, Dec. No. 381/00/COL, published in OJ C 125, 26.4.2001 as well as the EEA Supplement to the Official Journal of the EC No. 22, 26.4.2001.

([6]) In particular, point 5.3.2. of the Guidelines.

Whereas:

I. **FACTS**

A. *PROCEDURE AND CORRESPONDENCE*

1. OPENING OF THE FORMAL INVESTIGATION PROCEDURE

Following a complaint against the compensation scheme for express bus operators, the Authority carried out a preliminary examination of the scheme in question under the EEA State aid rules. This examination led to the Authority's decision of 18 December 2000 to open the formal investigation procedure against the compensation scheme for express bus operators. The decision was communicated to the Norwegian Government by letter of that same day (Doc. No. 00-9192-D).

In this letter, the Norwegian Government was invited, pursuant to point 5.3.1.(1) of Chapter 5 of the Authority's State Aid Guidelines, to submit its comments on the opening of the formal investigation procedure. The Norwegian authorities were further requested to provide all necessary information to assess the compatibility of the compensation scheme with the EEA State aid provisions.

The Authority reminded the Norwegian Government that, in accordance with point 6.2.3 of Chapter 6 of the Authority's State Aid Guidelines, unlawful aid may be recovered from the recipients should the Authority find the compensation scheme to be incompatible with the EEA Agreement. Against this background, the Norwegian Government was asked to forward a copy of the decision to the recipients of the aid immediately.

Finally and with respect to the proposed continuation of the compensation scheme for 2001, the Authority reminded the Norwegian Government of its obligation not to put the aid into effect.

2. COMMENTS AND FURTHER INFORMATION SUBMITTED BY THE NORWEGIAN GOVERNMENT

The Norwegian Government submitted its comments to the opening of the formal investigation procedure by letter dated 31 January 2001, received and registered by the Authority on 8 February 2001 (Doc. No. 01-1029-A). It claimed that the compensation scheme did not constitute 'new aid', and that, in any case, the compensation scheme was exempted from the obligation of prior notification because it was in accordance with Council Regulation (EEC) No 1191/69 [7]. Consequently, the Norwegian Government informed the Authority that payments under the compensation scheme would not be suspended.

By letter of 12 April 2001 (Doc. No. 01-2781-D), the Authority acknowledged receipt of this letter and requested additional information.

By letter of 15 June 2001, received and registered by the Authority on 20 June 2001 (Doc. No. 01-4686-A), the Norwegian Government submitted the information requested.

[7] According to Article 17(2) of Council Regulation (EEC) No 1191/69 reimbursements for public service obligations granted in accordance with this Regulation are exempt from the notification requirement and thus not subject to the standstill obligation.

3. COMMENTS AND ADDITIONAL INFORMATION SUBMITTED BY THIRD PARTIES

After having opened the formal investigation procedure, but before the publication of the decision in the Official Journal, the Norwegian Transport Association ('Transportbedriftenes Landsforening') submitted comments on the opening decision by letter of 21 February 2001, registered by the Authority on 23 February 2001 (Doc. No. 01-1387-A).

The complainant was informed of the opening of the formal investigation procedure by letter of 18 December 2000 (Doc. No. 00-9193-D).

After having received comments on the opening of the formal investigation from the Norwegian Government, the Authority addressed the complainant again, by letter of 12 April 2001 (Doc. No. 01-2780-D). In this letter, the Authority summarised the arguments brought forward by the Norwegian Government with respect to the opening of the formal investigation procedure and invited the complainant to submit his views on these arguments. Furthermore, the complainant was invited to submit additional information, in particular regarding the competitive situation between occasional services and regular services (provided by express bus operators) in Norway. The complainant responded to this invitation by letter of 21 May 2001, received and registered by the Authority on 23 May 2001 (Doc. No.01-3911-A).

No further comments were submitted by third parties within the time limits set in point 5.3.2.(1) of Chapter 5 of the Authority's State Aid Guidelines ([8]), i.e. 26 May 2001.

4. ADDITIONAL INFORMATION SUBMITTED BY THE NORWEGIAN GOVERNMENT IN RELATION TO THIRD PARTY COMMENTS

By letter of 30 October 2001 (Doc. No. 01-8453-D), the Authority transmitted third party submissions to the Norwegian Government. In addition, the Authority informed the Norwegian Government that it did not consider the compensation scheme for non-subsidised bus operators to be covered by Council Regulation (EEC) No 1191/69. Finally, and with respect to a possible justification under the Environmental Guidelines, the Authority stressed in particular that the compensation scheme would have to be limited in and, in principle, reduced over time, that the compensation awarded to bus operators must remain below costs due to the actual consumption of autodiesel on regular bus routes; and that the degree of compensation must furthermore be limited in order to provide an incentive for bus operators to reduce consumption of autodiesel. Against this background, the Norwegian Government was requested to supply additional information.

By letter from the Ministry of Transport and Communications dated 31 January 2002, received and registered by the Authority on 5 February 2002 (Doc. No. 02-1006-A), the Norwegian Government submitted its comments to the third party submissions. It also submitted its views on the Authority's assessment as regards the application of Council Regulation (EEC) No 1191/69 and submitted the information requested. Further comments were submitted by the Norwegian Government (cf. letter from the Ministry of Transport and Communications dated 4 April 2002, received and registered by the Authority on 9 April 2002 (Doc. No. 02-2573-A)).

5. THIRD PARTY COMMENTS SUBMITTED AFTER THE DEADLINE FOR COMMENTS HAD EXPIRED

After the deadline for comments from third parties had expired (i.e. 26 May 2001), the Authority also received further comments from the Norwegian Transport Association (cf. fax dated 7 February 2002, received and registered by the Authority on that same day (Doc. No. 02-1058-A) as well as a letter dated 9 April 2002, received and registered by the Authority on 11 April 2002 (Doc. No. 02-2557-A)) and from the complainant (cf. letter dated 8 May 2002, received and registered by the Authority on 15 May 2002 (Doc. No. 02-3635-A)).

([8]) According to point 5.3.2. (1) of Chapter 5 of the Authority's State Aid Guidelines, interested parties may submit their comments to the opening decision within one month from the date of publication.

B. *DESCRIPTION OF COMPENSATION SCHEME FOR EXPRESS BUSSES*

1. THE NORWEGIAN AUTODIESEL LEVY: ABOLISHMENT OF THE EXEMPTION FOR BUS OPERATORS

The autodiesel levy ('autodieselavgift') was originally introduced as of 1 October 1993 (when it replaced the kilometre tax introduced in 1978) ([9]). The tax is levied on the consumption of autodiesel and the rate per litre is fixed annually by Decision of the Norwegian Parliament ([10]). Bus operators providing passenger transport were exempted from this levy, (as they were previously exempted from the kilometre tax). In the Parliamentary Bill on Green Taxes (St. prp. nr. 54 (1997-1998) 'Grønne Skatter'), the Norwegian Government considered the previous exemption for buses not to be justified on environmental grounds since it relieved buses of external costs arising from the use of roads, accidents and pollution and did not give these operators an economic incentive to reduce these costs. Consequently, the Norwegian Government proposed to abolish the exemption from the autodiesel levy for bus operators in order to give these undertakings an incentive to increase efficiency and to make environmentally oriented investment decisions.

As of 1 January 1999, all bus operators providing passenger transport (i.e. both regular ([11]) and occasional ([12]) transport services) were, in principle, subject to the autodiesel levy.

2. INTRODUCTION OF COMPENSATION SCHEMES

However, in order to avoid a weakening of the competitiveness of public transport (i.e. regular passenger transport), it was proposed to compensate certain categories of bus operators (so-called 'tilskuddsberettiget bussdrift' or 'subsidised' bus operators, i.e. bus operators eligible for direct State subsidies for the provision of regular passenger transport services ([13])) for the costs resulting from the abolition of the exemption. For other categories of bus operators (so-called 'ikke-tilskuddsberettiget bussdrift' or 'non-subsidised' bus operators, i.e. bus operators providing regular passenger transport services, but not eligible for direct State subsidies in this respect ([14])), the Parliamentary Bill on Green Taxes stated that no compensation should be granted since these bus operators were considered to be able to cover the increased costs either through an increase in ticket prices or through a reduction in profits. It was further maintained that the abolition of the tax exemption would give the bus companies an incentive to enhance efficiency and make their operations more environmentally friendly.

Following the Government's proposal, the Parliament decided in the autumn 1998 to introduce a compensation scheme for 'subsidised' bus operators. Although not initially foreseen under the Government's proposal regarding the green tax reform, a separate compensation scheme for so-called 'non-subsidised' bus operators was adopted by the Norwegian Parliament in its Decision on the revised State Budget for 1999 adopted in the spring 1999 (St. prp. nr. 67 (1998-1999)). This scheme is under the Ministry of Transport's responsibility (cf. St.prp.nr. 1 (1999-2000), chapter 1330, post 71 'Tilskudd til ekspressbusser').

([9]) Regulation of 8 June 1993 on the autodiesel levy, 'Forskrift om avgift på mineralolje til framdrift av motorvogn og om merking av mineralolje'.
([10]) More detailed information on the applicable rates since 1999 are provided in table 2 below.
([11]) The term 'regular transport' is used in this decision in line with the definition given in Article 2(1) of Council Regulation (EC) No 12/98 of 11 December 1997, laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State.
([12]) The term 'occasional transport' is used in this decision in line with the definition given in Article 2(3) of Council Regulation (EC) No 12/98 of 11 December 1997, laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State.
([13]) For a more detailed description of this category of bus operators, see point C. of the present decision.
([14]) For a more detailed description of this category of bus operators, see point C. of the present decision.

Therefore, with the introduction of compensation schemes for both 'subsidised' and 'non-subsidised' bus operators, bus operators providing regular passenger transport were, as of 1 January 1999, (partly) compensated for the costs resulting from the autodiesel levy. On the other hand, other bus operators, *inter alia*, those providing occasional transport services, had to bear the costs resulting from the autodiesel levy in full.

The rules governing the compensation for express bus operators were laid down in two letters dated 21 February 2000, which were communicated to the eligible bus operators ([15]).

The amount of compensation per company is calculated according to the distances operated under the 'route plan', applying a certain rate per kilometre. This rate is not fixed in advance but will be determined once the total distances of all licensees have been established ([16]). According to the Norwegian Government, the rates applicable for the years 1999 and 2000 were 1,37 and 1,41, respectively, and for 2001 and 2002 estimated to be 1,07 and 0,62 NOK per km, respectively.

In addition, compensation is granted for so-called 'position driving' ([17]) and 'assistance driving' ([18]). According to the Norwegian authorities, compensation in these cases was only granted where 'position driving' and 'assistance driving' exceeded 10 % of driving according to schedule. Furthermore, compensation is also granted for 'approved deviations' from the route schedule ([19]).

Domestic transport services provided in the course of international transport ('cabotage services') are also included in the compensation scheme. It is assumed that foreign operators providing such cabotage services are doing so in a pool with Norwegian operators. It is further assumed that the Norwegian operators act on behalf of the foreign operators when claiming compensation.

3. SCOPE OF THE PRESENT INVESTIGATION

In its decision of 18 December 2000, the Authority opened the formal investigation procedure against the 'compensation scheme for express bus operators' ([20]). In its comments to the opening decision, the Norwegian Government clarified that the recipients of the aid scheme under investigation were not identical to 'express bus operators'. The term 'express bus' was used by the operators as a marketing term. According to the Norwegian Government, 'express bus operators' were in fact providing both 'subsidised' and 'non-subsidised' services. In light of these explanations, the Authority points out that the compensation scheme under investigation is that introduced for 'non-subsidised' bus operators providing regular passenger transport. The compensation scheme for 'subsidised' bus operators is not subject to the formal investigation procedure.

([15]) A more detailed description of the provisions of the compensation scheme is given in the Authority's opening decision.

([16]) This rate is apparently calculated by dividing the total amount earmarked for the purpose of the compensation scheme by the total kilometres for which applications for reimbursement have been submitted.

([17]) 'Position driving' is necessary before and after driving according to schedule, e.g. driving to and from garage/depot.

([18]) 'Assistance driving' is necessary so that all passengers attending a specified route should be served at any point in time according to schedules.

([19]) 'Approved deviations' are meant to be those deviations as referred to by the Norwegian Government in its response to the Authority's request for additional information of 12 April 2001: '… larger deviations [from the defined route] have not occurred unless as part of public service obligations specified in the licence …'.

([20]) This term was used by the Authority in its opening decision, based on the title of the scheme under investigation given in the Norwegian State Budget.

C. *DESCRIPTION OF LEGAL FRAMEWORK CONDITIONS GOVERNING REGULAR PASSENGER TRANSPORT IN NORWAY*

1. LEGAL FRAMEWORK CONDITIONS GOVERNING THE PROVISION OF REGULAR PASSENGER TRANSPORT SERVICES IN NORWAY

According to the Norwegian Government, all regular passenger transport services in Norway are governed by the Transport Act (Lov om samferdsel 1976 nr. 63) and the regulation on domestic passenger transport (Forskrift om persontransport i rute innenlands med motorvogn eller fartøy). ([21]) All operators holding a licence in accordance with § 3 of the Transport Act are allowed to provide regular passenger transport services. On the other hand, all operators holding a licence are subject to the same conditions governing the provision of regular passenger transport, as laid down in the Transport Act and the regulation on domestic passenger transport. The provisions in the regulation on domestic passenger transport stipulate, *inter alia*, that the licensee has a right as well as an obligation to provide the transport service covered by the licence. The route schedule as well as the tariffs is to be approved by the competent authorities. ([22]) In case an operator applies for a termination of the transport service in question (e.g. to abandon the transport services on a route or to change the conditions of the transport service), the competent authorities may require the operator to continue operations, while granting compensation for possible deficits on the route in question which cannot be financed through profits generated on other routes (cf. § 19 (2) of the regulation on domestic passenger transport).

2. DISTINCTION BETWEEN SO-CALLED 'SUBSIDISED' AND 'NON-SUBSIDISED' OPERATORS

The Norwegian Government stressed that the distinction between 'subsidised' and 'non-subsidised' operators was not based on the Transport Act or any other legal act governing the provision of regular passenger transport.

The Authority notes, however, that 'subsidised' and 'non-subsidised' operators are subject to different rules as regards the procedure proceeding the award of the right to offer regular passenger transport services on individual routes as well as the eligibility (or not) for direct State subsidies for the provision of such transport services.

It results from the information in the Authority's possession that so-called 'subsidised' operators are selected through a tender procedure to provide regular transport services. These services are compensated for under 'framework agreements' concluded with the county concerned. The conditions governing the tender procedures, the conclusion of such arrangements and the award of compensation are laid down in a Regulation on tender procedure for local transport services ('Forskrift om anbud i lokal rutetransport'). On the other hand, on routes where expectations about commercial transport possibilities are good, bus operators may apply for licences to run regular passenger transport services on the route in question. These applications are evaluated by the competent authorities, taking into consideration the need for transport and competition. Bus operators providing regular passenger transport services upon application are not entitled to receive direct State subsidies. Accordingly, they are called 'non-subsidised' bus operators.

D. *THE AUTHORITY'S DECISION TO OPEN THE FORMAL INVESTIGATION PROCEDURE, COMMENTS FROM NORWAY AND THIRD PARTY COMMENTS SUBMITTED IN THE COURSE OF THE PROCEEDINGS*

In December 2000, the Authority decided to open the formal investigation procedure against the compensation scheme for express bus operators ([23]). In this decision, the Authority expressed doubts as to the compatibility of the compensation scheme with the functioning of the EEA Agreement. In the Authority's view, the compensation scheme for express bus operators, introduced in 1999, constituted 'new aid'. Given that the scheme had not been notified to the Authority in accordance with Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, the compensation scheme had to be regarded as 'unlawful on procedural grounds' pursuant to Chapter 6 of the Authority's State Aid Guidelines. Furthermore, the Authority expressed doubts concerning the compatibility of the compensation scheme, in particular, with Article 61(3)(c) of the EEA Agreement, in combination with the Environmental Guidelines.

([21]) The Norwegian Government referred in its submissions to 'supplementary instructions'.
([22]) A more detailed description of the conditions governing regular passenger transport services in Norway is given below.
([23]) See footnote 5.

1. STATE AID WITHIN THE MEANING OF ARTICLE 61(1) OF THE EEA AGREEMENT

(a) ***The Authority's views as expressed in the opening decision***

Based on the information obtained in the preliminary investigation procedure, the Authority could not exclude that the compensation scheme reinforced the competitive position of companies that operate passenger transport services both inside and outside Norway and was, therefore, liable to distort competition and affect trade between the Contracting Parties.

The Authority's preliminary conclusion was based on the following circumstances:

Undertakings benefiting from the compensation scheme may provide both regular and occasional services. According to the Authority, it could, therefore, not be excluded that payments made under the compensation scheme were used to provide occasional transport services (a service which is fully liberalised).

Even in cases where bus operators exclusively provided regular services, distortive effects on competition could not be excluded since, 'non-subsidised' bus operators were — if only to a certain extent — in competition with occasional bus services.

With respect to international regular transport services, the Authority was not convinced that foreign operators would receive compensation on a non-discriminatory and transparent basis. Finally, the Authority pointed out that even if the scheme were to be applied without discrimination as regards foreign operators providing transport services in Norway, effects on trade could not be excluded since Norwegian bus operators benefiting from the compensation payments may compete outside Norway for both occasional and regular transport services.

(b) ***Comments from the Norwegian Government to the opening decision***

In its comments to the opening decision (cf. letter dated 31 January 2001), the Norwegian Government took the view that the compensation scheme did not constitute aid within the meaning of Article 61(1) of the EEA Agreement. The compensation granted for regular services could not affect the competitive situation of occasional services given that the markets for regular and occasional services were two different markets with a very limited interface. In addition, the Norwegian Government claimed that trade was not affected by the compensation scheme, given that compensation was granted to all (domestic and foreign operators) providing regular cabotage services within Norway. Furthermore, the compensation was calculated only in relation to the kilometres driven within Norway.

(c) ***Additional information submitted by the Norwegian Government***

Information provided by the Norwegian Government showed that out of the total number of 100 operators that provided regular bus services in Norway and that received compensation for the autodiesel levy under the compensation scheme at issue, 49 were also engaged in occasional services, i.e. 49 %. The Norwegian Government also submitted figures which showed that, within the Norwegian bus and coach industry, non-scheduled services ([24]) constitute normally less than 15 % of total operating costs of the companies concerned.

As regards the competitive situation between regular and occasional services, the Norwegian Government explained (cf. letter dated 15 June 2001) that these services constituted two separate markets given the different legislative obligations which govern both transport activities (licence requirement for regular but not for occasional services; additional obligations regarding timetables, frequency and route schedules for regular but not for occasional services) and the nature of the activity which was claimed to be different from the customer's point of view.

([24]) This term is used by the Norwegian Government. The Authority understands the term as referring to transport services other than 'regular transport services' within the meaning of Article 2(1) of Council Regulation (EC) No 12/98; see footnote 2.

According to the Norwegian authorities, a regular service may only be a good alternative to an occasional service for a group of passengers if attractions, hotels, etc. are situated along the specified route. The Norwegian Government also stated that a customer might, under certain circumstances, find that in certain situations there is an economically meaningful choice between travelling by hiring an occasional service or travelling by scheduled ([25]) service. Normally, this situation would, according to the Norwegian Government, not occur frequently, and the providers of regular bus services have, to a very limited extent, served the customer groups usually served by providers of occasional services.

It was further stated that the Norwegian Transport Act provided for the possibility of regular bus services to pick up groups of passengers within a reasonable distance from their scheduled stops. To the Norwegian authorities' knowledge, larger deviations had not occurred, unless as part of public service obligations specified in the licence. Such obligations may include transport services to special excursion spots.

In addition and as regards the statement in the opening decision that regular bus operators were allowed to reschedule their destinations in wintertime, so as to provide transport service to tourist sites, the Norwegian Government explained that applications for the rescheduling of 'non-subsidised' bus services had to be evaluated by the Ministry of Transport and Communications, considering the need and the impacts on competition of rescheduling. Furthermore, according to the Norwegian Government, operators were, in principle, not allowed to reschedule their transport route if a group of people so requires (however, it would seem that such re-scheduling could be possible, provided that it will not interrupt the transport services according to schedule, i.e. respecting timetables and stopping points).

As regards foreign carriers benefiting from the compensation scheme, the Norwegian Government informed the Authority that, for the time being, there is only one operator, the Swedish company Swebus AB, which provides international regular cabotage transport services in Norway; this company operates in a pool with the Norwegian operator, AS Østfold Bilruter.

As regards Norwegian operators engaged in transport activities abroad, the Norwegian Government informed the Authority that, for the time being, 330 Community licences have issued ([26]). Information about licences for regular transport services would need to be obtained from the respective countries.

(d) ***Comments from the Norwegian Transport Association to the opening decision***

The Norwegian Transport Association, while acknowledging that scheduled ([27]) services were in competition with occasional services, claimed that such competition would be an integral part of the Norwegian and European transport policy. The Norwegian Transport Association claimed that changes in schedules (due to variations in demand over the year) as well as the possibility of picking up groups within a reasonable distance from their scheduled stops would be inherent to such services and covered by Council Regulation (EEC) No 684/92 as amended by Council Regulation (EC) No 11/98. As regards international scheduled ([28]) services, the Norwegian Transport Association stated that foreign operators would be treated in the same way as domestic operators. As regards the applicability of Article 61(1) of the EEA Agreement to the compensation scheme at issue, the Norwegian Transport Association argues, in its letter dated 9 April 2002, that the regular bus transport services benefiting from the compensation scheme at issue were confined within Norway; competition rules would therefore not be applicable to the compensation scheme at issue.

([25]) This term is used by the Norwegian Government. The Authority understands the term as referring to 'regular transport services' within the meaning of Article 2 (1) of Council Regulation (EC) No 12/98; see footnote 2.

([26]) The Norwegian Government has, however, not indicated which number of such licences was held by bus operators subject to the present investigation.

([27]) This term is used by the Norwegian Transport Association. The Authority understands the term as referring to 'regular transport services' within the meaning of Article 2(1) of Council Regulation (EC) No 12/98; see footnote 2.

([28]) This term is used by the Norwegian Transport Association. The Authority understands the term as referring to 'international regular transport services' within the meaning of Article 3(3) of Council Regulation (EC) No 12/98; see footnote 2.

(e) ***Comments from the complainant***

According to the complainant, 'non-subsidised' bus operators are in competition with tourist coaches. In this respect, the complainant refers to certain routes served by both 'non-subsidised' bus operators and tourist coach operators and where both operators compete for the same group of customers (e.g. express bus routes to Oslo airport, where operators providing regular services are in competition with tourist coaches).

In addition, the complainant claims that scheduled buses are allowed — contrary to what the Norwegian Government has maintained — to reschedule their routes and drive groups of people to tourist areas, typical tourist bus operations (in this respect, the complainant refers to the Valdresbusses serving the route Oslo-Beitostølen, 'a typical tourist area'; other examples mentioned by the complainant concern the routes Oslo-Trysil, Oslo-Hemsedal and Oslo-Geilo). Such deviations from the route schedule would result in an overlapping of services.

Furthermore, 'non-subsidised' bus operators would receive compensation for 'assistance driving' and 'position driving'. Both activities would be used by these bus operators to provide transport services in competition with the complainant (in this respect, the complainant refers in particular to the route Valdres-Oslo; on the return journey/position driving, bus operators would provide tourist services for groups of passengers).

Finally, the complainant emphasised that 'non-subsidised' bus operators receive compensation for the provision of regular passenger transport on routes on which the licensed bus operators, at the same time, offer the transport of goods.

(f) ***Comments from the Norwegian Government to third party comments***

The complainants allegations, in particular as regards routes served by both regular bus operators and occasional bus operators and the possibility for regular bus operators to reschedule routes in order to allow those operators to drive groups to tourist areas were not contested by the Norwegian Government (cf. Norwegian Government's letter dated 31 January 2002). Reference was however made to the control mechanisms established under the compensation scheme which would ensure that compensation payments could not be misused, i.e. benefiting an operator's tourism activity and that compensation would only be granted for distances according to the specified routes and timetables. As regards the transport of goods, the Norwegian Government informed the Authority that, according to information from the Norwegian Association of Transport Enterprises, the figures regarding the share of turnover generated by the transport of goods compared to the turnover generated by regular transport was 'probably less than 1 %'.

As regards the effects of the compensation scheme concerning assistance driving, position driving and approved deviations from the route schedules as laid down in the licence, the Norwegian Government stated that, for the year 1999, the assistance and position driving compensated for amounted to less than 4 % of driving according to schedule. Based on these figures, the Norwegian Government took the view that the inclusion of position driving and assistance driving had insignificant effects on competition. The Norwegian Government confirmed that approved deviations ([29]) were also compensated for.

([29]) 'Approved deviations' are meant to be those deviations as referred to by the Norwegian Government in its response to the Authority's request for additional information of 12 April 2001: '… larger deviations [from the defined route] have not occurred unless as part of public service obligations specified in the licence. Such obligations may be to serve … special excursion spots …'.

2. NOTIFICATION REQUIREMENT AND STANDSTILL OBLIGATION

(a) ***Authority's views as expressed in the opening decision***

In the opening decision, the Authority took the view that the compensation scheme in question constituted 'new aid'. In the Authority's view, the compensation scheme could not be regarded as 'existing aid' within the meaning of point 7.2 (1) first bullet point of Chapter 7 of the Authority's State Aid Guidelines, since the compensation payment was not based on a legal act which was in operation at the time of the entry into force of the EEA Agreement (after the exemption from the autodiesel levy for bus operators was abolished as of 1 January 1999, the compensation scheme for so-called 'non-subsidised' bus operators was introduced). Furthermore, the compensation was determined according to specific rules, part of which were communicated to the bus operators concerned in two letters dated 21 February 2000. These rules constituted a new legal framework for the provision of aid to certain regular bus operators. Therefore, the compensation could not be considered to be a continuation of a tax concession which was laid down in a different legal act.

(b) ***Comments from the Norwegian Government to the opening decision***

In its comments to the opening of the formal investigation procedure, the Norwegian Government argued that it was irrelevant that the compensation scheme constituted a new legal framework. Decisive in determining whether a measure constitutes 'new aid' or 'existing aid' was whether additional money was granted and new beneficiaries included. In this respect, the Norwegian Government claimed that the compensation scheme was less extensive (both in money terms and in terms of eligible companies) than the previous tax exemption: according to the Norwegian Government, when determining the compensation amount for 1999 a 6 % reduction in fuel consumption was assumed; furthermore, the scope of the compensation scheme was limited to regular transport undertakings whereas the previous tax exemption covered all bus operators, including those offering occasional services.

3. COMPATIBILITY ASSESSMENT UNDER COUNCIL REGULATION (EEC) No 1191/69

(a) ***Authority's views as expressed in the opening decision***

Even though not invoked by the Norwegian Government in the course of the preliminary investigation, the Authority assessed whether Regulation No 1191/69 could be applicable. Based on the information at its disposal, the Authority came to the preliminary conclusion that '… the compensation for "non-subsidised" bus operators would not seem to fall within the scope of Regulation No. 1191/69, since the eligible operators do not seem to be subject to public service obligations within the meaning of Article 2 of that Regulation.' Furthermore, the Authority expressed the view that '…, on the basis of the rules regarding compensation payments, as laid down in the two letters of 21 February 2000, it was apparent that the compensation awarded to the bus operators in question had not been determined in accordance with the procedure laid down in Regulation No. 1191/69 (in particular Art. 9 et seq.). …'

(b) ***Comments from the Norwegian Government to the opening decision***

In its comments to the opening of the formal investigation procedure, the Norwegian Government claimed that the compensation scheme would fall under Council Regulation (EEC) No 1191/69.

According to the Norwegian Government, all regular passenger transport services in Norway fell within the scope of Council Regulation (EEC) No 1191/69. The Norwegian Government maintained that both 'subsidised' and 'non-subsidised' bus operators are subject to the same legal framework conditions. There was no distinction between these two groups under the Norwegian Transport Act. Consequently, the Norwegian Government did not see a justification to assess both types of operations differently. Assuming that the Authority found the compensation for so-called 'subsidised' bus operators in compliance with the EEA Agreement, the Norwegian Government claimed that the compensation granted to so-called 'non-subsidised' operators should also be regarded as compatible with the EEA Agreement.

The Norwegian Government stressed that the distinction between both categories of operators depending on estimates as to which routes were commercially viable, was drawn prior to the removal of the tax exemption. After the abolition of the tax exemption, the commercial situation of so-called 'non-subsidised' bus operators had changed. According to the Norwegian authorities, it was clear that the 'non-subsidised' bus operators would not necessarily assume the public service obligations they undertook prior to 1 January 1999 to the same extent or under the same conditions as they did if it had not been for the exemption from the autodiesel levy.

According to the Norwegian Government, the Transport Act ('Lov om samferdsel 1976 nr. 63') and the regulation on domestic passenger transport (Forskrift om persontransport i rute innenlands med motorvogn eller fartøy) stipulate a number of conditions governing the provision of regular passenger transport services which entailed public service obligations ([30]):

— The operator has an unconditional obligation to carry, except in cases of *force majeure* (§ 7);

— The operator shall engage a sufficient number of buses to cover ordinary demand and if possible also extraordinary demand that is foreseen (§ 8);

— The route schedules must be approved by the competent authority; all information regarding schedules, starting points, intermediate stops and destination must be properly advertised (§ 10);

— Fares and discounts must be approved by the competent authority (§ 11);

— The operator must use tickets, ticketing machines and other equipment which is approved by the competent authority (§ 12);

— The competent authority has the right to decide the use of terminals, stopping points and the exact roads to be used for the routes (§ 13);

— The competent authority may decide that passengers have the right to reserve seats in advance (§ 15);

— The operator must equip bus stops with information boards.

In addition, it is claimed that many routes running parallel to railroad services are denied rights to take up passengers near the railway services, which would constitute a public service obligation on the operators concerned.

According to the Norwegian authorities it is obvious that the obligations contained in the Transport Act and regulation on domestic passenger transport increase costs above what would be incurred if the services had been run on a strictly commercial basis and that, in particular the restrictions in order to protect the railway services, reduced revenues.

As regards the Authority's concern that the compensation scheme for express bus was not in line with the requirements laid down in Article 10 to 13 of Council Regulation (EEC) No 1191/69, since the compensation was not calculated in accordance with the criteria set out therein, the Norwegian authorities claimed that these discrepancies would not affect the compatibility of the compensation scheme with the Regulation, since the amount of compensation awarded would still be within the range permissible under the Regulation.

The Norwegian Government also refers to compensation schemes employed in other EU Member States, which had not been the cause of objections from the European Commission (in this context, reference is made in particular to an exemption from the diesel fuel tax in Denmark for scheduled bus services). It claimed that Council Regulation (EEC) No 1191/69 has not been interpreted by the Commission in a very strict manner and concluded that according to this lenient Commission approach all costs related to public service obligations were reimbursable.

([30]) References are made to the relevant provisions in the regulation on domestic passenger transport.

(c) ***Additional comments from the Norwegian Government***

In response to the Authority's letter of 30 October 2001, in which the Authority explained its doubts as regards the application of Council Regulation (EEC) No 1191/69, the Norwegian Government reiterated its view that the conditions contained in the Transport Act and the regulation on domestic passenger transport constitute public service obligations imposed on the bus operators in question. In response to the Authority's argument that these conditions could not be regarded as necessarily being imposed upon the bus operator concerned, given that the operator had applied for a licence to run a particular service on a certain route, the Norwegian Government stated that operators could not unilaterally change standards of continuity, regularity and capacity as laid down in the licences in order to adapt to changed financial circumstances (here the abolition of the exemption from the autodiesel levy). Applications for changes in fares, schedules and routes were not always approved. Insofar as the applications to change certain conditions was not granted, this would have to be considered as a public service obligation imposed on the operator concerned. The Norwegian Government also stated that it was likely that after the abolition of the previous exemption from the autodiesel levy some of the regular passenger services would no longer be profitable. The result would probably be that some operators would withdraw their services. Other operators would be forced to increase fares and/or reduce frequency to stay profitable. According to the Norwegian Government, neither a withdrawal of lines nor major increases in fares as a consequence of the abolition of the exemption from the autodiesel levy could be accepted by the Norwegian authorities.

The Norwegian Government stated that, according to the Transport Association, about 25 lines would possibly be shut down in the absence of the compensation scheme and for the remaining lines price increases of around 15 % could be expected. Asked by the Authority to provide verifiable information in this respect, the Norwegian Government stated that considering the marginal profits of some of the operators, the Norwegian Government found no reason to doubt that withdrawal of some lines and/or increases in fares would be a likely outcome of the abolishment of the compensation scheme. Exactly which services would be withdrawn or on which routes tariffs would be increased if the compensation scheme were to be abolished would only become evident once the scheme was actually abolished.

Furthermore, and as regards the costs resulting from these obligations, reference is made to the comments submitted by the Transport Association (and in particular Annex II to the submission). This Annex contained estimates of the financial consequences of the public service obligations. According to the Norwegian Government the compensation scheme does not leave room for overcompensation. Generally, the compensation was kept at a level well below the actual costs of the autodiesel levy. As regards the exact costs of the public service obligation, the Norwegian Government acknowledged, however, that there was no concrete verifiable information.

(d) ***Comments from the Norwegian Transport Association***

According to the Norwegian Transport Association, all domestic scheduled bus services, whether called 'non-subsidised' or 'subsidised' operators were equally subject to public service obligations as laid down in the Transport Act and regulation on domestic passenger transport, and should therefore be equally eligible for compensation.

There would be nothing in Council Regulation (EEC) No 1191/69 that would indicate that remunerative and non-remunerative services should be treated differently as regards public service obligations and compensation.

According to the Norwegian Transport Association, the question of legality of tax relief as a practical form of compensation for public service obligations has never been raised by an EC Member State or the European Commission itself. On the contrary, tax relief in various forms is a common way of compensating public transport throughout the EU. According to the Norwegian Transport Association, Council Regulation (EEC) No 1191/69 does not only apply to direct compensation payments but also to indirect forms of aid, such as VAT exemptions, mineral oil exemption, etc. It stresses that practical and administrative considerations have led to the choice of the aid in question in addition to a more complicated system of direct compensation through operational subsidies. The indirect form of aid through compensation for the mineral oil levy was regarded as being in line with Article 3(1) of Council Regulation (EEC) No 1191/69 which states that the competent authority shall select the way least costly to the community.

The Norwegian Transport Association concedes that, formally, the Norwegian fuel tax restitution regime was not tied directly to the actual costs resulting from the public service obligations imposed. However, as long as no over-compensation exists and the necessary steps are taken to avoid this, compliance with Articles 10 to 13 of Council Regulation (EEC) No 1191/69 would be of a purely theoretical nature.

The Norwegian Transport Association provided a list of obligations contained in the relevant legal documents as well as several licences that contain restrictions on the operation on certain parts of the route for which a licence was granted. According to the Norwegian Transport Association, the various obligations increase costs above what would be incurred had the services been run on a strictly commercial basis and reduce revenues due to restrictions on the serving of the market along parts of the routes in order to protect the railways. According to the Norwegian Transport Association, the Authority's doubts that the Norwegian authorities have not shown to what extent the operators in question assume additional obligations and costs compared to the level of services provided for purely commercial reasons, would be purely theoretical. The operators in question were never able to provide regular transport services without public service obligations. As regards the Authority's doubts concerning the qualification of the restriction to serve routes along railway lines as being a public service obligation, the Norwegian Transport Association claims that it would follow from Council Regulation (EEC) No 1191/69 that the imposition of reduced revenues constituted a public service obligation. In this respect, it is maintained that compensation for such obligations was commonly used in Europe in the calculations of public service obligations.

The Norwegian Transport Association presented estimates regarding the financial consequences of public service obligations for scheduled bus services in Norway (subject to the compensation scheme administered by the Ministry of Transport). In its view, the negative value of the various obligations would be higher than the amount of fuel restitution. Even if there was an element of overcompensation, such advantages for public service transport were inherent to the EEA wide public transport policy.

Based on the calculations and considerations set out in the Annex II to the submission of the Norwegian Transport Association, financial consequences due to public service obligations can be summarised as follows ([31]):

Table 1

Conditions/Obligations	Estimated extra costs
— Unconditional obligation to carry	n.a.
— Engagement in sufficient number of buses	n.a.
— Equipment of bus stops with information boards and other items	n.a.
— Obligation to give financial and statistical information	n.a.
— Advertising in the 'Rutebok for Norge'	NOK 0,1 million ([1])
— Special fares and discounts	NOK 30 million p.a.
— Obligation to use specific terminals	NOK 13 million p.a. ([2])

([31]) It should be noted that the Norwegian Transport Association provided estimates for extra costs only for certain obligations and only for certain companies; where information was lacking, the Authority noted 'n.a.'.

Conditions/Obligations	Estimated extra costs
— Excess costs due to the use of compulsory routes in certain areas	NOK 0,5 million p.a. ([3])
— Reduced operating efficiency due to imposed time schedules, limitations in number of departures and periods of operation, mainly to protect railways	No general estimates were given; the Norwegian Transport Association referred to one example where an operator was not allowed to offer daytime bus services (for this specific case a cost estimate was given of NOK 0,5 million p.a.)
— Loss of revenues due to restrictions on the serving of the market, most often to protect railway lines from competition on similar routes	The Norwegian Transport Association stated that it was not possible to make realistic calculations of the financial consequences; it was however stated that the loss in revenues would be higher than the calculation of excess costs mentioned above.

([1]) Referring to advertising the route schedule of the NOR-WAY express bus scheme.
([2]) Reference was made to the obligatory use of specific terminals in Oslo, Trondheim, Kristiansand, Arendal, Stavanger, Haugesund, Bergen, Elverum, Fagernes and Otta; estimates were, however, provided only for user fees at terminals in Oslo and partly in Trondheim.
([3]) Estimates were given only for the south and westbound long distance buses from Oslo. The estimates for extra costs were only provided with respect to these routes. It was, however, indicated that similar costs would occur also in other areas, especially in major urban areas. In this respect, reference was also made to loss in revenues arising from prohibitions for serving town centres, without however giving estimates in this respect.

In addition to these estimates, the Norwegian Transport Association provided examples of certain express bus operators and the conditions under which certain routes were operated.

The Norwegian Transport Association stressed the importance of Norwegian express bus lines for the remote and sparsely populated districts of Norway where no alternative public transport is available.

Finally, the Norwegian Transport Association maintained that a decision from the Authority declaring the compensation scheme for one group of licensed bus operators as incompatible with the EEA Agreement would seem to be in breach of Article 61 and possibly Article 59 of the EEA Agreement as well as Article 9 of Council Regulation (EEC) No 1017/68 on rules of competition in transport ([32]). Furthermore, the Norwegian Transport Association draws the Authority's attention to the fact that according to the amended proposal for a new Regulation on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway ([33]), the rules of calculation of public service obligations under Article 1 in Annex I shall not apply to exceptions from some or all of the financial effect of an excise duty on fuels. In this way, the European Commission would intend to lift the fuel tax question completely out of the rules governing compensation for public service obligations. The Norwegian Transport Association considers this an important element which should be taken into account in the current investigation.

(e) ***Comments from the complainant***

According to the complainant, the 'non-subsidised' bus operators are not subject to public service obligations. In particular, on routes which are also served by the railway, it would be the railway services which would provide transport services in the public interest. There was no additional need for express busses along these routes.

([32]) Regulation (EEC) No 1017/68 of the Council of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ L 175, 23.7.1968, p. 1.
([33]) COM (2002) 107 final, 21.2.2002.

4. COMPATIBILITY OF THE COMPENSATION SCHEME UNDER THE ENVIRONMENTAL GUIDELINES

(a) ***Authority's views as expressed in the opening decision***

In the opening decision, the Authority took the view that the Norwegian authorities had not demonstrated that the compensation scheme complied with the conditions of the Environmental Guidelines as regards level of compensation, the temporary and degressive nature of the aid, as well as the necessity of the aid to offset losses in competitiveness.

(1) *Possible over-compensation*

In the opening decision, the Authority acknowledged that 'a decrease in compensation as compared to the relief previously granted under the exemption from the autodiesel levy might indicate that compensation remains below costs resulting from the autodiesel levy.' However, the Authority took the view that it could not be ruled out that operators who received payments under the scheme could benefit from compensation exceeding their actual costs resulting from the autodiesel levy.

(2) *Incentive effect: temporary and degressive nature of the compensation scheme*

As regards the temporary nature of the compensation scheme, the Authority observed in the opening decision that the compensation scheme did not contain any limitation in time. As regards the incentive effects of the compensation scheme, the Authority had expressed the concern that, '… there is no clear signal as to the future reduction of State support which would oblige bus operators to reduce their fuel consumption.'

The Authority also observed that the Norwegian authorities did not submit '… information which would have enabled the Authority to ascertain that compensation awarded under the scheme decreased continuously since its introduction and compared to the situation before the abolition of the tax exemption in 1999.'

Finally, the Authority expressed the concern that, '… without information on the level of compensation granted under the scheme, it is difficult to ascertain whether and to what extent the scheme has a sufficient incentive effect.'

(3) *Necessity to offset losses of competitiveness*

As regards the compensation scheme for the so-called 'non-subsidised' bus operators as opposed to so-called 'subsidised' bus operators, both providing regular transport services, the Authority observed in the opening decision that the initial Government's proposal on Green Taxes stated that no compensation would be necessary since these 'non-subsidised' bus operators were considered to be able to cover the increased costs either through an increase in ticket prices or through a reduction in profits. Therefore, the Authority had strong doubts as to whether the compensation scheme was necessary.

(b) ***Comments from the Norwegian Government***

(1) *Possible overcompensation*

The Norwegian Government argued that the compensation scheme was limited to the extra costs due to the introduction of the autodiesel levy. Furthermore, the Norwegian authorities informed the Authority that the amount of compensation was calculated based on the consumption of the most energy efficient vehicles. Overcompensation could only occur if an express bus operator would use less than 0,31 litres per km. Any amounts allocated under the scheme which would exceed the amount necessary to compensate for the consumption based on the most efficient vehicles would not be paid out. In addition, the Norwegian Government pointed out that bus operators had expenses which were not completely compensated for, such as assistance and position driving.

As regards the level of compensation granted under the compensation scheme at issue, the Norwegian authorities submitted the following figures:

Table 2

		1998	1999	2000	2001	2002
A	Amounts allocated under Chapter 1330, post 71 (NOK)	n.a.	71 million	75,4 million	50 million	29 million
B	Amounts actually spent (NOK)	n.a.	64 million	66 million (estimate)	50 million (estimate)	29 million (estimate)
C	Revenues from auto diesel levy only related to regular passenger transport services provided by non-subsidised bus operators (NOK) (VAT inclusive)	n.a.	More than 64 million	More than 66 million	More than 53 million	More than 51 million
D=B/C	Compensation spent expressed as percentage of revenue from auto-diesel levy	n.a.	Less than 100 %	Less than 100 %	Less than 100 %	Less than 100 %
E	Autodiesel consumption (litres per km) [1]	0,315 (estimate)	0,315 (estimate)	0,315 (estimate)	0,315 (estimate)	0,315 (estimate)
F	Autodiesel levy (NOK per litre) exclusive VAT	3,43	3,54	3,74 (as from 1 July: 3,54)	3,04 (as from 1 July: 2,72)	2,77
	Autodiesel levy (NOK per litre) VAT incl.	4,22	4,35	4,6 (as from 1 July: 4,35)	3,77 (as from 1 July: 3,37)	3,43
G	Compensation (NOK per km)	n.a.	1,37	1,41	1,07 (estimate)	0,62 (estimate)

[1] According to the Norwegian Government, these figures represent consumption of the most efficient vehicles.

(2) *Necessity to offset losses of competitiveness*

The Norwegian Government claimed that the compensation scheme was necessary to maintain the competitiveness of the bus operators providing regular passenger transport services. According to the Norwegian authorities, experience from recent years made it evident that public transport on a scale sufficient to compete effectively with the private car could not be upheld without substantial contributions from public funds. It was considered important not to weaken the competitiveness of public transport in relation to private cars.

The Norwegian Government claimed that, contrary to what had been stated in the initial proposal ([34]), profitability of these operators was not sufficient to absorb increased costs. Referring to the Norwegian Parliament's decision, it was expected that the abolition of the previous exemption from the autodiesel levy would change the commercial viability of many regular routes, with the consequence that so-called 'non-subsidised' routes formerly operating with small profit margins would have to be closed down. As for the other routes, ticket prices would have to be raised, with the danger of customers switching to private transport. It was also stressed that an increase in ticket prices was not regarded as acceptable from the point of view of providing public transport at affordable prices.

In this respect, the Norwegian Government referred to a report on an evaluation of the competitive situation of express busses ([35]). With respect to four selected routes (i.e. Haukeliekspressen, Møre-ekspressen, Nordfjordekspressen and TIMEkspressen), the Norwegian Government stated from that report that the percentage of travellers who alternatively would use a private car as driver or passenger would be on average around 47 %.

The Norwegian Government claimed that the costs related to the use of the private car did not, at present, reflect the external costs caused by this means of transport.

As regards the cost increases due to the abolition of the tax exemption, the Norwegian Government submitted information allowing a comparison between costs under the old legal framework, i.e. with the exemption from the autodiesel levy in 1998 and the costs under the new legal framework, i.e. after the exemption had been abolished as from 1 January 1999. According to the Norwegian authorities, the average price of autodiesel from retail dealers was NOK 4,38 (VAT incl.) per litre in 1998, while the average price was NOK 8,27 (VAT incl. and including the autodiesel levy) in 1999. The cost per km was NOK 1,38 in 1998 and NOK 2,61 in 1999 respectively (the cost per km was calculated based on the assumed consumption of 0,315 litre per km).

(c) ***Comments from the complainant***

The complainant claimed that the compensation scheme would result in operators being compensated for 0.45 litres per km, which was allegedly exceeding the real consumption.

(d) ***Comments from the Norwegian Transport Association***

According to information from the Norwegian Association of Transport Enterprises, to which the Norwegian Government referred, overall costs per km could be estimated as amounting to NOK 12 (VAT incl. and including autodiesel levy). This would imply that fuel costs in 1998 (VAT incl. but without autodiesel levy) could be estimated to be about 12 % of overall costs, while fuel costs in 1999 (VAT incl. and including the autodiesel levy) could be estimated to be about 20 % of overall costs.

(e) ***Comments regarding the level playing field within the EEA***

The Norwegian Government and the Norwegian Transport Association claimed that the compensation scheme in Norway would be similar to derogations from the mineral oil duty in favour of local public passenger transport within the European Union. These derogations were covered by the EC Mineral Oil Directive ([36]) and the recent European Council decision of 12 March 2001 ([37]). In addition, the Norwegian Government claimed that the special topography of Norway, as well as the fact that the country's population lives very scattered around the country compared to other European countries, would require special arrangements within the public transport sector. In remote areas of the country, it would be difficult to maintain public transport on a commercial basis.

([34]) Cf. Norwegian Government's proposal for the State Budget 1999 (St.prp. nr.1 (1998-1999)), which follows up on the proposals made in the Parliamentary Bill on Green Taxes (St.prp. nr. 54 (1997-98)).
([35]) 'Evaluering av konkurranseflater for ekspressbussruter', Hjellnes COWI AS, July 1999.
([36]) Within the European Community, there are two 'Mineral Oil Directives': Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils (OJ L 316, 31.10.1992, p. 12) and Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils (OJ L 316, 31.10.1992, p. 19).
([37]) EC Council Decision of 12 March 2001 concerning reduced rates of excise duty and exemptions from such duty on certain mineral oils when used for specific purposes (OJ L 84, 23.3.2001, p. 23).

The complainant claimed, in his letter dated 8 May 2002, that the compensation scheme in Norway could not be regarded as an acceptable exemption covered by Council Directive 92/81/EEC ([38]). In this respect, he claims that the compensation is not dependent upon the amount of fuel actually used, but instead on the route kilometres; this would not take into account that the amount of fuel used varied considerably based on speed, time of the year, road quality, etc.. The complainant also points out that, according to the Directive, exemptions may only be authorised if they do not give rise to distortions of competition.

II. **APPRECIATION**

A. *STATE AID WITHIN THE MEANING OF ARTICLE 61(1) OF THE EEA AGREEMENT*

Article 61(1) of the EEA Agreement stipulates: 'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between the Contracting Parties, be incompatible with the functioning of the Agreement.'

Support measures under the compensation scheme are financed through the State budget (cf. State Budget, Chapter 1330, post 71: Subsidies for express busses, 'Tilskudd til ekspressbusser'). It follows from established case law that measures which mitigate the charges that are normally included in the budget of an undertaking, constitute State aid ([39]). Bus operators eligible under the compensation scheme receive a financial contribution which reduces their normal business expenses (i.e. costs due to the autodiesel levy), thus giving them an advantage over their competitors.

In the Authority's view, this assessment is not altered by the findings of the European Court of Justice in the 'Ferring' judgment ([40]). In that judgment, the Court held that tax measures which have the effect of exempting certain operators from the tax in question, and which compensate for the additional costs actually incurred by these operators in discharging their public service obligations, might be regarded as a service these operators provide and hence not State aid within the meaning of Article 92 of the EC Treaty (now Article 87 EC). The Court also stated that, provided there is the necessary equivalence between the exemption and the additional costs incurred, the operators in question would not be enjoying any real advantage for the purposes of Article 92(1) of the EC Treaty (now Article 87 EC) because the only effect of the tax measure in question was to put operators active in the same market on an equal competitive footing.

Given the sector specific rules in the transport sector (in particular, Article 49 of the EEA Agreement and Council Regulation (EEC) No 1191/69), it is not obvious that the conclusions of this judgment may be applied to the transport sector. The question of qualification of public support for regular passenger transport as State aid is currently pending before the European Court of Justice ([41]).

Furthermore, and as will be explained in more detail below, the Norwegian Government has not, in the Authority's view, shown whether and to what extent the bus operators benefiting from the compensation scheme are subject to public service obligations which would result in a possible competitive disadvantage compared to other (commercial) bus operators. In addition, the Authority was not satisfied that the compensation granted to express bus operators would be limited to the additional costs incurred due to the alleged public service obligations. In fact, the compensation scheme as such provides for no explicit link between possible public service obligations and the compensation. Consequently, the Authority cannot rule out that financial support granted under the compensation scheme might confer on the eligible operators a real economic advantage subject to the EEA State aid rules.

([38]) Council Directive 92/81/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils (OJ L 316, 31.10.1992, p. 12).
([39]) Judgment of the European Court of Justice, Case C-387/92 Banco Exterior de España [1994] ECR I-877, paragraph 13, and Case C-75/97 Belgium v Commission [1999] ECR I-3671, paragraph 23.
([40]) Judgment of the European Court of Justice of 22 November 2001, Case C-53/00, Ferring SA v ACCOSS [2001] ECR I-9067, para. 27 and 29.
([41]) Case C-280/00, 'Altmark Trans GmbH'; request for preliminary ruling pending before the European Court of Justice: OJ C 273, 23.9.2000, p. 8.

The aid scheme is also specific inasmuch as it favours only undertakings in the transport sector.

For a measure to be caught by Article 61(1) of the EEA Agreement, it must also distort competition and affect trade between the EEA States. When State financial aid strengthens the position of an undertaking compared to other undertakings competing in intra-Community trade, the latter must be regarded as affected by the aid ([42]). According to recent case law by the European Court of Justice, '… in matters relating to State aid, it is sufficient that the market concerned be open, even partly, to competition for aid to be capable of affecting trade between Member States' ([43]).

As regards the possible distortive effects of the State support granted under the compensation scheme, the Authority recalls the legal provisions applicable to passenger transport. Access to the international market for the carriage of persons has been opened up through Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus ([44]). Cabotage rights were introduced by Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State ([45]), subsequently replaced by Council Regulation (EEC) No 12/98 of 11 December 1997 on the same subject ([46]).

Pursuant to Council Regulation (EEC) No 12/98, road passenger transport cabotage, with the exception of domestic regular services, was liberalised as from 1 January 1996. These provisions have opened up the market to competition for occasional services, special regular services as well as regular services provided in the course of an international regular service.

According to an analysis of the passenger transport market carried out by the European Commission, the public transport market within the EC is gradually being opened to competition. With reference to 11 out of the 15 Member States, the European Commission observes that legislation or administrative arrangements have been introduced providing for competition in at least part of the urban, regional and inter-regional bus and coach markets ([47]).

Furthermore, the European Commission's analysis refers to public procurement rules and, in particular, national legislation in EC Member States, which would enhance EC/EEA wide market access. Finally, the European Commission noted that transport undertakings showed an increasing interest in entering other countries' domestic markets and have, to a certain extent, already acquired shares in national bus companies or operate public service transport outside their home markets ([48]).

As the Authority already pointed out in the opening decision, express bus operators provide both regular passenger transport services and occasional transport services. Therefore, there is a risk that State support under the compensation scheme might be used by express bus operators for occasional transport services. Furthermore, even as regards the market for regular passenger transport services, State support granted under the compensation scheme may be used by the eligible operators to provide similar services abroad in countries which have opened up that market segment to competition.

([42]) Case 730/79, Philip Morris v Commission [1980] ECR p. 2671, para. 11.
([43]) Judgement of 4 April 2001, Case T-288/91, Regione Friuli Venezia Giulia v Commission, [2001] ECR II-1169, para. 95.
([44]) OJ L 74, 20.3.1992, p. 1; incorporated into the EEA Agreement in Annex XIII, point 32.
([45]) OJ L 251, 29.8.1992, p. 1; incorporated into the EEA Agreement in Annex XIII, point 33a.
([46]) OJ L 4, 8.1.1998, p. 10; incorporated into the EEA Agreement in Annex XII, point 33b.
([47]) See European Commission's first proposal for a Regulation on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway, COM (2000) 7 final of 26.7.2000, in particular, page 4 of the explanatory memorandum: http://europa.eu.int/eur-lex/en/com/pdf/2000/en_500PC0007.pdf. According to the information contained in this explanatory memorandum, in particular, Denmark, Finland and Sweden have already opened their transport markets.
([48]) The Authority notes that Norwegian companies engaged in bus operations have acquired foreign undertakings providing bus transport services, see e.g. European Commission decision of 10 December 1999 (Case No COMP/M.1768-SCHOYEN/GOLDMAN SACHS/SWEBUS) declaring a concentration between inter alia the Norwegian company Schoyen, engaged, in particular, in bus operations and the Swedish company Swebus, engaged in the provision of bus and coach transport, compatible with the common market, published in OJ C 11 of 14.1.2000, p. 6.

These circumstances alone lead to the conclusion that the compensation scheme which grants aid to undertakings providing regular passenger transport on a local, regional and inter-regional level must be regarded as being liable to distort competition and to affect trade within the meaning of Article 61(1) of the EEA Agreement.

This conclusion is also in line with European Commission practice in this area ([49]).

In addition, the Authority observes that the information submitted by the Norwegian Government as well as information and comments submitted by third parties in the course of the formal investigation procedure indicate that the compensation granted to 'non-subsidised' bus operators actually distorts competition and affects trade.

Firstly, information submitted in the course of the formal investigation procedure showed that almost 50 % of operators eligible under the compensation scheme provided both regular and occasional services. Consequently, any financial benefits granted to express bus operators for the operation of regular passenger transport services could be channelled into other business areas, such as the provision of occasional transport services.

Secondly, the Authority cannot exclude that, at least on certain routes, regular and occasional services are in competition with each other. As regards the competitive situation between regular and occasional bus services, the Norwegian Government claimed that due to differences in the legal conditions under which scheduled and occasional services operate, occasional and regular passenger transport constituted two separate markets. However, the Authority observes that the actual scope of competition between regular transport services and occasional transport services cannot be determined in an abstract manner. Whether or not both kinds of services are in competition with each other can only be determined based on individual routes and the individual circumstances, such as distances, location, etc.

Based on the information submitted by the Norwegian Government and its comments to the complainant's allegations in this respect, the Authority notes that there would seem to be a number of routes which are served both by regular and occasional services. This would seem to be the case, in particular, where the final destination is a tourist site/ski resort or where tourist attractions are located along a specific route. In addition, the information submitted shows that operators providing regular transport services were allowed to serve groups of passengers to special excursion spots.

The market for occasional services (as well as for the transport of goods/packages) is a fully liberalised market. Therefore, State support which may distort competition on this market is also liable to affect trade. Furthermore, the State support may also affect trade as regards the provision of regular transport services. The fact that foreign operators providing international regular transport in Norway might equally benefit from the compensation scheme at issue does not exclude effects on trade, because operators benefiting under the compensation scheme may take advantage of the market opening in other EEA States and provide regular transport outside Norway.

Therefore, the Authority concludes that the compensation scheme at issue is liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement.

Based on the foregoing considerations, the Authority concludes that the compensation scheme at issue constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

([49]) See European Commission decision regarding the continuation of the ecological tax reform, State aid N 575/A/99 — Germany, as well as the more recent Commission decision regarding the continuation of these measures beyond March 2001, State aid N 449/2001 — Germany and the more recent Commission decision in State aid N 588/2002 — United Kingdom concerning a grant scheme for long-distance coach services.

B. *NOTIFICATION REQUIREMENT AND STANDSTILL OBLIGATION*

Pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, '[t]he EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid…The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision'.

This notification requirement and standstill obligation concern 'new aid'. On the other hand, 'existing aid' can be granted until the Authority finds the aid in question to be incompatible with the functioning of the EEA Agreement. According to point 7.2 of Chapter 7 of the Authority's State Aid Guidelines, 'existing aid' is defined as 'pre-EEA' aid (i.e. 'aid schemes in operation at the time of the entry into force of the EEA Agreement') and authorised aid.

In deciding whether or not an aid scheme is to be regarded as 'new aid' or 'existing aid', the Authority examines the relevant legal provisions providing for the aid in question, and in particular the entry into force of these provisions. The Authority is not obliged to carry out an economic analysis of the measure in question as compared to aid schemes which had been in place prior to the introduction of new legal provisions.

This view is confirmed by the case law of the European Court of Justice.

According to the European Court of Justice in the 'Namur-Les Assurances'-case '…the emergence of new aid or the alteration of existing aid cannot be assessed according to the scale of the aid or, in particular, its amount in financial terms at any moment in the life of the undertaking if the aid is provided under earlier statutory provisions which remain unaltered. Whether aid may be classified as new aid or as alteration of existing aid must be determined by reference to the provisions providing for it.' ([50]) (underlined here).

The fact that the previous tax exemption, which was based on decisions adopted under the Norwegian Act on excise duties, was abolished and a new compensation scheme put into place, is sufficient to turn this compensation scheme into 'new aid' within the meaning of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.

In addition, the Authority takes the view that the compensation scheme introduced in 1999 contains provisions regarding the scope of activities eligible for support and, in particular, the calculation of the compensation, which are as such substantially different from the previous rules governing the tax exemption. In this respect, the Authority notes, in particular, that whereas the previous exemption from the autodiesel levy ensured that the benefits resulting from this tax exemption were, by definition, equal to the costs resulting from the autodiesel levy, the newly introduced compensation scheme does not ensure that operators may not receive more than their actual costs due to the autodiesel levy. The compensation scheme bears the risk of overcompensation, given that the amount of compensation is not linked to the actual autodiesel costs incurred by the operators concerned but is determined based on the route kilometres driven by operators applying for State support under the scheme ([51]).

In the Authority's view, the compensation scheme was not exempted from the notification requirement pursuant to Article 17(2) of Council Regulation (EEC) No 1191/69, since the conditions laid down in the Regulation were not fulfilled ([52]).

([50]) Judgment of the Court of 9 August 1994, Case C-44/93 Namur-Les Assurances du Crédit SA, [1994] ECR I-3829, para. 28.
([51]) This issue will be discussed in more detail below.
([52]) For a detailed assessment of compensation scheme under Council Regulation (EEC) No 1191/69, see below.

The Authority, therefore, concludes that the compensation scheme introduced in 1999 constitutes 'new aid' which, pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, should have been notified to the Authority in advance ([53]).

Since the compensation scheme at issue was not notified to the Authority in advance, it is considered as being 'aid unlawful on procedural grounds', in accordance with Chapter 6 of the Authority's State Aid Guidelines.

C. *COMPATIBILITY OF COMPENSATION SCHEME FOR EXPRESS BUSSES*

In light of the objectives invoked by the Norwegian Government, the Authority assessed the compensation scheme for 'non-subsidised' bus operators under Council Regulation (EEC) No 1191/69 (and Article 49 of the EEA Agreement) and Article 61(3)(c) of the EEA Agreement in combination with the Environmental Guidelines.

1. COUNCIL REGULATION (EEC) No 1191/69

(a) ***Legal framework conditions***

Pursuant to Article 49 of the EEA Agreement, '[a]id shall be compatible with this Agreement if it meets the needs of coordination of transport or if it represents reimbursement for the discharge of certain obligations inherent in the concept of a public service.'

Regulation (EEC) No 1191/69 of 26 June 1969 on action by the Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway ([54]), as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991 ([55]) and incorporated into the EEA Agreement, lays down the rules under which compensation payments for public service obligations can be regarded as compatible with the functioning of the EEA Agreement.

Council Regulation (EEC) No 1191/69 declares compatible and exempts from the requirement of prior notification compensation for public service obligations, where such obligations have been imposed and where the amount of compensation has been determined in accordance with the provisions of the Regulation.

Public service obligations within the meaning of the Regulation are defined and enumerated in Article 2 of Council Regulation (EEC) No 1191/69. In follows from Article 2 of the Regulation that any such obligations may only give rise to compensation if it can be established that these obligations have been imposed on the operators concerned contrary to their commercial interests.

Furthermore, Article 3 of Council Regulation (EEC) No 1191/69 allows EFTA States to maintain public service obligations in order to ensure adequate transport services, having regard to the public interest and the possible recourse to other forms of transport. Transport undertakings may apply to the competent authorities for the termination of such obligations where the obligation entails economic disadvantages. Article 6(2) of the Regulation requires that the decision to maintain public service obligations shall also provide for compensation determined in accordance with the provisions of the Regulation (cf. Articles 10 to 13 of the Regulation).

([53]) The Authority's conclusions are in line with European Commission practice, e.g. State aid N 1999/99 — Netherlands regarding tax relief for municipal transport undertakings.
([54]) OJ L 156, 28.6.1969, p.1; incorporated into the EEA Agreement under point 4, Chapter I. 'Inland Transport' of Annex XIII.
([55]) OJ L 169, 29.6.1991, p.1; incorporated into the EEA Agreement under point 4, Chapter I. 'Inland Transport' of Annex XIII.

(b) ***Definition of public service obligations***

At the outset, the Authority observes that it does not exclude that the conditions laid down in the Norwegian regulation on domestic passenger transport could, in principle, be regarded as public service obligations referred to in Article 2(2) to (5) of Council Regulation (EEC) No 1191/69.

(c) ***Imposition of specific public service obligations on 'non-subsidised' bus operators***

The Authority takes the view that, based on the information submitted, the conditions laid down in the Norwegian regulation on domestic passenger transport cannot be regarded as having been imposed on the bus operators benefiting under the compensation scheme for express busses.

In the Authority's view, there is a significant difference between 'subsidised' and 'non-subsidised' bus operators which require a different assessment under Council Regulation (EEC) No 1191/69. This difference follows the legal framework conditions established under Norwegian law. 'Subsidised' operators were selected to provide regular passenger transport services following a tender procedure in which the competent authorities lay down the specific conditions under which operators are invited to provide transport services. The selected operators receive direct State support in the form of compensation for the costs resulting from the provision of transport services at a level determined through the tender procedure. The conclusion of a contract with operators having been selected by a tender and giving them the right to operate a certain route, subject to the predetermined obligations, could be regarded as a decision by which specific public service obligations were imposed on the selected operator. On the other hand, 'non-subsidised' operators have taken up regular transport services out of commercial considerations. Consequently, such operators are, according to Norwegian law, not entitled to receive direct State support for the provision of regular passenger transport services on these routes.

The Authority is of the opinion that the licence granted by the competent authorities to 'non-subsidised' bus operators to provide regular passenger transport services on certain routes, cannot be regarded as a decision required by Article 3 and 6 of Council Regulation (EEC) No 1191/69. In the Authority's view, the licence is rather the pre-requisite for the provision of regular passenger transport services, than a decision by which the provision of such services was imposed on these operators. Even though the licence granted to these bus operators entails the obligation to satisfy the conditions laid down in the Transport Act as well as the regulation on domestic passenger transport, these conditions do not necessarily constitute public service obligations imposed on the operators concerned, given that these operators have applied for a licence to run regular transport services out of commercial considerations. In addition, the Authority observes that the level of service appears to have been determined to a large extent by the bus operators applying for a licence for regular passenger transport services on a given route, rather than by the public authorities ([56]).

The Authority is aware that applications for licences on particular routes and the level of services offered by the bus undertakings and contained in these licences were submitted under legal framework conditions which relieved the operators in question (partly ([57])) of the costs resulting from the autodiesel levy. It might not be excluded that the commercial assumptions underlying the application for a licence to operate regular passenger transport services have changed, where bus operators have to bear (part of) the autodiesel costs themselves.

([56]) See e.g. the decision of the Møre and Romsdal County dated 6 February 2002 as well as the decision of the Buskerud County dated 22 August 2001. Both decisions are available on the Internet.

([57]) Where operators have applied for a licence prior to 1 January 1999, they have been fully exempted from the payment of the autodiesel levy; on the other hand, where licences were awarded after that date, operators were, in principle, subject to the autodiesel levy, while being entitled to receive compensation under the compensation scheme in question, thus being only partly relieved from the costs resulting from the autodiesel levy.

The Authority also notes that the relevant legal provisions (cf. § 19 of the regulation on domestic passenger transport) would seem to allow transport undertakings to request the termination of transport services on a particular route or changes to conditions under which transport services are provided. Based on such a request, the competent authorities could impose public service obligations on the operator concerned, if the maintenance of transport services on that route is regarded as being in the public interest. The application of this provision would have allowed the Norwegian authorities to determine which routes were considered to be in the public interest and which conditions and obligations needed to be imposed on the operator concerned, in order to ensure a service level the operator would not offer out of its own commercial interests.

The Authority notes, however, that this provision was not applied in the present case. Therefore, the Authority takes the view that there was no decision taken by the competent public authorities in which public service obligations were imposed on specific operators.

(d) ***Determination of extra costs compared to costs incurred by 'non-subsidised' bus operators out of their own commercial interest***

The Authority is aware that § 19 of the regulation on domestic passenger transport may not have been invoked due to the existence of the compensation scheme. The Authority therefore examined whether, based on the operators' financial situation, non-subsidised bus operators could be regarded as assuming obligations as laid down in the Transport Act and the regulation on domestic passenger transport contrary to their commercial interest (in particular, where the operation of certain routes, without revenues from the compensation scheme, would be loss making).

The Authority does not exclude that commercial (i.e. profitable) operators may be eligible for State support in the form of compensation for public service obligations, as claimed by the Norwegian Transport Association. However, in order for such State support to be regarded as compatible with the functioning of the EEA Agreement, the requirements laid down in Council Regulation (EEC) No 1191/69 must be fulfilled (in particular, the additional net cost generated by specific public service obligations must be determined and the compensation amount calculated accordingly).

According to the 'common compensation procedures' laid down in Articles 10 to 13 of Council Regulation (EEC) No 1191/69, the amount of compensation has to be determined based on the extra costs of specific conditions and obligations, net of benefits. The application of this method would require the competent authorities to compare the situation in which the public service obligation is fulfilled, with the (real or hypothetical) situation in which the operator in question would have been free to determine the operation of the service in question on a purely commercial basis. The determination of the amount of compensation requires a case-by-case assessment by the competent authorities of the cost and revenue effects due to the public service obligations in question.

In this respect, the Authority notes that the compensation scheme at issue does not provide for such an assessment. It is therefore difficult to see how the compensation scheme for express bus operators can be regarded as satisfying the requirements laid down in Council Regulation (EEC) No 1191/69.

In addition, the Authority notes that the information submitted by the Norwegian Government and the Norwegian Transport Association does not clearly establish the extra costs due to all alleged public service obligations, nor does it establish such extra costs for individual carriers. In this respect, the Authority notes that for some obligations (such as the unconditional obligation to carry) no estimates as regards extra costs, were submitted. In addition, some of the obligations referred to by the Norwegian Government as well as the Norwegian Transport Association would, in the Authority's view, not necessarily imply extra costs compared to what the operators concerned would do in their own commercial interest (e.g. requirement that information regarding route schedules should be adequately publicised). Further conditions would also seem to generate additional revenues that would have to be deducted from the extra costs. However, no information on possible additional revenues due to the obligations referred to by the Norwegian Transport Association was submitted.

Consequently, the Authority takes the view that the Norwegian Government did not demonstrate the existence of extra costs with respect to all alleged public service obligations and all operators allegedly being subject to such obligations.

(e) ***Compensation limited to the net extra costs due to public service obligations***

The Norwegian Government argued that the compensation scheme could not result in overcompensation for express bus operators since the amount of compensation would always remain below the costs due to the autodiesel levy.

Whether or not the compensation only partly covers the costs due to the autodiesel levy, is irrelevant for the assessment of the compatibility of the compensation scheme under Council Regulation (EEC) No 1191/69, because the costs due to the autodiesel levy incurred by express bus operators, may not be equal to the costs due to the alleged public service obligations.

As stated above, the information submitted only consisted of estimates for certain obligations and certain operators. Certain obligations referred to by the Norwegian Transport Association would seem to be applicable for all regular passenger services (e.g. unconditional obligation to carry, engagement of sufficient number of buses, publication in the 'Rutebok'), whereas other obligations would only seem to apply for a certain number of operators (e.g. use of specific terminals, use of specific stopping points, requirement to equip bus stops with information boards, priority for certain groups of passengers, use of tickets, tickets machines approved by competent authorities) ([58]).

Therefore, the conditions under which regular transport services are provided and possible (net) additional costs incurred by the bus operators concerned, may differ substantially from one bus operator to another and from one route to another. On the other hand, the amount of compensation is determined based on the route production. The amount does not vary depending on the existence or non-existence of specific obligations or on the costs related to these obligations.

Consequently, the Norwegian Government has not demonstrated that the State support granted under the compensation scheme does not entail any overcompensation of the alleged public service costs incurred by the operators concerned.

(f) ***Conclusions regarding the assessment under Council Regulation (EEC) No 1191/69 and final remarks***

In light of the foregoing circumstances, the Authority concludes that the conditions under which express bus operators provide regular passenger transport services cannot in an abstract manner be regarded as public service obligations imposed on the operators in question. Furthermore, the Norwegian Government has not demonstrated that the alleged public service obligations generated extra costs (and failed to quantify any such costs) and that the compensation granted to the express busses under the compensation scheme in question was limited to these extra costs. Consequently, the Authority did not regard the requirements laid down in Council Regulation (EEC) No 1191/69 to be fulfilled.

Assuming that the compensation scheme could be assessed directly under Article 49 of the EEA Agreement ([59]), the Authority considers that the compensation scheme could not be regarded as compatible with that provision, given that the Norwegian Government has not demonstrated that the compensation was necessary and proportionate to the provision of a public service.

([58]) The difference in conditions under which transport services are provided, is apparent from information provided by the Norwegian Transport Association with respect to the cost of public service obligations and conditions laid down in individual licences.

([59]) In this respect, the Authority also notes that, according to the recent Opinion delivered by Advocate General Léger in the 'Altmark Trans'-case, recourse to the basic provisions of the EC Treaty regarding reimbursement for public service obligations is not permissible (cf. First Opinion delivered on 19 March 2002, para. 114 — 117, not yet reported.

The Authority would like to point out that the above conclusion does not mean that regular passenger transport provided by express busses may not be compensated for the costs due to public service obligations that have actually been imposed on them. It would depend on an individual assessment carried out by the competent authorities of the circumstances regarding the routes in question whether and to what extent public service obligations are or can be imposed on the operator in question, to determine the extra costs related to these obligations and to award compensation covering these extra costs. Without such an individual assessment by the competent national authorities, the Authority cannot see how the compensation scheme for express bus operators could be regarded as compatible with the EEA State aid rules.

Finally, the Authority is not aware of any European Commission decision which would have approved aid comparable to the aid granted under the compensation scheme at issue based on Council Regulation (EEC) No 1191/69. On the contrary, a recent Commission decision concerning grants for long-distance coach services in the United Kingdom shows that the European Commission, when assessing the compatibility of compensation payments for public service obligations under Council Regulation (EEC) No 1191/69, attached great importance to the risk of possible over-compensation. The European Commission considered that the grant scheme as such, according to which grants were calculated based on the mileage operated without there being a link to the actual costs incurred due to public service obligations, did not avoid the risk of over-compensation. Only after the British authorities had introduced mechanisms ensuring that neither on an overall level nor on the level of each operator benefiting from the scheme payments made under the grant scheme could lead to overcompensation, the European Commission considered the grant scheme to be in accordance with the requirements laid down in Council Regulation (EEC) No 1191/69 ([60]).

2. ARTICLE 61(3)(C) OF THE EEA AGREEMENT, IN COMBINATION WITH THE ENVIRONMENTAL GUIDELINES

The Authority has, on the basis of the additional information furnished by the Norwegian Government, examined whether the compensation scheme may benefit from an exemption under Article 61(3)(c) of the EEA Agreement in connection with Chapter 15 of the Authority's State Aid Guidelines regarding aid for environmental protection.

At the outset, it should be recalled that, after the Authority's decision to open the formal investigation procedure, new Environmental Guidelines were adopted ([61]).

Pursuant to point 73 of the new Chapter 15 of the Authority's State Aid Guidelines, the new guidelines will apply from the date of their adoption (i.e. as from 23 May 2001). Pursuant to point 74 of the new Chapter 15 of the Authority's State Aid Guidelines on environmental protection, the Authority will apply the 1994 guidelines ([62]) in cases of non-notified aid, when aid has been granted before the adoption of the new guidelines. To the extent, aid is granted after the adoption of the new guidelines, the Authority applies the new guidelines.

As has been stated above, the compensation scheme constitutes new aid which has not been notified by the Norwegian Government to the Authority. It is therefore non-notified aid within the meaning of point 74 of the new Environmental Guidelines.

Consequently, the Authority assessed the compensation scheme for the period 1 January 1999 until 22 May 2001 under the 1994 Environmental Guidelines, and for the period starting 23 May 2001 under the new Environmental Guidelines.

([60]) State aid No N 588/2002 — United Kingdom.
([61]) Authority's decision of 23 May 2001, Dec. No. 152/01/COL, published in OJ L 237, 6.9.2001, p. 16.
([62]) Published in OJ L 231, 3.9.1994.

(a) ***Assessment of the compensation scheme under the 1994 Environmental Guidelines***

Pursuant to point 15.4.3 of the Authority's 1994 Environmental Guidelines, operating aid may be acceptable in the fields of waste management and relief from environmental taxes. Application of the conditions laid down in the Authority's State Aid Guidelines implies that, in principle, compensation should be limited to extra production costs and the aid should be temporary and in principle degressive, so as to provide an incentive for reducing pollution or introducing more efficient uses of resources more quickly. Such temporary relief from new environmental taxes may be authorised where it is necessary to offset losses in competitiveness, particularly at international level. A further factor to be taken into account is what the firms concerned have to do in return to reduce their pollution.

(1) *Compensation limited to extra production costs*

In the course of the formal investigation procedure, the Norwegian Government provided figures related to the overall amounts spent under the compensation scheme as compared to the revenues due to the autodiesel levy. These figures, which were up-dated based on the Norwegian Government's recent budgetary proposals, are reproduced in the table below.

Table 3

	1998	1999	2000	2001	2002
Compensation payments (revised)	n.a.	64,0 million	71,7 million	40,8 million	29,0 million
Revenues from the autodiesel levy (incl. VAT) ([1])	n.a.	64,0 million	66,0 million	53,0 million	51,0 million

([1]) These figures do not represent the actual amount of revenues due to the collection of the autodiesel levy from 'non-subsidised' bus operators, but are calculated based on the consumption of the most efficient vehicles.

The Norwegian Government claimed that the revenues from the autodiesel levy exceeded the amounts spent under the compensation scheme. Consequently, the general level of compensation was, according to the Norwegian Government, always below 100 %.

In this respect, the Norwegian authorities claimed that the revenues from the autodiesel levy would in reality be higher than the amount stated in the above table. According to the Norwegian authorities, the amount of revenues as communicated to the Authority was not based on the autodiesel levy actually collected from the non-subsidised bus operators, but was calculated based on the assumption that the bus operators concerned would use the most energy efficient vehicles (with a consumption of 0,315 litres per km). According to the Norwegian authorities, bus operators were not all equipped with these vehicles. Should operators in reality have higher autodiesel consumption than assumed for the purpose of the calculation of the revenues, the figure regarding revenues due to the autodiesel levy might be higher. In that case, the level of compensation and thus the aid intensity would in reality be lower than the one calculated on the basis of the figures presented by the Norwegian authorities.

However, given the absence of verifiable information concerning the exact amount of revenues from the autodiesel levy collected from express bus operators benefiting from the compensation scheme, the Authority can only base itself on the figures provided by the Norwegian Government as stated in the above table. Based on these figures, the level of compensation would amount to 100 % in 1999, approximately 109 % in 2000 and 77 % in 2001. Consequently, the level of compensation, as determined based on the above figures, would amount on average to 95,3 %, during the period 1999-2001.

The Authority regrets that the figures provided by the Norwegian Government do not allow the Authority to establish the exact level of compensation. Despite the remaining uncertainties, the Authority can, however, conclude that the amount of compensation awarded under the compensation scheme was on average limited to the extra costs (i.e. those costs resulting from the autodiesel levy, including VAT ([63])). In addition, the Authority takes note of the assurance from the Norwegian Government that any amounts allocated under the scheme which would exceed the amount necessary to compensate for the consumption based on the most efficient vehicles, would not be paid out. The Authority takes also note of the statement from the Norwegian Government that expenses related to assistance and position driving would not be completely compensated for.

(2) *Temporary and degressive relief from new environmental taxes, so as to provide an incentive for reducing pollution or introducing more efficient uses of resources more quickly*

The Authority observes that the compensation scheme, as such, is not limited in time. The continuation of the compensation scheme depends upon the annual budget proposals from the Norwegian Government and the annual budgetary decisions taken by the Norwegian Parliament. However, that part of the compensation scheme which is to be assessed under the 1994 Environmental Guidelines is limited in time, i.e. from 1 January 1999 until 22 May 2001, or approximately 2 ½ years ([64]).

Based on the figures presented by the Norwegian Government, the Authority observes that the amounts allocated to the compensation scheme decreased, from 1999 to 2001 (from NOK 64 million in 1999 to NOK 40.8 million in 2001). Based on the figures presented by the Norwegian Government ([65]), the level of compensation was, during the period 1999-2001 reduced from 100 % in 1999 to 77 % in 2001. If the level of compensation resulting from the application of the compensation scheme in 2002 was to be taken into account (i.e. 56.9 %), a certain overall downwards trend can be observed. In this respect, it should, however, be noted that strict compliance with the principle of degressivity has not been required by the European Commission in its practice ([66]).

On the other hand, the level of compensation throughout that same period was very high. Based on the figures presented by the Norwegian Government, the average level of compensation amounted to 95,3 % ([67]). As pointed out above, this percentage does not necessarily reflect the actual level of compensation, given that these figures are estimates based on the assumed consumption of autodiesel of only the most energy efficient vehicles.

It should be recalled that only where operators would have a fleet consisting entirely of what are regarded as being the most energy efficient vehicles, the compensation granted would cover a large proportion of their costs, due to the autodiesel levy. Compared to the situation prior to 1999, where bus operators were fully exempted from the autodiesel levy, it is reasonable to assume that operators would seem to have an incentive to minimise additional costs and thus replace existing fleet with new energy efficient vehicles. The Authority regrets that the Norwegian Government did not furnish information concerning the eligible operators' behaviour following the abolishment of the tax exemption and the introduction of the compensation scheme, and in particular as to whether these operators invested in less polluting vehicles. However, the Authority is aware that, under the 1994 Environmental Guidelines, permissible aid was not subject to a fixed ceiling. Commission practice under the 1994 Environmental Guidelines shows that the conditions concerning the incentive effect of the tax measure in question were regarded as being fulfilled provided that the tax relief did not fully compensate for the tax. Under such circumstances, the European Commission considered that the tax itself gave the beneficiaries an incentive to reduce their polluting behaviour ([68]).

([63]) The extra costs resulting from the abolishment of the exemption from the autodiesel levy are both the autodiesel levy as such and the VAT charged on that levy. It should be stressed that the extra costs do not, however, include costs due to the VAT charged on the price of the autodiesel as such.

([64]) See State aid No NN 75/2002 — Finland, where the Commission considered the requirement regarding the temporary nature of the aid to be fulfilled given that the duration of the scheme to be assessed under the 1994 Environmental Guidelines was limited to approximately 4 years; see also State aid No NN 3/A/2001 and NN 4/A/2001 — Sweden, where the European Commission considered that the '.. issue of whether the aid was temporary becomes irrelevant.'

([65]) As regards the calculation of the level of compensation, see explanation on page 33.

([66]) See Commission decision referred to in footnote 69.

([67]) As regards the calculation of the level of compensation, see explanation on page 33.

([68]) See e.g. State aids No NN 3/A/2001 and NN/4/2001 — Sweden 'Prolongation of CO_2 tax scheme', the scheme was assessed partly under the 1994 and partly under the new environmental guidelines; State aid No N 575/A/1999 — Germany 'Continuation of the ecological tax reform'.

(3) *Necessity to offset losses of competitiveness*

According to the guidelines, temporary relief from environmental taxes may be authorised where it is necessary to offset losses of competitiveness.

The abolishment of the exemption from the autodiesel levy for bus operators resulted in an additional burden for companies providing regular passenger transport services. This cost increase was estimated by the Norwegian authorities to be in the range of 8 % of the undertakings' overall costs per km. The services provided by express bus operators are competing for passengers that would otherwise use the private car. Public transport causes less environmental damage than the use of the private car. Based on studies about the external costs of transport in Europe (studies including Norway), average external costs resulting from the use of the car (including externalities such as air pollution, climate change and accidents) are more than twice the external costs caused by the use of busses ([69]). There is currently no comprehensive system which would ensure that these external costs are fully internalised in the various modes of transport and thus reflected in market prices. According to the Norwegian Government, costs related to the use of the private car do not at present reflect the external costs caused by this means of transport. The compensation granted to operators providing regular passenger transport might therefore be interpreted as a compensation for unpaid external costs caused by the use of private cars. Such a measure constitutes a second best solution in the absence of a comprehensive system internalising external costs caused by the transport system. Given the particularities of the market for providing regular passenger transport services, the Authority considers that it is justified to adopt measures to safeguard the competitive position of regular passenger transport in relation to the use of the private car as an alternative means of transport.

(4) *Compensation scheme not contrary to the common interest*

Finally, the Authority points to the fact that the support of local and regional passenger transport lies in the common interest of the Contracting Parties. In its Communication of 10 July 1998 on 'Developing the citizen's network', the European Commission considered that a 'well functioning European transport system needs good, sustainable passenger transport. This contributes to the economic development and employment and reduces congestion. It helps to clean up the environment by using less energy, making less noise and producing fewer pollutants. It reduces social exclusion by allowing people without the use of the car to gain access to jobs, schools, shops, medical facilities and leisure activities, recognizing that women, the young, the elderly, the unemployed and the disabled people are particularly dependent on public transport.'

Based on these considerations, the European Commission approved, *inter alia*, a tax relief for undertakings providing local passenger transport in Germany ([70]). As in the present case, the relief from the mineral oil levy in Germany was granted only to those operators providing scheduled/regular passenger transport services, while excluding occasional transport services.

The complainant claimed that the compensation scheme would distort competition between companies providing regular passenger transport and those providing occasional transport services. In this respect, he referred in particular to certain routes on which both, operators providing regular passenger transport and those providing occasional transport services would be in direct competition.

As explained above, the Authority shares this view. However, the distortive effects of the compensation scheme do not, in the Authority's view, exceed what is necessary to achieve the objectives pursued with the scheme.

([69]) These figures are based on a study carried out by INFRAS and IWW in 2000; they are referred to in the recent White Paper on the European Transport Policy — 2010, Time to decide.

([70]) State aid N 575/A/99 — Germany 'Continuation of the ecological tax reform' and State aid N 449/2001 — Germany 'Continuation of the ecological tax reform after 31 March 2002', available on the Internet: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/industrie/n575a-99.pdf.

In this respect, the Authority notes that operators eligible for support under the compensation scheme provide regular passenger transport services based on a licence issued by the local authorities. In issuing the licence, public interests, as regards an adequate offer of transport services, are taken into account. Express busses can therefore be regarded as forming an integral part of the collective transport system in Norway. Express busses are often the only collective transport means as well as the only alternative to the use of the private car. These circumstances justify public support for express busses in relation to the provision of regular passenger transport services.

The fact that, on some routes, occasional transport services are provided in competition with regular transport services does not affect the overall assessment. The liberalisation of the market for occasional transport services may lead to overlaps in transport offer from regular and occasional transport service operators. This does, however, not put into question the necessity for compensation for express bus operators with regard to the use of the private car as predominant means of transport.

As regards the distortion of competition between regular and occasional transport services, the Authority also refers to the assurance given by the Norwegian authorities that compensation is only granted with respect to regular passenger transport. Consequently, express bus operators providing occasional transport services are not entitled to receive payments under the compensation scheme. As regards the alleged distortive effects due to express bus operators rescheduling their routes in order to drive people to tourist sites, the Authority considers that rescheduling of routes in order to take into account changes on demand, do not put into question the qualification of the service in question as a 'regular service' within the meaning of Article 2(1) of Council Regulation (EC) No 12/98 ([71]). In addition, according to the Norwegian authorities, deviations from the original schedule have been approved only as part of public services obligations specified in the licence of the operator concerned. Consequently, these transport services would still be part of the regular passenger transport services provided by the operator in question. The fact that the destination of some of the regular routes may be a tourist site does not change the nature of the transport service from regular service into occasional service. Furthermore, the alleged distortive effects due to 'assistance driving' and 'position driving' being used by express bus operators to offer tourist services to groups of passengers, would not seem to result from the application of the compensation scheme as such. Should such services, as referred to by the complainant, have to be qualified as 'occasional services' within the meaning of Article 2(3) of Council Regulation (EC) No 12/98, such services would not be eligible for compensation.

In light of all the above considerations, the Authority considers that the distortive effects resulting from the compensation scheme are limited to what is necessary to ensure the objective pursued, namely to maintain the competitive situation of the regular passenger transport vis-à-vis the private car.

(b) ***Assessment under new Environmental Guidelines***

The new Environmental Guidelines lay down specific rules applicable to all operating aid in the form of tax reductions or exemptions. Pursuant to point 42, 'When adopting taxes that are to be levied on certain activities for reasons of environmental protection, EFTA States may deem it necessary to make provision for temporary exemptions for certain firms notably because of the absence of harmonisation at European level or because of the temporary risks of a loss of international competitiveness. …When assessing whether such measures qualify for exemptions from the general State aid prohibition as laid down in Article 61(1), it has to be ascertained among other things whether the tax in question corresponds to a tax which is to be levied within the European Community as the result of a Community decision. This aspect will be essential with regard to whether or not there could be a loss of international competitiveness for the taxpayer.'

([71]) Article 2(1) stipulates, 'The fact that the operating conditions of the service may be adjusted shall not affect its classification as a regular service.'

(1) *10-year derogation from new environmental taxes which correspond to harmonised Community taxes*

According to point 46.1.(b) of the Environmental Guidelines, exemptions from new environmental taxes may be justified covering a 10-year period with no degressivity, if the tax corresponding to a harmonised Community tax exceeds that provided for in Community legislation, provided that the amount effectively paid by the firms after the reduction remains higher than the European Community minimum, in order to provide the firms with an incentive to improve environmental protection.

Against that background, the Authority assessed whether the autodiesel tax rates set under Norwegian law exceed the applicable rates in the European Community.

Pursuant to Article 5(1) of Directive 92/82/EEC, the minimum rate for diesel (gas oil used as propellant) is set at EUR 245 per 1 000 litres (or EUR 0,245 per litre). Expressed in NOK, the minimum rate for mineral oil was as 2,037 NOK per litre in 2001 ([72]) and 1,96 NOK per litre in 2002 ([73]).

The applicable rates for the autodiesel levy in Norway amounted to NOK 3,44 per litre in 2001 (weighted average tax rate applicable during the period covered by the new Environmental Guidelines) and NOK 3,43 per litre in 2002. These rates are above the applicable rates within the European Community.

Furthermore, the Authority assessed whether bus operators, subject to the autodiesel levy but benefiting under the compensation scheme at issue, would still pay more than the minimum rate for diesel laid down in the EC Mineral Oil Directive.

Based on the applicable rates for autodiesel levy (VAT incl.) for the years 2001 and 2002 and the level of compensation (aid intensity) as referred to in the above table ([74]), the Authority calculated the rate of autodiesel levy actually paid by operators benefiting under the compensation scheme. This calculation gives the following picture: In 2001, the tax rate actually paid by bus operators was calculated as being 0,79 NOK per litre ([75]). This is below the applicable Community minimum rate for mineral oil, which amounted to 2,037 NOK per litre. In 2002, the tax rate actually paid by bus operators was calculated as being 1,47 NOK per litre ([76]). This is below the applicable Community minimum rate for mineral oil, which amounted to 1,96 NOK per litre.

Even though the actual level of compensation may be lower than what the figures provided by the Norwegian Government indicate, the Authority is not, due to the lack of precise information in this respect, in a position to ascertain that the amounts actually paid by express bus operators remains above the Community minimum.

Consequently, the Authority does not consider a 10-year derogation to be justified in the present case.

([72]) This calculation is based on the conversion rate of 8,3145 NOK = EUR 1, as fixed by the Authority for 2001.
([73]) This calculation is based on the conversion rate of 8,0105 NOK = EUR 1, as fixed by the Authority for 2002; cf. the Authority's homepage: http://www.eftasurv.int/fieldsofwork/fieldstateaid/dbaFile791.html.
([74]) As regards the calculation of the level of compensation, see explanation on page 33.
([75]) This results from a level of compensation amounting to 77 % (i.e. tax actually paid being 23 % of the applicable tax rate). The applicable tax rate was from 1 January 2001 until 30 June 2001 set at NOK 3,77 per litre and as from 1 July 2001 at NOK 3,37 per litre. The weighted average tax rate for the period governed by the new Environmental Guidelines therefore amounted to approximately NOK 3,44 per litre.
([76]) This results from a level of compensation amounting to 57 % (i.e. tax actually paid being 43 % of the applicable tax rate). The rate was set for 2002 at NOK 3,43 per litre.

(2) *5-year derogation for new environmental taxes which correspond to Community taxes*

Pursuant to point 48 second paragraph of the Environmental Guidelines, '… the EFTA State may grant operating aid in accordance with points 40 and 41 if the reduction granted satisfies the conditions laid down in these points. If the tax corresponds to a tax subject to harmonisation at European Community level, an express authorisation to derogate from the Community minimum must then in any event be provided for in the corresponding Community tax harmonisation provision.'

(a) ***Temporary nature and aid intensity***

According to point 40 of the Guidelines '[a]ll…operating aid is subject to a limited duration of five years where the aid is "degressive". Its intensity may amount to 100 % of the extra costs in the first year but must have fallen in a linear fashion to zero by the end of the fifth year.' Point 41 of the guidelines further states that '[i]n the case of "non-degressive" aid, its duration is limited to five years and its intensity must not exceed 50 % of the extra costs.'

As regards the requirement that the aid must be temporary, the Authority observes that, as pointed out above, the compensation scheme, as such, is not limited in time. The Authority also notes that the Norwegian Parliament decided to continue the operation of the compensation scheme for 2003, allocating, for that purpose, the amount of NOK 30 million.

As regards the permissible aid intensity, the Authority observes that the compensation scheme as such is not set up such that the aid intensity would fall in a linear fashion from 100 % in the first year to zero by the end of the fifth year. Hence, the aid is not 'degressive' within the meaning of point 40 of the guidelines. 'Non-degressive' aid is permissible provided that its duration is limited to five years and that the aid intensity does not exceed 50 % of the extra costs. Based on the figures above, the level of compensation (aid intensity) in the years 2001 and 2002 was 77 % and 57 %, respectively (on average during the two year period, the aid intensity amounted to 67 %) ([77]).

Furthermore, the compensation scheme does not contain any provision which would ensure that the average level of compensation of the five-year period would be limited to 50 % of the extra costs due to the autodiesel levy.

(b) ***Derogation from Community minimum***

Point 44(b) of the guidelines stipulates that an exemption which results in the benefiting companies paying less than the Community minimum would be regarded as incompatible with Article 61 of the EEA Agreement '[i]f such an exemption would not have been authorised within the European Community by the directive in question …' Where such an exemption would have been authorised, 'the Authority may take the view that… [the exemption] is compatible with Article 61 in so far as it is necessary and is not disproportionate in the light of the EEA objectives pursued. The Authority will be especially concerned to ensure that any such exemption is strictly limited in time.'

Based on the figures presented by the Norwegian Government, operators benefiting from the compensation scheme would seem to pay less than the Community minimum.

Even if the compensation would be limited to 50 % of the costs resulting from the autodiesel levy, as required under point 41 of the Environmental Guidelines, the autodiesel levy actually paid by the eligible bus operators would remain below the harmonised minimum rate: in 2001, the amount to be paid by operators would have amounted to NOK 1,71 per litre, with the harmonised rate being NOK 2,037 per litre; in 2002, the amount to be paid by operators would have amounted to NOK 1,72 per litre, with the harmonised rate being NOK 1,96 per litre.

Given that the Norwegian Government failed to submit information allowing the Authority to determine the exact level of compensation, the Authority assumes that, based on the aforementioned considerations, the amount of autodiesel levy actually paid by operators eligible under the compensation scheme, was below the harmonised rate for mineral oil as laid down in the Mineral Oil Directive.

([77]) As regards the calculation of the level of compensation, see explanation on page 33.

Consequently, and in accordance with point 44 of the Environmental Guidelines, the Authority has to assess whether the relief from the autodiesel levy could have been authorised within the EC.

Article 8(2) lit. c) of Directive 92/81/EEC allows EC Member States to apply total or partial exemptions or reductions in the rate of duty to mineral oil used in the field of passenger transport. On 12 March 2001, the EC Council adopted a decision to authorise for several EC Member States exemptions from the mineral oil duty, mainly for local public passenger transport vehicles ([78]).

The compensation scheme at issue is not limited to local transport services but extends to regional and inter-regional transport services.

As regards the question as to whether a relief from the autodiesel levy could have been authorised within the European Community, the Authority notes at the outset that Article 8(2) of the Mineral Oil Directive does not limit the possibility for exemptions to local passenger transport. Therefore, an exemption for regional and inter-regional passenger transport would not seem to be excluded.

Furthermore, the Authority considers that the justification for a compensation scheme for regular passenger transport is not only valid as regards local transport. The information in the Authority's possession does not show that the competitive situation of express bus operators as part of the collective transport system vis-à-vis the private car is, significantly better on regional or inter-regional routes as compared to local routes. The Authority also took into account the special geographical circumstances in Norway and the fact that, due to a limited railway network, regular bus services are often the only collective means of transport and only alternative to the use of the private car.

In accordance with point 44(b) of the Environmental Guidelines, the Authority still needs to examine whether the tax relief in question is necessary, not disproportionate in light of the EEA objectives pursued, and strictly limited in time. In addition, point 45 of the guidelines states that '… the tax measures in question should make a significant contribution to protecting the environment. Care should be taken to ensure that the exemptions do not, by their very nature, undermine the general objectives pursued.'

Given that the operators benefiting from the compensation scheme were previously fully exempted from the autodiesel levy, the abolishment of this tax exemption together with the partial relief from these extra costs increases the transport operators' costs and thereby gives them an incentive to reduce pollution, *inter alia*, by investing in more energy efficient vehicles. Furthermore, the compensation scheme is intended to maintain the competitive situation of regular passenger transport vis-à-vis the private car which causes more external costs than collective means of transport. In light of these considerations, the abolishment of the exemption from the autodiesel levy, together with the compensation scheme, contribute to the achievement of environmental objectives. As has been pointed out above, the distortive effects of the compensation scheme, in particular as concerns the provision of occasional transport services, are regarded as being limited to what is necessary to achieve the objectives pursued.

However, as already addressed above, the compensation scheme is neither limited in time, nor does the compensation scheme contain the necessary guarantee that the State support granted under the scheme is limited to 50 % of the extra production costs. As stated above, the information submitted by the Norwegian authorities does not show that, as regards the application of the compensation scheme in 2001 and 2002, the 50 % ceiling has been respected.

([78]) See footnote 37.

Therefore, in order to ensure compliance with the Environmental Guidelines, the Authority considers it necessary to request the Norwegian Government to limit the duration of the compensation scheme to five years starting from the application of the new Environmental Guidelines. This means that the duration of the compensation scheme must be limited until 22 May 2006 at the latest.

Furthermore, the Authority requests the Norwegian Government to ensure that any compensation granted under the compensation scheme for express bus operators is limited to 50 % of the extra costs due to the autodiesel levy. Any amounts granted to express bus operators which exceeded this ceiling must be regarded as being incompatible with the functioning of the EEA Agreement and would have to be recovered from the recipient.

(c) ***Conclusions under Article 61(3)(c) of the EEA Agreement, in combination with the Environmental Guidelines***

The compensation scheme for express bus operators applicable in the period from 1 January 1999 until 22 May 2001 fulfils the conditions laid down in the 1994 Environmental Guidelines. Any aid granted under the compensation scheme during that period can be regarded as being compatible with the functioning of the EEA Agreement.

The compensation scheme for express bus operators applicable as from 23 May 2001 can be regarded as being compatible with the functioning of the EEA Agreement, provided that it will be limited in time, i.e. to five years starting from the entry into force of the new Environmental Guidelines, and that the compensation granted to express busses is limited to 50 % of extra costs due to the autodiesel levy in relation to the provision of regular passenger transport services. No compensation may be granted for costs resulting from the autodiesel levy in connection with other transport services (i.e. provision of occasional transport services within the meaning of Article 2(3) of Regulation (EC) No 12/98 or transport of goods).

Any amounts granted under the compensation scheme as from 23 May 2001 which exceed this ceiling are regarded as incompatible with the functioning of the EEA Agreement and have to be recovered from the recipient. As regards the future application of the compensation scheme, the Norwegian Government needs to adopt measures which guarantee that compensation granted under the scheme will not exceed 50 % of the extra costs due to the autodiesel levy.

3. CONCLUSIONS

The compensation scheme for express bus operators (based on the State Budget, Chapter 1330, post 71) qualifies as 'new aid' within the meaning of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement. It was put into effect without the Authority's approval and is therefore to be regarded as 'unlawful on procedural grounds' pursuant to Chapter 6 of the Authority's State Aid Guidelines.

The Authority does not question the public financing of regular passenger transport in general. However, any such financing needs to be in accordance with the applicable EEA State aid rules.

In the Authority's view, the Norwegian Government has not demonstrated that the compensation scheme for express bus operators fulfils the requirements laid down in Council Regulation (EEC) No 1191/69. As the Authority has pointed out above, this conclusion does not rule out that express bus operators providing regular passenger transport could be compensated for costs inherent to the public service obligations imposed on them. Any such compensation would have to be done in accordance with the rules laid down in Council Regulation (EEC) No 1191/69.

On the other hand, the Authority considers that the abolishment of the exemption from the autodiesel levy for busses together with the compensation scheme for regular passenger transport may be regarded as pursuing environmental objectives. Express bus operators providing regular passenger transport are part of the collective transport system in Norway. Collective transport causes less external costs than the use of the private car. In the absence of a comprehensive system of internalising external costs in all modes of transport, compensation for collective transport can be regarded as justified to maintain the competitive position vis-à-vis the private car.

Given that the compensation scheme covers the period starting 1 January 1999, the Authority had to assess the compensation scheme both under the 1994 and the new Environmental Guidelines. Whereas the compensation scheme can be regarded as compatible with the 1994 Environmental Guidelines, the continuation of the compensation scheme as from 23 May 2002, can be regarded as compatible only if the scheme will be limited in time and the amount of compensation granted to express bus operators limited to 50 % of the extra costs due to the autodiesel levy.

The limitation in time means that the application of the compensation scheme needs to be limited until 23 May 2006 at the latest. Operators should be informed about the limited duration of the compensation scheme.

The limitation of the compensation to 50 % of extra costs requires from the Norwegian Government to limit any future compensation to 50 % of the extra costs due to the autodiesel levy, and to examine whether payments made to individual express bus operators under the compensation scheme in the past since 23 May 2001 respected the 50 % ceiling. Any compensation which exceeds that ceiling cannot be regarded as compatible with Article 61(3)(c) of the EEA Agreement in combination with the Environmental Guidelines. For payments which have already taken place and where the amount of compensation granted exceeds the permissible 50 % ceiling, the exceeding amount need to be recovered from the aid recipient, including interest.

Any exceeding amounts would have to be recovered from express bus operators in accordance with the rules and procedures laid down by national law, provided that those rules and procedures do not have the effect of making the recovery required by EEA law practically impossible and do not undermine the principle of equivalence with procedures for deciding similar, but purely national, disputes ([79]),

HAS ADOPTED THIS DECISION:

1. The compensation scheme for express bus operators (Chapter 1330, post 71 of the State Budget) constitutes new State aid within the meaning of Article 61(1) of the EEA Agreement. The compensation scheme has been implemented contrary to the Norwegian Government's obligations under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, and therefore constitutes 'aid unlawful on procedural grounds' within the meaning of Chapter 6 of the Authority's State Aid Guidelines.

2. The compensation scheme for express bus operators as applied from 1 January 1999 until 22 May 2001 is compatible with the functioning of the EEA Agreement, and in particular Article 61(3)(c) thereof, in combination with Chapter 15 of the Authority's State Aid Guidelines as adopted in 1994.

3. The compensation scheme for express bus operators as applied from 23 May 2001 is compatible with the functioning of the EEA Agreement, and in particular Article 61(3)(c) thereof, in combination with Chapter 15 of the Authority's State Aid Guidelines as amended in 2001, provided that:

   (a) The compensation scheme is limited to five years starting from 23 May 2001;

([79]) Judgment of the European Court of Justice of 13 June 2002, Case C-382/99 *Kingdom of Netherlands* v *Commission*, [2002] ECR I-5163, para. 90.

(b) The compensation granted under the scheme does not exceed 50 % of costs resulting from the auto-diesel levy in relation to the provision of regular passenger transport services.

4. Any payments made under the compensation scheme as from 23 May 2001 which exceed the permissible aid amount as referred to in point 3 are incompatible with the functioning of the EEA Agreement.

5. Incompatible aid as referred to in point 4 needs to be recovered from the aid recipients. Recovery shall be effected without delay and in accordance with the procedures of national law, provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.

6. The Norwegian Government is requested to take the necessary measures ensuring compliance with point 3 and 5 with immediate effect. As regards the limitation in time, as referred to under point 3.a., the Norwegian Government is requested to inform aid beneficiaries without delay of the limitation of the current compensation scheme until, at the latest, 23 May 2006. As regards compliance with the requirements contained in points 3.b. and 5, the Norwegian Government is asked to examine whether the payments made to individual express bus operators under the compensation scheme since 23 May 2001 respect the 50 % ceiling.

7. The Norwegian Government is requested to inform the Authority within two months from receipt of this decision of the measures taken to comply with the present decision.

8. This Decision is addressed to the Kingdom of Norway.

Done at Brussels, 16 July 2003.

For the EFTA Surveillance Authority

Einar M. BULL

The President