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Contents

(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 172/2005

of 18 January 2005

on the conclusion of the Agreement in the form of an Exchange of Letters concerning the extension of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Islamic Federal Republic of The Comoros on fishing off The Comoros for the period from 28 February 2004 to 31 December 2004

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

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

Whereas:

(1) In accordance with the terms of the Agreement between the European Economic Community and the Islamic Federal Republic of The Comoros on fishing off The Comoros [2], the Contracting Parties are to enter into negotiations, before the period of validity of the Protocol to the Agreement expires, to determine by mutual agreement the contents of the Protocol for the period that follows and, where applicable, the amendments or additions to be made to the Annex thereto.

(2) Pending negotiations on amendments to the Protocol, the two Contracting Parties have decided to extend the period of validity of the current Protocol approved by Council Regulation (EC) No 1439/2001 [3], from 28 February 2004 to 31 December 2004 by means of an agreement in the form of an Exchange of Letters.

(3) It is in the Community's interest to approve that extension.

(4) The allocation of the fishing opportunities among the Member States under the extended Protocol should be confirmed,

HAS ADOPTED THIS REGULATION:

Article 1

The Agreement in the form of an Exchange of Letters concerning the extension of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Islamic Federal Republic of The Comoros on fishing off The Comoros for the period from 28 February 2004 to 31 December 2004 is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters is attached to this Regulation (*).

Article 2

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

(a) tuna seiners:
Spain: 18 vessels
France: 21 vessels
Italy: 1 vessel

(b) surface longliners:
Spain: 20 vessels
Portugal: 5 vessels

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

Article 3

The Member States whose vessels fish under this Protocol shall be required to notify the Commission of the quantities of each stock caught in the Comorian fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas [4].

Article 4

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

[1] Opinion delivered on 16 December 2004 (not yet published in the Official Journal).
[2] OJ L 137, 2.6.1988, p. 19.
[3] OJ L 193, 17.7.2001, p. 1.

(*) See page 22 of this Official Journal.
[4] OJ L 73, 15.3.2001, p. 8.

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

Done at Brussels, 18 January 2005.

For the Council
The President
J.-C. JUNCKER

COUNCIL REGULATION (EC) No 173/2005

of 24 January 2005

amending Regulation (EC) No 1260/1999 laying down general provisions on the Structural Funds concerning the extension of the duration of the PEACE programme and the granting of new commitment appropriations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 161 thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the European Economic and Social Committee [2],

After consulting the Committee of the Regions,

Whereas:

(1) Article 7(4) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds [3] sets up a programme under Objective 1 in support of the peace process in Northern Ireland (PEACE) for a period of four years from 2000 to 2004, for the benefit of Northern Ireland and the border areas of Ireland.

(2) The European Council held in Brussels on 17 and 18 June 2004 asked the Commission to study whether measures under the PEACE programme and the International Fund for Ireland could be aligned with those under the other Structural Funds programmes, which will end in 2006, to include the financial consequences thereof.

(3) Consolidation of the peace process in Northern Ireland, to which the PEACE programme has made an original and essential contribution thus far, requires continuing financial support from the Community to the regions concerned and the extension of the PEACE programme for another two years.

(4) Regulation (EC) No 1260/1999 should therefore be amended accordingly so as to extend the implementation of the PEACE programme by two years, coinciding with the programming period for the Structural Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1260/1999 is hereby amended as follows:

1. the first subparagraph of Article 7(4) shall be replaced by the following:

   '4. Under Objective 1, a PEACE programme in support of the peace process in Northern Ireland shall be established for the years 2000 to 2006 for the benefit of Northern Ireland and the border areas in Ireland.';

2. Annex I shall be replaced by the text in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 24 January 2005.

For the Council
The President
F. BODEN

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[1] Assent given on 11 January 2005 (not yet published in the Official Journal).
[2] Opinion delivered on 16 December 2004 (not yet published in the Official Journal).
[3] OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 1105/2003 (OJ L 158, 27.6.2003, p. 3).

ANNEX

'ANNEX I

STRUCTURAL FUNDS

Annual breakdown of commitment appropriations for 2000 to 2006

(referred to in Article 7(1))

(EUR million, 1999 prices)

2000	2001	2002	2003	2004	2005	2006
29 430	28 840	28 250	27 670	27 080	27 120	26 660'

COUNCIL REGULATION (EC) No 174/2005

of 31 January 2005

imposing restrictions on the supply of assistance related to military activities to Côte d'Ivoire

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Council Common Position 2004/852/CFSP of 13 December 2004 concerning restrictive measures against Côte d'Ivoire [1],

Having regard to the proposal from the Commission,

Whereas:

(1) In its Resolution 1572 (2004) of 15 November 2004, the UN Security Council, acting under Chapter VII of the Charter of the United Nations, and deploring the resumption of hostilities in Côte d'Ivoire and the repeated violations of the ceasefire agreement of 3 May 2003, decided to impose certain restrictive measures against Côte d'Ivoire.

(2) Common Position 2004/852/CFSP provides for the implementation of the measures set out in UN Security Council Resolution (UNSCR) 1572 (2004), including a ban on technical and financial assistance related to military activities and on equipment, which might be used for internal repression.

(3) This measure falls within the scope of the Treaty and, therefore, in order to avoid any distortion of competition, Community legislation is necessary to implement it as far as the Community is concerned. For the purpose of this Regulation, the territory of the Community is deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.

(4) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance includes verbal forms of assistance;

2. 'Sanctions Committee' means the Committee of the Security Council of the United Nations which was established pursuant to paragraph 14 of UN Security Council Resolution (UNSCR) 1572 (2004).

Article 2

It shall be prohibited:

(a) to grant, sell, supply or transfer technical assistance related to military activities directly or indirectly to any person, entity or body in, or for use in, Côte d'Ivoire;

(b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, or for any grant, sale, supply, or transfer of related technical assistance and other services, directly or indirectly to any person, entity or body in, or for use in, Côte d'Ivoire;

(c) to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to in points (a) and (b).

Article 3

It shall be prohibited:

(a) to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Community, to any person, entity or body in, or for use in, Côte d'Ivoire;

[1] OJ L 368, 15.12.2004, p. 50.

(b) to grant, sell, supply or transfer technical assistance related to the equipment referred to in point (a), directly or indirectly to any person, entity or body in, or for use in, Côte d'Ivoire;

(c) to provide financing or financial assistance related to the equipment referred to in point (a), directly or indirectly to any person, entity or body in, or for use in, Côte d'Ivoire;

(d) to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to in points (a), (b) or (c).

Article 4

1. By way of derogation from Article 2, the prohibitions referred to therein shall not apply to:

(a) the provision of technical assistance, financing and financial assistance related to arms and related materiel, where such assistance or services are intended solely for support of and use by the United Nations Operation in Côte d'Ivoire (UNOCI) and the French forces who support it;

(b) the provision of technical assistance related to non-lethal military equipment intended solely for humanitarian or protective use, including such equipment intended for EU, UN, African Union and Economic Community of West African States (ECOWAS) crisis management operations, where such activities have also been approved in advance by the Sanctions Committee;

(c) the provision of financing or financial assistance related to non-lethal military equipment intended solely for humanitarian or protective use, including such equipment intended for EU, UN, African Union and ECOWAS crisis management operations;

(d) the provision of technical assistance related to arms and related materiel intended solely for support of or use in the process of restructuring defence and security forces pursuant to paragraph 3, subparagraph (f) of the Linas-Marcoussis Agreement, where such activities have also been approved in advance by the Sanctions Committee;

(e) the provision of financing or financial assistance related to arms and related materiel intended solely for support of or use in the process of restructuring defence and security forces pursuant to paragraph 3, subparagraph (f) of the Linas-Marcoussis Agreement;

(f) the sales or supplies temporarily transferred or exported to Côte d'Ivoire to the forces of a State which is taking action, in accordance with international law, solely and directly to facilitate the evacuation of its nationals and those for whom it has consular responsibility in Côte d'Ivoire, where such activities have also been notified in advance to the Sanctions Committee.

2. Authorisations for the activities referred to in paragraph 1, including where approval by, or notification to, the Sanctions Committee is required, shall be obtained through the competent authority, as listed in Annex II, of the Member State where the service provider is established or of the exporting Member State.

3. No authorisations shall be granted for activities that have already taken place.

Article 5

Articles 2 and 3 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Côte d'Ivoire by United Nations personnel, personnel of the European Union, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only.

Article 6

The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgements handed down by national courts.

Article 7

The Commission shall be empowered to amend Annex II on the basis of information supplied by Member States.

Article 8

Member States shall lay down the rules on sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 9

This Regulation shall apply:

(a) within the territory of the Community, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Community who is a national of a Member State;

(d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body doing business within the Community.

Article 10

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

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

Done at Brussels, 31 January 2005.

For the Council
The President
J. ASSELBORN

ANNEX I

List of equipment which might be used for internal repression as referred to in Article 3

The list below does not comprise the articles that have been specially designed or modified for military use.

1. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.

2. Specially designed fingerprint equipment.

3. Power-controlled searchlights.

4. Construction equipment provided with ballistic protection.

5. Hunting knives.

6. Specially designed production equipment to make shotguns.

7. Ammunition hand-loading equipment.

8. Communications intercept devices.

9. Solid-state optical detectors.

10. Image-intensifier tubes.

11. Telescopic weapon sights.

12. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:

    — signal pistols;

    — air- and cartridge-powered guns designed as industrial tools or humane animal stunners.

13. Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.

14. Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.

15. Body armour, other than that manufactured to military standards or specifications, and specially designed components therefor.

16. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.

17. Water cannon and specially designed or modified components therefor.

18. Vehicles equipped with a water cannon.

19. Vehicles specially designed or modified to be electrified to repel boarders and components therefor specially designed or modified for that purpose.

20. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.

21. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings, except handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.

22. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.

23. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shock batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.

24. Electronic equipment capable of detecting concealed explosives and specially designed components therefor, except TV or X-ray inspection equipment.

25. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.

26. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor, except those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators).

27. Equipment and devices designed for explosive ordnance disposal; except:

    — bomb blankets;

    — containers designed for folding objects known to be, or suspected of being improvised explosive devices.

28. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.

29. Linear cutting explosive charges.

30. Explosives and related substances as follows:

    — amatol,

    — nitrocellulose (containing more than 12,5 % nitrogen),

    — nitroglycol,

    — pentaerythritol tetranitrate (PETN),

    — picryl chloride,

    — tinitorphenylmethylnitramine (tetryl),

    — 2,4,6-trinitrotoluene (TNT)

31. Software specially designed and technology required for all listed items.

ANNEX II

LIST OF COMPETENT AUTHORITIES REFERRED TO IN ARTICLE 4

BELGIUM

Service public fédéral de l'économie, des PME, des classes moyennes et de l'énergie
Potentiel économique, E4, Service des licences
Avenue du Général Leman 60
B-1040 Bruxelles
Téléphone: (32-2) 206 58 16/27
Fax: (32-2) 230 83 22

Federale overheidsdienst Economie, KMO's, Middenstand en Economie
Economisch Potentieel, E4, Dienst vergunningen
Generaal Lemanstraat 60
B-1040 Brussel
Telefoon (32-2) 206.58.16/27
Fax: (32-2) 230.83.22

CZECH REPUBLIC

Ministerstvo průmyslu a obchodu
Licenční správa
Na Františku 32
110 15 Praha 1
Tel. (420-2) 24 06 27 20
Fax (420-2) 24 22 18 11

Ministerstvo zahraničních věcí
Odbor Společné zahraniční a bezpečnostní politiky EU
Loretánské nám. 5
118 00 Praha 1
Tel. (420) 2 2418 2987
Fax (420) 2 2418 4080

DENMARK

Erhvervs- og Byggestyrelsen
Langelinie Allé 17
DK-2100 København Ø
Tlf. (45) 35 46 62 81
Fax (45) 35 46 62 03

Udenrigsministeriet
Asiatisk Plads 2
DK-1448 København K
Tlf. (45) 33 92 00 00
Fax (45) 32 54 05 33

Justitsministeriet
Slotholmsgade 10
DK-1216 København K
Tlf. (45) 33 92 33 40
Fax (45) 33 93 35 10

GERMANY

Concerning financing and financial assistance:
Deutsche Bundesbank
Servicezentrum Finanzsanktionen
Postfach
D-80281 München
Tel.: (49) 89 28 89 38 00
Fax: (49) 89 35 01 63 38 00

Concerning technical assistance:
Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)
Frankfurter Straße 29—35
D-65760 Eschborn
Tel: (49) 61 96 908-0
Fax: (49) 61 96 908-800

ESTONIA

Eesti Välisministeerium
Islandi väljak 1
15049 Tallinn
Tel: +372 6317 100
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GREECE

Ministry of Economy and Finance
General Directorate for Policy Planning and Management
Address Kornaroy Str., 105 63 Athens
Tel.: +30 210 3286401-3
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Γενική Δ/νση Σχεδιασμού και Διαχείρισης Πολιτικής
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Τηλ.: +30 210 3286401-3
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SPAIN

Secretaría General de Comercio Exterior
Paseo de la Castellana, 162
E-28046 Madrid
Tel. (34) 913 49 38 60
Fax (34) 914 57 28 63

FRANCE

Ministère de l'économie, des finances et de l'industrie
Direction générale des douanes et des droits indirects
Cellule embargo — Bureau E2
Tél.: (33) 1 44 74 48 93
Télécopie: (33) 1 44 74 48 97

Direction générale du Trésor et de la politique économique
Service des affaires multilatérales et du développement
Sous-direction Politique commerciale et investissements
Service Investissements et propriété intellectuelle
139, rue du Bercy
75572 Paris Cedex 12
Tél.: (33) 1 44 87 72 85
Télécopie: (33) 1 53 18 96 55

Ministère des affaires étrangères
Direction générale des affaires politiques et de sécurité
Direction des Nations Unies et des organisations internationales
Sous-direction des affaires politiques
Tél.: (33) 1 43 17 59 68
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Service de la politique étrangère et de sécurité commune
Tél.: (33) 1 43 17 45 16
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Central Bank and Financial Services Authority of Ireland
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U.A.M.A.
Tel. (39) 06 3691 3605
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Ministry of Finance (Department of Customs)
M. Karaoli
1096 Nicosia
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Fax: +357 22 60 27 41/47

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Latvijas Republikas Ārlietu ministrija
Brīvības iela 36
Rīga LV 1395
Tālr. nr.: (371) 7016 201
Fakss: (371) 7828 121

LITHUANIA

Ministry of Foreign Affairs
Security Policy Department
J.Tumo-Vaizganto 2
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LUXEMBOURG

Ministère de l'économie et du commerce extérieur
Office des licences
B.P. 113
L-2011 Luxembourg
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mail: office.licences@mae.etat.lu

Ministère des affaires étrangères et de l'immigration
Direction des affaires politiques
5, rue Notre-Dame
L-2240 Luxembourg
Tél: (352) 478 2421
Fax: (352) 22 19 89

HUNGARY

Ministry of Economic Affairs and Transport — Hungarian Licencing and Administrative Office
Margit krt. 85.
H-1024 Budapest
Hungary
Postbox: 1537 Pf.: 345
Tel.: +36-1-336-7300

Gazdasági és Közlekedési Minisztérium — Engedélyezési és Közigazgatási Hivatal
Margit krt. 85.
H-1024 Budapest
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Postafiók: 1537 Pf.: 345
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MALTA

Bord ta' Sorveljanza dwar is-Sanzjonijiet
Direttorat ta' l-Affarijiet Multilaterali
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NETHERLANDS

Ministerie van Economische Zaken
De Belastingdienst/Douane Noord
Postbus 40200
8004 DE Zwolle

AUSTRIA

Bundesministerium für Wirtschaft und Arbeit
Abteilung C2/2 (Ausfuhrkontrolle)
Stubenring 1
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Department of Law and Treaties
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Co-operating authorities:

Ministry of Defence
Department of Defence Policy
Al. Niepodległości 218
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Ministry of Economy and Labour
Department of Export Control
Plac Trzech Krzyży 3/5
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PORTUGAL

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Fax: 00386 1 4782341

Ministry of the Economy
Kotnikova 5
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Phone: 00386 1 4783311
Fax: 00386 1 4331031

Ministry of Defence
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SI-1000 Ljubljana
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SLOVAKIA

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Mierová 19
827 15 Bratislava 212
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Fax: 00421/2/4333 7827

Ministerstvo financií Slovenskej republiky
Štefanovičova 5
P. O. BOX 82
817 82 BRATISLAVA
Tel.: 00421/2/5958 1111
Fax: 00421/2/5249 8042

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PL/PB 176
FIN-00161 Helsinki/Helsingfors
P./Tfn (358-9) 16 00 5
Faksi/Fax (358-9) 16 05 57 07

Puolustusministeriö/Försvarsministeriet
Eteläinen Makasiinikatu 8 / Södra Magasinsgatan 8
FIN-00131 Helsinki/Helsingfors
PL/PB 31
P./Tfn (358-9) 16 08 81 28
Faksi/Fax (358-9) 16 08 81 11

SWEDEN

Inspektionen för strategiska produkter (ISP)
Box 70 252
107 22 Stockholm
Tfn (46-8) 406 31 00
Fax (46-8) 20 31 00

UNITED KINGDOM

Sanctions Licensing Unit
Export Control Organisation
Department of Trade and Industry
4 Abbey Orchard Street
London SW1P 2HT
Tel. (44) 20 7215 0594
Fax. (44) 20 7215 0593

EUROPEAN COMMUNITY

Commission of the European Communities
Directorate-General for External Relations
Directorate CFSP
Unit A.2: Legal and institutional matters for external relations — Sanctions
CHAR 12/163
B-1049 Bruxelles/Brussel
Tel. (32-2) 296 25 56
Fax (32-2) 296 75 63

COMMISSION REGULATION (EC) No 175/2005

of 1 February 2005

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 2 February 2005.

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

Done at Brussels, 1 February 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[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 Commission Regulation of 1 February 2005 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	116,0
	204	78,7
	212	152,0
	999	115,6
0707 00 05	052	154,7
	999	154,7
0709 90 70	052	203,3
	204	244,8
	624	56,7
	999	168,3
0805 10 20	052	46,2
	204	48,3
	212	47,9
	220	49,5
	421	38,1
	448	35,4
	624	44,6
	999	44,3
0805 20 10	052	49,1
	204	60,6
	624	73,4
	999	61,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	61,2
	204	87,5
	400	78,4
	464	138,7
	624	67,4
	662	36,0
	999	78,2
0805 50 10	052	60,0
	999	60,0
0808 10 80	052	104,3
	400	91,0
	404	83,7
	720	52,8
	999	83,0
0808 20 50	388	78,8
	400	89,3
	528	79,2
	720	36,8
	999	71,0

(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 176/2005

of 1 February 2005

fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip [1], and in particular Article 5(2)(a) thereof,

Whereas:

Pursuant to Article 2(2) and Article 3 of abovementioned Regulation (EEC) No 4088/87, Community import and producer prices are fixed each fortnight for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses and apply for two-weekly periods. Pursuant to Article 1b of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down detailed rules for the application of the arrangements for the import into the Community of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip [2], those prices are determined for fortnightly periods on the basis of weighted prices provided by the Member States. Those prices should be fixed immediately so the customs duties applicable can be determined. To that end, provision should be made for this Regulation to enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer and import prices for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses as referred to in Article 1b of Regulation (EEC) No 700/88 for a fortnightly period shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 2 February 2005.

It shall apply from 2 to 15 February 2005.

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

Done at Brussels, 1 February 2005.

For the Commission
J. M. SILVA RODRÍGUEZ
Director-General for Agriculture and Rural Development

[1] OJ L 382, 31.12.1987, p. 22. Regulation as last amended by Regulation (EC) No 1300/97 (OJ L 177, 5.7.1997, p. 1).

[2] OJ L 72, 18.3.1988, p. 16. Regulation as last amended by Regulation (EC) No 2062/97 (OJ L 289, 22.10.1997, p. 1).

ANNEX

to the Commission Regulation of 1 February 2005 fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

(EUR/100 pieces)

Period: from 2 to 15 February 2005

Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	16,75	12,41	41,05	17,27
Community import prices	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
Israel	—	—	—	—
Morocco	—	—	—	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	—	—	—	—

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 November 2004

on the signing, on behalf of the European Community, and provisional application of the Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Islamic Federal Republic of The Comoros on fishing off The Comoros for the period from 28 February 2004 to 31 December 2004

(2005/76/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

(1) Under the terms of the Agreement between the European Economic Community and the Islamic Federal Republic of The Comoros on fishing off The Comoros [1], the Contracting Parties are to enter into negotiations, before the period of validity of the Protocol to the Agreement expires, to determine by mutual agreement the contents of the Protocol for the period that follows and, where applicable, the amendments or additions to be made to the Annex thereto.

(2) The two Contracting Parties have decided that, pending negotiations on amendments to the Protocol, the period of validity of the current Protocol approved by Regulation (EC) No 1439/2001 [2] should be extended from 28 February 2004 to 31 December 2004 by means of an agreement in the form of an Exchange of Letters.

(3) The exchange of letters provides Community fishermen with fishing opportunities from 28 February 2004 to 31 December 2004 in waters over which The Comoros has sovereignty or jurisdiction.

(4) To avoid any interruption in the fishing activities of Community vessels it is essential that the extension should enter into force as soon as possible. The Agreement in the form of an Exchange of Letters should therefore be signed, subject to its definitive conclusion by the Council.

(5) The method of allocating the fishing opportunities among Member States on the basis of the extended Protocol should be confirmed,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Agreement in the form of an Exchange of Letters concerning the extension of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Islamic Federal Republic of The Comoros on fishing off The Comoros for the period from 28 February 2004 to 31 December 2004 is hereby approved on behalf of the Community, subject to the Council Decision concerning the conclusion of the said Agreement in the form of an Exchange of Letters.

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

[1] OJ L 137, 2.6.1988, p. 19.
[2] OJ L 193, 17.7.2001, p. 1.

Article 2

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

Article 3

The Agreement in the form of an Exchange of Letters shall be provisionally applied by the Community from 28 February 2004.

Article 4

The fishing opportunities set out in Article 1 of the Protocol shall be allocated among the Member States as follows:

(a) tuna seiners:
Spain: 18 vessels
France: 21 vessels
Italy: 1 vessel;

(b) surface longliners:
Spain: 20 vessels
Portugal: 5 vessels.

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

Article 5

The Member States whose vessels fish under this Agreement shall be required to notify the Commission of the quantities of each stock caught in the Comorian fishing zone in accordance with Commission Regulation (EC) No 500/2001 [1] of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas.

Done at Brussels, 22 November 2004.

For the Council
The President
C. VEERMAN

[1] OJ L 73, 15.3.2001, p. 8.

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

concerning the extension of the Protocol setting out the fishing opportunities and financial compensation provided for in the agreement between the European Economic Community and the Islamic Federal Republic of The Comoros on fishing off The Comoros for the period from 28 February 2004 to 31 December 2004

A. *Letter from the Community*

Sir,

I have the honour to confirm that we agree to the following interim arrangements for the extension of the Protocol currently in force (28 February 2001 to 27 February 2004) setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Islamic Federal Republic of The Comoros on fishing off The Comoros, pending the negotiations on the amendments to be made to the Protocol to the Fisheries Agreement:

1. From 28 February 2004 to 31 December 2004 the arrangements applicable over the last three years will continue in operation. The Community's financial contribution under the interim arrangements will correspond *pro rata temporis* to the amount provided for in Article 2 of the Protocol currently in force, i.e. EUR 291 875. This financial contribution will be paid no later than 1 December 2004. The relevant conditions for payment of the amount provided for in Article 3 of the Protocol will also apply.

2. During the interim period, fishing licences will be granted within the limits applicable under Article 1 of the Protocol currently in force, against payment of fees or advances equal to those set out at point 1 of the Annex to the Protocol.

I should be obliged if you would acknowledge receipt of this letter and confirm that you are in agreement with its contents.

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

On behalf of the Council of the European Union

B. *Letter from the Government of the Union of The Comoros*

Sir,

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

'I have the honour to confirm that we agree to the following interim arrangements for the extension of the Protocol currently in force (28 February 2001 to 27 February 2004) setting out the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Islamic Federal Republic of The Comoros on fishing off The Comoros, pending the negotiations on the amendments to be made to the Protocol to the Fisheries Agreement:

1. From 28 February 2004 to 31 December 2004 the arrangements applicable over the last three years will continue in operation. The Community's financial contribution under the interim arrangements will correspond *pro rata temporis* to the amount provided for in Article 2 of the Protocol currently in force, i.e. EUR 291 875. This financial contribution will be paid no later than 1 December 2004. The relevant conditions for payment of the amount provided for in Article 3 of the Protocol will also apply.

2. During the interim period, fishing licences will be granted within the limits applicable under Article 1 of the Protocol currently in force, against payment of fees or advances equal to those set out at point 1 of the Annex to the Protocol.

I should be obliged if you would acknowledge receipt of this letter and confirm that you are in agreement with its contents.'

I have the honour to confirm that the above is acceptable to the Government of the Union of The Comoros and that your letter and this letter constitute an agreement in accordance with your proposal.

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

For the Government of the Union of The Comoros

COMMISSION

COMMISSION DECISION

of 30 March 2004

on the aid scheme implemented by the United Kingdom in favour of Gibraltar Qualifying Companies

(notified under document number C(2004) 928)

(Only the English text is authentic)

(Text with EEA relevance)

(2005/77/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 12 February 1999 (D/50716), the Commission asked the United Kingdom to provide information on a number of tax measures, including the Gibraltar qualifying companies regime. The United Kingdom replied by letter dated 22 July 1999. The Commission requested further information on 23 May 2000 and a reminder was sent on 28 June 2000. The United Kingdom replied on 3 July 2000. By letter dated 12 September 2000, the United Kingdom submitted information on the Exempt Companies regime (A/37430). A meeting was held with the United Kingdom and Gibraltar authorities on 19 October 2000 to discuss Gibraltar's offshore tax schemes, the Qualifying Companies regime and the Exempt Companies regime. Further information in response to questions raised at that meeting were submitted by the United Kingdom on 8 January 2001 (A/30254).

(2) By letter dated 11 July 2001 (D/289757), the Commission informed the United Kingdom that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the Gibraltar Qualifying Companies regime. Following an extension of the one month deadline, the United Kingdom replied by letter dated 21 September 2001 (A/37407).

(3) By application lodged at the Registry of the Court of First Instance of the European Communities on 7 September 2001, the Government of Gibraltar brought an action for

[1] OJ C 26, 30.1.2002, p. 9.

annulment of Decision SG(2001) D/289755 initiating the formal investigation procedure into the Gibraltar Qualifying Companies regime; the action was registered as Case T-207/01. A further application was brought by the Government of Gibraltar on the same date for the adoption of interim measures to suspend the Decision SG(2001) D/289755 to initiate the formal investigation procedure and to order the Commission to refrain from publishing it (Case T-207/01 R). By Order dated 19 December 2001, the President of the Court of First Instance dismissed the application for interim measures [2]. In its judgment of 30 April 2002, the Court of First Instance dismissed the application for annulment of the Decision [3].

(4) On 21 November 2001, the Commission requested information on the tax rate applicable to Qualifying Companies. In the absence of a reply, the Commission issued a formal reminder on 21 March 2002 (D/51275). The United Kingdom replied on 10 April 2002 (A/32681). Further clarification was requested by the Commission on 28 October 2002 (D/56088). The United Kingdom replied on 11 November 2002 (A/38454) and added additional remarks by letter dated 13 December 2002 (A/39209).

(5) The Commission Decision to initiate the formal investigation procedure was published in the *Official Journal of the European Communities*, inviting interested parties to submit their observations [4]. By letters dated 27 February 2002 (A/31518) and 28 February 2002 (A/31557), comments were received respectively from Charles A. Gomez & Co. barristers and acting solicitors from the Government of Gibraltar. These comments were forwarded to the United Kingdom, which replied by letter dated 25 April 2002 (A/33257).

II. **DESCRIPTION OF THE MEASURE**

(6) The definition of a Qualifying Company is set out in Gibraltar's Income Tax (Amendment) Ordinance of 14 July 1983. Detailed rules for the implementation of the Qualifying Company regime have been adopted by means of the Income Tax (Qualifying Companies) Rules of 22 September 1983; these rules together are referred to in this Decision as 'the Qualifying Company legislation'.

(7) In order to obtain the Qualifying Company status, a company must fulfil, *inter alia*, the following conditions:

— it must be registered in Gibraltar under the Companies Ordinance,

— it must have a paid up share capital of GBP 1 000 (or foreign currency equivalent),

— it must deposit GBP 1 000 with the Gibraltar Government as security for future taxes,

— it must pay a fee of GBP 250 for a Qualifying Company Certificate,

— no Gibraltarian or Gibraltar resident may have a beneficial interest in the shares of the company,

— it cannot keep any register of shares outside Gibraltar and must be prohibited by its memorandum or articles of association from doing so,

— the company may not, without the prior consent of the Gibraltar Finance Centre Director, trade or carry on business in Gibraltar, with Gibraltarians or residents of Gibraltar. It may, however, trade with other Exempt or Qualifying companies.

(8) A company which fulfils the above conditions obtains a Qualifying Company Certificate. Once issued the Certificate is valid for 25 years.

(9) A Qualifying Company is liable to taxation on its profits at a rate which is always lower than the normal corporate tax rate, which currently stands at 35 %. The rate of tax applied is negotiated between the company concerned and the Finance Centre Division, part of the Gibraltar Government's Department of Trade, Industry and Telecommunications. There is no statutory guidance for the conduct of these negotiations. The vast majority of Qualifying Companies pay a rate of tax of between 2 and 10 % and, recently, the policy of the Gibraltar authorities has been to ensure that all Qualifying Companies pay between 2 and 10 %. Within these parameters, the rate of tax is set with a view to ensuring consistency between all companies operating in the same sector [5]. The tax rates are:

[2] Joined Cases T-195/01 R and T-207/01 R *Gibraltar* v *Commission* R [2001] ECR II-3915.

[3] Joined Cases T-195/01 and T-207/01 *Gibraltar* v *Commission* [2002] ECR II 2309.

[4] See footnote 1.

[5] Approximately 12 companies fall outside this 2 to 10 % range.The tax rates for such companies have been negotiated on a case-by-case basis. They range from 0,5 to 1,5 % and from 21 to 34 %. There is no correlation between the tax rate applied and the area of activity of the company. The companies operate in diverse sectors including private investment holdings, marketing and selling holiday homes, offshore banking, ship repair and marketing consulting services.

(%)

Sector	Rate of taxation
Private investment	5
Financial services	5
Gaming	5
Satellite operations	2
Shipping services including repair and conversion	2
General traders	5
Consultancy services	5
Others (e.g. philatelic services, commission agents)	2-10

(10) Other benefits resulting from the Qualifying Status include:

— fees payable to non-residents (including directors) and dividends paid to its shareholders are subject to withholding tax at the same prescribed rate as the company,

— there is no stamp duty on the transfer of shares of a Qualifying Company.

(11) According to information supplied by the United Kingdom, in circumstances where the intended operation requires a 'bricks and mortar' presence in Gibraltar, the company undertaking such activity would usually obtain Qualifying Company status rather than Exempt Company [6] status. Qualifying Companies are also of particular benefit in situations where a subsidiary company needs to make income remittances to a foreign parent and is required to have suffered tax at a certain level to reduce further taxation in the home country.

III. GROUNDS FOR INITIATING THE PROCEDURE

(12) In its evaluation of the information submitted by the United Kingdom in the course of its preliminary investigation, the Commission considered that the relief from the obligation to pay the full amount of corporation tax was liable to confer an advantage on Qualifying Companies. It considered that this advantage was granted via State resources, affected trade between Member States and was selective. The Commission also considered that none of the derogations on the general prohibition on State aid provided for in Articles 87(2) and 87(3) of the Treaty applied. On these grounds the Commission had doubts as to the compatibility of the measure with the common market and therefore decided to initiate the formal investigation procedure.

IV. COMMENTS FROM THE GOVERNMENT OF GIBRALTAR

(13) The Government of Gibraltar makes comments under four headings:

— the Qualify Companies legislation does not constitute aid within the meaning of Article 87 of the Treaty,

— if the Qualifying Companies legislation constitutes aid, it is existing aid and not new, illegal aid,

— if the Qualifying Companies legislation constitutes aid, it is compatible with the common market by virtue of the exemption provided for in Article 87(3)(b) of the Treaty,

— if the Qualifying Companies legislation constitutes illegal and incompatible aid, an order for the recovery of the aid would be contrary to general principles of Community law.

(14) These comments can be summarised as follows.

The Qualifying Companies legislation does not constitute aid

(15) Article 87(1) of the Treaty is not applicable to tax schemes, such as the Qualifying Company legislation, which are designed to operate in an international context. In particular, given that Qualifying Company status is granted to the extent that such companies do not undertake business within Gibraltar, there is no advantage in the form of an exemption from the normally applicable tax rates, as Gibraltar is not competent to grant an advantage relating to another jurisdiction.

(16) Although the Gibraltar Government accepts that the advantages granted by the Qualifying Company regime are ring-fenced from the domestic market in the sense of paragraph B of the Code of Conduct for Business Taxation [7], adopted by the Resolution of the Council and the representatives of the governments of the Member States meeting within the Council of 1 December 1997, no State resources are involved. The measure places no financial burden on the budget of the Government of Gibraltar.

[6] Exempt Companies do not pay tax on their profits, but instead pay a fixed annual tax of GBP 225 to 300.

[7] OJ C 2, 6.1.1998, p. 2.

(17) The measure is not selective since a Qualifying Company can be set up by any natural or legal person, irrespective of nationality or economic activity. The Gibraltar Government accepts that Qualifying Company status is not available to companies which trade in Gibraltar or in which Gibraltarians or Gibraltar residents have a beneficial interest. However, this is at most an act of reverse discrimination which does not affect competition.

(18) The measure falls outside the scope of Article 87(1) of the Treaty insofar as some Qualifying Companies are established by individuals for tax planning reasons, for holding assets or property, or for managing their personal wealth. Such companies do not trade, produce or compete in the market.

(19) Gibraltar does not form part of the Community's common customs territory and is treated as a third country for the purpose of trade in goods. Article 87 of the Treaty therefore cannot apply to any aid perceived to be granted to undertakings engaged in trade in goods, as goods produced in Gibraltar do not circulate freely in the common market but are subject to customs formalities. Trade between Member States cannot be affected in such circumstances.

(20) The reasoning used in Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws No 30/1997 and No 206/1995 [8], to find that the advantage granted to certain firms did not constitute State aid within the meaning of Article 87(1) of the Treaty applies to Qualifying Companies established for tax planning purposes and to those trading in goods.

(21) A large number of companies enjoying Qualifying status would benefit from the currently applicable *de minimis* rules.

The Qualifying Companies legislation constitutes existing aid rather than illegal aid

(22) The Qualifying Companies legislation dates from 1983, a time when it was far from clear to the Commission, to Member States or to economic operators whether, and to what extent, State aid rules were to be systematically applied to national legislation on company taxation. There are few if any examples before the 1990s of Commission State aid action against general corporate tax measures. The legislation predates by 10 years the liberalisation of capital movements and by 15 years the clarification of the concept of State aid made by the Commission in its Notice on the application of the State aid rules to measures relating to direct business taxation [9] (hereinafter the Notice). The Qualifying Companies legislation was modelled on the Exempt Company legislation of 1967, which predates the accession of Gibraltar to the European Union in 1973.

(23) The Qualifying Companies legislation was notified to the 'Primarolo' group established in accordance with paragraph H of the Code of Conduct for Business Taxation by the United Kingdom Government even before the publication of the Notice of 1998. At the time there was no indication that measures designated as harmful under the Code of Conduct for Business Taxation would be treated by the Commission as new, unnotified aid measures.

(24) The Notice contains the first comprehensive, albeit not exhaustive, definition of 'fiscal State aid'. It is an administrative innovation and can be regarded more as a policy statement as to future Commission action in this area rather than as a 'clarification' of the applicable legislation.

(25) Article 1(b)(v) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [10] provides that measures may become aid as a result of the evolution of the common market and through liberalisation of certain activities. The Qualifying Companies legislation constitutes a measure, as referred to in that provision, which became aid only subsequently. By failing to regard Qualifying Companies legislation as existing aid, the Commission is applying, retroactively, the relatively refined State aid criteria of 2001 to the different legal and economic situation which prevailed in 1983. In this regard, the Irish company tax scheme was initially not classified as aid, although the Commission's view subsequently changed [11] and reflected the gradual tightening of Community discipline regarding such tax incentive schemes.

[8] OJ L 150, 23.6.2000, p. 50, recitals 90, 91 and 93.

[9] OJ C 384, 10.12 1998, p. 3.

[10] OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

[11] OJ C 395, 18.12.1998, p. 19.

(26) By using its discretion to treat the Qualifying Companies legislation as new, illegal aid, the Commission has infringed the principle of proportionality. Such treatment has dramatic economic consequences. The significant damage that will be caused is disproportionate to any Community interest which might be served by the initiation of a procedure in respect of illegal aid, particularly in view of the diminutive size of Gibraltar's economy and the necessarily insignificant impact of the legislation in issue on competition and on international trade. The Commission would have taken a more equitable approach if it had considered the qualifying company legislation either under the Code of Conduct for Business Taxation, under Articles 96 and 97 of the Treaty or under the procedure applicable to existing aid.

(27) Last, the Commission has infringed the principles of legal certainty and legitimate expectations by waiting 18 years before challenging the Qualifying Companies legislation and by not carrying out its investigation into the legislation within a reasonable time. The conformity of the legislation with Community law was never doubted by the Commission before February 1999. By analogy with the Defrenne case [12], this prolonged failure by the Commission to act gave rise to legitimate expectations on the part of Gibraltar.

(28) The Commission's investigations should be subject to a limitation period. Thus, pursuant to Article 15 of Regulation (EC) No 659/1999, any individual aid granted under an aid scheme 10 years before the Commission takes action must be deemed to be existing aid. Applying that rule, the Commission should have regarded the Qualifying Companies legislation as an existing aid scheme. In any event, the Commission infringed the principles of legitimate expectations and of legal certainty by allowing an excessively long period to elapse after opening its investigation into the legislation. The preliminary investigation began on 12 February 1999, but the formal investigation procedure was not initiated until two and a half years later. The preliminary investigation was punctuated by long periods of inactivity by the Commission. Given that there was some doubts within the Commission as late as November 2000 as to the utility of opening the State aid procedure on the harmful measures identified by the Code of Conduct Group, it is reasonable to claim that the existing aid procedure should have been used.

Compatibility by virtue of Article 87(3)(b) of the Treaty

(29) Article 87(3)(b) of the Treaty provides that aid to remedy a serious disturbance in the economy of a Member State may be considered to be compatible with the common market. The Qualifying Companies legislation was enacted a year before the closure of the Royal Navy Dockyard (announced in 1981) and at a time when the British military presence in Gibraltar was being scaled down. The Dockyard was Gibraltar's main source of employment and income, accounting for 25 % of employment and 35 % of gross domestic product (GDP). Its closure caused serious disturbances to the Gibraltar economy, including structural change and economic distress in terms of unemployment, increased social costs and exodus of qualified workers. The Qualifying Companies legislation was a response to these serious disturbances.

(30) Although the Commission and the Court of Justice of the European Communities have interpreted Article 87(3)(b) of the Treaty strictly as meaning that the disturbance in question must affect the whole economy of the Member State and not merely that of one of its regions or parts of its territory [13], there are grounds for applying the exemption under Article 87(3)(b) to Gibraltar. Unlike a region or territory of a Member State, Gibraltar is in every relevant way totally separated from the United Kingdom, notably in constitutional, political, legislative, economic, fiscal and geographical terms. It is the only territory to which Community law applies by virtue of Article 299(4) of the Treaty. The Gibraltar and United Kingdom economies are entirely distinct and separate. Gibraltar receives no financial assistance from the United Kingdom and raises its own revenue to meet its expenditure commitments. Consequently, disturbances which affect one economy do not generally affect the other, as is the case with the bovine spongiform encephalopathy crisis, a disturbance which affected the United Kingdom economy but not Gibraltar, treated as an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty.

An order for the recovery of the aid would be contrary to general principles of Community law

(31) Essentially similar reasoning to that summarised in recitals 22 to 28 on the question of existing aid can be used to argue in favour of the principle of legitimate expectations in the context of recovery. These arguments notably cover uncertainty on the scope of the State aid rules, the novelty of Commission action on corporate tax measures and the significance of the Notice as a policy statement, the age of the measure, notification to the Primarolo group, evolution of the common market and

[12] Case 43/75 *Defrenne* v *Sabena* [1976] ECR 455, paragraphs 72, 73 and 74.

[13] Joined cases T-132/96 and T-143/96, *Freistaat Sachsen and others* v *Commission* [1999] ECR II-3663 p. 167 et seq.

liberalisation, proportionality, prolonged failure of the Commission to act and the delays in the preliminary investigation. The legitimate expectations thus created prevent an order for recovery. In particular, at all times, both the Government of Gibraltar and the beneficiaries have acted in good faith.

(32) Paragraph 26 of the Decision opening the formal investigation procedure [14] included a specific request for comments on possible legitimate expectations that would pose an obstacle to the recovery of aid. In its defences in cases T-207/01 and T-207/01 R, the Commission confirmed its hesitations as to the possibility of a recovery order and emphasised the unusual nature of the request for specific comments. The Commission also stated that the uncertainty that might have existed and the possibility that the measure existed in a 'grey zone' of legal uncertainty gave rise at most to a legitimate expectation and to a debate over the recovery of aid already paid. In his Order of 19 December 2001, the President of the Court of First Instance observed that this unusual request might convince companies not to leave Gibraltar and must, at first sight, allay to a considerable extent any concerns that beneficiaries might have [15]. Accordingly, the Commission has led the Gibraltar Government and beneficiaries to believe that recovery will not be ordered.

(33) The application of Article 87 of the Treaty to a classic 'offshore' scheme is novel and still has conceptual difficulties as regards the determination of an advantage, the financial burden on the State and selectivity.

(34) The Commission itself, at the time of opening the formal investigation, was, exceptionally, not able to decide the question of existing aid.

(35) Recovery would be contrary to the principle of proportionality. Under Community law, when there is a choice between several courses of action, the least onerous must be followed. The disadvantages caused must not be disproportionate to the aims pursued.

(36) Recovery of aid granted over the previous 10 years would place a disproportionate burden on the Gibraltar authorities. Gibraltar is a small territory with limited administrative resources, only around 2 000 companies are assessed for taxation in any given year. Recovery would involve, *inter alia*, requesting suitable accounts from Qualifying Companies (including those no longer active), assessment of the tax liability for each year, issuing tax demands, handling appeals and counter appeals and pursuit of non-payment of tax due. The administrative burden, the limited powers of investigation of the Gibraltar Tax Department, the impossibility of tracing companies which have ceased activity and the absence of company assets in Gibraltar would paralyse governmental activity with no guarantee of achieving satisfactory recovery.

(37) Recovery would have a disproportionate effect on the Gibraltar economy and would be a disproportionate penalty in view of the circumstances which led to the adoption of the Qualifying Companies legislation, the limited effect on competition and trade and the small size of the beneficiaries. Financial services account for approximately 30 % of Gibraltar's GDP and the employment directly related to Qualifying Companies is estimated at 1 400 (out of a total workforce of around 14 000). The financial sector has a significant impact on virtually all other sectors of the economy. A recovery order would lead to the winding-up, bankruptcy or exodus of the Qualifying Companies, a destabilisation of the financial services sector and a major unemployment crisis, in turn causing political, social and economic instability.

(38) A large number of Qualifying Companies would not be assessable to Gibraltar taxation as their income is not derived from, accrued or received in Gibraltar. As a result of the conditions for eligibility, in many cases, the beneficiaries would have no assets within Gibraltar's jurisdiction. Others which have ceased trading would be untraceable.

(39) A large number of beneficiaries would be in receipt of aid which would comply with the *de minimis* rule.

V. **COMMENTS FROM CHARLES A. GOMEZ & CO.**

(40) The comments from Charles A. Gomez & Co. can be summarised as follows.

(41) The Gibraltar legal profession has a substantial dependency on Finance Centre work to which Qualifying Companies make a major contribution. Some 130 legal practitioners employ several hundred more staff and make a substantial contribution indirectly to employment in Gibraltar and Spain.

[14] See footnote 1.
[15] Joined Cases T-195/01 R and T-207/01, paragraphs 104 and 113.

(42) The recourse to Article 87(3)(a) of the Treaty cannot be restricted to areas where the standard of living is already low or where there is already serious unemployment. The principle of Article 87(3)(a) must also apply in the interest of preventing unemployment and poverty. When the Qualifying Company legislation was enacted, Gibraltar was faced with 20 years of economic sanctions by Spain and the imminent closure of the Royal Navy Dockyard. Faced with the option of poverty, unemployment and emigration, Gibraltar found an alternative source of prosperity by establishing the Gibraltar Finance Centre, to which the Qualifying Companies legislation is a major contributor. The European interest cannot link acceptance of poverty and unemployment by ruling out the application of Article 87(3)(a) of the Treaty to this situation when viable alternatives are available. Unlike other major financial centres, the Gibraltar centre was established through necessity. This necessity, self defence and the duty to mitigate damage caused by others all justify the Qualifying Companies legislation.

(43) Since accession in 1973, the Community institutions have failed to defend the rights and interests of citizens of the Union residing in Gibraltar. Despite a judgment of the Court of Justice, citizens of the Union in Gibraltar are not represented in the European Parliament. In the absence of any involvement in the 'EU territory of Gibraltar', the insistence by the Commission on notification of defensive measures taken by Gibraltar appears excessive.

VI. COMMENTS FROM THE UNITED KINGDOM

(44) The United Kingdom restricted its initial comments to the question of recovery of aid and to regional selectivity and made further observations in its comments on those of the Government of Gibraltar. They can be summarised as follows.

Recovery of aid

(45) If the Qualifying Companies legislation is found to be illegal aid incompatible with the common market, there is a general principle of Community law, legitimate expectations, which precludes any order for recovery of aid already paid. Although legitimate expectations arise in only exceptional circumstances where a recipient could legitimately have assumed that the aid was lawful [16], such circumstances exist in this case and it would be inappropriate and unlawful for the Commission to make an order for recovery.

(46) This procedure under Article 88(2) of the Treaty flows from the adoption of the Code of Conduct for Business Taxation in 1997 in which the Commission committed itself to the strict application of the State aid rules to measures relating to direct business taxation. It is implicit in that statement that in the past, the State aid rules had not been so strictly applied to fiscal regimes of the type addressed in the Code of Conduct for Business Taxation.

(47) It is highly unlikely that in 1984, any consideration was given by either the Government of Gibraltar or the United Kingdom Government to the possibility that the rules in question were in breach of the United Kingdom's State aid obligations. While it was clear at that time that a highly specific or sectoral tax advantage was capable of being State aid, the application of the State aid rules to more general company tax schemes, such as the Qualifying Companies regime, had been the subject of neither serious academic comment nor pronouncement by the Commission. It would be unreasonable to expect diligent businessmen to raise questions about the compliance of the measure with the State aid rules. They would have made business plans and altered their economic positions on the basis of the Qualifying Companies legislation and were entitled to assume that the tax benefits were lawful.

(48) Point 26 of the Notice specifically mentions circumstances where non-resident companies are treated more favourably than resident ones. This was the first time that differential tax treatment between resident and non-resident companies had been acknowledged by the Commission as an act of selection or 'specificity' capable of bringing the State aid rules into play. The Qualifying Companies legislation had been in place for many years prior to this time without any criticism or comment from the Commission.

Regional specificity

(49) The sole fact that the Qualifying Companies regime is a feature of Gibraltar legislation that has no application in the rest of the United Kingdom cannot give rise to the element of selectivity required by Article 87(1) of the Treaty. Gibraltar is a separate jurisdiction from the rest of the United Kingdom for tax purposes, with autonomy in relation to tax matters. It is not the case that any divergence between taxation laws applicable in Gibraltar and those applying in the rest of the United Kingdom would automatically give rise to State aid. One jurisdiction within a Member State with autonomy in relation to taxation matters cannot create a State aid purely because a particular aspect of its taxation system results in a lower (or higher) level of taxation than that applicable to the rest of the Member State. If a tax measure is general within the relevant tax jurisdiction, it cannot be caught by Article 87(1) of the Treaty. To rule otherwise would be to call into question the tax raising and tax varying powers enjoyed by devolved and decentralised administrations across the Community. This would constitute a serious intervention in Member States' constitutional arrangements.

[16] Case 223/85, *Rijn-Schelde-Verolme* v *Commission* [1987] ECR 4617.

Government of Gibraltar's comments

(50) The United Kingdom supports the Government of Gibraltar's contention that the Qualifying Companies legislation should be treated as existing aid in accordance with Article 1(b)(v) of Regulation (EC) No 659/1999. In the 1970s and 1980s it was universally assumed that Member States' sovereignty over fiscal issues was not limited by the State aid rules as far as entire corporate tax systems were concerned. The Commission made no attempt to apply the State aid rules to the Gibraltar tax regime or indeed to other tax regimes within the Community, which offered favourable tax treatment to certain classes of company over others. It was only after agreement on the complete liberalisation of capital movements and financial services liberalisation in the 1980s and early 1990s and then on the establishment of a Single Currency in the 1990s that attention was seriously focused on limiting harmful competition arising out of Member State tax regimes. The use of the State aid provisions of the Treaty to give effect to such tax policy is a phenomenon only experienced in the last four years. The common market has evolved over the last three decades and many State aid instruments today would not have been considered State aid 30, 20 or even 10 years ago.

(51) Even if the Commission is correct in the light of the current state of Community law in viewing the introduction of the Qualifying Companies legislation as a State aid measure which would require notification if adopted today, neither the Commission nor the Court of Justice would have considered it to be State aid requiring notification at the time it was adopted. In 1984 Spain was not yet a Member State, and many Member States maintained banking laws and exchange controls preventing the use of tax advantages such as those available in Gibraltar. It is far from clear that the Gibraltar measures were capable of distorting competition and affecting trade between Member States at that time.

(52) At that time, the Commission itself addressed cases of differential tax treatment where possible, using Article 95 of the Treaty (now Article 90), rather than relying on the State aid rules. Academic commentators and tax law practitioners did not consider that State aid principles applied to cases other than those where specific tax exemptions were offered to individual companies or groups of companies for industrial policy reasons. It is not possible to sustain an argument that measures such as the Gibraltar Qualifying Companies legislation were capable of being State aid until after the publication of the Notice on 10 December 1998.

(53) On the question of recovery, the United Kingdom in particular endorses the Government of Gibraltar's arguments that the Commission's commitment systematically to apply the State aid rules to direct taxation measures is novel and that any aid would be impossible to recover. Recovery would place a disproportionate burden on the Gibraltar authorities, many Qualifying Companies would not have a corporation tax liability in Gibraltar, it would be impossible to assess and/or recover the aid in a large number of cases and many beneficiaries would be in receipt of *de minimis* aid.

VII. ASSESSMENT OF THE AID MEASURE

(54) After having considered the observations of the United Kingdom authorities as well as those of the Government of Gibraltar and Charles A. Gomez & Co., the Commission maintains its position, expressed in its decision of 11 July 2001 [17] to the United Kingdom authorities initiating the procedure under Article 88(2) of the Treaty, that the scheme under examination constitutes unlawful, operating State aid, within the scope of Article 87(1) of the Treaty.

Existence of aid

(55) In order to be considered State aid within the meaning of Article 87(1) of the Treaty, a measure must fulfil the four following criteria.

(56) First, the measure must afford the beneficiaries an advantage that reduces the costs they normally bear in the course of their business. According to point 9 of the Notice, the tax advantage may be granted through different types of reduction in the company's burden and, in particular, through a reduction in the amount of tax. The Qualifying Companies regime clearly fulfils this criterion. Rather than be subject to income tax at the standard Gibraltar corporate rate of 35 %, Qualifying Companies negotiate their rate of tax with the Gibraltar authorities as described in recital (9) above.

(57) The observation that Qualifying Companies legislation is a tax scheme designed to operate in an international context is not relevant to its qualification as a State aid measure. Although the Commission accepts the argument that Gibraltar is not competent to grant tax advantages relating to other jurisdictions, the fact that Qualifying Companies negotiate their tax rate, demonstrates clearly that they earn revenue which, in the absence of their special treatment, would be subject to company taxation at the standard rate. Irrespective of the type of activities in which Qualifying Companies may be active, their Qualifying status is granted to the extent that they are companies registered in Gibraltar or are registered branches of overseas companies. Consequently, Qualifying Companies benefit from a special and more beneficial tax treatment in Gibraltar, when compared with other companies registered in Gibraltar.

[17] See footnote 1.

(58) Second, the advantage must be granted by the State or through State resources. The grant of a tax reduction, such as that negotiated between a Qualifying Company and the Gibraltar authorities, involves a loss of tax revenue which, according to point 10 of the Notice, is equivalent to the use of State resources in the form of fiscal expenditure.

(59) The Government of Gibraltar's argument that, through ring-fencing, the measure places no apparent burden on its budget, must be rejected. The Commission considers that the tax advantage, for the purposes of Article 87(1) of the Treaty, is granted through State resources, since the origin of this advantage is the renunciation by the Member State of tax revenue which it would normally have received ([18]). In the absence of the ring-fenced tax advantage, the activities of Qualifying Companies, to the extent that they occur under the jurisdiction of the Gibraltar authorities, would be subject to the full rate of tax in Gibraltar. This difference in tax rate represents the tax revenue foregone.

(60) Third, the measure must affect competition and trade between Member States. This criterion is fulfilled to the extent that Qualifying Companies are able, actually or potentially, to trade with companies located in other Member States or to be active in third country markets open to undertakings from other Member States. This is particularly the case since Qualifying Companies may not, in normal circumstances, trade or carry on business in Gibraltar, with Gibraltarians or with residents of Gibraltar.

(61) Even if some Qualifying Companies are established by individuals for tax planning purposes and do not trade, produce or compete in the market, they are not precluded from doing so. However, the fact that Qualifying Companies tend to have a 'bricks and mortar' presence in Gibraltar and generate income that is subject to company taxation, albeit at a reduced rate, suggests that they do in fact engage in economic activity. This is confirmed by the wide range of sectors in which Qualifying Companies are active (see recital 9).

(62) The Commission notes that Gibraltar does not form part of the Community's common customs territory. However, this does not affect the application of the State aid rules to those undertakings in Gibraltar engaged in trade in goods. Such undertakings are not precluded from trading with undertakings within the common customs territory, nor are they precluded from competing in third country markets where other Community undertakings are active, actually or potentially. Therefore, to the extent that the tax advantage granted to Qualifying Companies engaged in trade in goods strengthens their position, trade and competition is affected.

(63) The parallels drawn with the Commission's reasoning in Decision 2000/394/EC in respect of aid to firms in Venice and Chiogga must also be rejected. The circumstances of the two cases are quite different. In particular, the conclusion that there was no impact on trade and consequently no aid to three particular companies was based, *inter alia*, on the local nature of the services provided. These considerations are clearly not applicable to Qualifying Companies, which, as the Government of Gibraltar itself points out, operate in an international context.

(64) The *de minimis* rule cannot be used to justify the application of the Qualifying Companies regime. There is no mechanism to prevent the grant of aid in excess of that allowed under the *de minimis* rule, nor does the measure exclude sectors where the *de minimis* rule does not apply.

(65) Last, the measure must be specific or selective in that it favours 'certain undertakings or the production of certain goods'. The beneficiaries of the measure are Gibraltar companies in whose shares no Gibraltarian or Gibraltar resident may have a beneficial interest. In addition, Qualifying Companies may not in normal circumstances trade or carry on business in Gibraltar with Gibraltarians or residents of Gibraltar. The measure is therefore selective, in so far as it grants privileged tax treatment to those non-Gibraltar owned companies operating in or from Gibraltar.

(66) The observation that the measure is not selective because any person can establish a Qualifying Company and that the limitations on the availability of Qualifying Company status is an act of reverse discrimination against Gibraltar residents fails to demonstrate that the measure is not selective. When examining a measure, comparison must be made with the generally applicable system, in this case the standard regime of corporation tax in Gibraltar. The Qualifying Company regime is clearly an exception to the general system.

([18]) See, for instance, Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 26.

(67) The Commission notes the United Kingdom's observations on regional specificity. The Commission also notes that the United Kingdom has not attempted to argue that the Qualifying Companies regime constitutes a general measure within the Gibraltar tax jurisdiction. The Commission accordingly stands by its conclusion that that the measure is materially selective within Gibraltar. It is therefore not necessary to examine in this case the question of regional selectivity which is assessed in detail in the Commission decision of 30 March 2004 on the Gibraltar Government Corporation Tax Reform ([19]).

Existing aid or illegal aid

(68) This question has been considered by the Court of First Instance, which rejected the Government of Gibraltar's arguments against the Commission's provisional assessment of illegal aid in respect of the Qualifying Companies regime ([20]). Regardless of whether it was modelled on the 1967 Exempt Company regime, the Qualifying Company legislation was enacted in 1983, after the United Kingdom's accession to the Community. It therefore cannot be considered to be 'existing aid' within the meaning of Article 1(b)(i) of Regulation (EC) No 659/1999. The Court of First Instance itself concluded that there were sufficient grounds for the Commission to open the formal investigation procedure.

(69) As early as 1973, the European Court of Justice expressly confirmed the applicability of the State aid rules to fiscal measures ([21]). Even if there have been few examples of Commission action against general corporate tax measures, this does not affect the existing or illegal nature of the aid measure. In this case, the Qualifying Companies legislation is not a general corporate tax measure, but quite specific in its scope. In any event, the application of a Treaty provision for the first time to a particular situation does not constitute the retroactive application of a new rule.

(70) The Qualifying Companies legislation was not notified to the Commission in accordance with Article 88(3) of the Treaty. The fact that it was brought to the attention of the Primarolo group cannot be treated as formal notification to the Commission under the State aid rules.

(71) As for the Notice constituting an administrative innovation or policy statement, the Court of First Instance has already confirmed ([22]) that 'nowhere in (the Notice) does the Commission announce any change of practice in its decisions concerning the assessment of tax measures in the light of Article 87 EC and 88 EC'. It therefore follows that the United Kingdom is wrong to assert that measures such as the Qualifying Companies regime were not capable of being classified as State aid until after the publication of the Notice.

(72) In advancing its claim that the Qualifying Companies legislation became aid only after it was put into effect in 1983 in the sense of Article 1(b)(v) of Regulation (EC) No 659/1999, the Government of Gibraltar argues, with the support of the United Kingdom, that the measure predates the liberalisation of capital movements by 10 years. However, this general observation has not been supported by specific arguments relating to Qualifying Companies and therefore cannot, *per se*, establish that the measure, in 1983, did not constitute aid. It is clear from the legislation itself that there are no limitations on the sectors of economic activity in which Qualifying Companies can engage. The extent to which, if at all, unspecified restrictions on capital movements in 1983 affected companies benefiting from the tax advantages granted by the measure is therefore not apparent.

(73) Even if, as the United Kingdom maintains, some Member States' banking laws and exchange controls, at the time, prevented the use of such offshore tax advantages, the existence of the tax benefits would nevertheless still have strengthened the position of Qualifying Companies in markets not subject to such restrictions compared with their competitors in other Member States. In this respect, the Government of Gibraltar has advanced essentially the same arguments used in its pleadings before the Court of First Instance. The Court rejected these arguments against the Commission's provisional classification of the Qualifying Companies legislation and concluded that such 'general arguments are not capable of establishing that the 1983 tax scheme must, owing to its intrinsic characteristics, be classified as an existing aid scheme' ([23]). The Court also rejected parallels drawn with the Irish Corporation Tax case ([24]) on the grounds that the factual and legal circumstances were quite different ([25]). The Commission therefore sees no grounds on which to change its view.

([19]) Commission decision of 30 March 2004, not yet published.
([20]) See Joined Cases T-195/01 and T-207/01, paragraphs 117-131.
([21]) Case 173/73, *Italy* v *Commission*, [1974] ECR 709, paragraph 13.
([22]) Joined cases T-269/99, T-271/99 and T-272/99, *Diputación Foral de Guipúzcoaand others* v *Commission* [2002] ECR II-4217, paragraph 79.
([23]) See Joined Cases T-195/01 and T-207/01.
([24]) OJ C 395, 18.12.1998, p. 14.
([25]) Joined Cases T-195/01 and T-207/01, paragraphs 120 and 123.

(74) As for the alleged infringements of the principles of proportionality, legal certainty and legitimate expectations, the arguments of the Government of Gibraltar presume a margin of discretion that the Commission does not possess. In the Piaggio case [26], the Court ruled that the Commission's classification of the scheme at issue as an existing aid, for reasons of practical expediency, when that scheme had not been notified in accordance with Article 88(3) of the Treaty, could not be accepted. Accordingly, as confirmed by the Court of First Instance [27], the classification of a measure as new or existing aid must be determined without reference to the time which has elapsed since the measure was enacted and independently of any previous administrative practice, regardless of any alleged economic consequences. For these reasons, the suggestion by Charles A. Gomez & Co. and the United Kingdom that the Commission has acted excessively by considering the measure to have required notification must be rejected. Similarly, the limitation period in Article 15 of Regulation (EC) No 659/1999 does not set out a general principle under which illegal aid is transformed into existing aid but merely precludes recovery of aid established more than 10 years before the Commission's first intervention.

(75) The Commission notes that the procedure under Articles 96 and 97 of the Treaty concerns differences between general provisions of Member States [28]. In contrast, the Qualifying Companies legislation is not such a general provision but a selective measure of narrow scope falling clearly within the scope of the State aid rules. The Commission also notes that its action is entirely consistent with paragraph J of the Code of Conduct for Business Taxation.

Compatibility

(76) Insofar as the Qualifying Companies regime constitutes State aid within the meaning of Article 87(1) of the Treaty, its compatibility with the common market must be evaluated in the light of the derogations provided for in Articles 87(2) and 87(3).

(77) The derogations provided for in Article 87(2) of the Treaty, which concern aid of a social character granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences and aid granted to certain areas of the Federal Republic of Germany, do not apply in this case.

(78) In particular, the closure of the Naval Dockyard cannot be considered to be an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty. The Commission's decision-making practice has established that this derogation only applies in circumstances where the exceptional occurrence is unpredictable and outside the control of the Member State's authorities. The United Kingdom authorities announced the closure of the Dockyard in 1981, three years before it closed in 1984.

(79) The derogation provided for in Article 87(3)(a) provides for the authorisation of aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Point 3.5 of the Commission's Guidelines on national regional aid [29] establishes the methodology to be used in demarcating areas to be considered eligible to benefit from the derogation in Article 87(3)(a) of the Treaty. This uses historical data. Contrary to the assertion of Charles A. Gomez & Co., this provision cannot be used prospectively and applies only to areas where conditions of a low standard of living or serious underemployment already exist. Such areas are defined by the United Kingdom's regional aid map [30]. The United Kingdom authorities did not propose Gibraltar as an assisted area and accepted that no regional aid could be granted in Gibraltar for the period 2000 to 2006. Since Gibraltar is not and never has been such an area, Article 87(3)(a) does not apply. In any event, it has not been argued that Gibraltar has a per capita gross domestic product below the threshold set in point 3.5 of the Commission's Guidelines on national regional aid. Article 87(3)(a) cannot be used to palliate uncertain and unquantifiable future effects which can themselves be prevented or attenuated by the national authorities through the use of other policy instruments.

(80) The Qualifying Companies regime cannot be considered either to be a project of common European interest or to remedy a serious disturbance in the economy of a Member State, as referred to in Article 87(3)(b) of the Treaty. As the Government of Gibraltar has observed, the Commission and the Court of Justice interpret Article 87(3)(b) strictly as meaning that a serious disturbance must affect the whole economy of a Member State [31]. The disturbance in question, the closure of the Naval

[26] Case C-295/97 *Piaggio* v *Ifitalia and others*, [1999] ECR I-3735.
[27] Joined Cases T-195/01 and T-207/01, paragraph 121.
[28] See point 6 of the Notice.
[29] OJ C 74, 10.3.1998, p. 9.
[30] OJ C 272, 23.9.2000, p. 43 and Commission approval letter No SG(2000) D/106293 of 17 August 2000.
[31] See Joined cases T-132/96 and T-143/96, *Freistaat and others* v *Commission*, ECR [1999] II-3663, paragraphs 166, 167 and 168.

Dockyard, did not disturb the whole of the United Kingdom's economy. Whilst the Commission notes the Government of Gibraltar's argument that Gibraltar is separated from the United Kingdom in constitutional, political, legislative, economic, fiscal and geographic terms, this does not alter the fact that for the purposes of the State aid rules, Gibraltar forms part of the United Kingdom, regardless of the unique scope of Article 299(4) of the Treaty. In any event, there are other areas of the Community which are also characterised by varying types and degrees of separation from the Member State of which they form part. None of these areas is treated as a Member State in its own right for the purposes of Article 87(3)(b). The parallels that the Government of Gibraltar draws with measures adopted in response to the bovine spongiform encephalopathy (BSE) crisis in the United Kingdom are not relevant. The BSE crisis was considered to be an exceptional occurrence and accordingly these measures fell within the scope of Article 87(2)(b) of the Treaty. There is no requirement that, for Article 87(2)(b) to apply, the exceptional occurrence must affect the whole of a Member State concerned.

(81) The Qualifying Companies regime does not have as its object the promotion of culture and heritage conservation as provided for by Article 87(3)(d) of the Treaty.

(82) Finally, the Qualifying Companies regime must be examined in the light of Article 87(3)(c) of the Treaty, which provides for the authorisation of aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent that is contrary to the common interest. The tax advantages granted by the Qualifying Companies regime are not related to investments, to job creation or to specific projects. They simply constitute a reduction of charges that should normally be borne by the undertakings concerned in the course of their business and must therefore be considered as operating State aid, the benefits of which cease as soon as the aid is withdrawn. According to the constant practice of the Commission, such aid cannot be considered to facilitate the development of certain activities or of certain economic areas under Article 87(3)(c) of the Treaty. Operating aid, according to points 4.15 and 4.16 of the Commission's Guidelines on national regional aid, may only be granted in exceptional circumstances or under special conditions. In addition, Gibraltar is not included in the regional aid map for the United Kingdom for the period 2000 to 2006, as approved by the Commission under State aid N 265/00 ([32]).

([32]) Joined cases T-132/96 and T-143/96.

Recovery

(83) The Court of Justice has repeatedly ruled that where illegally granted State aid is found to be incompatible with the common market, the natural consequence of such a finding is that the aid should be recovered from the beneficiaries ([33]). Through recovery of the aid, the competitive position that existed before the aid was granted is restored as far as is possible. However, Article 14(1) of Regulation (EC) No 659/1999 provides that 'the Commission shall not require the recovery of the aid if this would be contrary to a general principle of Community law'.

(84) The Government of Gibraltar's arguments to the effect that legitimate expectations have been created by the uncertainty of the scope of the State aid rules and the rarity or novelty of Commission action against tax measures, whether offshore in nature or not, must be rejected. Only in exceptional circumstances may a recipient of unlawful aid escape the obligation to repay such aid and it is for the national courts alone to assess the circumstances of the individual case ([34]). Similarly, as the publication of the Notice represented neither a policy statement by the Commission, nor, as the United Kingdom implies, a tightening of the application of the State aid rules, it cannot have created legitimate expectations ([35]). The application of a Treaty rule to a specific situation for the first time cannot create a legitimate expectation in respect of the past. In any event, contrary to what the United Kingdom suggests, the differential tax treatment between resident and non-resident companies has played an important part in previous Commission State aid decisions ([36]).

(85) The notification of the Qualifying Companies legislation to the Primarolo group, far from creating legitimate expectations, placed the measure clearly within the scope of the Commission's commitment, mentioned in paragraph J of the Code of Conduct for Business Taxation, to examine or re-examine Member States' existing tax arrangements, with all the consequences that State aid investigations bring.

([33]) See for example Case C-169/95, *Spain* v *Commission* [1997] ECR I-135, paragraph 47.

([34]) See for example Cases C-5/89 *Commission* v *Germany* [1990] ECR I-3437), T-67/94 *Ladbroke Racing* v *Commission* [1998] ECR II-1, T-459/93 *Siemens* v *Commission* (ECR [1995] II 1675.

([35]) See footnote 23.

([36]) See, for example, Commission Decision 95/452/EC of 12 April 1995 on State aid in the form of tax concessions to undertakings operating in the Trieste Financial Services & Insurance Centre pursuant to Article 3 of Italian Law No 19 of 9 January 1991 on, OJ L 264, 7.11.1995, p. 30, recital 10.

(86) As for the evolution of the common market and liberalisation of capital movements and financial services, the Government of Gibraltar has provided only general arguments insufficient to establish the existence of legitimate expectations. In particular, the Commission notes that no specific reasoning has been advanced as to how the evolution of the common market has created such expectations, nor has any argument been given relating to the impact of specific liberalisation measures. In addition, it is clear that the scope of the Qualifying Companies legislation is wider than those sectors that may have been affected by restrictions on capital movements and financial services.

(87) The Government of Gibraltar draws on the Defrenne case to support its argument that the delays both before and during the investigation into the Qualifying Companies regime have created legitimate expectations. However, the factual and legal situation in the Defrenne case were quite different. In particular, through its prolonged failure to take infringement action against certain Member States, despite its own investigations into the infringements concerned and repeated warnings that it would initiate action, the Commission led Member States to consolidate their belief as to the effect of Article 119 of the Treaty (now Article 141). In contrast, the Commission's attention had not been repeatedly drawn to the Qualifying Companies regime and it was only on the adoption of the Code of Conduct for Business Taxation that the Commission started a systematic examination of Member States' tax arrangements.

(88) Similarly, the alleged delays in the preliminary investigation cannot create legitimate expectations. The United Kingdom's failure to meet the deadlines set in requests for information contributed to any delays, if there were indeed such delays. The preliminary investigation must also be put into the wider context of the Commission's follow-up to the adoption of the Code of Conduct for Business Taxation in which it sought information from Member States on around 50 tax measures. The Qualifying Companies regime was but one of these measures. The Commission was not inactive during the preliminary investigation, but had to proceed on Qualifying Companies in parallel with its preliminary investigation into the other measures.

(89) Part of the time was spent on the investigation into the Exempt Companies legislation, on which, according to the Government of Gibraltar, the Qualifying Company regime was modelled nearly 'word for word'. In this case, the Government of Gibraltar has itself referred to submissions it has made on Exempt Companies (for example its paper submitted by the United Kingdom in the letter of 12 September 2000), saying that the observations on Exempt Companies apply, *mutatis mutandis*, to Qualifying Companies. As far as the Commission is aware, the United Kingdom authorities kept the Government of Gibraltar informed as to the conduct of the investigation. The Government of Gibraltar was also given the opportunity to discuss the investigation into its offshore tax regimes at the meeting held on 19 October 2000 and at all stages had the opportunity to enquire as to its progress, timing and likely outcome.

(90) It may be true that there were some doubts as to the utility of opening the State aid procedure on certain tax measures pending progress on the rollback of harmful measures. However this related in part to those existing aid measures, for which, if rolled back in accordance with the Code of Conduct for Business Taxation, a State aid investigation would no longer have any meaning. The Commission also took the view that in the interests of equality of treatment, it would be better to initiate proceedings on a number of measures concerning a wide range of Member States at the same time, rather than to adopt a piecemeal approach.

(91) As for the claim that there should be a limitation period, such a period does in fact exist and is provided for in Article 15 of Regulation (EC) No 659/1999. It precludes recovery of aid established more than 10 years before the Commission's first intervention, in this case, 10 years before the Commission's letter of 12 February 1999.

(92) The Commission notes the Government of Gibraltar's comments on the significance of the Commission's specific request for observations on the recovery of aid. Whilst the request clearly expressed the Commission's uncertainties on the question of recovery, it also served as an explicit signal to the beneficiaries that, in the event that the measure was found to constitute illegal and incompatible aid, recovery remained a distinct possibility and was in principle the logical outcome. Whilst the President of the Court of First Instance observed that this 'unusual request must, at first sight, allay to a considerable extent any concerns that beneficiaries might have', he did not conclude that such concerns had been dispelled ([37]). If he had done so, the Commission would have been put in the absurd situation where the perverse consequence of seeking views on a course of action precluded that very course of action itself.

(93) Similarly, any doubts that the Commission may have publicly expressed on the existing or illegal nature of the aid measure would serve to emphasise that a finding of illegal aid, with all its consequences, was a clear possibility.

([37]) Joined Cases T-195/01 R and T-207/01 *Gibraltar* v *Commission*, paragraph 113.

(94) The claim that an order for recovery would infringe the principle of proportionality must also be rejected. The Court of Justice has consistently held [38] that the recovery of unlawfully granted State aid with a view to re-establishing the previously existing situation cannot in principle be regarded as disproportionate.

(95) The Commission rejects the assertion that an order for recovery would place a disproportionate administrative burden on the Gibraltar authorities. According to the United Kingdom, there are around 140 Qualifying Companies. This represents less than 10 % of the companies assessed for taxation each year in Gibraltar. Given that most, if not all, Qualifying Companies pay some income tax, albeit at a reduced rate, and that such companies tend to have a 'bricks and mortar' presence in Gibraltar, the Commission concludes that the administrative burden would not be excessive. As for the suggestion that the powers of investigation of Gibraltar Tax Department are limited, the Court of Justice has ruled that national provisions cannot be invoked in such a way as to render recovery impossible [39].

(96) Arguments similar to those in recital 37 on the consequences of recovery for the Gibraltar economy were used by the Government of Gibraltar in an attempt to prevent publication of the decision to open the formal investigation procedure [40]. They have not materialised. It is far from certain that they would do so as a result of a recovery order in this case. The Commission also notes that the arguments on the impact of recovery on the Gibraltar economy encompassed both the Qualifying Companies and the Exempt Companies regimes. However, since the Government of Gibraltar made its observations, the threat of recovery has diminished to the extent that following the annulment of the Commission's decision initiating the formal State aid investigation procedure [41], the original 1967 Exempt Companies legislation is now under investigation as an existing aid scheme. There can be no recovery order in respect of this legislation and consequently the impact forecast by the Government of Gibraltar, to the extent it materialises at all, will be reduced. In any event, the Commission cannot allow such hypothetical considerations to impede the restoration, as far as possible, of the competitive situation that existed before the implementation of an illegal aid measure.

(97) The Commission notes the Government of Gibraltar's comments that some Qualifying Companies would not be assessable to taxation in Gibraltar, that some would have no assets within its jurisdiction, that some would have ceased trading and that some would be in receipt of aid below the *de minimis* threshold. However, such considerations cannot, by themselves, preclude a recovery order. Nor can they relieve a Member State's authorities of the obligation to take the necessary steps to give full effect to a recovery order, since they become relevant only in the context of an examination of an individual case. In this context, the Commission notes that the benefits of Qualifying Company status are not limited to *de minimis* aid, nor are they limited to enterprises that are assessable to taxation in Gibraltar or that have no assets within the jurisdiction of the Gibraltar authorities.

(98) The Commission makes no observation on the good faith, or otherwise, of the Gibraltar authorities. However, it follows from the rulings of the Court of Justice [42] that, when an existing aid measure is altered, in order for the measure to become new aid by virtue of the modification or for the modification itself to be new aid, the alteration must widen the scope of the measure and/or increase the advantage available.

(99) In the present case, the Commission notes the ruling by the Court of First Instance that Gibraltar's 1967 Exempt Companies legislation must be considered to be an existing aid measure [43]. The Commission also notes that the Qualifying Companies legislation was modelled very closely on the Exempt Company legislation. The conditions for eligibility are largely identical. The substantive differences concern the determination of the annual tax due. Rather than pay only a very low, fixed annual tax, Qualifying Companies pay a percentage of their annual profits. It therefore follows that Qualifying Companies pay tax on their profits at a higher rate than Exempt Companies. The more restrictive Qualifying Companies regime can therefore be considered to offer a reduced advantage, within the meaning of Article 87(1) of the Treaty, compared with the Exempt Companies regime. The Commission also notes that in the unlikely event that the tax paid by a Qualifying Company would be lower than the fixed annual tax of an equivalent Exempt Company, the difference would fall below the *de minimis* threshold. The legislation provides for a minimum tax rate of 0 % for a Qualifying Company, whilst Exempt Companies pay a fixed annual tax of between GBP 225 and 300.

[38] See, for example, Joined cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103.
[39] See for example case C-24/95 *Rheinland Pfalz* v *Alcan*, [1997] ECR I-1591.
[40] Joined Cases T-195/01 R and T-207/01 *Gibraltar* v *Commission*, paragraphs 94 to 105.
[41] Joined Cases T-195/01 and T-207/01, paragraph 115.
[42] Joined Cases T-195/01 and T-207/01, paragraph 111.
[43] Joined Cases T-195/01 and T-207/01, paragraph 113.

(100) The Court of Justice has consistently ruled that where a diligent businessman could have foreseen the adoption of a Community measure likely to affect his interests, he cannot rely on the principle of protection of legitimate expectations if the measure is adopted ([44]). Given the similarities between the Exempt Companies and Qualifying Companies regimes, it is hard to see how a diligent operator could have anticipated that the two regimes would be subject to different State aid procedures. The differences between the two schemes, rather than being inherent in their design, reflect the practice of the Gibraltar authorities to require those offshore companies with a physical presence in Gibraltar to pay tax, albeit at a low level. It is therefore reasonable to assume that a conscientious businessman, acting in good faith, could legitimately have believed that by opting for the less generous Qualifying Companies regime rather than the manifestly legal (in State aid terms, existing) Exempt Companies regime, he would also enter a regime whose legality was not in doubt. Accordingly, the Commission concludes that an order for recovery would, in the exceptional circumstances of this case, be contrary to a general principle of Community law.

VIII. **CONCLUSIONS**

(101) It is concluded that the Gibraltar Qualifying Companies regime constitutes State aid within the meaning of Article 87(1) of the Treaty and that none of the derogations provided for in Article 87(2) or Article 87(3) apply. It is also concluded that the United Kingdom has unlawfully implemented the scheme in question, in breach of Article 88(3) of the Treaty. However, beneficiaries of the scheme were entitled to entertain a legitimate expectation that the legality of the scheme was not in doubt. Recovery of aid granted under the Qualifying Companies legislation should therefore not be required,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which the United Kingdom has implemented under the Qualifying Companies regime, contained in the Gibraltar Income Tax (Amendment) Ordinance of 14 July 1983 and the Gibraltar Income Tax (Qualifying Companies) Rules of 22 September 1983, is incompatible with the common market.

Article 2

The United Kingdom shall withdraw the scheme referred to in Article 1.

Article 3

The United Kingdom shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

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

Done at Brussels, 30 March 2004.

For the Commission

Mario MONTI

Member of the Commission

([44]) See for example Case 265/85, *Van den Bergh and Jurgens* v *Commission* [1987] ECR, 1155, paragraph 44.

COMMISSION DECISION

of 1 February 2005

amending Decision 2001/844/EC, ECSC, Euratom

(2005/78/EC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 218(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 131 thereof,

Having regard to the Treaty on European Union, and in particular Article 28(1) and Article 41(1) thereof,

Whereas:

(1) The Commission's security system is based on the principles set out in Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations [1] with a view to ensuring a smooth functioning of the decision-making process of the Union.

(2) The Commission's provisions on security are contained in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure [2].

(3) Appendix 1 to the Rules on security annexed to those provisions contains a table of equivalence including national security classifications.

(4) On 16 April 2003, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia signed the Treaty concerning their accession to the European Union [3]. Appendix 1 to the Rules on security should be amended in order to take account of those States.

(5) On 14 March 2003 the European Union signed an agreement [4] with NATO on the security of information. It is therefore also necessary to establish correspondence with NATO classification levels in Appendix 1 to the Rules on security.

(6) France and the Netherlands have changed their legislation on classification.

(7) In the interests of clarity, Appendix 1 to the Rules on security should be replaced.

(8) At the same time, the Annex to Decision 2001/844/EC, ECSC, Euratom should be corrected in order to ensure that the four classification terms are used homogeneously in all language versions,

HAS DECIDED AS FOLLOWS:

Article 1

Appendix 1 to the Rules on security contained in the Annex to Decision 2001/844/EC, ECSC, Euratom is replaced by the Annex to this Decision.

Article 2

The Annex to Decision 2001/844/EC, ECSC, Euratom is corrected by replacing in all linguistic versions the four classification terms, as appropriate, by the following terms which shall always be written in capital letters:

— 'RESTREINT UE',

— 'CONFIDENTIEL UE',

— 'SECRET UE',

— 'TRES SECRET UE/EU TOP SECRET'.

[1] OJ L 101, 11.4.2001, p. 1. Decision amended by Decision 2004/194/EC (OJ L 63, 28.2.2004, p. 48).
[2] OJ L 317, 3.12.2001, p. 1.
[3] OJ L 236, 23.9.2003, p. 17.
[4] OJ L 80, 27.3.2003, p. 36.

Article 3

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

Done at Brussels, 1 February 2005.

For the Commission
Siim KALLAS
Vice-President

ANNEX

'Appendix 1

COMPARISON OF NATIONAL SECURITY CLASSIFICATIONS

EU classification	TRES SECRET UE/ EU TOP SECRET	SECRET UE	CONFIDENTIEL UE	RESTREINT UE
WEU classification	FOCAL TOP SECRET	WEU SECRET	WEU CONFIDENTIAL	WEU RESTRICTED
Euratom classification	EURA TOP SECRET	EURA SECRET	EURA CONFIDENTIAL	EURA RESTRICTED
NATO classification	COSMIC TOP SECRET	NATO SECRET	NATO CONFIDENTIAL	NATO RESTRICTED
Belgium	Très Secret Zeer Geheim	Secret Geheim	Confidentiel Vertrouwelijk	Diffusion restreinte Beperkte Verspreiding
Czech Republic	Přísn tajné	Tajné	Důvěrné	Vyhrazené
Denmark	Yderst hemmeligt	Hemmeligt	Fortroligt	Til tjenestebrug
Germany	Streng geheim	Geheim	VS [1] — Vertraulich	VS — Nur für den Dienstgebrauch
Estonia	Täiesti salajane	Salajane	Konfidentsiaalne	Piiratud
Greece	Άκρως Απόρρητο Abr: ΑΑΠ	Απόρρητο Abr: (ΑΠ)	Εμπιστευτικό Abr: (ΕΜ)	Περιορισμένης Χρήσης Abr: (ΠΧ)
Spain	Secreto	Reservado	Confidencial	Difusión Limitada
France	Très Secret Défense [2]	Secret Défense	Confidentiel Défense	
Ireland	Top Secret	Secret	Confidential	Restricted
Italy	Segretissimo	Segreto	Riservatissimo	Riservato
Cyprus	Άκρως Απόρρητο	Απόρρητο	Εμπιστευτικό	Περιορισμένης Χρήσης
Latvia	Sevišķi slepeni	Slepeni	Konfidenciāli	Dienesta vajadzībām
Lithuania	Visiškai slaptai	Slaptai	Konfidencialiai	Riboto naudojimo
Luxembourg	Très Secret	Secret	Confidentiel	Diffusion restreinte
Hungary	Szigorúan titkos !	Titkos !	Bizalmas !	Korlátozott terjesztésű !
Malta	L-Ghola Segretezza	Sigriet	Kunfidenzjali	Ristrett
Netherlands	Stg [3]. Zeer Geheim	Stg. Geheim	Stg. Confidentieel	Departementaalvertrouwelijk
Austria	Streng Geheim	Geheim	Vertraulich	Eingeschränkt
Poland	Ściśle Tajne	Tajne	Poufne	Zastrzeżone
Portugal	Muito Secreto	Secreto	Confidencial	Reservado
Slovenia	Strogo tajno	Tajno	Zaupno	SVN Interno
Slovakia	Prísne tajné	Tajné	Dôverné	Vyhradené
Finland	Erittäin salainen	Erittäin salainen	Salainen	Luottamuksellinen
Sweden	Kvalificerat hemlig	Hemlig	Hemlig	Hemlig
United Kingdom	Top Secret	Secret	Confidential	Restricted

[1] VS = Verschlusssache.
[2] The classification Très secret défense, which covers governmental priority issues, may only be changed with the Prime Minister's authorisation.
[3] Stg = staatsgeheim.'

DECISION No 1/2005 OF THE EC-SWITZERLAND JOINT COMMITTEE

of 1 February 2005

replacing tables III and IV(b) of Protocol 2

(2005/79/EC)

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Economic Community, of the one part, and the Swiss Confederation, of the other part signed in Brussels on 22 July 1972, hereinafter referred to as 'the Agreement', as amended by the Agreement between the European Community and the Swiss Confederation amending the Agreement as regards the provisions applicable to processed agricultural products signed in Luxembourg on 26 October 2004, and its Protocol 2, and in particular Article 7 thereof,

(1) Whereas for the implementation of Protocol 2 to the Agreement, internal reference prices are fixed for the Contracting Parties by the Joint Committee.

(2) Whereas actual prices have changed on the domestic markets of the Contracting Parties as regards raw materials for which price compensation measures are applied.

(3) Whereas it is therefore necessary to update the reference prices and amounts listed in tables III and IV(b) to Protocol 2 accordingly.

(4) Whereas this Decision should enter into force on the date when the provisional application of the amending Agreement signed on 26 October 2004 becomes effective, i.e. the first day of the fourth month following the date of the signature, provided that the implementing measures as defined in Article 5(4) of Protocol 2 are adopted at the same date,

HAS ADOPTED THIS DECISION:

Article 1

Table III and the table under table IV(b) of Protocol 2 are replaced by the tables in Annex I and Annex II to this Decision.

Article 2

This decision shall enter into force on 1 February 2005.

Done at Brussels, 1 February 2005.

For the Joint Committee
The Chairman
Richard WRIGHT

ANNEX I

'TABLE III

EC and Swiss domestic reference prices

(CHF per 100 kg net)

Agricultural raw material	Swiss domestic reference price	EC domestic reference price	Difference Swiss/ EC reference price
Common wheat	58,34	16,10	42,24
Durum wheat	37,85	25,40	12,45
Rye	48,01	16,10	31,91
Barley	27,14	16,10	11,04
Maize	31,79	16,10	15,69
Common wheat flour	103,38	37,20	66,18
Whole-milk powder	590,00	395,00	195,00
Skimmed-milk powder	468,60	333,00	135,60
Butter	917,00	468,00	449,00
White sugar	—	—	0,00
Eggs [1]	255,00	205,50	49,50
Fresh potatoes	42,00	21,00	21,00
Vegetable fat [2]	390,00	160,00	230,00

[1] Derived from the prices for liquid birds' eggs, not in shell multiplied with factor 0,85.
[2] Prices for vegetable fats (for the baking and food industry) with 100 % fat content.'

ANNEX II

'TABLE IV

b) The basic amounts for agricultural raw materials taken into account for the calculation of the agricultural components:

(CHF per 100 kg net)

Agricultural raw material	Applied basic amount as from the entry into force	Applied basic amount as from three years after the entry into force
Common wheat	38,00	36,00
Durum wheat	11,00	10,00
Rye	29,00	27,00
Barley	10,00	9,00
Maize	14,00	13,00
Common wheat flour	57,00	54,00
Whole-milk powder	176,00	166,00
Skimmed-milk powder	122,00	115,00
Butter	449,00 (1)	449,00 (1)
White sugar	Zero	Zero
Eggs	36,00	36,00
Fresh potatoes	19,00	18,00
Vegetable fat	207,00	196,00

(1) Taking into account benefits from the aid for butter granted under Commission Regulation (EC) No 2571/97 of 15 December 1997, the applied basic amount of butter is not reduced compared to the price difference in table III.'

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL COMMON POSITION 2005/80/CFSP

of 31 January 2005

extending and amending Common Position 2004/133/CFSP on restrictive measures against extremists in the Former Yugoslav Republic of Macedonia (FYROM)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 15 thereof,

Whereas:

(1) On 10 February 2004 the Council adopted Common Position 2004/133/CFSP on restrictive measures against extremists in the former Yugoslav Republic of Macedonia (FYROM) and repealing Common Position 2001/542/CFSP [1].

(2) Common Position 2004/133/CFSP applies for a 12-month period.

(3) Following a review of Common Position 2004/133/CFSP, it is considered appropriate to extend its application for a further 12 months, as well as to expand the list of persons contained in its Annex,

HAS ADOPTED THIS COMMON POSITION:

Article 1

Common Position 2004/133/CFSP is hereby extended until 9 February 2006.

Article 2

The Annex to Common Position 2004/133/CFSP shall be replaced by the Annex to this Common Position.

Article 3

This Common Position shall take effect on the date of its adoption.

It shall apply as of 10 February 2005.

Article 4

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 31 January 2005.

For the Council
The President
J. ASSELBORN

[1] OJ L 39, 11.2.2004, p. 19.

ANNEX

'ANNEX

List of persons referred to in Article 1

Name	ADILI Gafur
Aka	Valdet Vardari
Date of birth	5.1.1959
Place of birth/origin	Kicevo (Harandjell)
Name	BAJRAMI Hamdi
Aka	Breza
Date of birth	16.8.1981
Place of birth/origin	Brest (FYROM)
Name	BEQIRI Idajet
Aka	
Date of birth	20.2.1951
Place of birth/origin	Mallakaster, Fier (Albania)
Name	BUTKA Spiro
Aka	Vigan Gradica
Date of birth	29.5.1949
Place of birth/origin	Kosovo
Name	GEORGIEVSKI Goran
Aka	Mujo
Date of birth	2.12.1969
Place of birth/origin	Kumanovo
Name	HYSENI Xhemail
Aka	Xhimi Shea
Date of birth	15.8.1958
Place of birth/origin	Lipkovo (Lojane)
Name	JAKUPI Avdil
Aka	Cakalla
Date of birth	20.4.1974
Place of birth/origin	Tanusevce
Name	JAKUPI Lirim
Aka	"Commander Nazi"
Date of birth	1.8.1979
Place of birth/origin	Bujanovac (Serbia & Montenegro)
Name	KRASNIQI Agim
Aka	
Date of birth	15.9.1979
Place of birth/origin	Kondovo (FYROM)
Name	LIMANI Fatmir
Aka	
Date of birth	14.1.1973
Place of birth/origin	Kicevo (FYROM)
Name	MATOSHI Ruzhdi
Aka	
Date of birth	6.3.1970
Place of birth/origin	Tetovo (FYROM)

Name	MISIMI Naser
Aka	
Date of birth	8.1.1959
Place of birth/origin	Mala Recica, Tetovo, (FYROM)

Name	MUSTAFAJ Taip
Aka	Mustafai, Mustafi or Mustafa
Date of birth	23.1.1964
Place of birth/origin	Bacin Dol, Gostivar, (FYROM)

Name	REXHEPI Daut
Aka	Leka
Date of birth	6.1.1966
Place of birth/origin	Poroj

Name	RUSHITI Sait
Date of birth	7.7.1966
Place of birth/origin	Tetovo

Name	SAMIU Izair
Aka	Baci
Date of birth	23.7.1963
Place of birth/origin	Semsevo

Name	STOJKOV Goran
Date of birth	25.2.1970
Place of birth/origin	Strumica

Name	SUMA Emrush
Aka	
Date of birth	27.5.1974
Place of birth/origin	Dirnce, Kosovo, Serbia & Montenegro

Name	SULEJMANI Fadil
Date of birth	5.12.1940
Place of birth/origin	Tetovo (Bosovce)

Name	SULEJMANI Gyner
Date of birth	3.3.1954
Place of birth/origin	Turkey

Name	UKSHINI Sami
Aka	“Commander Sokoli (Falcon)”
Date of birth	5.3.1963
Place of birth/origin	Djakovo, (Gjakova), Kosovo, Serbia & Montenegro’

COUNCIL DECISION 2005/81/CFSP

of 31 January 2005

extending the mandate of the Head of Mission/Police Commissioner of the European Union Police Mission (EUPM) in Bosnia-Herzegovina

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 23(2) thereof,

Having regard to Council Joint Action 2002/210/CFSP of 11 March 2002 on the European Union Police Mission [1] (EUPM), and in particular Article 4 thereof,

Having regard to Council Decision 2004/188/CFSP of 23 February 2004 concerning the appointment of the Head of Mission/Police Commissioner of the EUPM [2],

Whereas:

(1) On 23 February 2004, the Council adopted Decision 2004/188/CFSP appointing Mr Bartholomew Kevin Carty as Head of Mission/Police Commissioner of the EUPM as of 1 March 2004 for the duration of one year.

(2) Decision 2004/188/CFSP expires on 1 March 2005.

(3) The Secretary General/High Representative has proposed the extension of the mandate of Mr Bartholomew Kevin Carty as Head of Mission/Police Commissioner of the EUPM until 31 December 2005.

(4) The mandate of the Head of Mission/Police Commissioner of the EUPM should therefore be extended,

HAS DECIDED AS FOLLOWS:

Article 1

The mandate of Mr Bartholomew Kevin Carty as Head of Mission/Police Commissioner of the EUPM is hereby extended until 31 December 2005.

Article 2

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

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 31 January 2005.

For the Council
The President
J. ASSELBORN

[1] OJ L 70, 13.3.2002, p. 1. Joint Action as last amended by Joint Action 2003/188/CFSP (OJ L 73, 19.3.2003, p. 9).
[2] OJ L 58, 26.2.2004, p. 27.

COUNCIL COMMON POSITION 2005/82/CFSP

of 31 January 2005

repealing Common Positions 2002/401/CFSP on Nigeria, 2002/495/CFSP on Angola, 2002/830/CFSP on Rwanda and 2003/319/CFSP on the Lusaka Ceasefire agreement and the peace process in the Democratic Republic of Congo

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

(1) The Council adopted conclusions concerning the EU policy towards Nigeria on 17 May 2003, towards Angola on 13 October 2003, towards Rwanda on 8 December 2003 and towards the African Great Lakes Region on 14 June 2004. These conclusions set out the broader EU policy with regard to these countries and that region.

(2) Consequently, the Common Positions adopted by the Council with regard to these countries and that region which do not define common basic principles valid for a longer period of time and are not required as a legal basis for the implementation of EU policy, should be repealed,

HAS ADOPTED THIS COMMON POSITION:

Article 1

Common Positions 2002/401/CFSP [1] on Nigeria, 2002/495/CFSP [2] on Angola, 2002/830/CFSP [3] on Rwanda and 2003/319/CFSP [4] on the Lusaka Ceasefire agreement and the peace process in the Democratic Republic of Congo, are hereby repealed.

Article 2

This Common Position shall take effect on the day of its publication.

Article 3

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 31 January 2005.

For the Council
The President
J. ASSELBORN

[1] OJ L 139, 29.5.2002, p. 1.
[2] OJ L 167, 26.6.2002, p. 9.
[3] OJ L 285, 23.10.2002, p. 3.
[4] OJ L 115, 9.5.2003, p. 87.

COUNCIL DECISION 2005/83/CFSP

of 31 January 2005

implementing Common Position 2004/293/CFSP renewing measures in support of the effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Common Position 2004/293/CFSP [1] and in particular Article 2 thereof, in conjunction with Article 23(2) of the Treaty on European Union,

Whereas:

(1) By Common Position 2004/293/CFSP the Council adopted measures to prevent the entry into, or transit through, the territories of Member States of individuals who are engaged in activities which help persons at large continue to evade justice for crimes for which the International Criminal Tribunal for the former Yugoslavia (ICTY) has indicted them or are otherwise acting in a manner which could obstruct the ICTY's effective implementation of its mandate.

(2) On 28 June 2004 the Council adopted Decision 2004/528/CFSP, which amended the list contained in the Annex to Common Position 2004/293/CFSP.

(3) Following recommendations from the office of the High Representative for Bosnia and Herzegovina, further individuals should be targeted by those measures.

(4) The list contained in the Annex to Common Position 2004/293/CFSP should be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The list of persons set out in the Annex to Common Position 2004/293/CFSP shall be replaced by the list set out in the Annex to this Decision.

Article 2

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

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 31 January 2005.

For the Council
The President
J. ASSELBORN

[1] OJ L 94, 31.3.2004, p. 65. Common Position as last amended by Decision 2004/528/CFSP (OJ L 233, 2.7.2004, p. 15).

ANNEX

List of persons referred to in Article 1

1. BAGIC, Zeljko
   Son of Josip
   Date of birth/Place of birth: 29.3.1960, Zagreb
   Passport No:
   ID Card No:
   Personal ID No:
   Aliases: Cicko
   Address:

2. BILBIJA, Milorad
   Son of Svetko Bilbija
   Date of birth/Place of birth: 13.8.1956, Sanski Most.
   Passport No: 3715730
   ID Card No: 03GCD9986
   Personal ID No: 1308956163305
   Aliases:
   Address: Brace Pantica 7, Banja Luka

3. BJELICA, Milovan
   Son of
   Date of birth/Place of birth: 19.10.1958, Rogatica, Bosnia and Herzegovina, SFRY
   Passport No: 0000148 issued 26.7.1998 in Srpsko Sarajevo (annulled)
   ID Card No: 03ETA0150
   Personal ID No: 1910958130007
   Aliases: Cicko
   Address: CENTREK Company in Pale

4. CESIC, Ljubo
   Son of Jozo
   Date of birth/Place of birth: 20.2.1958 or 9.6.1966 (reference document from Croatian Ministry of Justice), Batin, Posusje, SFRY
   Passport No:
   ID Card No:
   Personal ID No:
   Aliases: Rojs
   Address: V Poljanice 26, Dubrava, Zagreb also resides at Novacka 62c, Zagreb

5. DILBER, Zeljko
   Son of Drago
   Date of birth/Place of birth: 2.2.1955, Travnik
   Passport No:
   ID No: 185581
   Personal ID No:
   Aliases:
   Address: 17 Stanka Vraza, Zadar

6. ECIM, Ljuban
   Son of
   Date of birth/Place of birth: 6.1.1964, Sviljanac, Bosnia and Herzegovina, SFRY
   Passport No: 0144290 issued 21.11.1998 in Banja Luka. (Annulled)
   ID Card No: 03GCE3530
   Personal ID No: 0601964100083
   Aliases:
   Address: Ulica Stevana Mokranjca 26, Banja Luka, BiH

7. JOVICIC, Predrag
   Son of Desmir Jovicic
   Date of birth/Place of birth: 1.3.1963, Pale
   Passport No: 4363551
   ID Card No: 03DYA0852
   Personal ID No: 0103963173133
   Aliases:
   Address: Milana Simovica 23, Pale, Pale-RS

8. KARADZIC, Aleksandar
   Son of
   Date of birth/Place of birth: 14.5.1973, Sarajevo Centar, Bosnia and Herzegovina, SFRY
   Passport No: 0036395. Expired 12.10.1998
   ID Card No:
   Personal ID No:
   Aliases: Sasa
   Address:

9. KARADZIC, Ljiljana (maiden name: ZELEN)
   Daughter of Vojo and Anka
   Date of birth/Place of birth: 27.11.1945, Sarajevo Centar, Bosnia and Herzegovina, SFRY
   Passport No/ID No:
   ID Card No:
   Personal ID No:
   Aliases:
   Address:

10. KESEROVIC, Dragomir
    Son of Slavko
    Date of birth/Place of birth: 8.6.1957, Piskavica/Banja Luka
    Passport No: 4191306
    ID Card No: 04GCH5156
    Personal ID No: 0806957100028
    Aliases:
    Address:

11. KIJAC, Dragan
    Son of
    Date of birth/Place of birth: 6.10.1955, Sarajevo
    Passport No:
    ID Card No:
    Personal ID No:
    Aliases:
    Address:

12. KOJIC, Radomir
    Son of Milanko and Zlatana
    Date of birth/Place of birth: 23.11.1950, Bijela Voda, Sokolac Canton, Bosnia and Herzegovina, SFRY
    Passport No: 4742002 Issued on 2002 in Sarajevo. Date of expiry 2007;
    ID Card No: 03DYA1935. Issued on 7 July 2003 in Sarajevo.
    Personal ID No: 2311950173133
    Aliases: Mineur or Ratko
    Address: 115 Trifka Grabeza, Pale or Hotel KRISTAL, Jahorina

13. KOVAC, Tomislav
Son of Vaso
Date of birth/Place of birth: 4.12.1959, Sarajevo, Bosnia and Herzegovina, SFRY
Passport No:
ID Card No:
Personal ID No: 0412959171315
Aliases: Tomo
Address: Bijela, Montenegro; and Pale, Bosnia and Herzegovina

14. KRASIC, Petar
Son of
Date of birth/Place of birth:
Passport No:
ID Card No:
Personal ID No:
Aliases:
Address:

15. KUJUNDZIC, Predrag
Son of Vasilija
Date of birth/Place of birth: 30.1.1961, Suho Pole, Doboj, Bosnia and Herzegovina, SFRY
Passport No:
ID Card No: 03GFB1318
Personal ID No: 3001961120044
Aliases: Predo
Address: Doboj, Bosnia and Herzegovina

16. LUKOVIC, Milorad Ulemek
Son of
Date of birth/Place of birth: 15.5.1968, Belgrade, Serbia, SFRY
Passport No:
ID Card No:
Personal ID No:
Aliases: Legija (Forged ID as IVANIC, Zeljko)
Address: on the run

17. MAKSAN, Ante
Son of Blaz
Date of birth/Place of birth: 7.2.1967, Pakostane, near Zadar
Passport No: 1944207
ID Card No:
Personal ID No:
Aliases: Djoni
Address: Proloska 15, Pakostane, Zadar

18. MALIS, Milomir
Son of Dejan Malis
Date of birth/Place of birth: 3.8.1966, Bjelice
Passport No:
ID Card No:
Personal ID No: 0308966131572
Aliases:
Address: Vojvode Putnika, Foca/Srbinje

19. MANDIC, Momcilo
Son of
Date of birth/Place of birth: 1.5.1954, Kalinovik, Bosnia and Herzegovina, SFRY
Passport No: 0121391 issued 12.5.1999 in Srpsko Sarajevo, Bosnia and Herzegovina (Annulled)
ID Card No:
Personal ID No: 0105954171511
Aliases: Momo
Address: GITROS Discotheque in Pale

20. MARIC, Milorad
Son of Vinko Maric
Date of birth/Place of birth: 9.9.1957, Visoko
Passport No: 4587936
ID Card No: 04GKB5268
Personal ID No: 0909957171778
Aliases:
Address: Vuka Karadzica 148, Zvornik

21. MICEVIC, Jelenko
Son of Luka and Desanka, maiden name: Simic
Date of birth/Place of birth: 8.8.1947, Borci near Konjic, Bosnia and Herzegovina, SFRY
Passport No: 4166874
ID Card No: 03BIA3452
Personal ID No: 0808947710266
Aliases: Filaret
Address: Milesevo monastery, Serbia and Montenegro

22. NINKOVIC, Milan
Son of Simo
Date of birth/Place of birth: 15.6.1943, Doboj
Passport No: 3944452
ID Card No: 04GFE3783
Personal ID No: 1506943120018
Aliases:
Address:

23. OSTOJIC, Velibor
Son of Jozo
Date of birth/Place of birth: 8.8.1945, Celebici, Foca
Passport No:
ID Card No:
Personal ID No:
Aliases:
Address:

24. OSTOJIC, Zoran
Son of Mico Ostojic
Date of birth/Place of birth: 29.3.1961, Sarajevo
Passport No:
ID Card No: 04BSF6085
Personal ID No: 2903961172656
Aliases:
Address: Malta 25, Sarajevo

25. PAVLOVIC, Petko
Son of Milovan Pavlovic
Date of birth/Place of birth: 6.6.1957, Ratkovici
Passport No: 4588517
ID Card No: 03GKA9274
Personal ID No: 0606957183137
Aliases:
Address: Vuka Karadjica 148, Zvornik

26. PETRAC, Hrvoje
Son of
Date of birth/Place of birth: 25.8.1955, Slavonski Brod
Passport No: Croatian passport number 01190016
ID Card No:
Personal ID No:
Aliases:
Address:

27. POPOVIC, Cedomir
Son of Radomir Popovic
Date of birth/Place of birth: 24.3.1950, Petrovici
Passport No:
ID Card No: 04FAA3580
Personal ID No: 2403950151018
Aliases:
Address: Crnogorska 36, Bileca

28. PUHALO, Branislav
Son of Djuro
Date of birth/Place of birth: 30.8.1963, Foca
Passport No:
ID Card No:
Personal ID No: 3008963171929
Aliases:
Address:

29. RADOVIC, Nade
Son of Milorad Radovic
Date of birth/Place of birth: 26.1.1951, Foca
Passport No: old 0123256 (annulled)
ID Card No: 03GJA2918
Personal ID No: 2601951131548
Aliases:
Address: Stepe Stepanovica 12, Foca/Srbinje

30. RATIC, Branko
Son of
Date of birth/Place of birth: 26.11.1957, MIHALJEVCI SL POZEGA, Bosnia and Herzegovina, SFRY
Passport No: 0442022 issued 17.9.1999 in Banja Luka.
ID Card No: 03GCA8959
Personal ID No: 2611957173132
Aliases:
Address: Ulica Krfska 42, Banja Luka, Bosnia and Herzegovina

31. ROGULJIC, Slavko
    Son of
    Date of birth/Place of birth: 15.5.1952, SRPSKA CRNJA HETIN, Serbia, SFRY
    Passport No: Valid passport 3747158 issued 12.4.2002 in Banja Luka. Date of expiry: 12.4.2007. Non-valid passport 0020222 issued 25.8.1988 in Banja Luka. Date of expiry: 25.8.2003
    ID Card No: 04EFA1053
    Personal ID No: 1505952103022
    Aliases:
    Address: 21 Vojvode Misica, Laktasi, Bosnia and Herzegovina

32. SAROVIC, Mirko
    Son of
    Date of birth/Place of birth: 16.9.1956, Rusanovici-Rogatica
    Passport No: 4363471 issued at Srpsko Sarajevo, expires on 8 October 2008
    ID Card No: 04PEA4585
    Personal ID No: 1609956172657
    Aliases:
    Address: Bjelopoljska 42, 71216 Srpsko Sarajevo

33. SKOCAJIC, Mrksa
    Son of Dejan Skocajic
    Date of birth/Place of birth: 5.8.1953, Blagaj
    Passport No: 3681597
    ID Card No: 04GDB9950
    Personal ID No: 0508953150038
    Aliases:
    Address: Trebinjskih Brigade, Trebinje

34. SPAJIC, Ratomir
    Date of birth/Place of birth: 8.4.1957, Konjic
    Son of Krsto
    Passport No: 3667966
    ID Card No: 04DYA7675
    Personal ID No: 0804957172662
    Aliases:
    Address:

35. VRACAR, Milenko
    Son of
    Date of birth/Place of birth: 15.5.1956, Nisavici, Prijedor, Bosnia and Herzegovina, SFRY
    Passport No: Valid passport 3865548 issued 29.8.2002 in Banja Luka. Date of expiry: 29.8.2007. Non-valid passports 0280280 issued 4.12.1999 in Banja Luka (date of expiry 4.12.2004) and 0062130 issued 16.9.1998 in Banja Luka
    ID Card No: 03GCE6934
    Personal ID No: 1505956160012
    Aliases:
    Address: 14 Save Ljuboje, Banja Luka, Bosnia and Herzegovina

36. ZOGOVIC, Milan
    Son of Jovan
    Date of birth/Place of birth: 7.10.1939, Dobrusa
    Passport No:
    ID Card No:
    Personal ID No:
    Aliases:
    Address:

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 103/2005 opening a standing invitation to tender for the resale on the internal market of paddy rice held by the Greek intervention agency

(Official Journal of the European Union L 20 of 22 January 2005)

On page 5, Article 2(3):

for: 'Tel. (30-10) 212 47 87 and 212 47 89

Fax (30-10) 862 93 73.',

read: 'Tel. +30(210) 212 48 46 and +30(210) 212 47 88

Fax +30(210) 212 47 91.'

Corrigendum to Commission Regulation (EC) No 165/2005 of 31 January 2005 fixing the import duties in the cereals sector applicable from 1 February 2005

(Official Journal of the European Union L 28 of 1 February 2005)

On page 16, in Annex I, CN code 1001 10 00, against the entry 'low quantity':

for: '6,58',

read: '6,08'.

Corrigendum to Council Decision 2004/778/EC of 11 October 2004 concerning the conclusion of the Protocol to the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Croatia, of the other part, to take into account the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic to the European Union

(Official Journal of the European Union L 350 of 25 November 2004)

On page 17, Annex VIII, new Annex V(b) (Products referred to in Article 15(2)), third CN code from the end of the codes relating to 'Trout':

for: 'ex 0305 49 80',

read: '0305 49 45'.