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# EN

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## I

(Acts whose publication is obligatory)

**REGULATION (EC) No 562/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 15 March 2006  
establishing a Community Code on the rules governing the movement of persons across borders  
(Schengen Borders Code)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62(1) and (2)(a) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(1)</sup>,

Whereas:

- (1) The adoption of measures under Article 62(1) of the Treaty with a view to ensuring the absence of any controls on persons crossing internal borders forms part of the Union's objective of establishing an area without internal borders in which the free movement of persons is ensured, as set out in Article 14 of the Treaty.
- (2) In accordance with Article 61 of the Treaty, the creation of an area in which persons may move freely is to be flanked by other measures. The common policy on the crossing of external borders, as provided for by Article 62(2) of the Treaty, is such a measure.
- (3) The adoption of common measures on the crossing of internal borders by persons and border control at external borders should reflect the Schengen *acquis* incorporated in the European Union framework, and in particular the relevant provisions of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders <sup>(2)</sup> and the Common Manual <sup>(3)</sup>.

- (4) As regards border control at external borders, the establishment of a 'common corpus' of legislation, particularly via consolidation and development of the *acquis*, is one of the fundamental components of the common policy on the management of the external borders, as defined in the Commission Communication of 7 May 2002 'Towards integrated management of the external borders of the Member States of the European Union'. This objective was included in the 'Plan for the management of the external borders of the Member States of the European Union', approved by the Council on 13 June 2002 and endorsed by the Seville European Council on 21 and 22 June 2002 and by the Thessaloniki European Council on 19 and 20 June 2003.

- (5) The definition of common rules on the movement of persons across borders neither calls into question nor affects the rights of free movement enjoyed by Union citizens and members of their families and by third-country nationals and members of their families who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens.
- (6) Border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.
- (7) Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.

<sup>(1)</sup> Opinion of the European Parliament of 23 June 2005 (not yet published in the Official Journal) and Council Decision of 21 February 2006.

<sup>(2)</sup> OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 1160/2005 of the European Parliament and of the Council (OJ L 191, 22.7.2005, p. 18).

<sup>(3)</sup> OJ C 313, 16.12.2002, p. 97. Common Manual as last amended by Council Regulation (EC) No 2133/2004 (OJ L 369, 16.12.2004, p. 5).

- (8) Border control comprises not only checks on persons at border crossing points and surveillance between these border crossing points, but also an analysis of the risks for internal security and analysis of the threats that may affect the security of external borders. It is therefore necessary to lay down the conditions, criteria and detailed rules governing checks at border crossing points and surveillance.

- (9) Provision should be made for relaxing checks at external borders in the event of exceptional and unforeseeable circumstances in order to avoid excessive waiting time at borders crossing-points. The systematic stamping of the documents of third-country nationals remains an obligation in the event of border checks being relaxed. Stamping makes it possible to establish, with certainty, the date on which, and where, the border was crossed, without establishing in all cases that all required travel document control measures have been carried out.
- (10) In order to reduce the waiting times of persons enjoying the Community right of free movement, separate lanes, indicated by uniform signs in all Member States, should, where circumstances allow, be provided at border crossing points. Separate lanes should be provided in international airports. Where it is deemed appropriate and if local circumstances so allow, Member States should consider installing separate lanes at sea and land border crossing points.
- (11) Member States should ensure that control procedures at external borders do not constitute a major barrier to trade and social and cultural interchange. To that end, they should deploy appropriate numbers of staff and resources.
- (12) Member States should designate the national service or services responsible for border-control tasks in accordance with their national law. Where more than one service is responsible in the same Member State, there should be close and constant cooperation between them.
- (13) Operational cooperation and assistance between Member States in relation to border control should be managed and coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States established by Regulation (EC) No 2007/2004 <sup>(1)</sup>.
- (14) This Regulation is without prejudice to checks carried out under general police powers and security checks on persons identical to those carried out for domestic flights, to the possibilities for Member States to carry out exceptional checks on baggage in accordance with Council Regulation (EEC) No 3925/91 of 19 December 1991 concerning the elimination of controls and formalities applicable to the cabin and hold baggage of persons taking an intra-Community flight and the baggage of persons making an intra-Community sea crossing <sup>(2)</sup>, and to national law on carrying travel or identity documents or to the requirement that persons notify the authorities of their presence on the territory of the Member State in question.
- (15) Member States should also have the possibility of temporarily reintroducing border control at internal borders in the event of a serious threat to their public policy or internal security. The conditions and procedures for doing so should be laid down, so as to ensure that any such measure is exceptional and that the principle of proportionality is respected. The scope and duration of any temporary reintroduction of border control at internal borders should be restricted to the bare minimum needed to respond to that threat.
- (16) In an area where persons may move freely, the reintroduction of border control at internal borders should remain an exception. Border control should not be carried out or formalities imposed solely because such a border is crossed.
- (17) Provision should be made for a procedure enabling the Commission to adapt certain detailed practical rules governing border control. In such cases, the measures needed to implement this Regulation should be taken pursuant to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>.
- (18) Provision should also be made for a procedure enabling the Member States to notify the Commission of changes to other detailed practical rules governing border control.
- (19) Since the objective of this Regulation, namely the establishment of rules applicable to the movement of persons across borders cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (20) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the Member States' obligations as regards international protection and non-refoulement.
- (21) By way of derogation from Article 299 of the Treaty, the only territories of France and the Netherlands to which this Regulation applies are those in Europe. It does not affect the specific arrangements applied in Ceuta and Melilla, as defined in the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985 <sup>(4)</sup>.

<sup>(1)</sup> Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

<sup>(2)</sup> OJ L 374, 31.12.1991, p. 4. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(4)</sup> OJ L 239, 22.9.2000, p. 69.

- (22) In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law or not.
- (23) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* <sup>(1)</sup> which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC <sup>(2)</sup> on certain arrangements for the application of that Agreement.
- (24) An arrangement has to be made to allow representatives of Iceland and Norway to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchanges of Letters between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning committees which assist the European Commission in the exercise of its executive powers <sup>(3)</sup>, annexed to the abovementioned Agreement.
- (25) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC <sup>(4)</sup> and 2004/860/EC <sup>(5)</sup>.
- (26) An arrangement has to be made to allow representatives of Switzerland to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchange of Letters between the Community and Switzerland, annexed to the abovementioned Agreement.
- (27) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* <sup>(6)</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (28) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* <sup>(7)</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (29) In this Regulation, the first sentence of Article 1, Article 5(4)(a), Title III and the provisions of Title II and the annexes thereto referring to the Schengen Information System (SIS) constitute provisions building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession,

HAVE ADOPTED THIS REGULATION:

#### TITLE I

#### GENERAL PROVISIONS

##### Article 1

#### Subject matter and principles

This Regulation provides for the absence of border control of persons crossing the internal borders between the Member States of the European Union.

It establishes rules governing border control of persons crossing the external borders of the Member States of the European Union.

##### Article 2

#### Definitions

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

1. 'internal borders' means:

- (a) the common land borders, including river and lake borders, of the Member States;

<sup>(1)</sup> OJ L 176, 10.7.1999, p. 36.

<sup>(2)</sup> OJ L 176, 10.7.1999, p. 31.

<sup>(3)</sup> OJ L 176, 10.7.1999, p. 53.

<sup>(4)</sup> Council Decision 2004/849/EC of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 368, 15.12.2004, p. 26).

<sup>(5)</sup> Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 370, 17.12.2004, p. 78).

<sup>(6)</sup> OJ L 131, 1.6.2000, p. 43.

<sup>(7)</sup> OJ L 64, 7.3.2002, p. 20.

- (b) the airports of the Member States for internal flights;
- (c) sea, river and lake ports of the Member States for regular ferry connections;
2. 'external borders' means the Member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders;
3. 'internal flight' means any flight exclusively to or from the territories of the Member States and not landing in the territory of a third country;
4. 'regular ferry connection' means any ferry connection between the same two or more ports situated in the territory of the Member States, not calling at any ports outside the territory of the Member States and consisting of the transport of passengers and vehicles according to a published timetable;
5. 'persons enjoying the Community right of free movement' means:
- (a) Union citizens within the meaning of Article 17(1) of the Treaty, and third-country nationals who are members of the family of a Union citizen exercising his or her right to free movement to whom Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States <sup>(1)</sup> applies;
- (b) third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens;
6. 'third-country national' means any person who is not a Union citizen within the meaning of Article 17(1) of the Treaty and who is not covered by point 5 of this Article;
7. 'persons for whom an alert has been issued for the purposes of refusing entry' means any third-country national for whom an alert has been issued in the Schengen Information System (SIS) in accordance with and for the purposes laid down in Article 96 of the Schengen Convention;
8. 'border crossing point' means any crossing-point authorised by the competent authorities for the crossing of external borders;
9. 'border control' means the activity carried out at a border, in accordance with and for the purposes of this Regulation, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;
10. 'border checks' means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States or authorised to leave it;
11. 'border surveillance' means the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks;
12. 'second line check' means a further check which may be carried out in a special location away from the location at which all persons are checked (first line);
13. 'border guard' means any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border who carries out, in accordance with this Regulation and national law, border control tasks;
14. 'carrier' means any natural or legal person whose profession it is to provide transport of persons;
15. 'residence permit' means:
- (a) all residence permits issued by the Member States according to the uniform format laid down by Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals <sup>(2)</sup>;
- (b) all other documents issued by a Member State to third-country nationals authorising a stay in, or re-entry into, its territory, with the exception of temporary permits issued pending examination of a first application for a residence permit as referred to in point (a) or an application for asylum;
16. 'cruise ship' means a ship which follows a given itinerary in accordance with a predetermined programme, which includes a programme of tourist activities in the various ports, and which normally neither takes passengers on nor allows passengers to disembark during the voyage;
17. 'pleasure boating' means the use of pleasure boats for sporting or tourism purposes;
18. 'coastal fisheries' means fishing carried out with the aid of vessels which return every day or within 36 hours to a port situated in the territory of a Member State without calling at a port situated in a third country;

<sup>(1)</sup> OJ L 158, 30.4.2004, p. 77.

<sup>(2)</sup> OJ L 157, 15.6.2002, p. 1.

19. 'threat to public health' means any disease with epidemic potential as defined by the International Health Regulations of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject of protection provisions applying to nationals of the Member States.

#### Article 3

##### Scope

This Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:

- (a) the rights of persons enjoying the Community right of free movement;
- (b) the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.

#### TITLE II

#### EXTERNAL BORDERS

#### CHAPTER I

#### *Crossing of external borders and conditions for entry*

#### Article 4

##### Crossing of external borders

1. External borders may be crossed only at border crossing points and during the fixed opening hours. The opening hours shall be clearly indicated at border crossing points which are not open 24 hours a day.

Member States shall notify the list of their border crossing points to the Commission in accordance with Article 34.

2. By way of derogation from paragraph 1, exceptions to the obligation to cross external borders only at border crossing points and during the fixed opening hours may be allowed:

- (a) in connection with pleasure boating or coastal fishing;
- (b) for seamen going ashore to stay in the area of the port where their ships call or in the adjacent municipalities;
- (c) for individuals or groups of persons, where there is a requirement of a special nature, provided that they are in possession of the permits required by national law and that there is no conflict with the interests of public policy and the internal security of the Member States;
- (d) for individuals or groups of persons in the event of an unforeseen emergency situation.

3. Without prejudice to the exceptions provided for in paragraph 2 or to their international protection obligations, Member States shall introduce penalties, in accordance with their national law, for the unauthorised crossing of external borders at places other than border crossing points or at times other than the fixed opening hours. These penalties shall be effective, proportionate and dissuasive.

#### Article 5

##### Entry conditions for third-country nationals

1. For stays not exceeding three months per six-month period, the entry conditions for third-country nationals shall be the following:

- (a) they are in possession of a valid travel document or documents authorising them to cross the border;
- (b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement <sup>(1)</sup>, except where they hold a valid residence permit;
- (c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;
- (d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;
- (e) they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds.

2. A non-exhaustive list of supporting documents which the border guard may request from the third-country national in order to verify the fulfilment of the conditions set out in paragraph 1, point c, is included in Annex I.

3. Means of subsistence shall be assessed in accordance with the duration and the purpose of the stay and by reference to average prices in the Member State(s) concerned for board and lodging in budget accommodation, multiplied by the number of days stayed.

<sup>(1)</sup> OJ L 81, 21.3.2001, p. 1. Regulation as last amended by Regulation (EC) No 851/2005 (OJ L 141, 4.6.2005, p. 3).

Reference amounts set by the Member States shall be notified to the Commission in accordance with Article 34.

The assessment of sufficient means of subsistence may be based on the cash, travellers' cheques and credit cards in the third-country national's possession. Declarations of sponsorship, where such declarations are provided for by national law and letters of guarantee from hosts, as defined by national law, where the third-country national is staying with a host, may also constitute evidence of sufficient means of subsistence.

4. By way of derogation from paragraph 1:
- (a) third-country nationals who do not fulfil all the conditions laid down in paragraph 1 but hold a residence permit or a re-entry visa issued by one of the Member States or, where required, both documents, shall be authorised to enter the territories of the other Member States for transit purposes so that they may reach the territory of the Member State which issued the residence permit or re-entry visa, unless their names are on the national list of alerts of the Member State whose external borders they are seeking to cross and the alert is accompanied by instructions to refuse entry or transit;
- (b) third-country nationals who fulfil the conditions laid down in paragraph 1, except for that laid down in point (b), and who present themselves at the border may be authorised to enter the territories of the Member States, if a visa is issued at the border in accordance with Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit <sup>(1)</sup>.

Visas issued at the border shall be recorded on a list.

If it is not possible to affix a visa in the document, it shall, exceptionally, be affixed on a separate sheet inserted in the document. In such a case, the uniform format for forms for affixing the visa, laid down by Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form <sup>(2)</sup>, shall be used;

- (c) third-country nationals who do not fulfil one or more of the conditions laid down in paragraph 1 may be authorised by a Member State to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations. Where the third-country national concerned is the subject of an alert as referred to in paragraph 1(d), the Member State authorising him or her to enter its territory shall inform the other Member States accordingly.

## CHAPTER II

### **Control of external borders and refusal of entry**

#### Article 6

#### **Conduct of border checks**

1. Border guards shall, in the performance of their duties, fully respect human dignity.

Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.

2. While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

#### Article 7

#### **Border checks on persons**

1. Cross-border movement at external borders shall be subject to checks by border guards. Checks shall be carried out in accordance with this chapter.

The checks may also cover the means of transport and objects in the possession of the persons crossing the border. The law of the Member State concerned shall apply to any searches which are carried out.

2. All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border and of the presence of signs of falsification or counterfeiting.

The minimum check referred to in the first subparagraph shall be the rule for persons enjoying the Community right of free movement.

However, on a non-systematic basis, when carrying out minimum checks on persons enjoying the Community right of free movement, border guards may consult national and European databases in order to ensure that such persons do not represent a genuine, present and sufficiently serious threat to the internal security, public policy, international relations of the Member States or a threat to the public health.

The consequences of such consultations shall not jeopardise the right of entry of persons enjoying the Community right of free movement into the territory of the Member State concerned as laid down in Directive 2004/38/EC.

<sup>(1)</sup> OJ L 64, 7.3.2003, p. 1.

<sup>(2)</sup> OJ L 53, 23.2.2002, p. 4.

3. On entry and exit, third-country nationals shall be subject to thorough checks.
- (a) thorough checks on entry shall comprise verification of the conditions governing entry laid down in Article 5(1) and, where applicable, of documents authorising residence and the pursuit of a professional activity. This shall include a detailed examination covering the following aspects:
- (i) verification that the third-country national is in possession of a document which is valid for crossing the border and which has not expired, and that the document is accompanied, where applicable, by the requisite visa or residence permit;
  - (ii) thorough scrutiny of the travel document for signs of falsification or counterfeiting;
  - (iii) examination of the entry and exit stamps on the travel document of the third-country national concerned, in order to verify, by comparing the dates of entry and exit, that the person has not already exceeded the maximum duration of authorised stay in the territory of the Member States;
  - (iv) verification regarding the point of departure and the destination of the third-country national concerned and the purpose of the intended stay, checking if necessary, the corresponding supporting documents;
  - (v) verification that the third-country national concerned has sufficient means of subsistence for the duration and purpose of the intended stay, for his or her return to the country of origin or transit to a third country into which he or she is certain to be admitted, or that he or she is in a position to acquire such means lawfully;
  - (vi) verification that the third-country national concerned, his or her means of transport and the objects he or she is transporting are not likely to jeopardise the public policy, internal security, public health or international relations of any of the Member States. Such verification shall include direct consultation of the data and alerts on persons and, where necessary, objects included in the SIS and in national data files and the action to be performed, if any, as a result of an alert;
- (b) thorough checks on exit shall comprise:
- (i) verification that the third-country national is in possession of a document valid for crossing the border;
  - (ii) verification of the travel document for signs of falsification or counterfeiting;
  - (iii) whenever possible, verification that the third-country national is not considered to be a threat to public policy, internal security or the international relations of any of the Member States;
- (c) In addition to the checks referred to in point (b) thorough checks on exit may also comprise:
- (i) verification that the person is in possession of a valid visa, if required pursuant to Regulation (EC) No 539/2001, except where he or she holds a valid residence permit;
  - (ii) verification that the person did not exceed the maximum duration of authorised stay in the territory of the Member States;
  - (iii) consultation of alerts on persons and objects included in the SIS and reports in national data files.
4. Where facilities exist and if requested by the third-country national, such thorough checks shall be carried out in a private area.
5. Third-country nationals subject to a thorough second line check shall be given information on the purpose of, and procedure for, such a check.
- This information shall be available in all the official languages of the Union and in the language(s) of the country or countries bordering the Member State concerned and shall indicate that the third-country national may request the name or service identification number of the border guards carrying out the thorough second line check, the name of the border crossing point and the date on which the border was crossed.
6. Checks on a person enjoying the Community right on free movement shall be carried out in accordance with Directive 2004/38/EC.
7. Detailed rules governing the information to be registered are laid down in Annex II.

#### *Article 8*

#### **Relaxation of border checks**

1. Border checks at external borders may be relaxed as a result of exceptional and unforeseen circumstances. Such exceptional and unforeseen circumstances shall be deemed to be those where unforeseeable events lead to traffic of such intensity that the waiting time at the border crossing point becomes excessive, and all resources have been exhausted as regards staff, facilities and organisation.

2. Where border checks are relaxed in accordance with paragraph 1, border checks on entry movements shall in principle take priority over border checks on exit movements.

The decision to relax checks shall be taken by the border guard in command at the border crossing point.

Such relaxation of checks shall be temporary, adapted to the circumstances justifying it and introduced gradually.



3. Even in the event that checks are relaxed, the border guard shall stamp the travel documents of third-country nationals both on entry and exit, in accordance with Article 10.

4. Each Member State shall transmit once a year a report on the application of this Article to the European Parliament and the Commission.

#### Article 9

##### Separate lanes and information on signs

1. Member States shall provide separate lanes, in particular at air border crossing points in order to carry out checks on persons, in accordance with Article 7. Such lanes shall be differentiated by means of the signs bearing the indications set out in the Annex III.

Member States may provide separate lanes at their sea and land border crossing points and at borders between Member States not applying Article 20 at their common borders. The signs bearing the indications set out in the Annex III shall be used if Member States provide separate lanes at those borders.

Member States shall ensure that such lanes are clearly signposted, including where the rules relating to the use of the different lanes are waived as provided for in paragraph 4, in order to ensure optimal flow levels of persons crossing the border.

2. (a) Persons enjoying the Community right of free movement are entitled to use the lanes indicated by the sign in part A of Annex III. They may also use the lanes indicated by the sign in part B of Annex III.
- (b) All other persons shall use the lanes indicated by the sign in part B of Annex III.

The indications on the signs referred to in points (a) and (b) may be displayed in such language or languages as each Member State considers appropriate.

3. At sea and land border crossing points, Member States may separate vehicle traffic into different lanes for light and heavy vehicles and buses by using signs as shown in Part C of Annex III.

Member States may vary the indications on those signs where appropriate in the light of local circumstances.

4. In the event of a temporary imbalance in traffic flows at a particular border crossing point, the rules relating to the use of the different lanes may be waived by the competent authorities for the time necessary to eliminate such imbalance.

5. The adaptation of existing signs to the provisions of paragraphs 1, 2 and 3 shall be completed by 31 May 2009. Where Member States replace existing signs or put up new ones before that date, they shall comply with the indications provided for in those paragraphs.

#### Article 10

##### Stamping of the travel documents of third-country nationals

1. The travel documents of third-country nationals shall be systematically stamped on entry and exit. In particular an entry or exit stamp shall be affixed to:

- (a) the documents, bearing a valid visa, enabling third-country nationals to cross the border;
- (b) the documents enabling third-country nationals to whom a visa is issued at the border by a Member State to cross the border;
- (c) the documents enabling third-country nationals not subject to a visa requirement to cross the border.

2. The travel documents of nationals of third countries who are members of the family of a Union citizen to whom Directive 2004/38/EC applies, but who do not present the residence card provided for in Article 10 of that Directive, shall be stamped on entry or exit.

The travel documents of nationals of third countries who are members of the family of nationals of third countries enjoying the Community right of free movement, but who do not present the residence card provided for in Article 10 of Directive 2004/38/EC, shall be stamped on entry or exit.

3. No entry or exit stamp shall be affixed:
  - (a) to the travel documents of Heads of State and dignitaries whose arrival has been officially announced in advance through diplomatic channels;
  - (b) to pilots' licences or the certificates of aircraft crew members;
  - (c) to the travel documents of seamen who are present within the territory of a Member State only when their ship puts in and in the area of the port of call;
  - (d) to the travel documents of crew and passengers of cruise ships who are not subject to border checks in accordance with point 3.2.3 of Annex VI;
  - (e) to documents enabling nationals of Andorra, Monaco and San Marino to cross the border.

Exceptionally, at the request of a third-country national, insertion of an entry or exit stamp may be dispensed with if insertion might cause serious difficulties for that person. In that case, entry or exit shall be recorded on a separate sheet indicating the name and passport number. That sheet shall be given to the third-country national.

4. The practical arrangements for stamping are set out in Annex IV.

5. Whenever possible, third-country nationals shall be informed of the border guard's obligation to stamp their travel document on entry and exit, even where checks are relaxed in accordance with Article 8.

6. The Commission shall report to the European Parliament and the Council by the end of 2008 on the operation of the provisions on stamping travel documents.

#### Article 11

##### **Presumption as regards fulfilment of conditions of duration of stay**

1. If the travel document of a third-country national does not bear an entry stamp, the competent national authorities may presume that the holder does not fulfil, or no longer fulfils, the conditions of duration of stay applicable within the Member State concerned.

2. The presumption referred to in paragraph 1 may be rebutted where the third-country national provides, by any means, credible evidence, such as transport tickets or proof of his or her presence outside the territory of the Member States, that he or she has respected the conditions relating to the duration of a short stay.

In such a case:

- (a) where the third-country national is found on the territory of a Member State applying the Schengen *acquis* in full, the competent authorities shall indicate, in accordance with national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of one of the Member States applying the Schengen *acquis* in full;
- (b) where the third-country national is found on the territory of a Member State in respect of which the decision contemplated in Article 3(2) of the 2003 Act of Accession has not been taken, the competent authorities shall indicate, in accordance with national law and practice, in his or her travel document the date on which, and the place where, he or she crossed the external border of such a Member State.

In addition to the indications referred to in points (a) and (b), a form as shown in Annex VIII may be given to the third-country national.

Member States shall inform each other and the Commission and the Council General Secretariat of their national practices with regard to the indications referred to in this Article.

3. Should the presumption referred to in paragraph 1 not be rebutted, the third-country national may be expelled by the competent authorities from the territory of the Member States concerned.

#### Article 12

##### **Border surveillance**

1. The main purpose of border surveillance shall be to prevent unauthorised border crossings, to counter cross-border criminality and to take measures against persons who have crossed the border illegally.

2. The border guards shall use stationary or mobile units to carry out border surveillance.

That surveillance shall be carried out in such a way as to prevent and discourage persons from circumventing the checks at border crossing points.

3. Surveillance between border crossing points shall be carried out by border guards whose numbers and methods shall be adapted to existing or foreseen risks and threats. It shall involve frequent and sudden changes to surveillance periods, so that unauthorised border crossings are always at risk of being detected.

4. Surveillance shall be carried out by stationary or mobile units which perform their duties by patrolling or stationing themselves at places known or perceived to be sensitive, the aim of such surveillance being to apprehend individuals crossing the border illegally. Surveillance may also be carried out by technical means, including electronic means.

5. Additional rules governing surveillance may be adopted in accordance with the procedure referred to in Article 33(2).

#### Article 13

##### **Refusal of entry**

1. A third-country national who does not fulfil all the entry conditions laid down in Article 5(1) and does not belong to the categories of persons referred to in Article 5(4) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.

2. Entry may only be refused by a substantiated decision stating the precise reasons for the refusal. The decision shall be taken by an authority empowered by national law. It shall take effect immediately.

The substantiated decision stating the precise reasons for the refusal shall be given by means of a standard form, as set out in Annex V, Part B, filled in by the authority empowered by national law to refuse entry. The completed standard form shall be handed to the third-country national concerned, who shall acknowledge receipt of the decision to refuse entry by means of that form.

3. Persons refused entry shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national.

Lodging such an appeal shall not have suspensive effect on a decision to refuse entry.

Without prejudice to any compensation granted in accordance with national law, the third-country national concerned shall, where the appeal concludes that the decision to refuse entry was ill-founded, be entitled to correction of the cancelled entry stamp, and any other cancellations or additions which have been made, by the Member State which refused entry.

4. The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned.

5. Member States shall collect statistics on the number of persons refused entry, the grounds for refusal, the nationality of the persons refused and the type of border (land, air or sea) at which they were refused entry. Member States shall transmit those statistics once a year to the Commission. The Commission shall publish every two years a compilation of the statistics provided by the Member States.

6. Detailed rules governing refusal of entry are given in Part A of Annex V.

#### CHAPTER III

### **Staff and resources for border control and cooperation between Member States**

#### Article 14

#### **Staff and resources for border control**

Member States shall deploy appropriate staff and resources in sufficient numbers to carry out border control at the external borders, in accordance with Articles 6 to 13, in such a way as to ensure an efficient, high and uniform level of control at their external borders.

#### Article 15

### **Implementation of controls**

1. The border control provided for by Articles 6 to 13 shall be carried out by border guards in accordance with the provisions of this Regulation and with national law.

When carrying out that border control, the powers to instigate criminal proceedings conferred on border guards by national law and falling outside the scope of this Regulation shall remain unaffected.

Member States shall ensure that the border guards are specialised and properly trained professionals. Member States shall encourage border guards to learn languages, in particular those necessary for the carrying-out of their tasks.

2. Member States shall notify to the Commission the list of national services responsible for border control under their national law in accordance with Article 34.

3. To control borders effectively, each Member State shall ensure close and constant cooperation between its national services responsible for border control.

#### Article 16

### **Cooperation between Member States**

1. The Member States shall assist each other and shall maintain close and constant cooperation with a view to the effective implementation of border control, in accordance with Articles 6 to 15. They shall exchange all relevant information.

2. Operational cooperation between Member States in the field of management of external borders shall be coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States (hereinafter referred to as the Agency) established by Regulation (EC) No 2007/2004.

3. Without prejudice to the competences of the Agency, Member States may continue operational cooperation with other Member States and/or third countries at external borders, including the exchange of liaison officers, where such cooperation complements the action of the Agency.

Member States shall refrain from any activity which could jeopardise the functioning of the Agency or the attainment of its objectives.

Member States shall report to the Agency on the operational cooperation referred to in the first subparagraph.

4. Member States shall provide for training on the rules for border control and on fundamental rights. In that regard, account shall be taken of the common training standards as established and further developed by the Agency.

*Article 17***Joint control**

1. Member States which do not apply Article 20 to their common land borders may, up to the date of application of that Article, jointly control those common borders, in which case a person may be stopped only once for the purpose of carrying out entry and exit checks, without prejudice to the individual responsibility of Member States arising from Articles 6 to 13.

To that end, Member States may conclude bilateral arrangements between themselves.

2. Member States shall inform the Commission of any arrangements concluded in accordance with paragraph 1.

## CHAPTER IV

**Specific rules for border checks***Article 18***Specific rules for the various types of border and the various means of transport used for crossing the external borders**

The specific rules set out in Annex VI shall apply to the checks carried out at the various types of border and on the various means of transport used for crossing border crossing points.

Those specific rules may contain derogations from Articles 5 and 7 to 13.

*Article 19***Specific rules for checks on certain categories of persons**

1. The specific rules set out in Annex VII shall apply to checks on the following categories of persons:

- (a) Heads of State and the members of their delegation(s);
- (b) pilots of aircraft and other crew members;
- (c) seamen;
- (d) holders of diplomatic, official or service passports and members of international organisations;
- (e) cross-border workers;
- (f) minors.

Those specific rules may contain derogations from Articles 5 and 7 to 13.

2. Member States shall notify to the Commission the model cards issued by their Ministries of Foreign Affairs to accredited members of diplomatic missions and consular representations and members of their families in accordance with Article 34.

## TITLE III

**INTERNAL BORDERS**

## CHAPTER I

**Abolition of border control at internal borders***Article 20***Crossing internal borders**

Internal borders may be crossed at any point without a border check on persons, irrespective of their nationality, being carried out.

*Article 21***Checks within the territory**

The abolition of border control at internal borders shall not affect:

- (a) the exercise of police powers by the competent authorities of the Member States under national law, insofar as the exercise of those powers does not have an effect equivalent to border checks; that shall also apply in border areas. Within the meaning of the first sentence, the exercise of police powers may not, in particular, be considered equivalent to the exercise of border checks when the police measures:
  - (i) do not have border control as an objective,
  - (ii) are based on general police information and experience regarding possible threats to public security and aim, in particular, to combat cross-border crime,
  - (iii) are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders,
  - (iv) are carried out on the basis of spot-checks;
- (b) security checks on persons carried out at ports and airports by the competent authorities under the law of each Member State, by port or airport officials or carriers, provided that such checks are also carried out on persons travelling within a Member State;
- (c) the possibility for a Member State to provide by law for an obligation to hold or carry papers and documents;

(d) the obligation on third-country nationals to report their presence on the territory of any Member State pursuant to the provisions of Article 22 of the Schengen Convention.

#### Article 22

##### **Removal of obstacles to traffic at road crossing-points at internal borders**

Member States shall remove all obstacles to fluid traffic flow at road crossing-points at internal borders, in particular any speed limits not exclusively based on road-safety considerations.

At the same time, Member States shall be prepared to provide for facilities for checks in the event that internal border controls are reintroduced.

#### CHAPTER II

##### **Temporary reintroduction of border control at internal borders**

#### Article 23

##### **Temporary reintroduction of border control at internal borders**

1. Where there is a serious threat to public policy or internal security, a Member State may exceptionally reintroduce border control at its internal borders for a limited period of no more than 30 days or for the foreseeable duration of the serious threat if its duration exceeds the period of 30 days, in accordance with the procedure laid down in Article 24 or, in urgent cases, with that laid down in Article 25. The scope and duration of the temporary reintroduction of border control at internal borders shall not exceed what is strictly necessary to respond to the serious threat.

2. If the serious threat to public policy or internal security persists beyond the period provided for in paragraph 1, the Member State may prolong border control on the same grounds as those referred to in paragraph 1 and, taking into account any new elements, for renewable periods of up to 30 days, in accordance with the procedure laid down in Article 26.

#### Article 24

##### **Procedure for foreseeable events**

1. Where a Member State is planning to reintroduce border control at internal borders under Article 23(1), it shall as soon as possible notify the other Member States and the Commission accordingly, and shall supply the following information as soon as available:

(a) the reasons for the proposed reintroduction, detailing the events that constitute a serious threat to public policy or internal security;

(b) the scope of the proposed reintroduction, specifying where border control is to be reintroduced;

(c) the names of the authorised crossing-points;

(d) the date and duration of the proposed reintroduction;

(e) where appropriate, the measures to be taken by the other Member States.

2. Following the notification from the Member State concerned, and with a view to the consultation provided for in paragraph 3, the Commission may issue an opinion without prejudice to Article 64(1) of the Treaty.

3. The information referred to in paragraph 1, as well as the opinion that the Commission may provide in accordance with paragraph 2, shall be the subject of consultations between the Member State planning to reintroduce border control, the other Member States and the Commission, with a view to organising, where appropriate, mutual cooperation between the Member States and to examining the proportionality of the measures to the events giving rise to the reintroduction of border control and the threats to public policy or internal security.

4. The consultation referred to in paragraph 3 shall take place at least fifteen days before the date planned for the reintroduction of border control.

#### Article 25

##### **Procedure for cases requiring urgent action**

1. Where considerations of public policy or internal security in a Member State demand urgent action to be taken, the Member State concerned may exceptionally and immediately reintroduce border control at internal borders.

2. The Member State reintroducing border control at internal borders shall notify the other Member States and the Commission accordingly, without delay, and shall supply the information referred to in Article 24(1) and the reasons that justify the use of this procedure.

#### Article 26

##### **Procedure for prolonging border control at internal borders**

1. Member States may only prolong border control at internal borders under the provisions of Article 23(2) after having notified the other Member States and the Commission.

2. The Member State planning to prolong border control shall supply the other Member States and the Commission with all relevant information on the reasons for prolonging the border control at internal borders. The provisions of Article 24(2) shall apply.

## Article 27

**Informing the European Parliament**

The Member State concerned or, where appropriate, the Council shall inform the European Parliament as soon as possible of the measures taken under Articles 24, 25 and 26. As of the third consecutive prolongation pursuant to Article 26, the Member State concerned shall, if requested, report to the European Parliament on the need for border control at internal borders.

## Article 28

**Provisions to be applied where border control is reintroduce at internal borders**

Where border control at internal borders is reintroduced, the relevant provisions of Title II shall apply *mutatis mutandis*.

## Article 29

**Report on the reintroduction of border control at internal borders**

The Member State which has reintroduced border control at internal borders under Article 23 shall confirm the date on which that control is lifted and, at the same time or soon afterwards, present a report to the European Parliament, the Council and the Commission on the reintroduction of border control at internal borders, outlining, in particular, the operation of the checks and the effectiveness of the reintroduction of border control.

## Article 30

**Informing the public**

The decision to reintroduce border control at internal borders shall be taken in a transparent manner and the public informed in full thereof, unless there are overriding security reasons for not doing so.

## Article 31

**Confidentiality**

At the request of the Member State concerned, the other Member States, the European Parliament and the Commission shall respect the confidentiality of information supplied in connection with the reintroduction and prolongation of border control and the report drawn up under Article 29.

## TITLE IV

**FINAL PROVISIONS**

## Article 32

**Amendments to the Annexes**

Annexes III, IV and VIII shall be amended in accordance with the procedure referred to in Article 33(2).

## Article 33

**Committee**

1. The Commission shall be assisted by a committee, hereinafter 'the Committee'.

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

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

3. The Committee shall adopt its rules of procedure.

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

## Article 34

**Notifications**

1. Member States shall notify the Commission of:

- (a) the list of residence permits;
- (b) the list of their border crossing points;
- (c) the reference amounts required for the crossing of their external borders fixed annually by the national authorities;
- (d) the list of national services responsible for border control;
- (e) the specimen of model cards issued by Foreign Ministries.

2. The Commission shall make the information notified in conformity with paragraph 1 available to the Member States and the public through publication in the *Official Journal of the European Union*, C Series, and by any other appropriate means.

## Article 35

**Local border traffic**

This Regulation shall be without prejudice to Community rules on local border traffic and to existing bilateral agreements on local border traffic.

## Article 36

**Ceuta and Melilla**

The provisions of this Regulation shall not affect the special rules applying to the cities of Ceuta and Melilla, as defined in the Declaration by the Kingdom of Spain on the cities of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985 <sup>(1)</sup>.

<sup>(1)</sup> OJ L 239, 22.9.2000, p. 73.

*Article 37***Notification of information by the Member States**

By 26 October 2006, the Member States shall notify the Commission of national provisions relating to Article 21(c) and (d), the penalties as referred to in Article 4(3) and the bilateral arrangements concluded in accordance with Article 17(1). Subsequent changes to those provisions shall be notified within five working days.

The information notified by the Member States shall be published in the *Official Journal of the European Union*, C Series.

*Article 38***Report on the application of Title III**

The Commission shall submit to the European Parliament and the Council by 13 October 2009 a report on the application of Title III.

The Commission shall pay particular attention to any difficulties arising from the reintroduction of border control at internal borders. Where appropriate, it shall present proposals aimed at resolving such difficulties.

*Article 39***Repeals**

1. Articles 2 to 8 of the Convention implementing the Schengen Agreement of 14 June 1985 shall be repealed with effect from 13 October 2006.

2. The following shall be repealed with effect from the date referred to in paragraph 1:

(a) the Common Manual, including its annexes;

- (b) the decisions of the Schengen Executive Committee of 26 April 1994 (SCH/Com-ex (94) 1, rev 2), 22 December 1994 (SCH/Com-ex (94)17, rev. 4) and 20 December 1995 (SCH/Com-ex (95) 20, rev. 2);
  - (c) Annex 7 to the Common Consular Instructions;
  - (d) Council Regulation (EC) No 790/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance <sup>(1)</sup>;
  - (e) Council Decision 2004/581/EC of 29 April 2004 determining the minimum indications to be used on signs at external border crossing points <sup>(2)</sup>;
  - (f) Council Decision 2004/574/EC of 29 April 2004 amending the Common Manual <sup>(3)</sup>;
  - (g) Council Regulation (EC) No 2133/2004 of 13 December 2004 on the requirement for the competent authorities of the Member States to stamp systematically the travel documents of third country nationals when they cross the external borders of the Member States and amending the provisions of the Convention implementing the Schengen agreement and the Common Manual to this end <sup>(4)</sup>.
3. References to the Articles deleted and instruments repealed shall be construed as references to this Regulation.

*Article 40***Entry into force**

This Regulation shall enter into force on 13 October 2006. However, Article 34 shall enter into force on the day after its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 15 March 2006.

*For the European Parliament*  
The President  
J. BORRELL FONTELLES

*For the Council*  
The President  
H. WINKLER

<sup>(1)</sup> OJ L 116, 26.4.2001, p. 5. Regulation amended by Decision 2004/927/EC (OJ L 396, 31.12.2004, p. 45).

<sup>(2)</sup> OJ L 261, 6.8.2004, p. 119.

<sup>(3)</sup> OJ L 261, 6.8.2004, p. 36.

<sup>(4)</sup> OJ L 369, 16.12.2004, p. 5.

## ANNEX I

**Supporting documents to verify the fulfilment of entry conditions**

The documentary evidence referred to in Article 5(2) may include the following:

- (a) for business trips:
    - (i) an invitation from a firm or an authority to attend meetings, conferences or events connected with trade, industry or work;
    - (ii) other documents which show the existence of trade relations or relations for work purposes;
    - (iii) entry tickets for fairs and congresses if attending one;
  - (b) for journeys undertaken for the purposes of study or other types of training:
    - (i) a certificate of enrolment at a teaching institute for the purposes of attending vocational or theoretical courses in the framework of basic and further training;
    - (ii) student cards or certificates for the courses attended;
  - (c) for journeys undertaken for the purposes of tourism or for private reasons:
    - (i) supporting documents as regards lodging:
      - an invitation from the host if staying with one,
      - a supporting document from the establishment providing lodging or any other appropriate document indicating the accommodation envisaged;
    - (ii) supporting documents as regards the itinerary:
      - confirmation of the booking of an organised trip or any other appropriate document indicating the envisaged travel plans;
    - (iii) supporting documents as regards return:
      - a return or round-trip ticket.
  - (d) for journeys undertaken for political, scientific, cultural, sports or religious events or other reasons:
    - invitations, entry tickets, enrolments or programmes stating wherever possible the name of the host organisation and the length of stay or any other appropriate document indicating the purpose of the visit.
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## ANNEX II

**Registration of information**

At all border crossing points, all service information and any other particularly important information shall be registered manually or electronically. The information to be registered shall include in particular:

- (a) the names of the border guard responsible locally for border checks and of the other officers in each team;
  - (b) relaxation of checks on persons applied in accordance with Article 8;
  - (c) the issuing, at the border, of documents in place of passports and of visas;
  - (d) persons apprehended and complaints (criminal offences and administrative breaches);
  - (e) persons refused entry in accordance with Article 13 (grounds for refusal and nationalities);
  - (f) the security codes of entry and exit stamps, the identity of border guards to whom a given stamp is assigned at any given time or shift and the information relating to lost and stolen stamps;
  - (g) complaints from persons subject to checks;
  - (h) other particularly important police or judicial measures;
  - (i) particular occurrences.
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## ANNEX III

**Model signs indicating lanes at border crossing points**

## PART A



(1)

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(1) No logo is required for Norway and Iceland.

PART B



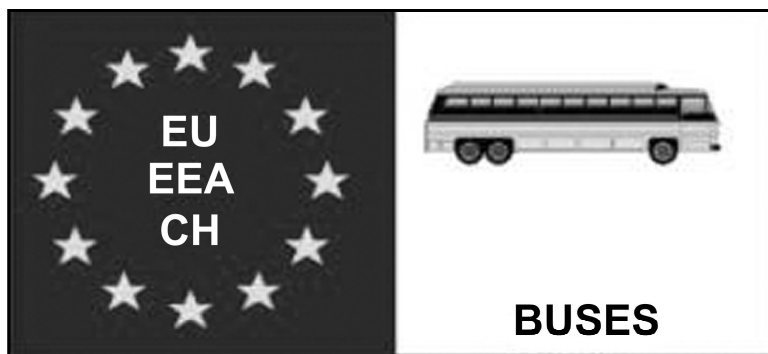
PART C



(<sup>1</sup>)



(<sup>1</sup>)



(<sup>1</sup>)

(<sup>1</sup>) No logo is required for Norway and Iceland.

<p><b>ALL PASSPORTS</b></p>	 <p><b>CARS</b></p>
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<p><b>ALL PASSPORTS</b></p>	 <p><b>BUSES</b></p>
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<p><b>ALL PASSPORTS</b></p>	 <p><b>LORRIES</b></p>
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## ANNEX IV

**Affixing stamps**

1. The travel documents of third-country nationals shall be systematically stamped on entry and exit, in accordance with Article 10. The specifications of those stamps are laid down in the Schengen Executive Committee Decision SCH/COM-EX (94) 16 rev and SCH/Gem-Handb (93) 15 (CONFIDENTIAL).
2. The security codes on the stamps shall be changed at regular intervals not exceeding one month.
3. On the entry and exit of third-country nationals subject to the visa obligation, the stamp will, if possible, be affixed so that it covers the edge of the visa without affecting the legibility of the indications on the visa or the security features of the visa sticker. If several stamps must be affixed (for example in the case of a multiple-entry visa, this shall be done on the page facing the one on which the visa is affixed).

If that page cannot be used, the stamp shall be entered on the following page. The machine readable zone shall not be stamped.

4. Member States shall designate national contact points responsible for exchanging information on the security codes of the entry and exit stamps used at border crossing points and shall inform the other Member States, the General Secretariat of the Council and the Commission thereof. Those contact points shall have access without delay to information regarding common entry and exit stamps used at the external border of the Member State concerned, and in particular to information on the following:
  - (a) the border crossing point to which a given stamp is assigned;
  - (b) the identity of the border guard to whom a given stamp is assigned at any given time;
  - (c) the security code of a given stamp at any given time.

Any inquiries regarding common entry and exit stamps shall be made through the abovementioned national contact points.

The national contact points shall also forward immediately to the other contact points, the General Secretariat of the Council and the Commission information regarding a change in the contact points as well as lost and stolen stamps.

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## ANNEX V

## PART A

**Procedures for refusing entry at the border**


1. When refusing entry, the competent border guard shall:
  - (a) fill in the standard form for refusing entry, as shown in Part B. The third-country national concerned shall sign the form and shall be given a copy of the signed form. Where the third-country national refuses to sign, the border guard shall indicate this refusal in the form under the section 'comments';
  - (b) affix an entry stamp on the passport, cancelled by a cross in indelible black ink, and write opposite it on the right-hand side, also in indelible ink, the letter(s) corresponding to the reason(s) for refusing entry, the list of which is given on the abovementioned standard form for refusing entry;
  - (c) cancel the visa by applying a stamp stating 'CANCELLED' in the cases referred to in paragraph 2. In such a case the optically variable feature of the visa sticker, the security feature 'latent image effect' as well as the term 'visa' shall be destroyed by crossing it out so as to prevent any later misuse. The border guard shall inform his/her central authorities of this decision forthwith;
  - (d) record every refusal of entry in a register or on a list stating the identity and nationality of the third-country national concerned, the references of the document authorising the third-country national to cross the border and the reason for, and date of, refusal of entry;
2. The visa shall be cancelled in the following cases:
  - (a) if the holder of the visa is the subject of an alert in the SIS for the purposes of being refused entry unless he or she holds a visa or re-entry visa issued by one of the Member States and wishes to enter for transit purposes in order to reach the territory of the Member State which issued the document;
  - (b) if there are serious grounds to believe that the visa was obtained in a fraudulent way.

However, the failure of the third-country national to produce, at the border, one or more of the supporting documents referred to in Article 5(2), shall not automatically lead to a decision to cancel the visa.
3. If a third-country national who has been refused entry is brought to the border by a carrier, the authority responsible locally shall:
  - (a) order the carrier to take charge of the third-country national and transport him or her without delay to the third country from which he or she was brought, to the third country which issued the document authorising him or her to cross the border, or to any other third country where he or she is guaranteed admittance, or to find means of onward transportation in accordance with Article 26 of the Schengen Convention and Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 <sup>(1)</sup>;
  - (b) pending onward transportation, take appropriate measures, in compliance with national law and having regard to local circumstances, to prevent third-country nationals who have been refused entry from entering illegally.
4. If there are grounds both for refusing entry to a third-country national and arresting him or her, the border guard shall contact the authorities responsible to decide on the action to be taken in accordance with national law.

<sup>(1)</sup> OJ L 187, 10.7.2001, p. 45.

## PART B

## Standard form for refusal of entry at the border

Name of State Logo of State (Name of Office) _____ _____	
(1)	
<b>REFUSAL OF ENTRY AT THE BORDER</b>	
On _____ at (time) _____ at the border crossing point _____	
We, the undersigned, _____ have before us:	
Surname _____ First name _____	
Date of birth _____ Place of birth _____ Sex _____	
Nationality _____ Resident in _____	
Type of identity document _____ number _____	
Issued in _____ on _____	
Visa number _____ type _____ issued by _____	
valid from _____ until _____	
For a period of _____ days on the following grounds: _____	
Coming from _____ by means of _____ (indicate means of transport used, e.g. flight number), he/she is hereby informed that he/she is refused entry into the country pursuant to ( <i>indicate references to the national law in force</i> ), for the following reasons:	
<input type="checkbox"/> (A) has no valid travel document(s) <input type="checkbox"/> (B) has a false/counterfeit/forged travel document <input type="checkbox"/> (C) has no valid visa or residence permit <input type="checkbox"/> (D) has a false/counterfeit/forged visa or residence permit <input type="checkbox"/> (E) has no appropriate documentation justifying the purpose and conditions of stay. The following document(s) could not be provided: _____	
<input type="checkbox"/> (F) has already stayed for three months during a six-month period on the territory of the Member States of the European Union	
<input type="checkbox"/> (G) does not have sufficient means of subsistence in relation to the period and form of stay, or the means to return to the country of origin or transit	
<input type="checkbox"/> (H) is a person for whom an alert has been issued for the purposes of refusing entry <input type="checkbox"/> in the SIS <input type="checkbox"/> in the national register	
<input type="checkbox"/> (I) is considered to be a <i>threat to public policy, internal security, public health or the international relations</i> of one or more of the Member States of the European Union ( <i>each State must indicate the references to national law relating to such cases of refusal of entry</i> ).	
<b>Comments</b> The person concerned may appeal against the decision to refuse entry as provided for in national law. The person concerned receives a copy of this document ( <i>each State must indicate the references to the national law and procedure relating to the right of appeal</i> ).	
<div style="border: 1px solid black; width: 150px; height: 40px; margin: 0 auto;"></div> Person concerned	<div style="border: 1px solid black; width: 150px; height: 40px; margin: 0 auto;"></div> Officer responsible for checks

(1) No logo is required for Norway and Iceland.



## ANNEX VI

**Specific rules for the various types of border and the various means of transport used for crossing the Member States' external borders****1. Land borders****1.1. Checks on road traffic**

1.1.1. To ensure effective checks on persons, while ensuring the safety and smooth flow of road traffic, movements at border crossing points shall be regulated in an appropriate manner. Where necessary, Member States may conclude bilateral agreements to channel and block traffic. They shall inform the Commission thereof pursuant to Article 37.

1.1.2. At land borders, Member States may, where they deem appropriate and if circumstances allow, install or operate separate lanes at certain border crossing points, in accordance with Article 9.

Separate lanes may be dispensed with at any time by the Member States' competent authorities, in exceptional circumstances and where traffic and infrastructure conditions so require.

Member States may cooperate with neighbouring countries with a view to the installation of separate lanes at external border crossing points.

1.1.3. As a general rule, persons travelling in vehicles may remain inside them during checks. However, if circumstances so require, persons may be requested to alight from their vehicles. Thorough checks will be carried out, if local circumstances allow, in areas designated for that purpose. In the interests of staff safety, checks will be carried out, where possible, by two border guards.

**1.2. Checks on rail traffic**

1.2.1. Checks shall be carried out both on train passengers and on railway staff on trains crossing external borders, including those on goods trains or empty trains. Those checks shall be carried out in either one of the following two ways:

- on the platform, in the first station of arrival or departure on the territory of a Member State,
- on board the train, during transit.

Member States may conclude bilateral agreements on how to conduct those checks. They shall inform the Commission thereof pursuant to Article 37.

1.2.2. By way of derogation from point 1.2.1 and in order to facilitate rail traffic flows of high-speed passenger trains, the Member States on the itinerary of these trains from third countries may also decide, by common agreement with third countries concerned, to carry out entry checks on persons in trains from third countries in either one of the following ways:

- in the stations in a third country where persons board the train,
- in the stations where persons disembark within the territory of the Member States,
- on board the train during transit between the stations on the territory of the Member States, provided that the persons stay on board the train in the previous station/stations.

1.2.3. With respect to high-speed trains from third countries making several stops in the territory of the Member States, if the rail transport carrier is in a position to board passengers exclusively for the remaining part of the journey within the territory of the Member States, such passengers shall be subject to entry checks either on the train or at the station of destination except where checks have been carried out pursuant to points 1.2.1 or 1.2.2 first indent.

Persons who wish to take the train exclusively for the remaining part of the journey within the territory of the Member States shall receive clear notification prior to the train's departure that they will be subject to entry checks during the journey or at the station of destination.

- 1.2.4. When travelling in the opposite direction, the persons on board the train shall be subject to exit checks under similar arrangements.
- 1.2.5. The border guard may order the cavities of carriages to be inspected if necessary with the assistance of the train inspector, to ensure that persons or objects subject to border checks are not concealed in them.
- 1.2.6. Where there are reasons to believe that persons who have been reported or are suspected of having committed an offence, or third-country nationals intending to enter illegally, are hiding on a train, the border guard, if he or she cannot act in accordance with his national provisions, shall notify the Member States towards or within whose territory the train is moving.

## 2. **Air borders**

### 2.1. *Procedures for checks at international airports*

2.1.1. The competent authorities of the Member States shall ensure that the airport operator takes the requisite measures to physically separate the flows of passengers on internal flights from the flows of passengers on other flights. Appropriate infrastructures shall be set in place at all international airports to that end.

2.1.2. The place where border checks are carried out shall be determined in accordance with the following procedure:

- (a) passengers on a flight from a third country who board an internal flight shall be subject to an entry check at the airport of arrival of the flight from a third country. Passengers on an internal flight who board a flight for a third country (transfer passengers) shall be subject to an exit check at the airport of departure of the latter flight;
- (b) for flights from or to third countries with no transfer passengers and flights making more than one stop-over at the airports of the Member States where there is no change of aircraft:
  - (i) passengers on flights from or to third countries where there is no prior or subsequent transfer within the territory of the Member States shall be subject to an entry check at the airport of entry and an exit check at the airport of exit;
  - (ii) passengers on flights from or to third countries with more than one stop-over on the territory of the Member States where there is no change of aircraft (transit passengers), and provided that passengers cannot board the aircraft for the leg situated within the territory of the Member States, shall be subject to an entry check at the airport of arrival and an exit check at the airport of departure;
  - (iii) where an airline may, for flights from third countries with more than one stop-over within the territory of the Member States, board passengers only for the remaining leg within that territory, passengers shall be subject to an exit check at the airport of departure and an entry check at the airport of arrival.

Checks on passengers who, during those stop-overs, are already on board the aircraft and have not boarded in the territory of the Member States shall be carried out in accordance with point (b)(ii). The reverse procedure shall apply to that category of flights where the country of destination is a third country.

2.1.3. Border checks will normally not be carried out on the aircraft or at the gate, unless it is justified on the basis of an assessment of the risks related to internal security and illegal immigration. In order to ensure that, at the airports designated as border crossing points, persons are checked in accordance with the rules set out in Articles 6 to 13, Member States shall ensure that the airport authorities take the requisite measures to channel passenger traffic to facilities reserved for checks.

Member States shall ensure that the airport operator takes the necessary measures to prevent unauthorised persons entering and leaving the reserved areas, for example the transit area. Checks will normally not be carried out in the transit area, unless it is justified on the basis of an assessment of the risks related to internal security and illegal immigration; in particular checks in this area may be carried out on persons subject to an airport transit visa in order to check that they are in possession of such a visa.

- 2.1.4. Where, in cases of *force majeure* or imminent danger or on the instructions of the authorities, an aircraft on a flight from a third country has to land on a landing ground which is not a border crossing point, that aircraft may continue its flight only after authorisation from the border guards and from customs. The same shall apply where an aircraft on a flight from a third country lands without permission. In any event, Articles 6 to 13 shall apply to checks on persons on those aircraft.
- 2.2. *Procedures for checks in aerodromes*
- 2.2.1. It shall be ensured that persons are also checked, in accordance with Articles 6 to 13, in airports which do not hold the status of international airport under the relevant national law (aerodromes) but through which the routing of flights from or to third countries is authorised.
- 2.2.2. By way of derogation from point 2.1.1 it shall not be necessary to make appropriate arrangements in aerodromes to ensure that inflows of passengers from internal and other flights are physically separated, without prejudice to Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security <sup>(1)</sup>. In addition, when the volume of traffic is low, the border guards need not be present at all times, provided that there is a guarantee that the necessary personnel can be deployed in good time.
- 2.2.3. When the presence of the border guards is not assured at all times in the aerodrome, the manager of the aerodrome shall give adequate notice to the border guards about the arrival and the departure of aircrafts on flights from or to third countries.
- 2.3. *Checks on persons on private flights*
- 2.3.1. In the case of private flights from or to third countries the captain shall transmit to the border guards of the Member State of destination and, where appropriate, of the Member State of first entry, prior to take-off, a general declaration comprising inter alia a flight plan in accordance with Annex 2 to the Convention on International Civil Aviation and information concerning the passengers' identity.
- 2.3.2. Where private flights coming from a third country and bound for a Member State make stop-overs in the territory of other Member States, the competent authorities of the Member State of entry shall carry out border checks and affix an entry stamp to the general declaration referred to in point 2.3.1.
- 2.3.3. Where uncertainty exists whether a flight is exclusively coming from, or solely bound for, the territories of the Member States without stop-over on the territory of a third country, the competent authorities shall carry out checks on persons in airports and aerodromes in accordance with points 2.1 to 2.2.
- 2.3.4. The arrangements for the entry and exit of gliders, micro-light aircraft, helicopters, small-scale aircraft capable of flying short distances only and airships shall be laid down by national law and, where applicable, by bilateral agreements.

### 3. **Sea borders**

#### 3.1. *General checking procedures on maritime traffic*

- 3.1.1. Checks on ships shall be carried out at the port of arrival or departure, on board ship or in an area set aside for the purpose, located in the immediate vicinity of the vessel. However, in accordance with the agreements reached on the matter, checks may also be carried out during crossings or, upon the ship's arrival or departure, in the territory of a third country.

The purpose of checks is to ensure that both crew and passengers fulfil the conditions laid down in Article 5, without prejudice to Article 19(1)(c).

- 3.1.2. The ship's captain or, failing that, the individual or corporation who represents the shipowner in all matters relating to the shipowner's duties in fitting out the vessel (shipowner's agent), shall draw up a list, in duplicate, of the crew and of any passengers. At the latest upon arriving in the port he or she shall give the list(s) to the border guards. If, for reasons of *force majeure*, the list or lists cannot be sent to the border guards, a copy will be sent to the appropriate border post or shipping authority, which shall forward it without delay to the border guards.
- 3.1.3. One copy of the two lists duly signed by the border guard shall be returned to the ship's captain, who shall produce it on request when in port.

<sup>(1)</sup> OJ L 355, 30.12.2002, p. 1. Regulation as amended by Regulation (EC) No 849/2004 (OJ L 158, 30.4.2004, p. 1).

- 3.1.4. The ship's captain, or failing that, the shipowner's agent shall report to the competent authority promptly any changes to the composition of the crew or the number of passengers.

In addition, the captain shall notify the competent authorities promptly, and if possible even before the ship enters port, of the presence on board of stowaways. Stowaways will, however, remain under the responsibility of the ship's captain.

- 3.1.5. The ship's captain shall notify the border guards of the ship's departure in due time and in accordance with the rules in force in the port concerned; if he or she is unable to notify them, he or she shall advise the appropriate shipping authority. The second copy of the previously completed and signed list(s) shall be returned to border guards or shipping authorities.

3.2. *Specific check procedures for certain types of shipping*

Cruise ships

- 3.2.1. The cruise ship's captain or, failing that, the shipowner's agent shall transmit to the respective border guards the itinerary and the programme of the cruise, at least 24 hours before leaving the port of departure and before the arrival at each port in the territory of the Member States.

- 3.2.2. If the itinerary of a cruise ship comprises exclusively ports situated in the territory of the Member States, by way of derogation from Articles 4 and 7, no border checks shall be carried out and the cruise ship may dock at ports which are not border crossing points.

Nevertheless, on the basis of an assessment of the risks related to internal security and illegal immigration, checks may be carried out on the crew and passengers of those ships.

- 3.2.3. If the itinerary of a cruise ship comprises both ports situated in the territory of the Member States and ports situated in third countries, by way of derogation from Article 7, border checks shall be carried out as follows:

- (a) where the cruise ship comes from a port situated in a third country and calls for the first time at a port situated in the territory of a Member State, crew and passengers shall be subject to entry checks on the basis of the nominal lists of crew and passengers, as referred to in point 3.2.4.

Passengers going ashore shall be subject to entry checks in accordance with Article 7 unless an assessment of the risks related to internal security and illegal immigration shows that there is no need to carry out such checks;

- (b) where the cruise ship comes from a port situated in a third country and calls again at a port situated in the territory of a Member State, crew and passengers shall be subject to entry checks on the basis of the nominal lists of crew and passengers as referred to in point 3.2.4 to the extent that those lists have been modified since the cruise ship called at the previous port situated in the territory of a Member State.

Passengers going ashore shall be subject to entry checks in accordance with Article 7 unless an assessment of the risks related to internal security and illegal immigration shows that there is no need to carry out such checks;

- (c) where the cruise ship comes from a port situated in a Member State and calls at such a port, passengers going ashore shall be subject to entry checks in accordance with Article 7 if an assessment of the risks related to internal security and illegal immigration so requires;

- (d) where a cruise ship departs from a port situated in a Member State to a port in a third country, crew and passengers shall be subject to exit checks on the basis of the nominal lists of crew and passengers.

If an assessment of the risks related to internal security and illegal immigration so requires, passengers going on board shall be subject to exit checks in accordance with Article 7;

- (e) where a cruise ship departs from a port situated in a Member State to such a port, no exit checks shall be carried out.

Nevertheless, on the basis of an assessment of the risks related to internal security and illegal immigration, checks may be carried out on the crew and passengers of those ships.

3.2.4. The nominal lists of crew and passengers shall include:

- (a) name and surname;
- (b) date of birth;
- (c) nationality;
- (d) number and type of travel document and, where applicable, visa number.

The cruise ship's captain or, failing that, the shipowner's agent shall transmit to the respective border guards the nominal lists at least 24 hours before the arrival at each port in the territory of the Member States or, where the journey to this port lasts less than 24 hours, immediately after the boarding is completed in the previous port.

The nominal list shall be stamped at the first port of entry into the territory of the Member States and in all cases thereafter if the list is modified. The nominal list shall be taken into account in the assessment of the risks as referred to in point 3.2.3.

#### Pleasure boating

3.2.5. By way of derogation from Articles 4 and 7, persons on board a pleasure boat coming from or departing to a port situated in a Member State shall not be subject to border checks and may enter a port which is not a border crossing point.

However, according to the assessment of the risks of illegal immigration, and in particular where the coastline of a third country is located in the immediate vicinity of the territory of the Member State concerned, checks on those persons and/or a physical search of the pleasure boat shall be carried out.

3.2.6. By way of derogation from Article 4, a pleasure boat coming from a third country may, exceptionally, enter a port which is not a border crossing point. In that case, the persons on board shall notify the port authorities in order to be authorised to enter that port. The port authorities shall contact the authorities in the nearest port designated as a border crossing point in order to report the vessel's arrival. The declaration regarding passengers shall be made by lodging the list of persons on board with the port authorities. That list shall be made available to the border guards, at the latest upon arrival.

Likewise, if for reasons of *force majeure* the pleasure boat coming from a third country has to dock in a port other than a border crossing point, the port authorities shall contact the authorities in the nearest port designated as a border crossing point in order to report the vessel's presence.

3.2.7. During those checks, a document containing all the technical characteristics of the vessel and the names of the persons on board shall be handed in. A copy of that document shall be given to the authorities in the ports of entry and departure. As long as the vessel remains in the territorial waters of one of the Member States, a copy of that document shall be included amongst the ship's papers.

#### Coastal fishing

3.2.8. By way of derogation from Articles 4 and 7, the crews of coastal fisheries vessels which return every day or within 36 hours to the port of registration or to any other port situated in the territory of the Member States without docking in a port situated in the territory of a third country shall not be systematically checked. Nevertheless, the assessment of the risks of illegal immigration, in particular where the coastline of a third country is located in the immediate vicinity of the territory of the Member State concerned, shall be taken into account in order to determine the frequency of the checks to be carried out. According to those risks, checks on persons and/or a physical search of the vessel shall be carried out.

3.2.9. The crews of coastal fisheries vessels not registered in a port situated in the territory of a Member State shall be checked in accordance with the provisions relating to seamen.

The ship's captain shall notify the competent authorities of any alteration to the crew list and of the presence of any passengers.

#### Ferry connections

3.2.10. Checks shall be carried out on persons on board ferry connections with ports situated in third countries. The following rules shall apply:

- (a) where possible, Member States shall provide separate lanes, in accordance with Article 9;
- (b) checks on foot passengers shall be carried out individually;
- (c) checks on vehicle occupants shall be carried out while they are at the vehicle;
- (d) ferry passengers travelling by coach shall be considered as foot passengers. Those passengers shall alight from the coach for the checks;
- (e) checks on drivers of heavy goods vehicles and any accompanying persons shall be conducted while the occupants are at the vehicle. Those checks will in principle be organised separately from checks on the other passengers;
- (f) to ensure that checks are carried out quickly, there shall be an adequate number of gates;
- (g) so as to detect illegal immigrants in particular, random searches shall be made on the means of transport used by the passengers, and where applicable on the loads and other goods stowed in the means of transport;
- (h) ferry crew members shall be dealt with in the same way as commercial ship crew members.

#### 4. Inland waterways shipping

- 4.1. 'Inland waterways shipping involving the crossing of an external border' covers the use, for business or pleasure purposes, of all types of boat and floating vessels on rivers, canals and lakes.
  - 4.2. As regards boats used for business purposes, the captain and the persons employed on board who appear on the crew list and members of the families of those persons who live on board shall be regarded as crew members or equivalent.
  - 4.3. The relevant provisions of points 3.1 to 3.2 shall apply *mutatis mutandis* to checks on inland waterways shipping.
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## ANNEX VII

**Special rules for certain categories of persons****1. Heads of State**

By way of derogation from Article 5 and Articles 7 to 13, Heads of State and the members of their delegation, whose arrival and departure have been officially announced through diplomatic channels to the border guards, may not be subject to border checks.

**2. Pilots of aircraft and other crew members**

2.1. By way of derogation from Article 5 the holders of a pilot's licence or a crew member certificate as provided for in Annex 9 to the Civil Aviation Convention of 7 December 1944 may, in the course of their duties and on the basis of those documents:

- (a) embark and disembark in the stop-over airport or the airport of arrival situated in the territory of a Member State;
- (b) enter the territory of the municipality of the stop-over airport or the airport of arrival situated in the territory of a Member State;
- (c) go, by any means of transport, to an airport situated in the territory of a Member State in order to embark on an aircraft departing from that same airport.

In all other cases, the requirements provided for by Article 5(1) shall be fulfilled.

2.2. Articles 6 to 13 shall apply to checks on aircraft crew members. Wherever possible, priority will be given to checks on aircraft crews. Specifically, they will be checked either before passengers or at special locations set aside for the purpose. By way of derogation from Article 7, crews known to staff responsible for border controls in the performance of their duties may be subject to random checks only.

**3. Seamen**

3.1. By way of derogation from Articles 4 and 7, Member States may authorise seamen holding a seafarer's identity document issued in accordance with the Geneva Convention of 19 June 2003 (No 185), the London Convention of 9 April 1965 and the relevant national law, to enter into the territory of the Member States by going ashore to stay in the area of the port where their ships call or in the adjacent municipalities without presenting themselves at a border crossing point, on condition that they appear on the crew list, which has previously been submitted for checking by the competent authorities, of the ship to which they belong.

However, according to the assessment of the risks of internal security and illegal immigration, seamen shall be subject to a check in accordance with Article 7 by the border guards before they go ashore.

If a seaman constitutes a threat to public policy, internal security or public health, he may be refused permission to go ashore.

3.2. Seamen who intend to stay outside the municipalities situated in the vicinity of ports shall comply with the conditions for entry to the territory of the Member States, as laid down in Article 5(1).

**4. Holders of diplomatic, official or service passports and members of international organisations**

4.1. In view of the special privileges or immunities they enjoy, the holders of diplomatic, official or service passports issued by third countries or their Governments recognised by the Member States, as well as the holders of documents issued by the international organisations listed in point 4.4 who are travelling in the course of their duties, may be given priority over other travellers at border crossing points even though they remain, where applicable, subject to the requirement for a visa.

By way of derogation from Article 5(1)(c), persons holding those documents shall not be required to prove that they have sufficient means of subsistence.

- 4.2. If a person presenting himself or herself at the external border invokes privileges, immunities and exemptions, the border guard may require him or her to provide evidence of his or her status by producing the appropriate documents, in particular certificates issued by the accrediting State or a diplomatic passport or other means. If he or she has doubts, the border guard may, in case of urgent need, apply direct to the Ministry of Foreign Affairs.
- 4.3. Accredited members of diplomatic missions and of consular representations and their families may enter the territory of the Member States on presentation of the card referred to in Article 19(2) and of the document authorising them to cross the border. Moreover, by way of derogation from Article 13 border guards may not refuse the holders of diplomatic, official or service passports entry to the territory of the Member States without first consulting the appropriate national authorities. This shall also apply where an alert has been entered in the SIS for such persons.
- 4.4. The documents issued by the international organisations for the purposes specified in point 4.1 are in particular the following:
- United Nations *laissez-passer* issued to staff of the United Nations and subordinate agencies under the Convention on Privileges and Immunities of Specialised Agencies adopted by the United Nations General Assembly on 21 November 1947 in New York,
  - European Community (EC) *laissez-passer*,
  - European Atomic Energy Community (Euratom) *laissez-passer*,
  - legitimacy certificate issued by the Secretary-General of the Council of Europe,
  - documents issued pursuant to paragraph 2 of Article III of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Force (military ID cards accompanied by a travel order, travel warrant, or an individual or collective movement order) as well as documents issued in the framework of the Partnership for Peace.

#### 5. **Cross-border workers**

- 5.1. The procedures for checking cross-border workers are governed by the general rules on border control, in particular Articles 7 and 13.
- 5.2. By way of derogation from Article 7, cross-border workers who are well known to the border guards owing to their frequent crossing of the border at the same border crossing point and who have not been revealed by an initial check to be the subject of an alert in the SIS or in a national data file shall be subject only to random checks to ensure that they hold a valid document authorising them to cross the border and fulfil the necessary entry conditions. Thorough checks shall be carried out on those persons from time to time, without warning and at irregular intervals.
- 5.3. The provisions of point 5.2 may be extended to other categories of regular cross-border commuters.

#### 6. **Minors**

- 6.1. Border guards shall pay particular attention to minors, whether travelling accompanied or unaccompanied. Minors crossing an external border shall be subject to the same checks on entry and exit as adults, as provided for in this Regulation.
- 6.2. In the case of accompanied minors, the border guard shall check that the persons accompanying minors have parental care over them, especially where minors are accompanied by only one adult and there are serious grounds for suspecting that they may have been unlawfully removed from the custody of the person(s) legally exercising parental care over them. In the latter case, the border guard shall carry out a further investigation in order to detect any inconsistencies or contradictions in the information given.
- 6.3. In the case of minors travelling unaccompanied, border guards shall ensure, by means of thorough checks on travel documents and supporting documents, that the minors do not leave the territory against the wishes of the person(s) having parental care over them.
-



ANNEX VIII

Name of State

Logo of State ..... (Name of Office)



\_\_\_\_\_

\_\_\_\_\_ (1)

APPROVAL OF THE EVIDENCE REGARDING THE RESPECT OF THE CONDITION OF THE DURATION OF A SHORT STAY IN CASES WHERE THE TRAVEL DOCUMENT DOES NOT BEAR AN ENTRY STAMP

On \_\_\_\_\_ at (time) \_\_\_\_\_ at (place) \_\_\_\_\_

We, the undersigning authority, \_\_\_\_\_ have before us:

Surname \_\_\_\_\_ First name \_\_\_\_\_

Date of birth \_\_\_\_\_ Place of birth \_\_\_\_\_ Sex: \_\_\_\_\_

Nationality \_\_\_\_\_ Resident in \_\_\_\_\_

Travel document \_\_\_\_\_ number \_\_\_\_\_

Issued in \_\_\_\_\_ on \_\_\_\_\_

Visa number \_\_\_\_\_ (if applicable) issued by \_\_\_\_\_

for a period of \_\_\_\_\_ days on the following grounds: \_\_\_\_\_

Having regard to the evidence relating to the duration of his/her stay on the territory of the Member States that he/she) has provided, he/she) is considered to have entered the territory of the Member State \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ at the border crossing point \_\_\_\_\_

Contact details of the undersigning authority:

Tel \_\_\_\_\_

Fax: \_\_\_\_\_

e-mail: \_\_\_\_\_

The person concerned will receive a copy of this document.

Person concerned

Officer responsible + stamp

(1) No logo is required for Norway and Iceland.

**COUNCIL REGULATION (EC) No 563/2006**

**of 13 March 2006**

**concerning the conclusion of the Partnership Agreement between the European Community and Solomon Islands on fishing off Solomon Islands**

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 <sup>(1)</sup>,

Whereas:

- (1) The Community and Solomon Islands have negotiated and initialled a Partnership Fisheries Agreement providing Community fishermen with fishing opportunities in the waters over which Solomon Islands has sovereignty or jurisdiction in respect of fisheries.
- (2) That Agreement provides for economic, financial, technical and scientific cooperation in the fisheries sector with a view to guaranteeing the conservation and sustainable exploitation of resources, as well as partnerships between undertakings aimed at developing economic activities in the fisheries sector and related activities in the common interest.
- (3) That Agreement should be approved.
- (4) The allocation of the fishing opportunities among the Member States should be defined.
- (5) The Member States whose vessels fish under this Agreement are to notify the Commission of the quantities of each stock caught within the Solomon Islands 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 <sup>(2)</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Partnership Agreement between the European Community and Solomon Islands on fishing off Solomon Islands (hereinafter referred to as the Agreement) is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Regulation.

*Article 2*

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

— Freezer tuna seiners:	Spain:	75 % of fishing possibilities available
	France:	25 % of fishing possibilities available
— Surface longliners:	Spain:	six vessels
	Portugal:	four vessels.

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

*Article 3*

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

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

Done at Brussels, 13 March 2006.

*For the Council*  
*The President*  
M. BARTENSTEIN

<sup>(1)</sup> Opinion delivered on 14 February 2006 (not yet published in the Official Journal).

<sup>(2)</sup> OJ L 73, 15.3.2001, p. 8.

**PARTNERSHIP AGREEMENT****between the European Community and Solomon Islands on fishing off Solomon Islands**

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

THE GOVERNMENT OF SOLOMON ISLANDS, hereinafter referred to as 'Solomon Islands',

Both collectively referred to as 'the Parties',

CONSIDERING the close cooperation and cordial relations between the Community and Solomon Islands, particularly in the context of the Lomé and Cotonou Agreements, and their common desire to further maintain and develop these relations;

CONSIDERING the wish of Solomon Islands to promote the rational exploitation of its fishery resources by means of intensified cooperation;

RECALLING THAT, in respect in particular of sea fishing, Solomon Islands exercises its sovereignty or jurisdiction over a zone extending up to 200 nautical miles from the baselines of its coasts;

HAVING REGARD TO the United Nations Convention on the Law of the Sea and to the United Nations Fish Stock Agreement;

AWARE OF the importance of the principles established by the Code of Conduct for responsible fisheries adopted at the FAO Conference in 1995;

AFFIRMING THAT the exercise of sovereign rights by coastal states in waters under their jurisdiction for the purpose of exploiting, conserving and managing living resources must be conducted in accordance with the principles and practices of international law and in due consideration to practices established at regional level;

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

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

DECIDED, to these ends, to establish a dialogue with a view to defining a sectoral fisheries policy in Solomon Islands and identifying the appropriate means of ensuring that this policy is effectively implemented and that economic operators and civil society are involved in the process;

DESIDEROUS OF establishing terms and conditions governing the fishing activities of Community vessels in the Solomon Islands fishing zone and Community support for the enhancement of responsible fishing in that fishing zone;

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

HEREBY AGREE AS FOLLOWS:

*Article 1*

**Scope**

This Agreement establishes the principles, rules and procedures governing:

- economic, financial, technical and scientific cooperation in the fisheries sector with a view to enhancing responsible
- fishing in the Solomon Islands fishing zone to guarantee the conservation and sustainable exploitation of fisheries resources, and developing the Solomon Islands fisheries sector,
- the conditions governing access by Community fishing vessels to the Solomon Islands fishing zone,

- the arrangements for policing fisheries in the Solomon Islands fishing zone with a view to ensuring that the above rules and conditions are complied with,
  - the measures for an effective conservation and management of fish stocks,
  - the prevention of illegal, undeclared and unregulated fishing,
  - partnerships between companies aimed at developing economic activities in the fisheries sector and related activities, in the common interest.
- (iii) engaging in any other activity which can reasonable be expected to result in locating, catching, taking or harvesting fish;
  - (iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
  - (v) any operation at sea directly in support of or in preparation for any activity described in subparagraphs (i) to (iv);
  - (vi) use of any other vehicle, air or sea borned, for any activity described in subparagraphs (i) to (v) except for emergencies involving health and safety of the crew or the safety of a vessel;

#### Article 2

#### Definitions

For the purposes of this Agreement:

- (a) 'Solomon Islands authorities' means the Department of Fisheries and Marine Resources of Solomon Islands or the Permanent Secretary of Fisheries of the Department of Fisheries and Marine Resources of Solomon Islands;
- (b) 'Community authorities' means the European Commission;
- (c) 'Solomon Islands fishing zone' means the waters over which Solomon Islands has sovereignty or jurisdiction in respect of fisheries, identified by Solomon Islands national legislation as 'Solomon Islands fishery limits';
- (d) 'Community vessel' means a fishing vessel flying the flag of a Member State and registered in the Community;
- (e) 'Joint enterprise' means a commercial company set up in Solomon Islands by vessel owners or national enterprises from the Parties in order to engage in fishing or related activities;
- (f) 'Joint Committee' means a committee made up of representatives of the Community and Solomon Islands whose functions are described in Article 9 of this Agreement;
- (g) 'fishing' means:
  - (i) searching for, catching, taking or harvesting fish;
  - (ii) attempting to search for, catch, take or harvest fish;
- (h) 'fishing trip' means any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels, and any other vessels directly involved in such fishing operations;
- (i) 'operator' means any person who is in charge of, or is responsible for the operation of, or directs or controls a fishing vessel, including the owner, charterer or master;
- (j) 'transshipment' means the unloading of any or all of the fish on board a fishing vessel onto another fishing vessel either at sea or in port.

#### Article 3

#### Principles and objectives referred to the implementation of this Agreement

1. The Parties hereby undertake to promote responsible fishing in the Solomon Islands fishing zone based on the principle of non discrimination between the different fleets fishing in the zone, without prejudice to agreements concluded between developing countries within a geographical region, including reciprocal fisheries agreements.
2. The Parties shall cooperate with a view to defining and implementing a sectoral fisheries policy in the Solomon Islands fishing zone and shall to that end initiate a policy dialogue on the necessary reforms. They hereby undertake not to adopt measures in this area without first consulting each other.
3. The Parties shall also cooperate on carrying out *ex ante*, ongoing and *ex post* evaluations, both jointly and unilaterally, of measures, programmes and actions implemented on the basis of this Agreement.
4. The Parties hereby undertake to ensure that this Agreement is implemented in accordance with the principles of good economic and social governance.

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

#### Article 4

### Scientific cooperation

1. During the period covered by this Agreement, the Community and Solomon Islands shall monitor the state of resources in the Solomon Islands fishing zone; a joint scientific meeting shall be held when necessary to that end, alternately in the Community and in Solomon Islands.

2. Based on the conclusions of the scientific meeting and the best available scientific advice, the Parties shall consult each other within the Joint Committee provided for in Article 9 and, where necessary and by mutual agreement, take measures to ensure the sustainable management of fisheries resources.

3. The Parties shall consult each other, either directly or within the international organisations concerned, to ensure the management and conservation of living resources in the west and central Pacific, and to cooperate in the relevant scientific research.

#### Article 5

### Access by Community vessels to fisheries in the Solomon Islands fishing zone

1. Solomon Islands hereby undertakes to authorise Community vessels to engage in fishing activities in its fishing zone in accordance with this Agreement, including the Protocol and Annex thereto.

2. The fishing activities governed by this Agreement shall be subject to the laws and regulations in Solomon Islands. Solomon Islands shall notify the Commission of any amendments to the said laws and regulations within six and one month respectively before they are applied.

3. Solomon Islands shall assume responsibility for the effective implementation of the fisheries monitoring provisions in the Protocol. Community vessels shall cooperate with the Solomon Islands authorities responsible for carrying out such monitoring. The steps taken by Solomon Islands to regulate fishing in the interest of the conservation of fishery resources shall be based on objective and scientific criteria. They shall apply without discrimination both to Community, Solomon Islands and foreign vessels, without prejudice to agreements concluded between developing countries within a single geographical region, including reciprocal fisheries agreements.

4. The Community shall take all the appropriate steps required to ensure that its vessels comply with this Agreement and the legislation and regulations governing fisheries in the Solomon Islands fishing zone.

#### Article 6

### Licences

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

#### Article 7

### Financial contribution

1. The Community shall grant Solomon Islands a single financial contribution in accordance with the terms and conditions laid down in the Protocol and Annexes. This single contribution shall be calculated on the basis of two related elements, namely:

- (a) access by Community vessels to the Solomon Islands fishing zone, and
- (b) the Community's financial support for enhancing responsible fishing and the sustainable exploitation of fisheries resources in the Solomon Islands fishing zone.

The part of the financial contribution referred to in point (b) of paragraph 1 shall be determined and managed in the light of objectives identified by common accord between the Parties in accordance with the Protocol, to be achieved in the context of the sectoral fisheries policy in Solomon Islands and in accordance with an annual and multiannual programme for its implementation.

2. The financial contribution granted by the Community shall be paid each year in accordance with the Protocol and without prejudice to the provisions of this Agreement and its Protocol on any change of the amount of the contribution as a result of:

- (a) serious circumstances, other than natural phenomena, preventing fishing activities in the Solomon Islands fishing zone (in accordance with Article 14 of the Agreement);
- (b) a reduction in the fishing opportunities granted to Community vessels, made by mutual agreement between the Parties for the purposes of managing the stocks concerned, where this is considered necessary for the conservation and sustainable exploitation of resources on the basis of the best available scientific advice (in accordance with Article 4 of the Protocol);
- (c) an increase in the fishing opportunities granted to Community vessels, made by mutual agreement between the Parties where the best available scientific advice concurs that the state of resources so permits (in accordance with Articles 1 and 4 of the Protocol);

- (d) a reassessment of the terms of Community financial support for implementing a sectoral fisheries policy in Solomon Islands (in accordance with Article 5 of the Protocol), where this is warranted by the results of the annual and multiannual programming observed by both Parties;
- (e) termination of this Agreement under Article 12;
- (f) suspension of the implementation of this Agreement under Article 13.
- (c) acting as a forum for the amicable settlement of any disputes regarding the interpretation or implementation of the Agreement;
- (d) reassessing, where necessary, the level of fishing opportunities and, consequently, of the financial contribution. Consultations shall be based on the principles set out under Articles 1, 2, and 3 of the Protocol;
- (e) any other function which the Parties decide on by mutual agreement.

#### Article 8

#### Promoting cooperation among economic operators and in civil society

1. The Parties shall encourage economic, commercial, scientific and technical cooperation in the fisheries sector and related sectors. They shall consult one another with a view to coordinating the different measures that might be taken to this end.
2. The Parties shall encourage exchanges of information on fishing techniques and gear, preservation methods and the industrial processing of fisheries products.
3. The Parties shall endeavour to create conditions favourable to the promotion of relations between enterprises from the Parties in the technical, economic and commercial spheres, by encouraging the establishment of an environment favourable to the development of business and investment.
4. The Parties shall encourage, in particular, the setting-up of joint enterprises in their mutual interest. The creation of joint enterprises in Solomon Islands and the transfer of Community vessels to joint enterprises shall systematically comply with Solomon Islands and Community legislation.

#### Article 9

#### Joint Committee

1. A Joint Committee shall be set up to monitor the implementation of this Agreement. The Joint Committee shall perform the following functions:
  - (a) monitoring the performance, interpretation and implementation of the Agreement and, in particular, the definition of the annual and multiannual programming referred to in Article 5(2) of the Protocol and evaluation of its implementation;
  - (b) providing the necessary liaison for matters of mutual interest relating to fisheries;

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

#### Article 10

#### Geographical area to which the Agreement applies

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

#### Article 11

#### Duration

This Agreement shall apply for three years from the date of its entry into force; it shall be automatically renewable for additional periods of three years, unless notice of termination is given in accordance with Article 12.

#### Article 12

#### Termination

1. This Agreement may be terminated by either Party in the event of serious circumstances such as the degradation of the stocks concerned, the discovery of a reduced level of exploitation of the fishing opportunities granted to Community vessels, or failure to comply with undertakings made by the Parties with regard to combating illegal, undeclared and unregulated fishing.
2. The Party concerned shall notify the other Party of its intention to withdraw from the Agreement in writing at least six months before the date of expiry of the initial period or each additional period.
3. Dispatch of the notification referred to in the previous paragraph shall open consultations by the Parties.
4. Payment of the financial contribution referred to in Article 7 for the year in which the termination takes effect shall be reduced proportionately and *pro rata temporis*.

5. Before the end of the period of validity of any Protocol to this Agreement, the parties shall hold negotiations to establish by agreement what amendments or additions to the Protocol and the Annex are required.

#### *Article 13*

#### **Suspension and review of the payment of the financial contribution**

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

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

#### *Article 14*

#### **Suspension on grounds of *force majeure***

1. Where serious circumstances, other than natural phenomena, prevent fishing activities in the Solomon Islands exclusive economic zone (EEZ), the European Community may suspend

payment of the financial contribution provided for in Article 2 of the Protocol, following consultations between the two parties where possible, and provided that the Community has paid in full any amounts due at the time of suspension.

2. Payment of the financial contribution shall resume as soon as the parties find, by mutual agreement following consultations, that the circumstances preventing fishing activities are no longer present and that the situation allows a resumption of fishing activities. This payment should be done within a time limit of two months upon confirmation from both parties.

3. The validity of the licences granted to Community vessels under Article 6 of the Agreement and 1 of the Protocol shall be extended by a period equal to the period during which fishing activities were suspended.

#### *Article 15*

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

#### *Article 16*

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

## PROTOCOL

### setting out the fishing opportunities and payments provided in the Partnership Agreement between the European Community and Solomon Islands on fishing off Solomon Islands

#### Article 1

##### Period of application and fishing possibilities

1. Solomon Islands shall grant annual fishing licences to Community tuna fishing vessels pursuant to Article 6 of the Agreement, in conformity with its National Tuna Management Plan and within the limits established by the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery, hereinafter referred to as 'the Palau Arrangement'.

2. For a period of three years from the date of entry into force of this Protocol the fishing opportunities foreseen under Article 5 of the Agreement shall be as follows:

— Annual licences to fish simultaneously within the Solomon Islands fishing zone shall be granted to four purse seine vessels and 10 long liners.

3. Starting from the second year of application of the Protocol and without prejudice to Articles 9(1)(d) of the Agreement and 4 of the Protocol, at the request of the Community, the number of fishing licences for purse seine vessels granted in Article 1(2) of the Protocol may be increased, if resources permit and in accordance with the Palau Arrangement yearly limitations and with an appropriate tuna stock assessment based on objective and scientific criteria, including the 'Western and Central Pacific Tuna Fishery Overview and Status of Stocks' published yearly by the Secretariat of the Pacific Community.

4. Paragraphs 1, 2 and 3 shall apply subject to Articles 4, 6 and 7 of this Protocol.

#### Article 2

##### Financial contribution – methods of payment

1. The single financial contribution referred to in Article 7 of the Agreement shall be EUR 400 000 per year.

2. Paragraph 1 shall apply subject to Articles 4 of this Protocol and to Articles 13 and 14 of the Agreement.

3. If the total quantity of tuna catches per year by Community vessels in the Solomon Islands fishing zone exceeds 6 000 tonnes, the total annual financial contribution shall be increased by EUR 65 per additional tonne of tuna caught. However, the total

annual amount to be paid by the Community cannot exceed the triple of the amount of the financial contribution referred to in paragraph 1.

4. For each additional purse seine licence granted by Solomon Islands pursuant to Article 1(3), the Community shall increase the financial contribution referred to in Article 2(1) of this Protocol by EUR 65 000 per year.

5. Payment shall be made no later than 1 May for the first year and no later than the anniversary date of the Protocol for the following years.

6. Subject to Article 5, Solomon Islands shall have full discretion regarding the use to which this financial contribution is put.

7. The financial contribution shall be paid into the Government Revenue Account opened with a financial institution specified by Solomon Islands. This account is Solomon Islands Government Revenue Account No 0260-002 with the Central Bank of Solomon Islands, Honiara. The annual financial contribution to be paid by the Community in exchange for the granting of additional annual licences pursuant to Articles 1(3) and 2(4) shall be paid into the account.

#### Article 3

##### Cooperation on responsible fishing

1. Both parties hereby undertake to promote responsible fishing in the Solomon Islands fishing zone based on the principle of non-discrimination between the different fleets fishing in those waters.

2. During the period covered by this Protocol, the Community and Solomon Islands shall monitor the state and sustainability of resources in the Solomon Islands fishing zone.

3. Based on the conclusions of the annual meeting of the members to the 'Palau Arrangement' and on the yearly assessment of stocks done by the Secretariat of the Pacific Community, the two parties shall consult each other within the Joint Committee provided for in Article 9 of the Agreement and, where necessary and by mutual agreement, take measures to ensure the sustainable management of fisheries resources.



## Article 4

**Review of fishing opportunities**

1. The fishing opportunities referred to in Article 1 may be increased by mutual agreement insofar as the conclusions of the annual meeting of the 'Palau Arrangement' members and the annual review of the status of stocks made by the Secretariat of the Pacific Community confirm that such an increase will not endanger the sustainable management of Solomon Islands resources. In this case the financial contribution referred to in Article 2(1) shall be increased proportionately and *pro rata temporis*.

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

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

## Article 5

**Support for enhancing responsible fishing in Solomon Islands waters**

1. Solomon Islands shall define and implement a sectoral fisheries policy in Solomon Islands with a view to enhancing responsible fishing in its waters. A share of 30 % of the single financial contribution referred to in Article 2(1) of this Protocol shall be put towards these objectives. This contribution shall be managed in the light of objectives identified by mutual agreement between the two parties, and the annual and multiannual programming to attain them.

2. For the purposes of paragraph 1, as soon as this Protocol enters into force and no later than three months after that date, the Community and Solomon Islands shall agree, within the Joint Committee provided for in Article 9 of the Agreement, on a multiannual sectoral programme and detailed implementing rules covering, in particular:

- (a) annual and multiannual guidelines for using the percentage of the financial contribution referred to in paragraph 1;
- (b) the objectives, both annual and multiannual, to be achieved with a view to introducing, over time, responsible fishing and sustainable fisheries, taking account of the priorities expressed by Solomon Islands in its national fisheries policy and other policies relating to or having an impact on the enhancement of responsible fishing and sustainable fisheries;

(c) criteria and procedures for evaluating the results obtained each year.

3. Any proposed amendments to the multiannual sectoral programme must be approved by both parties within the Joint Committee.

4. Each year, Solomon Islands shall allocate the percentage of the single financial contribution referred to in paragraph 1 with a view to implementing the multiannual programme. For the first year of application of the Protocol, that allocation must be notified to the Community at the time when the multiannual sectoral programme is approved within the Joint Committee. For each year thereafter, Solomon Islands shall notify the Community of the allocation no later than 45 days before the anniversary date of this Protocol.

5. The share of the single financial contribution (30 %) provided for in paragraph 1 shall be jointly controlled by the Department of Fisheries and Marine Resources and the Department of Finance and Treasury.

6. Where the annual evaluation of the progress made in implementing the multiannual sectoral programme so warrants, the European Community may ask for the share of the single financial contribution referred to in Article 5(1) of this Protocol to be reduced with a view to bringing the actual amount of financial resources allocated to implementation of the programme into line with its results.

## Article 6

**Disputes  
Suspension of implementation of the Protocol**

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

2. Without prejudice to Article 7, implementation of the Protocol may be suspended at the initiative of one party if the dispute between the parties is deemed to be serious and if the consultations held within the Joint Committee under paragraph 1 have not resulted in an amicable settlement.

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

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

*Article 7***Suspension of implementation of the Protocol on grounds of non-payment**

Subject to Article 9 of the Agreement, if the Community fails to make the payments provided for in Article 2 of the Protocol, the implementation of this Protocol may be suspended on the following terms:

- (a) the competent authorities of Solomon Islands shall notify the European Commission of the non-payment. The latter shall make the necessary verifications and, where necessary, transmit the payment within no more than 45 working days of the date of receipt of the notification;
- (b) if no payment is made and non-payment is not adequately justified within the period provided for in point (a) above, Solomon Islands shall be entitled to suspend the implementation of the Protocol. They shall inform the European Commission of such action forthwith;

- (c) implementation of the Protocol shall resume as soon as the payment concerned has been made.

*Article 8***National law and regulations**

The activities of vessels operating under this Protocol and the Annexes thereto, in particular transshipment, the use of port services and the purchase of supplies shall be governed by the applicable national laws and regulations in Solomon Islands.

*Article 9***Entry into force**

1. This Protocol with its Annex shall enter into force on the date on which the parties notify each other of the completion of the procedures necessary for that purpose.
2. It shall apply with effect not before 1 January 2005.

## ANNEX

**Conditions governing fishing activities by Community vessels in the Solomon Islands fishing zone**

## CHAPTER I

**APPLICATION FORMALITIES AND ISSUE OF LICENCES**

## SECTION 1

**Issue of licences**

1. Only eligible vessels may obtain a licence to fish in the Solomon Islands fishing zone.
2. For a vessel to be eligible, neither the owner, nor the master nor the vessel itself must be prohibited from fishing in Solomon Islands. They must be in order with the Government insofar as they must have fulfilled all prior obligations arising from their fishing activities in Solomon Islands under the fisheries agreement concluded with the Community.
3. All Community vessels applying for a fishing licence must be represented by an agent resident in Solomon Islands. The name and address of that agent shall be stated in the licence application.
4. The relevant Community authorities shall present to the Permanent Secretary of the Department of Fisheries and Marine Resources of Solomon Islands (hereinafter the Permanent Secretary), via the Delegation of the European Commission responsible for Solomon Islands (hereinafter the Delegation of the Commission or the Delegation), an application for each vessel wishing to fish under the Agreement at least 15 days before the beginning of the requested term of validity.
5. Applications shall be submitted to the Permanent Secretary on a form drawn up in accordance with the specimen in Appendix 1.
6. All licence applications shall be accompanied by the following documents:
  - proof of payment of the fee for the period of validity of the licence,
  - a copy of the tonnage certificate, certified by the flag Member State, giving the tonnage of the vessel expressed in GRT,
  - a recent, certified colour photograph, of at least 15 cm × 10 cm, showing a side view of the vessel in its current state,
  - any other documents or certificates required under the specific rules applicable to the type of vessel concerned pursuant to this Protocol.
7. The fee shall be paid into the account specified by the Permanent Secretary (Government Revenue Account No 0260-002 with the Central Bank of Solomon Islands, Honiara).
8. The fees shall include all national and local charges except for port taxes, service charges and transhipment fees.
9. Licences for all vessels shall be issued to shipowners or their agents via the Delegation of the Commission within 15 working days of receipt of all the documents referred to in point 6 by the Permanent Secretary.
10. If a licence is signed at a time when the European Commission Delegation offices are closed, it shall be sent direct to the vessel's agent and a copy shall be sent to the Delegation.
11. Licences shall be issued for a specific vessel and shall not be transferable.

12. At the request of the European Community and where *force majeure* is proven, a vessel's licence shall be replaced by a new licence for another vessel whose features are similar to those of the first vessel, with no further fee due. If the gross registered tonnage (GRT) of the replacement vessel is above that of the vessel to be replaced, the difference in fee shall be paid *pro rata temporis*. The total catch by both vessels concerned will be taken into account when the level of catches by Community vessels is taken into consideration to determine if any additional payments are to be made by the Community according to Article 2(3) of the Protocol.
13. The owner of the first vessel, or the agent, shall return the cancelled licence to the Permanent Secretary, via the European Commission Delegation.
14. The new licence shall take effect on the day that the vessel's owner returns the cancelled licence to the Permanent Secretary. The European Commission Delegation in Solomon Islands shall be informed of the licence transfer.
15. The licence must be kept on board at all times, without prejudice to point 2 of Chapter VII of this Annex.

## SECTION 2

### Licence conditions – fees and advance payments

1. Licences shall be valid for one year. They may be renewable. Renewal of licences shall be subject to the number of available fishing possibilities established by the Protocol.
2. The fee shall be EUR 35 per tonne caught within the Solomon Islands fishing zone.
3. Licences shall be issued once the following standard amounts have been paid to Government Revenue Account No 0260 002 with the Central Bank of Solomon Islands, Honiara:
  - EUR 13 000 per tuna seiner vessel, equivalent to the fees due for 371 tonnes of tuna and tuna like species caught per year,
  - EUR 3 000 per surface long-liner, equivalent to the fees due for 80 tonnes of tuna and tuna like species caught per year.
4. The final statement of the fees due for the fishing year shall be drawn up by the Commission of the European Communities by 30 June each year for the amounts caught during the year before and on the basis of the catch declarations made by each shipowner. The data should be confirmed by the scientific institutes responsible for verifying catch data of the Community (Institut de Recherche pour le Développement (IRD), the Instituto Español de Oceanografía (IEO) or the Instituto Português de Investigação Marítima (IPIMAR)) and by the Secretariat of the Pacific Community (SPC). On the basis of those confirmed statement of catches figures the Commission shall establish a statement of the fees due in respect of each licence period, calculated on the basis of EUR 35 per tonne caught.
5. The fee statement drawn up by the Commission shall be transmitted to the Permanent Secretary for verification and approval.

The Solomon Islands authorities may question the fee statement within 30 days from the invoice of the statement and, in case of disagreement, request the call of the Joint Committee.

If no objections are raised within 30 days from the invoice of the statement, the fee statement is considered to be accepted by Solomon Islands.

6. The final fee statement shall simultaneously be notified without delay to the Permanent Secretary, to the Delegation of the European Commission, to the Secretariat of the Pacific Community (SPC) and to the shipowners via their national administrations.
7. Any additional payments shall be made by the shipowners to the competent Solomon Islands authorities within 45 days from notification of the confirmed final statement into Solomon Islands Government Revenue Account No 0260-002 with the Central Bank of Solomon Islands, Honiara.
8. However, if the amount of the final statement is lower than the advance referred to in point 3 of this Section, the resulting balance shall not be reimbursable to the shipowner.

## CHAPTER II

**FISHING ZONES**

1. The vessels referred to in Article 1 of the Protocol shall be authorised to engage in fishing activities within the Solomon Islands fishing zone except for 30 nautical miles around the Main Group Archipelago (MGA) and the archipelagic and territorial waters of the other archipelagos. Coordinates of waters A of the MGA and the rest of the Archipelagos (i.e. Waters B, Waters C, Waters D and Waters E) shall be provided by the Permanent Secretary before the entry into force of the Agreement. The Permanent Secretary shall communicate to the European Commission any modification to the said closed fishing zones at least two months before their application.
2. In any case, all fishing shall not be permitted within three nautical miles of any anchored fish-aggregating device for which notification of its location shall be given by geographical coordinates.

## CHAPTER III

**CATCH REPORTING ARRANGEMENTS**

1. For the purposes of this Annex, the duration of a voyage by a Community vessel shall be defined as follows:
  - either the period elapsing between entering and leaving the Solomon Islands fishing zone,
  - or the period elapsing between entering the Solomon Islands fishing zone and a transhipment,
  - or the period elapsing between entering the Solomon Islands fishing zone and a landing in Solomon Islands.
2. All vessels authorised to fish in Solomon Islands waters under the Agreement shall be obliged to communicate their catches to the Permanent Secretary in the following manner:
  - 2.1. Declarations shall include the catches made by the vessel during each trip. They shall be transmitted to the Permanent Secretary by electronic means, with a copy to the European Commission, at the end of each trip and, in all cases, before the vessel leaves the Solomon Islands fishing zone. Electronic receipts shall be sent at once to the vessel by both addressees, with a copy to the other.
  - 2.2. The original of the declarations sent electronically during the annual period of validity of the licence within the meaning of point 2.1 shall be transmitted on a physical medium to the Permanent Secretary within 45 days following the end of the last trip made during the said period. Hard copies shall be sent to the European Community at the same time.
  - 2.3. Vessels shall declare their catches on the corresponding form in the log-book, in accordance with the specimen in Appendix 2. The words 'Outside Solomon Islands EEZ' shall be entered in the abovementioned log-book in respect of periods during which the vessel is not in Solomon Islands waters.
  - 2.4. The forms shall be filled in legibly and signed by the master of the ship.
3. Where the provisions set out in this Chapter are not complied with, Solomon Islands reserves the right to suspend the licence of the offending vessel until formalities have been completed and to apply the penalty laid down in applicable Solomon Islands legislation. The European Commission shall be informed thereof.

## CHAPTER IV

**EMBARKING SEAMEN**

1. Each European Community vessel fishing under the Agreement shall undertake to employ at least one Solomon Islands national as a crew-member. Condition of service for Solomon Islands nationals should be as standard for the industry in Solomon Islands.
2. In case a European Community vessel is not in the condition to employ one Solomon Islands national as a crew-member, shipowners shall be obliged to pay a lump sum equivalent to the wages of two crew-members for the duration of the fishing season in the Solomon Islands fishing zone.

3. The sum referred to above shall be paid into Government Revenue Account No 0260-002 with the Central Bank of Solomon Islands, Honiara.
4. Shipowners shall be free to select the seamen they take on board their vessels from the names on a list submitted by the Permanent Secretary.
5. The shipowner or agent shall inform the Permanent Secretary of the names of Solomon Islands seamen taken on board the vessel concerned, mentioning their position in the crew.
6. The International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by European Community vessels. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.
7. Solomon Islands seamen's employment contracts, a copy of which shall be given to the signatories, shall be drawn up between the shipowners' agent(s) and the seamen and/or their trade unions or representatives in consultation with the Permanent Secretary. These contracts shall guarantee the seamen the social security cover applicable to them, including life assurance and sickness and accident insurance.
8. Solomon Islands seamen's wages shall be paid by the shipowners. They shall be fixed, before licences are issued, by mutual agreement between the shipowners or their agents and the Permanent Secretary. However, the wage conditions granted to Solomon Islands seamen shall not be lower than those applied to Solomon Islands crews and shall under no circumstances be below ILO standards.
9. All seamen employed aboard Community vessels shall report to the master of the vessel designated on the day before their proposed embarkation date. Where a seaman fails to report at the date and time agreed for embarkation, shipowners shall be automatically absolved of their obligation to take the seaman on board.
10. Where no Solomon Islands seamen are taken on board for reasons other than that referred to in the previous point, shipowners shall be obliged to pay as soon as possible a flat-rate amount (for the fishing year) equivalent to the wages of the seamen not taken on board.
11. That sum shall be used for the training of seamen/fishermen in Solomon Islands and shall be paid into Government Revenue Account No 0260-002 with the Central Bank of Solomon Islands, Honiara.

#### CHAPTER V

#### TECHNICAL SPECIFICATIONS

Vessels shall comply with the measures and recommendations adopted by the Secretariat of the Pacific Community and by the members to the 'Palau Arrangement' regarding fishing gear and the technical specifications thereof and all other technical measures applicable to their fishing activities.

#### CHAPTER VI

#### OBSERVERS

1. At the time of lodging a license application, each Community vessel concerned shall contribute EUR 400 into Government Revenue Account No 0260-002 with the National Bank of Solomon Islands, Honiara, specifically for the observer's programme.
2. Vessels authorised to fish in Solomon Islands waters under the Agreement shall take on board observers appointed by Solomon Islands on the terms set out below:
  - 2.1. The Permanent Secretary shall determine each year the scope of the programme for observation on board on the basis of the number of vessels authorised to fish in the waters under its jurisdiction and the state of the resources targeted by those vessels. It shall determine accordingly the number or percentage of vessels by category of fishery which shall be required to take an observer on board.
  - 2.2. The Permanent Secretary shall draw up a list of vessels designated to take an observer on board and a list of appointed observers. These lists shall be kept up to date. They shall be forwarded to the European Commission as soon as they have been drawn up and every three months thereafter where they have been updated.

- 2.3. The Permanent Secretary shall inform the shipowners concerned, or their agents, of his intentions to take on board an appointed observer on their vessels at the time the licence is issued, or no later than 15 days before the observer's planned embarkation date and whose name shall be notified as soon as possible.
3. The time spent on board by observers shall be fixed by the Permanent Secretary but, as a general rule, it should not exceed the time required to carry out their duties. The Permanent Secretary shall inform the shipowners or their agents thereof when notifying them of the name of the observer appointed to be taken on board the vessel concerned.
4. The conditions under which observers are taken on board shall be agreed between shipowners or their agents and the Permanent Secretary.
5. Within two weeks and giving 10 days' notice, the shipowners concerned shall make known at which Solomon Islands ports and on what dates they intend to take observers on board.
6. Where observers are taken on board in a foreign port, their travel costs shall be borne by the shipowner. Should a vessel with an observer from Solomon Islands on board leave the Solomon Islands fishing zone, all measures must be taken to ensure the observer's return to Solomon Islands as soon as possible at the expense of the shipowner.
7. If the observer is not present at the time and place agreed and during the six hours following the time agreed, shipowners shall be automatically absolved of their obligation to take the observer on board.
8. Observers shall be treated as officers. They shall carry out the following tasks:
  - 8.1. observe the fishing activities of the vessels;
  - 8.2. verify the position of vessels engaged in fishing operations;
  - 8.3. perform biological sampling in the context of scientific programmes;
  - 8.4. note the fishing gear used;
  - 8.5. verify the catch data for the Solomon Islands zone recorded in the logbook;
  - 8.6. verify the percentages of by-catches and estimate the quantity of discards of species of marketable fin-fish, crustaceans, cephalopods and marine mammals;
  - 8.7. report fishing data once a week by radio, including the quantity of catches and by-catches on board.
9. Masters shall do everything in their power to ensure the physical safety and welfare of observers during performance of their duties.
10. Similarly, as far as possible, they shall be offered every facility needed to carry out their duties. The master shall give them access to the means of communication needed for the discharge of their duties, to documents directly concerned with the vessel's fishing activities, including in particular the logbook and the navigation log, and to those parts of the vessel necessary to facilitate the exercise of their tasks as observer.
11. While on board, observers shall:
  - 11.1. take all appropriate steps to ensure that the conditions of their boarding and presence on the vessel neither interrupt nor hamper fishing operations,
  - 11.2. respect the material and equipment on board and the confidentiality of all documents belonging to the said vessel.
12. At the end of the observation period and before leaving the vessel, observers shall draw up an activity report to be transmitted to the Permanent Secretary, with a copy to the Delegation of the European Commission. They shall sign it in the presence of the master, who may add or cause to be added to it any observations considered relevant, followed by the master's signature. A copy of the report shall be handed to the master when the observer is put ashore.

13. Shipowners shall bear the cost of accommodating observers in the same conditions as the officers on the vessel.
14. The salary and social contributions of the observer shall be borne by the Solomon Islands Government.

#### CHAPTER VII

##### VESSEL IDENTIFICATION AND ENFORCEMENT

1. For fisheries and marine safety purposes, every vessel shall be marked and identified in accordance with the Food and Agricultural Organisation (FAO) approved standard specification for the marking and identification of fishing vessels.
2. The name of the vessel will be printed clearly in Latin characters on the bow and the stern of the vessel.
3. Any vessel not displaying its name and radio call sign or signal letters in the prescribed manner may be escorted to a Solomon Islands port for further investigation.
4. A vessel operator shall ensure the continuous monitoring of the international distress and calling frequency 2 182 kHz (HF), and/or the international safety and calling frequency 156.8 MHz (Channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities of the Government.
5. A vessel operator shall ensure that a recent and up to date copy of the International code of Signals (INTERCO) is on board and accessible at all times.

#### CHAPTER VIII

##### COMMUNICATION WITH PATROL VESSELS OF SOLOMON ISLANDS

Communication between the permitted vessels and the patrol vessels of the Government shall be made by international signal codes as follows:

International Signal Code — Meaning:

L .....	Stop immediately
SQ3 .....	Stop or slow down, I wish to board your vessel
QN .....	Lay your vessel along the starboard side of our vessel
QN1 .....	Lay your vessel along the portside of our vessel
TD2 .....	Are you a fishing vessel?
C .....	Yes
N .....	No
QR .....	We cannot lay our vessel alongside your vessel
QP .....	We will lay our vessel alongside your vessel.

#### CHAPTER IX

##### MONITORING

1. The European Community shall keep an up-to-date list of the vessels to which a fishing licence has been issued under this Protocol. This list shall be notified to the Solomon Islands authorities responsible for fisheries inspection as soon as it is drawn up and each time it is updated.
2. Community vessels may be included on the list referred to in the previous point upon receipt of notification of the advance payment referred to in point 3 of Section 2 of Chapter I of this Annex. The shipowner may then obtain a certified copy of this list to be kept on board instead of the fishing licence until the licence has been issued.



3. *Entering and leaving the zone*

- 3.1. Community vessels shall notify the Permanent Secretary at least 24 hours in advance of their intention to enter or leave the Solomon Islands fishing zone. As soon as the vessels enter the Solomon Islands fishing zone, they shall inform the Permanent Secretary by fax, e-mail or radio.
- 3.2. When notifying leaving, vessels shall also communicate their position and the volume and species in catches kept on board. These communications shall be made preferably by fax, but failing this, in the case of vessels without a fax, by e-mail or by radio.
- 3.3. Vessels found to be fishing without having informed the Permanent Secretary shall be regarded as vessels without a licence.
- 3.4. Vessels shall also be informed of the fax and telephone numbers and e-mail address when the fishing licence is issued.

4. *Control procedures*

- 4.1. Masters of Community fishing vessels engaged in fishing activities in the Solomon Islands fishing zone shall allow and facilitate boarding and the discharge of their duties by any Solomon Islands official responsible for the inspection and control of fishing activities.
- 4.2. These officials shall not remain on board for longer than is necessary for the discharge of their duties.
- 4.3. Once the inspection has been completed, a certificate shall be issued to the master of the vessel.

5. *Arrest of fishing vessels*

- 5.1. The Permanent Secretary shall inform the Delegation of the European Commission, within 48 hours, of all arrests and penalties imposed on Community vessels in the Solomon Islands fishing zone.
- 5.2. The Delegation of the European Commission shall at the same time receive a brief report of the circumstances and reasons leading to the arrest.

6. *Statement of arrest*

- 6.1. After the inspection officer has drawn up a statement, the master of the vessel shall sign it.
- 6.2. This signature shall not prejudice the rights of the master or any defence which he may make to the alleged infringement.
- 6.3. The master shall take the vessel to a port designated by the inspection officer. In the case of minor infringements, the Permanent Secretary may authorise the boarded vessel to continue its fishing activities.

7. *Consultation meeting in the event of arrest*

- 7.1. Before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the presumed infringement, a consultation meeting shall be held, within one working day of the receipt of the above information, between the Delegation of the European Commission and the Permanent Secretary, possibly attended by a representative of the Member State concerned.
- 7.2. At the meeting, the Parties shall exchange any relevant documentation or information helping to clarify the circumstances of the established facts. The shipowner or its agent shall be informed of the outcome of the meeting and of any measures resulting from the arrest.

8. *Settlement of arrest*

- 8.1. Before any judicial procedure, an attempt shall be made to resolve the presumed infringement through a compromise procedure. This procedure shall end no later than four working days after the arrest.
- 8.2. In the event of an amicable settlement, the amount of the fine shall be determined in accordance with Solomon Islands legislation.

- 8.3. If the case cannot be settled by amicable procedure and has to be brought before a competent judicial body, a bank security set to take account of the arrest costs and the fines and compensation payable by the parties responsible for the infringement shall be paid by the shipowner into Government Revenue Account No 0260-002 with the Central Bank of Solomon Islands, Honiara.
- 8.4. The bank security shall be irrevocable until the legal proceedings have been concluded. It shall be released once legal proceedings end without a conviction. Similarly, in the event of a conviction leading to a fine of less than the security lodged, the balance shall be released by the Permanent Secretary, Ministry of Finance.
- 8.5. The vessel shall be released and its crew authorised to leave the port:
- once the obligations arising under the amicable settlement have been fulfilled, or
  - when the bank security referred to in point 8.3 has been lodged and accepted by the Permanent Secretary, pending completion of the legal proceedings.
9. *Transshipment*
- 9.1. Community vessels wishing to tranship catches in Solomon Islands waters shall do so within Solomon Islands designated ports.
- 9.2. The owners of such vessels must notify the following information to the Permanent Secretary at least 48 hours in advance:
- the names of the transshipping fishing vessels,
  - the names of the cargo vessels,
  - the tonnage by species to be transhipped,
  - the day of transshipment.
- 9.3. Transshipment shall be considered as an exit from the Solomon Islands fishing zone. Vessels must therefore submit their catch declarations to the Permanent Secretary and state whether they intend to continue fishing or leave the Solomon Islands fishing zone.
- 9.4. Any transshipment of catches not covered above shall be prohibited in the Solomon Islands fishing zone. Any person infringing this provision shall be liable to the penalties under Solomon Islands laws.
10. Masters of Community fishing vessels engaged in landing or transshipment operations in a Solomon Islands port shall allow and facilitate the inspection of such operations by Solomon Islands inspectors. Once the inspection has been completed, a certificate shall be issued to the master of the vessel.

#### *Appendices*

1. Licence application form.
  2. Logbook.
-

## Appendix 1

**EC/SOLOMON ISLANDS FISHERY AGREEMENT  
APPLICATION FOR REGISTRATION AND PERMIT  
To the Permanent Secretary of the  
DEPARTMENT OF FISHERIES AND MARINE RESOURCES OF SOLOMON ISLANDS**

**INSTRUCTIONS:**

- **Applicant MUST sign and date the application; otherwise, not valid.**
- Address means complete mailing address.
- Clearly mark  where appropriate.
- All units are metric; specify units if other systems used.
- Affix a recent 6 × 8 inch colour side photo of the vessel to this application, showing vessel name and registration No.
- Attach a copy of Forum Fisheries Agency (FFA) Regional Register and Vessel Monitoring System (VMS) certificates.

**If this vessel was registered before, specify:**

Old vessel name \_\_\_\_\_  
 Old registration No \_\_\_\_\_  
 Old international radio call sign \_\_\_\_\_

**Regional requirements:**

FFA registration No \_\_\_\_\_  
 FFA VMS registration No \_\_\_\_\_  
 Type of ALC \_\_\_\_\_

**Vessel identification:**

Name of vessel \_\_\_\_\_

Vessel type: (Select as appropriate)

Single purse seiner

Longliner

Pole and liner

Fish carrier/reefer

Bunker

Group purse seiner

Search boat

Other

Specify \_\_\_\_\_

Country of registration \_\_\_\_\_

International radio call sign \_\_\_\_\_

Country of registration No \_\_\_\_\_

**Vessel owner:**

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_

**Vessel operator/charterer:**

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_

**Vessel master:**

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_

**Fishing master:**

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_

**Operational base(s):**

Port 1/country \_\_\_\_\_

Port 2/country \_\_\_\_\_

Port 3/country \_\_\_\_\_

Flag/State of authorised fishing area \_\_\_\_\_

1 year  \_\_\_\_\_

6 months  \_\_\_\_\_

3 months  \_\_\_\_\_

Other (Specify):  \_\_\_\_\_

**Vessel specifications:**

Hull material: Steel  Wood  FRP  If other, specify \_\_\_\_\_

Year built \_\_\_\_\_ Gross tonnage \_\_\_\_\_

Place built \_\_\_\_\_ Overall length \_\_\_\_\_

Crew size \_\_\_\_\_ Main engines power (specify units) \_\_\_\_\_

Fuel carrying capacity (1 000 litres) \_\_\_\_\_

**Daily freezing capacity** (Select more than one, if appropriate):

Method		Capacity (tonnes/day)	Temperature (c)
Brine (NaCl)	BR <input type="checkbox"/>	_____	_____
Brine (CaCl)	CB <input type="checkbox"/>	_____	_____
Air (Blast)	BF <input type="checkbox"/>	_____	_____
Air (Coils)	RC <input type="checkbox"/>	_____	_____
If other, specify _____		_____	_____

**Storage capacity** (more than one, if appropriate):

Method		Capacity (Cubic metres)	Temperature (c)
Ice	IC <input type="checkbox"/>	_____	_____
Refrigerated sea water	RW <input type="checkbox"/>	_____	_____
Brine (NaCl)	BR <input type="checkbox"/>	_____	_____
Brine (CaCl)	CB <input type="checkbox"/>	_____	_____
Air (Coils)	RC <input type="checkbox"/>	_____	_____
If other, specify _____		_____	_____

Complete either A, B, C or D below as appropriate.

**A. For purse seine vessels:**

Helicopter registration No _____	Net length (metres) _____
Helicopter model _____	Net depth (metres) _____
Support craft:	
Name 1 _____	Type 1 _____
Name 2 _____	Type 2 _____
Name 3 _____	Type 3 _____

**B. For pole and line vessels:**

Number of automatic poling devices (0 if none) \_\_\_\_\_

Bait storage (more than one, if appropriate) \_\_\_\_\_

Circulation method (x where appropriate)

Natural	NN <input type="checkbox"/>	Capacity (Cubic metres) _____
Circulation	CR <input type="checkbox"/>	_____
Refrigerated	RC <input type="checkbox"/>	_____

**C. For longline vessels:**

Average number of baskets _____	Mainline length Km _____
Average number of hooks per basket _____	
Mainline material _____	

**D. For support vessels:**

Activities (more than one, if appropriate)

Refrigerated carrier <input type="checkbox"/>	Scouting boat <input type="checkbox"/>
Anchor boat <input type="checkbox"/>	Supply/mothership <input type="checkbox"/>

If other, specify \_\_\_\_\_

Fishing vessel(s) supported \_\_\_\_\_

I declare that the above information is true and complete. I understand, I am required to report any changes to the above information immediately, and further understand that failure to do so may affect good standing on the FFA Regional Register. This application is filed pursuant to:

_____ Agreement name	_____ Agreement effective date
<b>Applicant:</b>	
State whether owner, charter or duly agent _____	Phone: _____
Applicant name: _____	Fax: _____
Address: _____	E-mail: _____
Signature: _____	Date: _____





**DIRECTIVE 2006/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 15 March 2006**

**on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(3)</sup> requires Member States to protect the rights and freedoms of natural persons with regard to the processing of personal data, and in particular their right to privacy, in order to ensure the free flow of personal data in the Community.
- (2) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) <sup>(4)</sup> translates the principles set out in Directive 95/46/EC into specific rules for the electronic communications sector.
- (3) Articles 5, 6 and 9 of Directive 2002/58/EC lay down the rules applicable to the processing by network and service providers of traffic and location data generated by using electronic communications services. Such data must be

erased or made anonymous when no longer needed for the purpose of the transmission of a communication, except for the data necessary for billing or interconnection payments. Subject to consent, certain data may also be processed for marketing purposes and the provision of value-added services.

- (4) Article 15(1) of Directive 2002/58/EC sets out the conditions under which Member States may restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1), (2), (3) and (4), and Article 9 of that Directive. Any such restrictions must be necessary, appropriate and proportionate within a democratic society for specific public order purposes, i.e. to safeguard national security (i.e. State security), defence, public security or the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communications systems.
- (5) Several Member States have adopted legislation providing for the retention of data by service providers for the prevention, investigation, detection, and prosecution of criminal offences. Those national provisions vary considerably.
- (6) The legal and technical differences between national provisions concerning the retention of data for the purpose of prevention, investigation, detection and prosecution of criminal offences present obstacles to the internal market for electronic communications, since service providers are faced with different requirements regarding the types of traffic and location data to be retained and the conditions and periods of retention.
- (7) The Conclusions of the Justice and Home Affairs Council of 19 December 2002 underline that, because of the significant growth in the possibilities afforded by electronic communications, data relating to the use of electronic communications are particularly important and therefore a valuable tool in the prevention, investigation, detection and prosecution of criminal offences, in particular organised crime.
- (8) The Declaration on Combating Terrorism adopted by the European Council on 25 March 2004 instructed the Council to examine measures for establishing rules on the retention of communications traffic data by service providers.

<sup>(1)</sup> Opinion delivered on 19 January 2006 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of the European Parliament of 14 December 2005 (not yet published in the Official Journal) and Council Decision of 21 February 2006.

<sup>(3)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

<sup>(4)</sup> OJ L 201, 31.7.2002, p. 37.

- (9) Under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), everyone has the right to respect for his private life and his correspondence. Public authorities may interfere with the exercise of that right only in accordance with the law and where necessary in a democratic society, *inter alia*, in the interests of national security or public safety, for the prevention of disorder or crime, or for the protection of the rights and freedoms of others. Because retention of data has proved to be such a necessary and effective investigative tool for law enforcement in several Member States, and in particular concerning serious matters such as organised crime and terrorism, it is necessary to ensure that retained data are made available to law enforcement authorities for a certain period, subject to the conditions provided for in this Directive. The adoption of an instrument on data retention that complies with the requirements of Article 8 of the ECHR is therefore a necessary measure.
- (10) On 13 July 2005, the Council reaffirmed in its declaration condemning the terrorist attacks on London the need to adopt common measures on the retention of telecommunications data as soon as possible.
- (11) Given the importance of traffic and location data for the investigation, detection, and prosecution of criminal offences, as demonstrated by research and the practical experience of several Member States, there is a need to ensure at European level that data that are generated or processed, in the course of the supply of communications services, by providers of publicly available electronic communications services or of a public communications network are retained for a certain period, subject to the conditions provided for in this Directive.
- (12) Article 15(1) of Directive 2002/58/EC continues to apply to data, including data relating to unsuccessful call attempts, the retention of which is not specifically required under this Directive and which therefore fall outside the scope thereof, and to retention for purposes, including judicial purposes, other than those covered by this Directive.
- (13) This Directive relates only to data generated or processed as a consequence of a communication or a communication service and does not relate to data that are the content of the information communicated. Data should be retained in such a way as to avoid their being retained more than once. Data generated or processed when supplying the communications services concerned refers to data which are accessible. In particular, as regards the retention of data relating to Internet e-mail and Internet telephony, the obligation to retain data may apply only in respect of data from the providers' or the network providers' own services.
- (14) Technologies relating to electronic communications are changing rapidly and the legitimate requirements of the competent authorities may evolve. In order to obtain advice and encourage the sharing of experience of best practice in these matters, the Commission intends to establish a group composed of Member States' law enforcement authorities, associations of the electronic communications industry, representatives of the European Parliament and data protection authorities, including the European Data Protection Supervisor.
- (15) Directive 95/46/EC and Directive 2002/58/EC are fully applicable to the data retained in accordance with this Directive. Article 30(1)(c) of Directive 95/46/EC requires the consultation of the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established under Article 29 of that Directive.
- (16) The obligations incumbent on service providers concerning measures to ensure data quality, which derive from Article 6 of Directive 95/46/EC, and their obligations concerning measures to ensure confidentiality and security of processing of data, which derive from Articles 16 and 17 of that Directive, apply in full to data being retained within the meaning of this Directive.
- (17) It is essential that Member States adopt legislative measures to ensure that data retained under this Directive are provided to the competent national authorities only in accordance with national legislation in full respect of the fundamental rights of the persons concerned.
- (18) In this context, Article 24 of Directive 95/46/EC imposes an obligation on Member States to lay down sanctions for infringements of the provisions adopted pursuant to that Directive. Article 15(2) of Directive 2002/58/EC imposes the same requirement in relation to national provisions adopted pursuant to Directive 2002/58/EC. Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems <sup>(1)</sup> provides that the intentional illegal access to information systems, including to data retained therein, is to be made punishable as a criminal offence.
- (19) The right of any person who has suffered damage as a result of an unlawful processing operation or of any act incompatible with national provisions adopted pursuant to Directive 95/46/EC to receive compensation, which derives from Article 23 of that Directive, applies also in relation to the unlawful processing of any personal data pursuant to this Directive.

<sup>(1)</sup> OJ L 69, 16.3.2005, p. 67.



- (20) The 2001 Council of Europe Convention on Cybercrime and the 1981 Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data also cover data being retained within the meaning of this Directive.
- (21) Since the objectives of this Directive, namely to harmonise the obligations on providers to retain certain data and to ensure that those data are available for the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (22) This Directive respects the fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union. In particular, this Directive, together with Directive 2002/58/EC, seeks to ensure full compliance with citizens' fundamental rights to respect for private life and communications and to the protection of their personal data, as enshrined in Articles 7 and 8 of the Charter.
- (23) Given that the obligations on providers of electronic communications services should be proportionate, this Directive requires that they retain only such data as are generated or processed in the process of supplying their communications services. To the extent that such data are not generated or processed by those providers, there is no obligation to retain them. This Directive is not intended to harmonise the technology for retaining data, the choice of which is a matter to be resolved at national level.
- (24) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making <sup>(1)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (25) This Directive is without prejudice to the power of Member States to adopt legislative measures concerning the right of access to, and use of, data by national authorities, as designated by them. Issues of access to data retained pursuant to this Directive by national authorities for such activities as are referred to in the first indent of Article 3(2) of Directive 95/46/EC fall outside the scope of Community

law. However, they may be subject to national law or action pursuant to Title VI of the Treaty on European Union. Such laws or action must fully respect fundamental rights as they result from the common constitutional traditions of the Member States and as guaranteed by the ECHR. Under Article 8 of the ECHR, as interpreted by the European Court of Human Rights, interference by public authorities with privacy rights must meet the requirements of necessity and proportionality and must therefore serve specified, explicit and legitimate purposes and be exercised in a manner that is adequate, relevant and not excessive in relation to the purpose of the interference,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

#### Subject matter and scope

1. This Directive aims to harmonise Member States' provisions concerning the obligations of the providers of publicly available electronic communications services or of public communications networks with respect to the retention of certain data which are generated or processed by them, in order to ensure that the data are available for the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law.
2. This Directive shall apply to traffic and location data on both legal entities and natural persons and to the related data necessary to identify the subscriber or registered user. It shall not apply to the content of electronic communications, including information consulted using an electronic communications network.

#### Article 2

#### Definitions

1. For the purpose of this Directive, the definitions in Directive 95/46/EC, in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) <sup>(2)</sup>, and in Directive 2002/58/EC shall apply.
2. For the purpose of this Directive:
  - (a) 'data' means traffic data and location data and the related data necessary to identify the subscriber or user;

<sup>(1)</sup> OJ C 321, 31.12.2003, p. 1.

<sup>(2)</sup> OJ L 108, 24.4.2002, p. 33.

- (b) 'user' means any legal entity or natural person using a publicly available electronic communications service, for private or business purposes, without necessarily having subscribed to that service;
- (c) 'telephone service' means calls (including voice, voicemail and conference and data calls), supplementary services (including call forwarding and call transfer) and messaging and multi-media services (including short message services, enhanced media services and multi-media services);
- (d) 'user ID' means a unique identifier allocated to persons when they subscribe to or register with an Internet access service or Internet communications service;
- (e) 'cell ID' means the identity of the cell from which a mobile telephony call originated or in which it terminated;
- (f) 'unsuccessful call attempt' means a communication where a telephone call has been successfully connected but not answered or there has been a network management intervention.

#### Article 3

#### Obligation to retain data

1. By way of derogation from Articles 5, 6 and 9 of Directive 2002/58/EC, Member States shall adopt measures to ensure that the data specified in Article 5 of this Directive are retained in accordance with the provisions thereof, to the extent that those data are generated or processed by providers of publicly available electronic communications services or of a public communications network within their jurisdiction in the process of supplying the communications services concerned.

2. The obligation to retain data provided for in paragraph 1 shall include the retention of the data specified in Article 5 relating to unsuccessful call attempts where those data are generated or processed, and stored (as regards telephony data) or logged (as regards Internet data), by providers of publicly available electronic communications services or of a public communications network within the jurisdiction of the Member State concerned in the process of supplying the communication services concerned. This Directive shall not require data relating to unconnected calls to be retained.

#### Article 4

#### Access to data

Member States shall adopt measures to ensure that data retained in accordance with this Directive are provided only to the competent national authorities in specific cases and in accordance

with national law. The procedures to be followed and the conditions to be fulfilled in order to gain access to retained data in accordance with necessity and proportionality requirements shall be defined by each Member State in its national law, subject to the relevant provisions of European Union law or public international law, and in particular the ECHR as interpreted by the European Court of Human Rights.

#### Article 5

#### Categories of data to be retained

1. Member States shall ensure that the following categories of data are retained under this Directive:

- (a) data necessary to trace and identify the source of a communication:
- (1) concerning fixed network telephony and mobile telephony:
    - (i) the calling telephone number;
    - (ii) the name and address of the subscriber or registered user;
  - (2) concerning Internet access, Internet e-mail and Internet telephony:
    - (i) the user ID(s) allocated;
    - (ii) the user ID and telephone number allocated to any communication entering the public telephone network;
    - (iii) the name and address of the subscriber or registered user to whom an Internet Protocol (IP) address, user ID or telephone number was allocated at the time of the communication;
- (b) data necessary to identify the destination of a communication:
- (1) concerning fixed network telephony and mobile telephony:
    - (i) the number(s) dialled (the telephone number(s) called), and, in cases involving supplementary services such as call forwarding or call transfer, the number or numbers to which the call is routed;
    - (ii) the name(s) and address(es) of the subscriber(s) or registered user(s);

- (2) concerning Internet e-mail and Internet telephony:
- (i) the user ID or telephone number of the intended recipient(s) of an Internet telephony call;
  - (ii) the name(s) and address(es) of the subscriber(s) or registered user(s) and user ID of the intended recipient of the communication;
- (c) data necessary to identify the date, time and duration of a communication:
- (1) concerning fixed network telephony and mobile telephony, the date and time of the start and end of the communication;
  - (2) concerning Internet access, Internet e-mail and Internet telephony:
    - (i) the date and time of the log-in and log-off of the Internet access service, based on a certain time zone, together with the IP address, whether dynamic or static, allocated by the Internet access service provider to a communication, and the user ID of the subscriber or registered user;
    - (ii) the date and time of the log-in and log-off of the Internet e-mail service or Internet telephony service, based on a certain time zone;
- (d) data necessary to identify the type of communication:
- (1) concerning fixed network telephony and mobile telephony: the telephone service used;
  - (2) concerning Internet e-mail and Internet telephony: the Internet service used;
- (e) data necessary to identify users' communication equipment or what purports to be their equipment:
- (1) concerning fixed network telephony, the calling and called telephone numbers;
  - (2) concerning mobile telephony:
    - (i) the calling and called telephone numbers;
    - (ii) the International Mobile Subscriber Identity (IMSI) of the calling party;
    - (iii) the International Mobile Equipment Identity (IMEI) of the calling party;
- (iv) the IMSI of the called party;
- (v) the IMEI of the called party;
- (vi) in the case of pre-paid anonymous services, the date and time of the initial activation of the service and the location label (Cell ID) from which the service was activated;
- (3) concerning Internet access, Internet e-mail and Internet telephony:
- (i) the calling telephone number for dial-up access;
  - (ii) the digital subscriber line (DSL) or other end point of the originator of the communication;
- (f) data necessary to identify the location of mobile communication equipment:
- (1) the location label (Cell ID) at the start of the communication;
  - (2) data identifying the geographic location of cells by reference to their location labels (Cell ID) during the period for which communications data are retained.
2. No data revealing the content of the communication may be retained pursuant to this Directive.

#### Article 6

##### Periods of retention

Member States shall ensure that the categories of data specified in Article 5 are retained for periods of not less than six months and not more than two years from the date of the communication.

#### Article 7

##### Data protection and data security

Without prejudice to the provisions adopted pursuant to Directive 95/46/EC and Directive 2002/58/EC, each Member State shall ensure that providers of publicly available electronic communications services or of a public communications network respect, as a minimum, the following data security principles with respect to data retained in accordance with this Directive:

- (a) the retained data shall be of the same quality and subject to the same security and protection as those data on the network;

- (b) the data shall be subject to appropriate technical and organisational measures to protect the data against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure;
- (c) the data shall be subject to appropriate technical and organisational measures to ensure that they can be accessed by specially authorised personnel only;
- and
- (d) the data, except those that have been accessed and preserved, shall be destroyed at the end of the period of retention.

#### Article 8

### Storage requirements for retained data

Member States shall ensure that the data specified in Article 5 are retained in accordance with this Directive in such a way that the data retained and any other necessary information relating to such data can be transmitted upon request to the competent authorities without undue delay.

#### Article 9

### Supervisory authority

- Each Member State shall designate one or more public authorities to be responsible for monitoring the application within its territory of the provisions adopted by the Member States pursuant to Article 7 regarding the security of the stored data. Those authorities may be the same authorities as those referred to in Article 28 of Directive 95/46/EC.
- The authorities referred to in paragraph 1 shall act with complete independence in carrying out the monitoring referred to in that paragraph.

#### Article 10

### Statistics

1. Member States shall ensure that the Commission is provided on a yearly basis with statistics on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or a public communications network. Such statistics shall include:

- the cases in which information was provided to the competent authorities in accordance with applicable national law,
- the time elapsed between the date on which the data were retained and the date on which the competent authority requested the transmission of the data,

- the cases where requests for data could not be met.
- Such statistics shall not contain personal data.

#### Article 11

### Amendment of Directive 2002/58/EC

The following paragraph shall be inserted in Article 15 of Directive 2002/58/EC:

'1a. Paragraph 1 shall not apply to data specifically required by Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks (\*) to be retained for the purposes referred to in Article 1(1) of that Directive.

(\*) OJ L 105, 13.4.2006, p. 54.'

#### Article 12

### Future measures

- A Member State facing particular circumstances that warrant an extension for a limited period of the maximum retention period referred to in Article 6 may take the necessary measures. That Member State shall immediately notify the Commission and inform the other Member States of the measures taken under this Article and shall state the grounds for introducing them.
- The Commission shall, within a period of six months after the notification referred to in paragraph 1, approve or reject the national measures concerned, after having examined whether they are a means of arbitrary discrimination or a disguised restriction of trade between Member States and whether they constitute an obstacle to the functioning of the internal market. In the absence of a decision by the Commission within that period the national measures shall be deemed to have been approved.
- Where, pursuant to paragraph 2, the national measures of a Member State derogating from the provisions of this Directive are approved, the Commission may consider whether to propose an amendment to this Directive.

#### Article 13

### Remedies, liability and penalties

1. Each Member State shall take the necessary measures to ensure that the national measures implementing Chapter III of Directive 95/46/EC providing for judicial remedies, liability and sanctions are fully implemented with respect to the processing of data under this Directive.

2. Each Member State shall, in particular, take the necessary measures to ensure that any intentional access to, or transfer of, data retained in accordance with this Directive that is not permitted under national law adopted pursuant to this Directive is punishable by penalties, including administrative or criminal penalties, that are effective, proportionate and dissuasive.

#### Article 14

##### Evaluation

1. No later than 15 September 2010, the Commission shall submit to the European Parliament and the Council an evaluation of the application of this Directive and its impact on economic operators and consumers, taking into account further developments in electronic communications technology and the statistics provided to the Commission pursuant to Article 10 with a view to determining whether it is necessary to amend the provisions of this Directive, in particular with regard to the list of data in Article 5 and the periods of retention provided for in Article 6. The results of the evaluation shall be made public.

2. To that end, the Commission shall examine all observations communicated to it by the Member States or by the Working Party established under Article 29 of Directive 95/46/EC.

#### Article 15

##### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by no later than 15 September 2007. They shall forthwith inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or

shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. Until 15 March 2009, each Member State may postpone application of this Directive to the retention of communications data relating to Internet Access, Internet telephony and Internet e-mail. Any Member State that intends to make use of this paragraph shall, upon adoption of this Directive, notify the Council and the Commission to that effect by way of a declaration. The declaration shall be published in the *Official Journal of the European Union*.

#### Article 16

##### Entry into force

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

#### Article 17

##### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 15 March 2006.

*For the European Parliament*  
*The President*  
J. BORRELL FONTELLES

*For the Council*  
*The President*  
H. WINKLER

**Declaration by the Netherlands**  
**pursuant to Article 15(3) of Directive 2006/24/EC**

Regarding the Directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of publicly available electronic communications services and amending Directive 2002/58/EC, the Netherlands will be making use of the option of postponing application of the Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail, for a period not exceeding 18 months following the date of entry into force of the Directive.

**Declaration by Austria**  
**pursuant to Article 15(3) of Directive 2006/24/EC**

Austria declares that it will be postponing application of this Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail, for a period of 18 months following the date specified in Article 15(1).

**Declaration by Estonia**  
**pursuant to Article 15(3) of Directive 2006/24/EC**

In accordance with Article 15(3) of the Directive of the European Parliament and of the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, Estonia hereby states its intention to make use of use that paragraph and to postpone application of the Directive to retention of communications data relating to Internet access, Internet telephony and Internet e-mail until 36 months after the date of adoption of the Directive.

**Declaration by the United Kingdom**  
**pursuant to Article 15(3) of Directive 2006/24/EC**

The United Kingdom declares in accordance with Article 15(3) of the Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC that it will postpone application of that Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail.

**Declaration by the Republic of Cyprus**  
**pursuant to Article 15(3) of Directive 2006/24/EC**

The Republic of Cyprus declares that it is postponing application of the Directive in respect of the retention of communications data relating to Internet access, Internet telephony and Internet e-mail until the date fixed in Article 15(3).

**Declaration by the Hellenic Republic**  
**pursuant to Article 15(3) of Directive 2006/24/EC**

Greece declares that, pursuant to Article 15(3), it will postpone application of this Directive in respect of the retention of communications data relating to Internet access, Internet telephony and Internet e-mail until 18 months after expiry of the period provided for in Article 15(1).

**Declaration by the Grand Duchy of Luxembourg**  
**pursuant to Article 15(3) of Directive 2006/24/EC**

Pursuant to Article 15(3) of the Directive of the European Parliament and of the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, the Government of the Grand Duchy of Luxembourg declares that it intends to make use of Article 15(3) of the Directive in order to have the option of postponing application of the Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail.

**Declaration by Slovenia****pursuant to Article 15(3) of Directive 2006/24/EC**

Slovenia is joining the group of Member States which have made a declaration under Article 15(3) of the Directive of the European Parliament and the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks, for the 18 months postponement of the application of the Directive to the retention of communication data relating to Internet, Internet telephony and Internet e-mail.

**Declaration by Sweden****pursuant to Article 15(3) of Directive 2006/24/EC**

Pursuant to Article 15(3), Sweden wishes to have the option of postponing application of this Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail.

**Declaration by the Republic of Lithuania****pursuant to Article 15(3) of Directive 2006/24/EC**

Pursuant to Article 15(3) of the draft Directive of the European Parliament and of the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or public communications networks and amending Directive 2002/58/EC (hereafter the 'Directive'), the Republic of Lithuania declares that once the Directive has been adopted it will postpone the application thereof to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail for the period provided for in Article 15(3).

**Declaration by the Republic of Latvia****pursuant to Article 15(3) of Directive 2006/24/EC**

Latvia states in accordance with Article 15(3) of Directive 2006/24/EC of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC that it is postponing application of the Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail until 15 March 2009.

**Declaration by the Czech Republic****pursuant to Article 15(3) of Directive 2006/24/EC**

Pursuant to Article 15(3), the Czech Republic hereby declares that it is postponing application of this Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail until 36 months after the date of adoption thereof.

**Declaration by Belgium****pursuant to Article 15(3) of Directive 2006/24/EC**

Belgium declares that, taking up the option available under Article 15(3), it will postpone application of this Directive, for a period of 36 months after its adoption, to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail.

**Declaration by the Republic of Poland****pursuant to Article 15(3) of Directive 2006/24/EC**

Poland hereby declares that it intends to make use of the option provided for under Article 15(3) of the Directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of publicly available electronic communications services and amending Directive 2002/58/EC and postpone application of the Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail for a period of 18 months following the date specified in Article 15(1).

**Declaration by Finland****pursuant to Article 15(3) of Directive 2006/24/EC**

Finland declares in accordance with Article 15(3) of the Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC that it will postpone application of that Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail.

**Declaration by Germany****pursuant to Article 15(3) of Directive 2006/24/EC**

Germany reserves the right to postpone application of this Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail for a period of 18 months following the date specified in the first sentence of Article 15(1).

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## CORRIGENDA

**Corrigendum to Council Regulation (EC, Euratom) No 2028/2004 of 16 November 2004 amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources**

(Official Journal of the European Union L 352 of 27 November 2004)

1. On page 4, in point 5(f), second sentence, 11th line,

*for:* '... determined by Article 2(1) of Decision 2000/597/EC, Euratom ...',

*read:* '... determined by Article 2(1)(c) of Decision 2000/597/EC, Euratom ...'.

2. On page 5, in point 7, paragraph 2, first subparagraph of the quoted text:

*for:* '... which the European Central Bank applied to its refinancing operations, ...',

*read:* '... which the European Central Bank applied to its main refinancing operations, ...'.

3. On page 7, in point 16,

*for:* 'Article 21a

The rate provided for in Article 11 of this Regulation shall continue to apply for the calculation of interest for late payment where the due date falls before the end of the month in which Council Regulation (EC) 2028/2004 of 16 November 2004 amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (\*) enters into force.

(\*) OJ L 352, 27.11.2004, p. 1.'

*read:* 'Article 21a

The rate provided for in Article 11 of this Regulation in its version before the entry into force of Council Regulation (EC, Euratom) No 2028/2004 of 16 November 2004 amending Regulation (EC, Euratom) No 1150/2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (\*) shall continue to apply for the calculation of interest for late payment where the due date falls before the end of the month in which the said Regulation (EC, Euratom) No 2028/2004 enters into force.

(\*) OJ L 352, 27.11.2004, p. 1.'

**Corrigendum to Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements**

*(Official Journal of the European Union L 255 of 30 September 2005)*

On Page 11, the following words shall be inserted immediately below the title:

**'(Text with EEA relevance)'.**

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