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I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 643/2007

of 11 June 2007

amending Regulation (EC) No 41/2007 as concerns the recovery plan for bluefin tuna recommended by the International Commission for the Conservation of Atlantic Tunas

THE COUNCIL OF THE EUROPEAN UNION,

fixed on a provisional basis, pending an agreement on the final share of this stock under the ICCAT convention.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽¹⁾, and in particular Article 20 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Regulation (EC) No 41/2007 ⁽²⁾ fixes for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in community waters and, for Community vessels, in waters where catch limitations are required.

(2) The Community has, since 14 November 1997, been a party to the International Convention for the Conservation of Atlantic Tunas ⁽³⁾.

(3) At its Annual Meeting in November 2006, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted Recommendation 2006[05] to establish a 15-year recovery plan for bluefin tuna in the eastern Atlantic and Mediterranean.

(4) Under Regulation (EC) No 41/2007 the fishing opportunities and associated conditions for bluefin tuna were

(5) In order to rebuild the stock, the ICCAT recovery plan provides for a graduated reduction of the Total Allowable Catch (TAC) level from 2007 to 2010, restrictions on fishing within certain areas and time period, a new minimum size for bluefin tuna, measures concerning sport and recreational fishing activities as well as control measures and the implementation of the ICCAT Scheme of Joint International Inspection to ensure the effectiveness of the recovery plan.

In order to contribute to the conservation of bluefin tuna, it is necessary to implement special measures from 2007 pending the adoption of a Council Regulation implementing multi-annual measures for the recovery of the bluefin tuna stock.

(6) Since the fishery for bluefin tuna by Community vessels started in February 2007, it was necessary to apply the management and control measures for this fishery as agreed upon by ICCAT as from February 2007 instead of 13 June 2007 as mentioned in the ICCAT Recommendation 2006[05] in order to ensure the compliance with the recovery plan for bluefin tuna.

(7) The measures adopted under this Regulation, for the sole purpose of their financing, shall be deemed to be a recovery plan within the meaning of Article 5 of Regulation (EC) No 2371/2002.

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 15, 20.1.2007, p. 1. Regulation as amended by Commission Regulation (EC) No 444/2007 (OJ L 106, 24.4.2007, p. 22).

⁽³⁾ OJ L 162, 18.6.1986, p. 33.

(8) Regulation (EC) No 41/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 41/2007 is amended as follows:

1. the following Chapter shall be inserted:

‘CHAPTER Xa

SPECIAL MEASURES FOR BLUEFIN TUNA IN THE EASTERN ATLANTIC AND MEDITERRANEAN

SECTION 1

Management measures

Article 80a

Scope

This Chapter lays down the general rules for the application by the Community of special measures for Bluefin Tuna (*thunnus thynnus*) recommended by the International Commission for the Conservation of the Atlantic Tunas (ICCAT). It shall apply to bluefin tuna in the Eastern Atlantic and the Mediterranean.

Article 80b

Definitions

For the purpose of this Chapter, the following definitions shall apply:

- (a) “CPCs” means Contracting Parties to the International Convention for the Conservation of the Atlantic Tuna and cooperating non-contracting parties, entities or fishing entities;
- (b) “Fishing vessel” means any vessel used or intended for use for the purposes of the commercial exploitation of tuna resources, included fish processing vessels and vessels engaged in transshipment;
- (c) “Joint fishing operation” means any operations between two or more vessels flying the flag of different CPCs or of different Member States where the catch of one vessel is attributed in total or in part to one or more other vessels;
- (d) “Transfer activities” means any transfer of bluefin tuna
 - (i) from the fishing vessel to the end fattening bluefin tuna farm, including for the fish dead or escaped during the transport;
 - (ii) from a bluefin tuna farm or a tuna trap to a processing vessel, transport vessel or to land;

- (e) “Tuna trap” means fixed gear anchored to the bottom usually containing a guide net that leads fish into an enclosure;
- (f) “Caging” means that bluefin tuna is not taken on board and includes both, fattening and farming;
- (g) “Fattening” means caging of bluefin tuna for a short period (usually two to six months) aiming mostly at increasing the fat content of the fish;
- (h) “Farming” means caging of bluefin tuna for a period longer than one year, aiming to increase the total biomass;
- (i) “Transshipment” means the unloading of all or any of the bluefin tuna on board a fishing vessel to another fishing vessel at port;
- (j) “Processing vessel” means a vessel on board of which fisheries products are subject to one or more of the following operations, prior to their packaging: filleting or slicing, freezing and/or transformation;
- (k) “Sport fishery” means a non-commercial fishery whose participants adhere to a national sport organisation or are issued with a national sport licence;
- (l) “Recreational fishery” means a non-commercial fishery whose participants do not adhere to a national sport organisation or are not issued with a national sport licence;
- (m) “Task II” means Task II as defined by the International Commission for the Conservation of the Atlantic Tunas (ICCAT) in the “Field manual for statistics and sampling Atlantic tunas and tuna-like fish” (Third edition, ICCAT, 1990).

Article 80c

Quota

1. Each Member State may allocate its bluefin tuna quota to its fishing vessels and traps authorised to fish actively for bluefin tuna.
2. Private trade arrangements between nationals of a Member State and a CPC in order to use a fishing vessel flying the flag of that Member State for fishing in the framework of a tuna quota of a CPC, shall be concluded only under authorisation by the Member State concerned which shall inform the Commission.

*Article 80d***Joint fishing operations**

1. Any joint fishing operations for bluefin tuna involving vessels flying the flag of one or more Member State(s) shall only be authorised with the consent of the flag Member State or flag Member States concerned

2. At the moment of the application for the authorisation, each Member State shall take the necessary measures to obtain from its fishing vessel participating in the joint fishing operation detailed information concerning the duration of the joint operation, the identity of the operators involved and the allocation key between the vessels for the catches involved.

3. Each Member State shall transmit the information referred to in paragraph 2 to the Commission. The Commission shall promptly forward that information to the ICCAT Secretariat.

SECTION 2

Technical measures*Article 80e***Closed fishing season**

By way of derogation from the provision laid down in Article 6 of Regulation (EC) No 520/2007 ⁽¹⁾:

- (a) Bluefin tuna fishing shall be prohibited in the east Atlantic and Mediterranean by large-scale pelagic longline vessels over 24 m during the period from 1 June to 31 December 2007, with the exception of the area delimited by west of 10° W and north of 42° N;
- (b) Purse seine fishing for bluefin tuna shall be prohibited in the east Atlantic and Mediterranean during the period from 1 July to 31 December 2007;
- (c) Bluefin tuna fishing by bait boats shall be prohibited in the east Atlantic and Mediterranean during the period from 15 November 2007 to 15 May 2008;
- (d) Bluefin tuna fishing by pelagic trawlers shall be prohibited in the east Atlantic during the period from 15 November 2007 to 15 May 2008.

⁽¹⁾ OJ L 123, 12.5.2007, p. 3.

*Article 80f***Use of planes**

By way of derogation from the provision laid down in Article 6 of Regulation (EC) No 520/2007 the use of airplanes or helicopters for searching for bluefin tuna in the Convention Area shall be prohibited.

*Article 80g***Minimum size**

1. By way of derogation from Article 8 and Annex IV of Regulation (EC) No 520/2007, the minimum size for bluefin tuna in the east Atlantic and in the Mediterranean Sea shall be 30 kg or 115 cm with effect at the latest from 30 June 2007.

2. By derogation to paragraph 1 and without prejudice to Article 80i, a minimum size for bluefin tuna (*Thunnus thynnus*) of 8 kg or 75 cm shall apply for the following bluefin tunas, with effect at the latest from 30 June 2007:

(a) bluefin tuna caught in the eastern Atlantic by bait boats, trolling boats and pelagic trawlers;

(b) bluefin tuna caught in the Adriatic Sea for farming purposes.

3. The additional specific conditions for bluefin tuna caught in the eastern Atlantic by bait boats, trolling boats and pelagic trawlers are set out in Part I of Annex XVIa.

*Article 80h***Sampling plan for bluefin tuna**

1. By way of derogation from the provisions laid down in Article 11 of Regulation (EC) No 520/2007, each Member State shall establish a sampling programme for the estimation of the numbers-at-size of the bluefin tuna captured.

2. Sampling by size in cages shall be carried out on a sample of 100 specimens per 100 tonnes of live fish or on a sample of 10 % of the total number of fish placed in a cage. The size sample, on basis of length or weight, shall be taken during harvesting at the farm, and on the dead fish during transport in accordance with the method adopted by the ICCAT for notifying data in the framework of Task II.

3. Additional methods and samplings shall be developed for fish reared for more than one year.

4. Sampling shall be carried out during a harvest taken at random and shall cover all cages. The data shall be notified to the ICCAT by 31 May 2008 for sampling carried out the previous year in 2007.

Article 80i

By-catch

1. A by-catch of maximum 8 % of bluefin tuna weighing less than 30 kg and no less than 10 kg shall be authorised for all fishing vessels, fishing actively or not for bluefin tuna.

2. The percentage mentioned in paragraph 1 shall be calculated either on the basis of the total by-catch in number of fish per landing of the total bluefin tuna catches of these vessels, or on basis of its weight equivalence in percentage.

3. By-catch must be deducted from the quota of the flag Member State. The discard of dead fish from the by-catch shall be prohibited and shall be deducted from the quota of the flag Member State.

4. Articles 80n and 80p(3) shall apply to landings of by-catch of bluefin tuna.

Article 80j

Recreational fisheries

1. In the framework of recreational fisheries it shall be prohibited to catch, retain on board, tranship and land more than one individual of bluefin tuna in each sea trip.

2. The marketing of bluefin tuna caught in recreational fishing shall be prohibited except for charitable purposes.

3. Each Member State shall record catch data from recreational fishing and transmit this data to the Commission. The Commission shall forward that information to the Standing Committee on Research and Statistics of ICCAT.

4. Each Member State shall take the necessary measures to ensure, to the greatest extent possible, the release of bluefin tuna caught alive, especially juveniles, in the framework of recreational fishing.

Article 80k

Sport fisheries

1. Each Member State shall take the necessary measures to regulate sport fishing, notably by fishing authorisations.

2. The marketing of bluefin tuna caught in sport fishing competitions shall be prohibited except for charitable purposes.

3. Each Member State shall record catch data from sport fishing and transmit this data to the Commission. The Commission shall forward that information to the Standing Committee on Research and Statistics of ICCAT.

4. Each Member State shall take the necessary measures to ensure, to the greatest extent possible, the release of the bluefin tuna caught alive, especially juveniles, in the framework of sport fishing.

SECTION 3

Control measures

Article 80l

Register of vessels authorised to fish actively for bluefin tuna

1. By 14 June 2007, each Member State shall send the Commission electronically a list of all fishing vessels flying its flag authorised to fish actively for bluefin tuna in the eastern Atlantic and Mediterranean Sea by issue of a special fishing permit.

2. The Commission shall send this information to the ICCAT Executive Secretariat before 15 June 2007 so that those vessels can be entered on the ICCAT record of vessels authorised to fish for bluefin tuna.

3. Those Community fishing vessels concerned by this Article and not entered into the ICCAT record may not fish for, retain on board, tranship, transport, transfer or land bluefin tuna in the eastern Atlantic and Mediterranean Sea.

4. Article 8a(2), (4), (6), (7) and (8) of Regulation (EC) No 1936/2001 shall apply *mutatis mutandis*.

Article 80m

Register of tuna traps authorised to fish for bluefin tuna

1. By 14 June 2007, each Member State shall send the Commission electronically a list of its authorised tuna traps authorised to fish for bluefin tuna in the eastern Atlantic and Mediterranean Sea by issue of a special fishing licence. The list shall include the name of the traps and the register number.

2. The Commission shall send the list to the ICCAT Executive Secretariat before 15 June 2007 so that these tuna traps can be entered on the ICCAT record of tuna traps authorised to fish for bluefin tuna.

3. Community tuna traps not entered into the ICCAT record may not fish for, retain, tranship or land bluefin tuna in the eastern Atlantic and Mediterranean Sea.

4. Article 8a(2), (4), (6), (7) and (8) of Regulation (EC) No 1936/2001 shall apply *mutatis mutandis*.

Article 80n

Designated ports

1. It shall be prohibited to land and or tranship from vessels referred to in Article 80l any quantity of bluefin tuna fished in east Atlantic and Mediterranean Sea at any place other than ports designated by CPCs and by Member States.

2. Member States shall designate a place to be used for landing or a place close to the shore (designated ports) where landing or transhipment operations of bluefin tuna are permitted.

3. Member States shall transmit to the Commission no later than 14 June 2007 a list of designated ports. The Commission shall send this information to the ICCAT Executive Secretariat before 15 June 2007. Any subsequent changes to the list shall be notified to the Commission for transmission to the ICCAT Executive Secretariat, at least 15 days before the change shall come into force.

Article 80o

Transhipment

1. By way of derogation from Article 11 of Regulation (EEC) No 2847/93 transhipment at sea of bluefin tuna in the east Atlantic and Mediterranean Sea shall be prohibited, except for large-scale tuna longline fishing vessels operating in accordance with ICCAT Recommendation 2005(06) establishing a programme for transhipment for large-scale tuna longline fishing vessels, as amended.

2. Prior to entry into any port, the master of the receiving vessel (catching vessel or processing vessel) or his representative, shall provide the competent authorities of the Member

State whose port he wants to use at least 48 hours before the estimated time of arrival with the following:

- (a) estimated time of arrival;
- (b) estimated quantity of bluefin tuna retained on board;
- (c) information on the geographical areas where the catches of bluefin tuna to be transhipped were taken;
- (d) the name of the catching vessel which delivers the bluefin tuna and its number in the ICCAT record of authorised fishing vessels for bluefin tuna;
- (e) the name of the receiving vessel, its number in the ICCAT record of authorised fishing vessels for bluefin tuna;
- (f) the tonnage of bluefin tuna to be transhipped.

3. Catching fishing vessels shall not be allowed to tranship, unless they have obtained prior authorisation from their flag State.

4. The master of the catching vessel shall, before the transhipment starts, inform its flag State of the following:

- (a) the quantities of bluefin tuna to be transhipped;
- (b) the date and port of the transhipment;
- (c) the name, registration number and flag of the receiving vessel and its number in the ICCAT record of authorised fishing vessels for bluefin tuna;
- (d) the geographical area of the tuna catches.

5. The competent authority of the Member State in which port the transhipment takes place shall inspect the receiving vessel on arrival and check the cargo and documentation related to the transhipment operation.

6. The competent authority of the Member State of which port the transhipment takes place shall send a record of the transhipment to the flag State authority of the catching vessel, within 48 hours after the transhipment has ended.

7. The masters of a Community vessel referred to in Article 80l shall complete and transmit the ICCAT transshipment declaration to the competent authorities of the Member State whose flag the vessels are flying. The declaration shall be transmitted no later than 15 days after the date of transshipment in port in accordance with the format set out in Part III of Annex XVIa.

Article 80p

Recording requirements

1. In addition to complying with Articles 6 and 8 of Regulation (EEC) No 2847/93, the master of a Community fishing vessels referred to in Article 80l shall enter in the logbook, if applicable, the information listed in Part II of Annex XVIa.

2. The master of a Community vessel referred to in Article 80l engaged in a joint fishing operation shall record the additional information in their logbook:

(a) where the catch is taken on board or transferred into cages:

— the date and the time of the catch taken in a joint fishing operation,

— the location (longitude/latitude) of the catch taken in a joint fishing operation,

— amount of catches of bluefin tuna taken on board, or transferred into cages,

— the name and international radio call sign of the fishing vessel;

(b) for those vessels, engaged in a joint fishing operation but not involved in the transfer of fish:

— the date and the time of the joint fishing operation,

— the location (longitude/latitude) of the joint fishing operation,

— state that no catches have been taken on board or have been transferred into cages by that vessel,

— the name and international radio call sign(s) of the catching fishing vessel(s).

3. Where a catching vessel engaged in a joint fishing operation declares the quantity of bluefin tuna captured by its fishing gear, the master shall indicate, for each catch, for which vessel(s) and flag State(s) against whose quota the catches shall be counted.

4. By way of derogation from the provision of Article 7 of Regulation (EEC) No 2847/93, the master of a Community vessel referred to in Article 80l of this Regulation or his representative shall notify the competent authority of the Member State (including the flag Member State) or the CPC whose ports or landing facility they wish to use at least four hours before the estimated time of arrival at the port, of the following:

(a) estimated time of arrival;

(b) estimate of quantity of bluefin tuna retain on board;

(c) information on the zone where the catches were taken.

5. In the case of landing in a designated port of a Member State other than the flag Member State, the relevant authority of that Member State shall send a record of the landing to the flag authority of the vessel, within 48 hours after the landing has ended.

Article 80q

Control in port or in farm

1. Member States shall take the necessary measures to ensure that all vessels referred to in ICCAT Record of vessel authorised to fish for bluefin tuna entering a designated port to land and/or tranship bluefin tuna caught in the eastern Atlantic and Mediterranean Sea are submitted to a control in port.

2. Member States shall take the necessary measures to control each caging operation in the fattening or farming farms falling under their jurisdiction.

3. When the fattening or farming farms are located in the High Seas, the provisions of paragraph 2 shall apply, *mutatis mutandis*, to Member States where the natural or legal persons responsible for the fattening or farming farm are established.

*Article 80r***Catch reports**

1. The master of a catching fishing vessel referred to in Article 80l shall send to the competent authorities of his flag Member State a catch report stating the quantities of bluefin tuna caught by his vessel, including zero catch returns.
2. The report shall for the first time be transmitted at the latest at the end of the 10 days after the entry into Eastern Atlantic and Mediterranean Sea or after the beginning of the fishing trip. In the case of joint fishing operations the master of the catching vessel shall indicate, for each catch, for which vessel or vessels the catches shall be counted against the quota of the Flag State(s).
3. From the date of entry into force of this Regulation, the master of a fishing vessel shall transmit the report on the quantity of bluefin tuna, including zero catch returns on a five days basis.
4. Each Member State shall, upon receipt, forward catch reports by electronic means or other means to the Commission. The Commission shall promptly forward that information to the ICCAT Secretariat.
5. Member States shall inform the Commission, by computer-readable form, before the fifteenth day of each month, of the quantities of bluefin tuna caught in the Eastern Atlantic and Mediterranean Sea which have been landed, transhipped, trapped or caged by the vessel flying their flag during the preceding month.

*Article 80s***Cross-check**

1. Member States shall verify, including by using VMS (vessel monitoring system) data, the submission of logbooks and relevant information recorded in the logbooks of their vessels, in the transfer/transhipment document and in the catch documents.
2. The Member States shall carry out administrative cross-checks on all landings, all transhipment or caging between the quantities by species recorded in the vessels logbook or quantities by species recorded in the transhipment declaration and the quantities recorded in the landing declaration or caging declaration, and any other relevant document, such as invoice and/or sales notes.

*Article 80t***Caging operations**

1. The Member State under whose jurisdiction the fattening or farming farm for bluefin tuna is located shall submit within one week of the completion of the caging operation a caging report, validated by an observer, to the Member State or CPC whose flag vessels have fished the tuna and to the Commission. The Commission shall promptly forward that information to the ICCAT Secretariat. This report shall contain the information included in the caging declaration as referred to in Article 4 b of Regulation (EC) No 1936/2001.
2. When the fattening or farming farms are located in the High Seas, paragraph 1 shall apply, *mutatis mutandis*, to Member States where the natural or legal persons responsible for fattening or farming farms are established.
3. Before any transfer activity, the flag Member State or the flag CPC of the catching vessel shall be informed by the competent authority of the fattening or farming farm Member State of the transfer into cage of quantities caught by fishing vessels flying its flag.

The flag Member State of the catching vessel shall request the competent authority of the fattening or farming farm Member State to proceed to the seizure of the catches and the release of the fish into the sea if it considers on receipt of that information that:

- (a) the fishing vessel declared to have caught the fish had not sufficient individual quota for bluefin tuna put into the cage or,
- (b) the quantity of fish has not been duly reported and not taken into account for the calculation of any quota that may be applicable or,
- (c) the fishing vessel declared to have caught the fish is not authorised to fish for bluefin tuna.

4. The master of a Community fishing vessel shall complete and transmit to the flag Member State or to the flag CPC the ICCAT transfer declaration not later than 15 days after the date of transfer to tug vessels or to the cage, in accordance with the format set out in Part III of Annex XVIa. The transfer declaration shall accompany the transferred fish during transport to the cage.

*Article 80u***Trap activities**

1. Catches by trap shall be recorded after the end of every fishing operation in tuna traps and shall be transmitted in a catch record by electronic means or other means within 48 hours after the end of every fishing operation to the competent authority of the Member State where the trap is located.

2. Each Member State shall, upon receipt, forward the catch record by electronic means to the Commission. The Commission shall promptly forward the information to the ICCAT Secretariat.

*Article 80v***Observer programme**

1. Each Member State shall ensure observer coverage on its fishing vessels over 15m in length for at least:

- (a) 20 % of its active purse seine vessels. In the case of joint fishing operations, an observer shall be present during the fishing operation;
- (b) 20 % of its active pelagic trawlers;
- (c) 20 % of its active longline vessels;
- (d) 20 % of its active bait boats;
- (e) 100 % during the harvesting process for tuna traps.

The observer tasks shall be, in particular, to:

- (a) monitor a vessel compliance with the present Chapter;
- (b) record and report upon the fishing activity;
- (c) observe and estimate catches and verify entries made in the logbook;
- (d) sight and record vessels which may be fishing contrary to ICCAT conservation measures.

In addition, the observer shall carry out scientific work, such as collecting Task II data as defined by ICCAT, when required by ICCAT, based on the instructions from the Standing Committee on Research and Statistics of ICCAT.

2. Each Member State under whose jurisdiction the fattening or farming farm for bluefin tuna is located shall ensure an observer presence during all transfer of bluefin tuna to the cages and all harvest of fish from the farm.

The observer tasks shall be, in particular, to:

- (a) observe and monitor farming operation compliance in accordance with Article 4a, 4b and 4c of Regulation (EC) No 1936/2001;
- (b) validate the caging report referred to in Article 80t;
- (c) carry out such scientific work, for example collecting samples, as required by the International Commission for the Conservation of the Atlantic Tunas based on the instructions from the Standing Committee on Research and Statistics of ICCAT.

*Article 80w***Financing**

The special measures for bluefin tuna in the eastern Atlantic and Mediterranean, for the sole purpose of their financing, shall be deemed to be a recovery plan within the meaning of Article 5 of Regulation (EC) No 2371/2002 and shall be eligible under Article 21(a)(i) of Regulation (EC) No 1198/2006 of 27 July 2006 of the European Fisheries Fund ⁽¹⁾.

*Article 80x***Market measures**

1. Community trade, landing, imports, exports, placing in cages for fattening or farming, re-exports and transshipments of eastern Atlantic and Mediterranean bluefin tuna species that are not accompanied by accurate, complete, and validated documentation required by this Chapter shall be prohibited.

2. Community trade, imports, landings, placing in cages for fattening or farming, fattening, processing, exports, re-exports and the transshipment of eastern Atlantic and Mediterranean bluefin tuna (*thunnus thynnus*) caught by fishing vessels whose flag State either does not have a quota, catch limit or allocation of fishing effort for eastern Atlantic and Mediterranean bluefin tuna, under the terms of ICCAT management and conservation measures, or when the flag State fishing possibilities are exhausted, shall be prohibited.

⁽¹⁾ OJ L 223, 15.8.2006, p. 1.

3. Community trade, imports, landings, processing, exports from fattening or farming farms that do not comply with ICCAT Recommendation 2006[07] on bluefin Tuna Farming shall be prohibited.

Article 80y

Conversion factors

The conversion factors adopted by the Standing Committee on Research and Statistics of ICCAT shall apply to calculate the equivalent round weight of the processed bluefin tuna.

Article 80z

ICCAT Scheme of Joint International Inspection

1. The ICCAT Scheme of Joint International Inspection adopted by ICCAT at its Fourth Regular Meeting (Madrid, November 1975) shall apply in the Community. The text of the scheme is reproduced in Part IV of Annex XVIa.

2. Member States whose fishing vessels are authorised to fish bluefin tuna in the eastern Atlantic and Mediterranean Sea shall assign inspectors to carry out inspections at sea.

3. The Commission or a body designated by it may assign Community inspectors to the Scheme.

4. The Commission or a body designated by it shall coordinate the surveillance and inspection activities for the

Community. It may draw up, in concert with the Member States concerned, joint inspection programmes for that purpose which will enable the Community to fulfil its obligation under the Scheme. The Member States whose vessels are engaged in fishery on bluefin tuna shall adopt the necessary measures to facilitate the implementation of these programmes particularly as regards the human and material resources required and the periods and zones when these are to be deployed.

5. Member States shall inform the Commission by 14 June 2007 of the names of the inspectors and the inspection vessels they are intending to assign to the Scheme during the following year. Using this information the Commission shall draw up, in collaboration with the Member States, a forward plan for Community participation in the Scheme in 2007, which it shall send to the ICCAT Secretariat and the Member States.'

2. Annex I D shall be amended in accordance with Annex I to this Regulation.

3. The text in Annex II to this Regulation shall be inserted as Annex XVIa.

Article 2

Entry into force

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

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

Done at Luxembourg, 11 June 2007.

For the Council

The President

H. SEEHOFER

ANNEX I

In Annex I D to Regulation (EC) No 41/2007 the entry concerning the bluefin tuna in zone Atlantic Ocean, east of longitude 45° W, and Mediterranean shall be replaced by the following:

Species:	Bluefin tuna <i>Thunnus thynnus</i>	Zone:	Atlantic Ocean, east of longitude 45° W, and Mediterranean BFT/AE045W
Cyprus	154,68		
Greece	287,23		
Spain	5 568,21		
France	5 493,65		
Italy	4 336,31		
Malta	355,59		
Portugal	523,88		
All Member States	60 ⁽¹⁾		
EC	16 779,55		
TAC	29 500		

⁽¹⁾ Except Cyprus, Greece, Spain, France, Italy, Malta and Portugal, and only as by-catch.'

ANNEX II

The following Annex shall be inserted into Regulation (EC) No 41/2007:

'ANNEX XVIa

ICCAT Recovery Plan for Bluefin Tuna*Part I***Specific conditions applying to bait boat, trolling boat and pelagic trawler fisheries in the Eastern Atlantic**

1. Each Member State shall limit the maximum number of its bait boat and trolling boats authorised to fish bluefin tuna to the number of the vessels participating in directed fishery for bluefin tuna in 2006.
2. Each Member State shall limit the maximum number of its pelagic trawler vessels authorised to fish bluefin tuna as by-catch.
3. By 30 June 2007, Member States shall submit to the Commission the number of fishing vessels established pursuant to paragraphs 1 and 2. The Commission shall promptly forward that information to the ICCAT Secretariat.
4. (a) Each Member State shall ensure that vessels to which a special fishing permit referred to in paragraphs 1 and 2 has been issued are included in a list containing their name and Community fleet register number (CFR) as defined in Annex I to Commission Regulation (EC) No 26/2004 of 30 December 2003 on the Community fishing fleet register ⁽¹⁾.

(b) Each Member State shall send to the Commission the list referred to in paragraph (a) and all subsequent amendments in a computer readable form.

(c) Amendments to the list referred to in paragraph (4 a) shall be transmitted to the Commission at least five days prior to the date that the vessel newly inserted in that list enters the Eastern Atlantic. The Commission shall promptly forward amendments to the ICCAT Secretariat.
5. No more than 10 % of the Community quota for bluefin tuna shall be allocated among the authorised vessels referred to in paragraphs 1 and 2, with up to a maximum of 200 tonnes of bluefin tuna weighing no less than 6,4 kg or 70 cm caught by bait boat vessels of an overall length of less than 17 m.
6. No more than 2 % of the Community quota for bluefin tuna may be allocated among its coastal artisanal fishery for fresh fish.
7. (a) It shall be prohibited to land and/or tranship from vessels referred to in paragraphs 1 and 2 of the present Annex any quantity of bluefin tuna fished in East Atlantic at any place other than ports designated by Member States or by CPCs;

(b) Member States shall designate a place used for landing or a place closed to the shore (designated ports) where landing or transhipment operations of bluefin tuna are permitted;

(c) Member States shall transmit to the Commission no later than 30 June 2007 a list of designated ports. The Commission shall send this information to the ICCAT Executive Secretariat before 1 July 2007. Any subsequent changes to the list shall be notified to the Commission for transmission to the ICCAT Executive Secretariat, at least 15 days before the change shall come into force.
8. By way of derogation from the provision of Article 7 of Regulation (EEC) No 2847/93, the master of a Community vessel referred to in paragraphs 1 and 2 or his representative must notify the competent authority of the Member State (including the competent authority of their flag State) or of the CPC in whose ports or landing facility they wish to use at least 4 hours before the estimated time of arrival at the port, of the following:
 - (a) estimated time of arrival;
 - (b) estimate of quantity of bluefin tuna retain on board;
 - (c) information on the zone where the catches were taken.

⁽¹⁾ OJ L 5, 9.1.2004, p. 25.

9. Each Member State shall implement a catch reporting regime that insures effective monitoring of the utilisation of each vessel's quota.
10. Bluefin tuna catches may not be offered for retail sale to the final consumer, irrespective of the marketing method, unless appropriate marking or labelling indicates:
 - (a) the species, fishing gear used;
 - (b) the catch area and date.
11. Beginning 1 July 2007, Member States whose bait boats are authorised to fish for bluefin tuna in the East Atlantic shall institute tail tag requirements as follows:
 - (a) Tail tags must be affixed on each bluefin tuna immediately upon offloading.
 - (b) Each tail tag shall have a unique identification number and be included on bluefin tuna statistical documents and written on the outside of any package containing tuna.

Part II

Specification for logbooks

Minimum specifications for logbooks:

1. The logbook must be numbered by sheets.
2. The logbook must be filled every day (midnight) or before port arrival.
3. The logbook must be completed in case of at sea inspections.
4. One copy of the sheets must remain attached to the logbook.
5. Logbooks must be kept on board to cover a period of one year operation.

Minimum standard information for logbooks:

1. Master name and address.
2. Dates and ports of departure, dates and ports of arrival.
3. Vessel name, register number, ICCAT number and IMO number (if available). In case of joint fishing operations, vessel names, register numbers, ICCAT numbers and IMO numbers (if available) of all the vessels involved in the operation.
4. Fishing gear:
 - (a) type FAO code
 - (b) Dimension (length, mesh size, number of hooks ...)
5. Operations at sea with one line (minimum) per day of trip, providing:
 - (a) Activity (fishing, steaming ...)
 - (b) Position: Exact daily positions (in degree and minutes), recorded for each fishing operation or at noon when no fishing has been conducted during this day.
 - (c) Record of catches
6. Species identification:
 - (a) by FAO code
 - (b) round (RWT) weight in kg per day

7. Master signature
8. Observer signature (if applicable)
9. Means of weight measure: estimation, weighing on board
10. The logbook is kept in equivalent live weight of fish and mentions the conversion factors used in the evaluation.

Minimum information in case of landing, transshipment/transfer:

1. Dates and port of landing/transshipment/transfer
2. Products
 - (a) presentation
 - (b) number of fish or boxes and quantity in kg
3. Signature of the master or vessel agent

Part III

ICCAT transfer/transshipment declaration

Document No ICCAT TRANSFER/TRANSHIPMENT DECLARATION

Tug/Carrier vessel

Name of vessel and radio call sign:

Flag:

Flag State authorisation No

National Register No

ICCAT Register No

IMO No

Fishing Vessel

Name of the vessel and radio call sign,

Flag:

Flag State authorisation No

National Register No

ICCAT Register No

External identification:

Fishing logbook sheet No

Day Month Hour Year

FV Master's name: Tug/carrier Master's name:

LOCATION OF TRANSHIPMENT/TRANSFER Departure from

Return to Signature: Signature:

Transfer/transshipment

For transshipment, indicate the weight in kilograms

In case of transfer of live fish indicate number of unit and live weight

Port	ea Lat. Long.	Species	Number of unit of fishes	Type of Product Live	Type of Product Whole	Type of Product Gutted	Type of Product Head off	Type of Product Filleted	Type of Product	further transfer/transhipments
										Date:
										Place/position:
										Authorization CP No
										Transfer vessel Master signature:
										Name of receiver vessel:
										Flag
										ICCAT Register No
										IMO No
										Master's signature
										Date:
										Place/position:
										Authorisation CP No
										Transfer vessel Master's signature:
										Name of receiver vessel:
										Flag
										ICCAT Register No
										IMO No
										Master's signature

ICCAT Observer signature (if applicable):

Obligations in case of transfer/transhipment:

1. The original of the transfer/transhipment declaration must be provided to the recipient vessel tug/processing/transport).
2. The copy of the transfer/transhipment declaration must be kept by the correspondent catching fishing vessel.
3. Further transfers or transshipping operations shall be authorised by the relevant CP which authorised the vessel to operate.
4. The original of the transfer/transhipment declaration has to be kept by the recipient vessel which holds the fish, up to the farm or the landing place.
5. The transfer or transshipping operation shall be recorded in the log book of any vessel involved in the operation.

Part IV

ICCAT scheme of joint international inspection

The ICCAT Commission agreed at its Fourth Regular Meeting (Madrid, November 1975) that:

Pursuant to paragraph 3 of Article IX of the Convention, the ICCAT Commission recommends the establishment of the following arrangements for international control outside the waters under national jurisdiction for the purpose of ensuring the application of the Convention and the measures in force thereunder:

1. Control shall be carried out by inspectors of the fishery control services of Contracting Governments. The names of the inspectors appointed for that purpose by their respective governments shall be notified to the Commission.
2. Ships carrying inspectors shall fly a special flag or pennant approved by the ICCAT Commission to indicate that the inspector is carrying out international inspection duties. The names of the ships so used for the time being, which may be either special inspection vessels or fishing vessels, shall be notified to the ICCAT Commission, as soon as may be practical.
3. Each inspector shall carry a document of identify supplied by the authorities of the flag State in a form approved by the ICCAT Commission and given him on appointment stating that he has authority to act under arrangements approved by the ICCAT Commission.
4. Subject to the arrangements agreed under paragraph 9, a vessel employed for the time being in fishing for tuna or tuna-like fishes in the Convention Area outside the waters under national jurisdiction shall stop when given the appropriate signal in the International Code of Signals by a ship carrying an inspector unless actually carrying out fishing operations, in which case it shall stop immediately once it has finished such operations. The master⁽¹⁾ of the vessel shall permit the inspector, who may be accompanied by a witness, to board it. The master shall enable the inspector to make such examination of catch or gear and any relevant documents as the inspector deems necessary to verify the observance of the ICCAT Commission's recommendations in force in relation to the flag State of the vessel concerned and the inspector may ask for any explanations that he deems necessary.
5. On boarding the vessel an inspector shall produce the document described in 3. Inspections shall be made so that the vessel suffers the minimum interference and inconvenience and that degradation of the quality of the fish be avoided. An inspector shall limit his enquiries to the ascertainment of the facts in relation to the observance of the ICCAT Commission's recommendations in force in relation to the flag State of the vessel concerned. In making his examination an inspector may ask the master for any assistance he may require. He shall draw up a report of his inspection in a form approved by the ICCAT Commission. He shall sign the report in the presence of the master of the vessel who shall be entitled to add or have added to the report any observations which he may think suitable and must sign such observations. Copies of the report shall be given to the master of the vessel and to the inspector's government who shall transmit copies to the appropriate authorities of the flag State of the vessel and to the ICCAT Commission. Where any infringement of the recommendations is discovered the inspector should, where possible, also inform the competent authorities of the flag State, as notified to the ICCAT Commission, and any inspection ship of the flag State known to be in the vicinity.
6. Resistance to an inspector or failure to comply with his directions shall be treated by the flag State of the vessel in a manner similar to resistance to any inspector of that State or a failure to comply with his directions.
7. Inspectors shall carry out their duties under these arrangements in accordance with the rules set out in this recommendation but they shall remain under the operational control of their national authorities and shall be responsible to them.
8. Contracting Governments shall consider and act on reports of foreign inspectors under these arrangements on a similar basis in accordance with their national legislation to the reports of national inspectors. The provisions of this paragraph shall not impose any obligation on a Contracting Government to give the report of a foreign inspector a higher evidential value than it would possess in the inspector's own country. Contracting Governments shall collaborate in order to facilitate judicial or other proceedings arising from a report of an inspector under these arrangements.
9. (i) Contracting Governments shall inform the ICCAT Commission by the 1st of March each year of their provisional plans for participation in these arrangements in the following year and the ICCAT Commission may make suggestions to Contracting Governments for the coordination of national operations in this field including the number of inspectors and ships carrying inspectors;

(ii) The arrangements set out in this recommendation and the plans for participation shall apply between Contracting Governments unless otherwise agreed between them; and such agreement shall be notified to the ICCAT Commission: Provided however, that implementation of the scheme shall be suspended between any two Contracting Governments if either of them has notified the ICCAT Commission to that effect, pending completion of an agreement.

⁽¹⁾ Master refers to the individual in charge of the vessel.

10. (i) The fishing gear shall be inspected in accordance with the regulations in force for the subarea in which the inspection takes place. The inspector will state the nature of this violation in this report.
(ii) Inspectors shall have the authority to inspect all fishing gear in use or that fishing gear on deck ready for use.
11. The inspector shall affix an identification mark approved by the ICCAT Commission to any fishing gear inspected which appears to be in contravention of the ICCAT Commission's recommendations in force in relation to the flag State of the vessel concerned and shall record this fact in his report.
12. The inspector may photograph the gear in such a way as to reveal those features which in his opinion are not in conformity with the regulation in force, in which case the subjects photographed should be listed in the report and copies of the photographs should be attached to the copy of the report to the flag State.
13. The inspector shall have authority, subject to any limitations imposed by the ICCAT Commission, to examine the characteristics of catches, to establish whether the ICCAT Commission's recommendations are being complied with. He shall report his findings to the authorities of the flag State of the inspected vessel as soon as possible. (Biennial Report 1974-75, Part II).

Remarks

It was agreed to leave in abeyance the date of entry into effect of the International Inspection Scheme until the ICCAT Commission decides otherwise.

ICCAT Pennant:



COMMISSION REGULATION (EC) No 644/2007**of 12 June 2007****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 13 June 2007.

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

Done at Brussels, 12 June 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 12 June 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	68,4
	TR	97,2
	ZZ	82,8
0707 00 05	JO	151,2
	TR	94,4
	ZZ	122,8
0709 90 70	TR	103,8
	ZZ	103,8
0805 50 10	AR	58,9
	ZA	52,7
	ZZ	55,8
0808 10 80	AR	86,2
	BR	78,5
	CA	102,0
	CL	85,2
	CN	70,4
	NZ	109,9
	US	106,0
	UY	55,1
	ZA	101,2
	ZZ	88,3
0809 10 00	IL	196,3
	TR	188,6
	ZZ	192,5
0809 20 95	TR	377,6
	US	311,6
	ZZ	344,6
0809 40 05	CL	136,2
	ZZ	136,2

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 645/2007**of 12 June 2007****fixing the final complementary quantity of raw cane sugar originating in the ACP States and India for supply to refineries for the 2006/2007 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular the second subparagraph of Article 29(4),

Whereas:

- (1) Article 29(4) of Regulation (EC) No 318/2006 lays down that, during the 2006/2007, 2007/2008 and 2008/2009 marketing years and in order to ensure adequate supply to Community refineries, import duties on a complementary quantity of imports of raw cane sugar originating in the States referred to in Annex VI to that Regulation are to be suspended.
- (2) That complementary quantity should be calculated in accordance with Article 19 of Commission Regulation (EC) No 950/2006 of 28 June 2006 laying down detailed rules of application for the 2006/2007, 2007/2008 and 2008/2009 marketing years for the import and refining of sugar products under certain tariff quotas and preferential agreements ⁽²⁾, on the basis of an exhaustive Community forecast supply balance for raw sugar.
- (3) For the 2006/2007 marketing year, the balance indicates the need to import a complementary quantity of raw sugar for refining of 334 025 tonnes in white sugar equivalent so that the Community refineries' supply needs can be met. This complementary quantity includes an estimation of applications for import licences in the final months of the 2006/2007

marketing year, concerning imports referred to in Article 3(2) of Commission Regulation (EC) No 1100/2006 of 17 July 2006 laying down, for the marketing years 2006/2007, 2007/08 and 2008/2009, detailed rules for the opening and administration of tariff quotas for raw cane-sugar for refining, originating in least developed countries, as well as detailed rules applying to the importation of products of tariff heading 1701 originating in least developed countries ⁽³⁾.

- (4) Commission Regulation (EC) No 1249/2006 of 18 August 2006 fixing the complementary quantity of raw cane sugar originating in the ACP States and India for supply to refineries in the period from 1 July 2006 to 30 September 2007 ⁽⁴⁾ and Commission Regulation (EC) No 92/2007 of 30 January 2007 fixing a complementary quantity of raw cane sugar originating in the ACP States and India for supply to refineries for the marketing year 2006/2007 ⁽⁵⁾ already fixed complementary quantities of respectively 82 500 tonnes and 120 000 tonnes. It is therefore appropriate to fix the final quantity of complementary sugar of 131 525 tonnes for the marketing year 2006/2007.
- (5) Adequate supply of the refineries can only be guaranteed if the traditional export agreements between the beneficiary countries are respected. Therefore a breakdown between the beneficiary countries or group of countries is needed. For India, a quantity of 6 000 tonnes is opened which brings the total quantity for the 2006/2007 marketing year for India to 22 000 tonnes which is considered an economically viable shipping quantity. The remaining quantities should be fixed for the ACP States, which have collectively undertaken to implement between themselves procedures for the allocation of the quantities in order to ensure the appropriate supply of the refineries.
- (6) Prior to the import of this complementary sugar, the refiners need to make supply and shipping arrangements with the beneficiary countries and trade. In order to allow them to prepare for the application for import licences in due time, it is appropriate to provide for the entry into force of this Regulation as from the date of its publication.

⁽¹⁾ OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 247/2007 (OJ L 69, 9.3.2007, p. 3).

⁽²⁾ OJ L 178, 1.7.2006, p. 1. Regulation as last amended by Regulation (EC) No 371/2007 (OJ L 92, 3.4.2007, p. 6).

⁽³⁾ OJ L 196, 18.7.2006, p. 3.

⁽⁴⁾ OJ L 227, 19.8.2006, p. 22.

⁽⁵⁾ OJ L 22, 31.1.2007, p. 10.

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

(a) 125 525 tonnes expressed as white sugar originating in the States listed in Annex VI to Regulation (EC) No 318/2006 except India;

HAS ADOPTED THIS REGULATION:

(b) 6 000 tonnes expressed as white sugar originating in India.

Article 1

In addition to the quantities laid down in Regulations (EC) No 1249/2006 and (EC) No 92/2007, a final quantity of 131 525 tonnes of complementary raw cane sugar in white sugar equivalent is fixed for the marketing year 2006/2007:

Article 2

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

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

Done at Brussels, 12 June 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION REGULATION (EC) No 646/2007

of 12 June 2007

implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards a Community target for the reduction of the prevalence of *Salmonella enteritidis* and *Salmonella typhimurium* in broilers and repealing Regulation (EC) No 1091/2005

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents ⁽¹⁾ and, in particular Article 4(1), Article 8(1) and Article 13 thereof,

Whereas:

(1) The purpose of Regulation (EC) No 2160/2003 is to ensure that proper and effective measures are taken to detect and control salmonella and other zoonotic agents at all relevant stages of production, processing and distribution, particularly at the level of primary production, in order to reduce their prevalence and the risk they pose to public health.

(2) Regulation (EC) No 2160/2003 provides for a Community target to be established for the reduction of the prevalence of all salmonella serotypes with public health significance in broilers at the level of primary production. Such reduction is important in view of the strict measures which are to apply to fresh meat from infected flocks of broilers in accordance with that Regulation, as from 12 December 2010. In particular, fresh poultry meat, including meat of broilers, may not be placed on the market for human consumption unless *Salmonella* is absent in 25 grams of such meat.

(3) Regulation (EC) No 2160/2003 provides that the Community target is to include a numerical expression of the maximum percentage of epidemiological units remaining positive and/or the minimum percentage of reduction in the number of epidemiological units remaining positive, the maximum time limit within which the target must be achieved and the definition of the testing schemes necessary to verify achievement of the target. It is also to include a definition, where relevant, of serotypes with public health significance.

(4) In order to set the Community target, comparable data on the prevalence of the concerned *Salmonella* serotypes in flocks of broilers in Member States have been collected in accordance with Commission Decision 2005/636/EC ⁽²⁾ concerning a baseline study on the prevalence of *Salmonella* in flocks of broilers.

(5) Regulation (EC) No 2160/2003 provides that for a transitional period of three years, the Community target for broilers is to cover only *Salmonella enteritidis* and *Salmonella typhimurium*. Other serotypes with public health significance may be considered after that period.

(6) In order to verify progress on the achievement of the Community target, it is necessary to provide for repeated sampling of flocks of broilers, in this Decision.

(7) In accordance with Article 15 of Regulation (EC) No 2160/2003, the European Food Safety Authority (EFSA) was consulted on the setting of the Community target for broilers. In particular, the EFSA Task Force on Zoonoses Data Collection adopted on 28 March 2007 the Report on the Analysis of the baseline survey on the prevalence of *Salmonella* in broiler flocks of *Gallus gallus* in the EU, 2005-2006, Part A: *Salmonella* prevalence estimates ⁽³⁾.

(8) Commission Regulation (EC) No 1091/2005 of 12 July 2005 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards requirements for the use of specific control methods in the framework of the national programmes for the control of salmonella ⁽⁴⁾, has been replaced by Commission Regulation (EC) No 1177/2006 of 1 August 2006 implementing Regulation (EC) No 2160/2003 of the European Parliament and of the Council as regards requirements for the use of specific control methods in the framework of the national programmes for the control of salmonella in poultry ⁽⁵⁾. For the sake of clarity, it is appropriate to repeal Regulation (EC) No 1091/2005.

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

⁽²⁾ OJ L 228, 3.9.2005, p. 14.

⁽³⁾ The EFSA Journal (2007) 98, 1-85.

⁽⁴⁾ OJ L 182, 13.7.2005, p. 3.

⁽⁵⁾ OJ L 212, 2.8.2006, p. 3.

⁽¹⁾ OJ L 325, 12.12.2003, p. 1. Regulation as last amended by Council Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

HAS ADOPTED THIS REGULATION:

Article 2

Repeal of Regulation (EC) No 1091/2005

Regulation (EC) No 1091/2005 is repealed with effect from 1 July 2007.

References to the repealed Regulation shall be construed as references to Regulation (EC) No 1177/2006.

Article 3

Entry into force and applicability

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

Article 1(1) and (3) shall apply from 1 July 2007 and Article 1(2) shall apply from 1 January 2009.

Article 1

Community target

1. The Community target, as referred to in Article 4(1) of Regulation (EC) No 2160/2003, for the reduction of *Salmonella enteritidis* and *Salmonella typhimurium* in broilers (Community target) shall be a reduction of the maximum percentage of flocks of broilers remaining positive of *Salmonella enteritidis* and *Salmonella typhimurium* to 1 % or less by 31 December 2011.

2. The testing scheme necessary to verify progress in the achievement of the Community target is set out in the Annex.

3. The Commission shall consider a review of the testing scheme set out in the Annex based on the experience gained in 2009 being the first year of the national control programmes as referred to in Article 5(1) of Regulation (EC) No 2160/2003.

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

Done at Brussels, 12 June 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX

Testing scheme necessary to verify the achievement of the Community target as referred to in Article 1(2)**1. Frequency and status of sampling**

- (a) The sampling frame shall cover all flocks of broilers covered by the scope of Regulation (EC) No 2160/2003.
- (b) Flocks of broilers shall be sampled on the initiative of the food business operator and by the competent authority.
- Sampling on the initiative of the food business operator shall take place in accordance with Article 5(3) of Regulation (EC) No 2160/2003 within three weeks before the birds are moved to the slaughterhouse.
 - Sampling by the competent authority shall include each year at least one flock of broilers on 10 % of the holdings with more than 5 000 birds. It shall be done on a risk basis each time the competent authority considers it necessary.

A sampling carried out by the competent authority may replace the sampling on the initiative of the food business operator.

- (c) However, by way of derogation from point (a), the competent authority may decide to sample at least one flock of broilers per round on holdings with several flocks if:
- (i) an all in/all out system is used;
 - (ii) the same management applies to all flocks;
 - (iii) feed and water supply is common to all flocks;
 - (iv) during one year and at least six rounds, *Salmonella* spp were tested according to the monitoring scheme set out in point (b) in all flocks on the holding and samples of all flocks of at least one round were taken by the competent authority; and
 - (v) all results from the testing for *Salmonella enteritidis* or *Salmonella typhimurium* were negative.

2. Sampling protocol

At least two pairs of boot/sock swabs shall be taken. For free range flocks of broilers, samples shall only be collected in the area inside the house. All boot/sock swabs must be pooled into one sample.

In flocks with less than 100 broilers, where it is not possible to use boot/sock swabs as access to the houses is not possible, they may be replaced by hand drag swabs, where the boot swabs or socks are worn over gloved hands and rubbed over surfaces contaminated with fresh faeces, or if not feasible, by other sampling techniques for faeces fit for the intended purpose.

Before putting on the boot/sock swabs, their surface shall be moistened with maximum recovery diluents (MRD: 0,8 % sodium chloride, 0,1 % peptone in sterile deionised water), or sterile water or any other diluent approved by the national reference laboratory referred to in Article 11 of Regulation (EC) No 2160/2003. The use of farm water containing antimicrobials or additional disinfectants shall be prohibited. The recommended way to moisten boot swabs shall be to pour the liquid inside before putting them on. Alternatively, boot swabs or socks may be autoclaved with diluents within autoclave bags or jars before use. Diluents may also be applied after boots are put on using a spray or wash bottle.

It shall be ensured that all sections in a house are represented in the sampling in a proportionate way. Each pair should cover about 50 % of the area of the house.

On completion of sampling the boot/sock swabs shall be carefully removed so as not to dislodge adherent material. Boot swabs may be inverted to retain material. They shall be placed in a bag or pot and labelled.

The competent authority shall supervise education of the food business operators to guarantee the correct application of the sampling protocol.

In the case of sampling by the competent authority because of suspicion of *Salmonella* infection and in any other case considered appropriate, the competent authority shall satisfy itself by conducting further tests as appropriate so that the results of examinations for *Salmonella* in flocks of broilers are not affected by the use of antimicrobials in those flocks.

Where the presence of *Salmonella enteritidis* and *Salmonella typhimurium* is not detected but antimicrobials or bacterial growth inhibitory effect are detected, it shall be considered as an infected flock of broilers for the purpose of the Community target referred to in Article 1(2).

3. Examination of the samples

3.1. Transport and preparation of the samples

Samples shall be sent by express mail or courier to the laboratories referred to in Articles 11 and 12 of Regulation (EC) No 2160/2003, within 25 hours after collection. At the laboratory samples shall be kept refrigerated until examination, which shall be carried out within 48 hours following receipt.

The pair of boot/sock swabs shall be carefully unpacked to avoid dislodging adherent faecal material, pooled and placed in 225 ml buffered peptone water (BPW) which has been pre-warmed to room temperature.

The sample shall be swirled to fully saturate it and culture shall be continued by using the detection method in point 3.2.

If ISO standards on the preparation of faeces for the detection of salmonella are agreed on, they shall be applied and replace the provisions on the preparation of samples set out in this point.

3.2. Detection method

The detection method recommended by the Community reference laboratory (CRL) for salmonella in Bilthoven, the Netherlands, shall be used.

That method is described in the current version of draft Annex D of ISO 6579 (2002): 'Detection of *Salmonella* spp. in animal faeces and in samples of the primary production stage'.

In that detection method, a semi-solid medium (modified semi-solid Rappaport-Vassiladis medium, MSRV) is used as the single selective enrichment medium.

3.3. Serotyping

At least one isolate from each positive sample shall be serotyped, following the Kaufmann-White scheme.

3.4. Alternative methods

With regard to samples taken on the initiative of the food business operator, the methods of analysis provided for in Article 11 of Regulation (EC) No 882/2004 of the European Parliament and of the Council ⁽¹⁾, may be used instead of the methods for the preparation of samples, detection methods and serotyping provided for in points 3.1, 3.2 and 3.3 of this Annex, if validated in accordance with EN/ISO 16140/2003.

3.5. Storage of strains

At least one isolated strain per house and per year shall be collected by the competent authority and stored for future phagetyping or anti-microbial susceptibility testing, using the normal methods for culture collection, which must ensure integrity of the strains for a minimum of two years.

⁽¹⁾ OJ L 165, 30.4.2004, p. 1; as corrected by OJ L 191, 28.5.2004, p. 1.

4. Results and reporting

4.1. Calculation of prevalence for the verification of the Community target

A flock of broilers shall be considered positive for the purpose of verifying the achievement of the Community target, where the presence of *Salmonella enteritidis* and/or *Salmonella typhimurium* (other than vaccine strains) was detected in the flock at any occasion.

Positive flocks of broilers shall be counted only once per round, irrespective of the number of sampling and testing operations and only be reported in the year of the first positive sampling.

4.2. Reporting

Reporting shall include:

- (a) the total number of flocks of broilers sampled by the competent authority or by the food business operator;
- (b) the total number of infected flocks of broilers;
- (c) all serotypes of *Salmonella* isolated (including other than *Salmonella enteritidis* and *Salmonella typhimurium*);
- (d) explanations of the results, in particular concerning exceptional cases.

The results and any additional relevant information shall be reported as part of the report on trends and sources provided for in Article 9(1) of Directive 2003/99/EC of the European Parliament and of the Council ⁽¹⁾.

4.3. Additional information

At least the following information shall be made available from each flock of broilers tested for analysis at national level or by the European Food Safety Authority at its request:

- (a) sample taken by the competent authority or by the food business operator;
- (b) holding reference, remaining unique in time;
- (c) house reference, remaining unique in time;
- (d) month of sampling.

⁽¹⁾ OJ L 325, 12.12.2003, p. 31.

COMMISSION REGULATION (EC) No 647/2007**of 12 June 2007****amending Regulation (EC) No 2229/2004 laying down further detailed rules for the implementation of the fourth stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular the second subparagraph of Article 8(2) thereof,

Whereas:

- (1) Commission Regulations (EC) No 1112/2002 ⁽²⁾ and (EC) No 2229/2004 ⁽³⁾ lay down the detailed rules for the implementation of the fourth stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and include a list of the active substances covered by that stage.
- (2) It has become apparent that some of the active substances included in the list set out in Regulation (EC) No 2229/2004 have never been on the market as plant protection products as defined by Directive

91/414/EEC, and, consequently, ought not to have been included in that list. Those substances should be removed from that list.

- (3) Regulation (EC) No 2229/2004 should therefore be amended accordingly.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 2229/2004 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 22nd 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, 12 June 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

⁽¹⁾ OJ L 230, 9.8.1991, p. 1. Directive as last amended by Commission Directive 2007/31/EC (OJ L 140, 1.6.2007, p. 44).

⁽²⁾ OJ L 168, 27.6.2002, p. 14.

⁽³⁾ OJ L 379, 24.12.2004, p. 13.

ANNEX

Annex I to Regulation (EC) No 2229/2004 is amended as follows:

1. In Part A, the entries for the following active substances are deleted:

(a) entries in Group 1 of Part A:

- Amino acids/L-Glutamic acid,
- Amino acids/L-Tryptophan,
- Resins,
- Sodium metabisulphite,
- Wheat gluten,
- Maltodextrin;

(b) entries in Group 2.2 of Part A:

- Citrus extract *Notified as Bactericide*,
- Marigold extract,
- *Mimosa Tenuiflora* extract,
- Plant oils/Blackcurrant bud oil *Notified as repellent*,
- Plant oils/Eucalyptus oil,
- Plant oils/Marjoram oil *Notified as repellent*
- Plant oils/Thyme oil *Notified as repellent*;

(c) entry in Group 6.1 of Part A:

- Polyvinyl acetate.

(d) entry in Group 6.2 of Part A:

- Ammonium bituminosulfonate;

2. In Part B, the entries for the following active substances are deleted:

- Z, E 3, 7, 11-trimethyl-2, 6, 10-dodecatrien-1-ol (Farnesol),
- 1, 7 Dioxaspiro-5, 5-undecan,
- 3, 7 Dimethyl-2,6-octadien-1-ol (Geraniol),
- 3, 7, 11-Trimethyl-1, 6, 10-dodecatrien-3-ol (Nerolidol),
- (E)-2 methyl-6-methylene-3, 7-octadien-2-ol (isomyrcenol),
- Ethyl 2, 4-decadienoate;

3. In Part F, the entry for the following active substance is deleted:

- Sodium lauryl sulphate;

4. In Part G, the entry for the following active substance is deleted:

- Di-1-p-menthene.
-

COMMISSION REGULATION (EC) No 648/2007**of 11 June 2007****prohibiting fishing for roundnose grenadier in ICES areas Vb, VI, VII (Community waters and waters not under the sovereignty or jurisdiction of third countries) by vessels flying the Spanish flag**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy ⁽¹⁾, and in particular Article 26(4) thereof,Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 2015/2006 of 19 December 2006 fixing for 2007 and 2008 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks ⁽³⁾ lays down quotas for 2007 and 2008.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of, or registered in, the Member State referred to therein have exhausted the quota allocated for 2007.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated for 2007 to the Member State referred to in the Annex to this Regulation for the stock referred to therein shall be deemed to be exhausted from the date stated in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of, or registered in, the Member State referred to therein shall be prohibited from the date stated in that Annex. After that date it shall also be prohibited to retain on board, tranship or land such stock caught by those vessels.

*Article 3***Entry into force**

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

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

Done at Brussels, 11 June 2007.

For the Commission

Fokion FOTIADIS

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 9; corrigendum: OJ L 36, 8.2.2007, p. 6).

⁽³⁾ OJ L 384, 29.12.2006, p. 28. Regulation as amended by Commission Regulation (EC) No 609/2007 (OJ L 141, 2.6.2007, p. 33).

ANNEX

No	11
Member State	SPAIN
Stock	RNG/5B67-
Species	Roundnose grenadier (<i>Coryphaenoides rupestris</i>)
Zone	Community waters and waters not under the sovereignty or jurisdiction of third countries in areas Vb, VI, VII
Date	13.4.2007

COMMISSION REGULATION (EC) No 649/2007**of 12 June 2007****establishing a prohibition of fishing for greenland halibut in EC waters of ICES zones IIa and IV, EC and international waters of ICES zone VI by vessels flying the flag of Spain**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽¹⁾, and in particular Article 26(4) thereof,Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 41/2007 of 21 December 2006 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2007.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2007.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2007 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. It shall be prohibited to retain on board, tranship or land such stock caught by those vessels after that date.

*Article 3***Entry into force**

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

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

Done at Brussels, 12 June 2007.

For the Commission

Fokion FOTIADIS

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 1967/2006 (OJ L 409, 30.12.2006, p. 11, as corrected by OJ L 36, 8.2.2007, p. 6).

⁽³⁾ OJ L 15, 20.1.2007, p. 1. Regulation as amended by Commission Regulation (EC) No 444/2007 (OJ L 106, 24.4.2007, p. 22).

ANNEX

No	12
Member State	SPAIN
Stock	GHL/2A-C46
Species	Greenland halibut (<i>Reinhardtius hippoglossoides</i>)
Zone	EC waters of IIa and IV; EC and international waters of VI
Date	13.4.2007

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 25 May 2007

appointing a Belgian alternate member of the Committee of the Regions

(2007/401/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 263 thereof,

Having regard to the proposal from the Belgian Government,

Whereas:

(1) On 24 January 2006 the Council adopted Decision 2006/116/EC appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2006 to 25 January 2010 ⁽¹⁾.

(2) A seat as an alternate member of the Committee of the Regions has fallen vacant following the resignation of Mr CEREXHE,

Article 1

Ms Evelyne HUYTEBROECK, Minister for the Environment, Energy, Tourism and Welfare of the Brussels Capital Regional Government, is hereby appointed an alternate member of the Committee of the Regions in place of Mr CEREXHE for the remainder of his term of office, which runs until 25 January 2010.

Article 2

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

Done at Brussels, 25 May 2007.

For the Council

The President

A. SCHAVAN

⁽¹⁾ OJ L 56, 25.2.2006, p. 75.

COMMISSION

COMMISSION DECISION

of 6 December 2006

on State aid No C 6/2006 (ex N 417/2005) which Germany is planning to implement for Volkswerft Stralsund

(notified under document number C(2006) 5790)

(Only the German version is authentic)

(Text with EEA relevance)

(2007/402/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

- (1) By letter of 22 August 2005, registered as received on 26 August, Germany notified to the Commission its intention to grant regional investment aid in favour of Volkswerft Stralsund. The Commission requested information by 13 September 2005, to which Germany replied by letter of 14 October, registered as received on 17 October. By letter of 18 November 2005, it requested further information which Germany provided by letter of 19 December 2005, registered as received on 20 December.
- (2) On 22 February 2006 the Commission initiated the formal investigation procedure with respect to the alleged State aid. The Commission decision to initiate the procedure was published in the *Official Journal of*

the European Union ⁽²⁾. The Commission invited interested parties to submit comments on the presumed aid. Comments were submitted by letter of 10 May 2006, registered as received on 11 May, by the beneficiary Volkswerft Stralsund. By letters of 11 May, registered as received on the same day, the *Verband für Schiffbau und Meerestechnik* (German Shipbuilding and Ocean Industries Association) and *Danske Maritime* (Danish Maritime Industries Association) submitted comments.

- (3) The comments were transmitted to the German authorities by letters of 12 May and 19 May. Germany replied to these comments by letter of 2 June 2006, registered as received on the same day.
- (4) Germany's response to the initiation of the formal investigation procedure was submitted by letter of 7 April 2006, registered as received on the same day. On 26 July 2006 the Commission requested further information which Germany provided by letter of 22 August 2006, registered as received on 23 August.

II. DESCRIPTION

- (5) The beneficiary of the aid is Volkswerft Stralsund GmbH (VWS), a shipyard located in Stralsund, Mecklenburg-Western Pomerania (Germany), an assisted area under Article 87(3)(a) of the Treaty. VWS belongs to the Danish A.P. Möller group and is part of its subgroup of yards led by Odense Steel Shipyard Ltd. It is a large enterprise and does not rank as a small or medium-sized enterprise under the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽³⁾.

⁽¹⁾ OJ C 90, 13.4.2006, p. 36.

⁽²⁾ See footnote 1.

⁽³⁾ OJ L 124, 20.5.2003, p. 36.

- (6) VWS is active in the design and production of sea-going vessels as well as in ship repair and conversion. It produces predominantly medium-sized container vessels but also passenger-cargo vessels, ferries and special vessels such as dredgers, cable-laying vessels, anchor handling tug supply vessels and marine pollution control vessels. VWS can produce ships up to a length of 260 m.
- (7) The pre-fabrication of the different components up to sections takes place on specialised production lines. The final assembly — after conservation work and painting — is done in the dock hall, which can accommodate ships of up to 300 m in length. The launching of the ship is done with a 230 metre-long ship lift. This limits the production programme of VWS to ships of up to 260 m.
- (8) VWS plans to modernise and rationalise its production as well as to adapt to changes in international demand in order to remain competitive on the world market. While it assumes that the favourable market conditions for cargo vessels will continue for several years to come, it considers that demand will increasingly shift to so-called 'panamax vessels', which VWS is currently not able to produce at competitive costs. Panamax vessels are the largest ships that can transit the Panama Canal, i.e. ships with a maximum length of 300 m and a maximum width of 32,2 m.
- (9) VWS is therefore implementing an investment project to improve the productivity of the yard and to allow the shipyard to produce larger panamax vessels efficiently. The project will allow VWS to compete in the market segment of panamax vessels and will therefore increase the yard's sales potential. VWS reckons that this will lead to a more balanced utilisation of the yard's existing installations and will thus reduce significantly the production costs per ship, increasing the yard's productivity.
- (10) The investments are in steel processing (panel production and section construction; conservation) so as to be able to build and handle larger steel constructions (sections) and in extending the ship lift by 40 metres to allow the lifting of longer ships.
- (11) In the field of panel production and section construction a new production line for panels and for section parts for larger types of vessel will be built in an existing hall. Moreover, four additional sites for section construction will be built on the slipway so as to build larger sections. As regards conservation, the investment concerns the enlargement of two of the four existing conservation facilities to accommodate larger sections. The ability to build and handle larger steel constructions is necessary for the construction of larger vessels from an economic and technical point of view as the final assembly of larger vessels from smaller sections would be inefficient. By extending the ship lift, its capacity will match the capacity of the dock hall.
- (12) On completion of the investment project, the productivity of VWS will, according to the information submitted by Germany, increase from around [...] (*) t steel/1 000 working hours in 2005 to [...] t steel/1 000 working hours. The capacity of the yard measured in compensated gross tonnes (CGT) will not increase as a result of the investment project; only the product mix will change, from medium-sized container vessels to large container vessels. The steel-processing capacity of the yard will increase from around 56 000 tonnes in 2005 to 64 000 tonnes following implementation of the project.
- (13) The project was started at the beginning of 2005 and completed by 28 February 2006. It will create 207 new direct jobs.
- (14) The investment project involves a reduction in the degree of vertical integration at the shipyard. The share of outsourcing is supposed to increase from 17 % of productive hours in 2005 to around 28 % by the end of 2007. It is estimated that increased outsourcing will lead to the creation of 400 new jobs in the Stralsund region.
- (15) Total project costs amount to EUR 18 669 000 and are equal to eligible costs. These costs can be broken down as follows:
- | (EUR) | |
|-------------------------------------|------------|
| Ship lift | 10 512 000 |
| Panel line and section construction | 3 910 000 |
| Conservation | 4 247 000 |
| Total | 18 669 000 |
- (16) Germany intends to grant State aid amounting to EUR 4 200 500, which is equal to 22,5 % of the eligible investment costs of EUR 18 669 000. The aid will be granted on the basis of two approved regional aid schemes⁽⁴⁾. The aid application was made before the start of the investment project.

(*) Confidential information, also marked by [...] below.

⁽⁴⁾ Joint Federal Government/Länder scheme for improving regional economic structures, 34th general plan; Investment Allowance Law 2005.

III. REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (17) The Commission initiated the formal investigation procedure since it doubted that the grant was compatible with the common market. It had misgivings that the investments in panel production and section construction might go beyond mere investments to improve the productivity of existing installations. It also doubted that the investments in conservation and in extension of the ship lift constituted eligible investments as their objective did not seem to be the improvement of the productivity of existing installations.
- (18) In addition, the Commission had misgivings that the investments by VWS might lead to an increase in capacity at the yard that might not be compatible with the Framework on State aid to shipbuilding (the Framework) ⁽⁵⁾ or with the common market.

IV. COMMENTS FROM INTERESTED PARTIES

- (19) The Commission received comments from the beneficiary, from the German Shipbuilding and Ocean Industries Association and from the Danish Maritime Industries Association.

1. Comments from the beneficiary (VWS)

- (20) In its comments VWS points out that the aim of the investment project was to increase productivity and to improve capacity utilisation. Moreover, an increase in the total capacity of the yard is not the purpose of the investment project, nor does the implementation of the investment project have such an effect. The project is instead a precondition for the product innovation at which VWS is aiming and for entering the market segment of panamax vessels. VWS points out that the market for vessels of between 2 500 TEU ⁽⁶⁾ and 4 999 TEU is the optimal market segment for the yard as the segment has the highest sales potential worldwide and competitive pressure within Europe is low.
- (21) VWS furthermore points out that, when the yard was rebuilt in the period from 1993 to 1998, it was already conceived as a panamax yard, as can be seen from the fact that the size of the shipbuilding hall is adapted to the size of panamax vessels. However, at that time, it could not be foreseen that market demand would increasingly turn to panamax vessels. As Bremer Vulkan, which was the owner of VWS at the time, already had yards capable of building panamax vessels, its plans envisaged the production of smaller vessels at VWS and a ship lift with a length of 230 m was thus considered sufficient.

- (22) VWS explains that the market situation for VWS has changed in recent years because of several factors. Bremer Vulkan does not exist anymore. The market demand for the original product mix of VWS is not sufficient and so the yard has specialised in container vessels of up to 3 000 TEU and large specialised offshore vessels. Since there is no longer any demand for bulk carriers, fishing vessels, ferries, passenger vessels or tankers, which were part of the original product mix of VWS, these vessels are no longer being built. VWS also points out that the market for smaller container vessels is characterised by strong competition in Germany and, to some extent, in Poland, whereas the larger container vessels of the panamax class are built by only a very few European yards. It argues that its technical equipment, in particular the shipbuilding hall, already allows the construction of panamax vessels.

- (23) However, in order to build panamax vessels efficiently, changes in the technical equipment of the yard are necessary. Up to now, VW produced ships between 2 100 and 3 000 TEU and with a length of 197 to 237 m. These vessels were built out of between 95 and 111 steel sections of up to 16 m in length. The manufacture of such sections is limited by the available space in the workshops and the conservation halls. Panamax vessels have a length of 295 m. Without changes in the technical equipment of the yard, this would mean building these vessels using 170 sections per vessel, which would increase handling by between 60 % and 70 % if the size of the sections remained unchanged. As the market price of these vessels is, however, only between 20 % and 23 % higher, VWS has to increase productivity if it is to build these vessels efficiently. Investments in enlarging two of the existing conservation facilities and expanding the production of panels and sections are thus necessary if sections of up to 32 m are to be built and treated.

- (24) VWS points out that the launching of panamax vessels is already possible with the existing 230 m ship lift. The part of the vessel exceeding the length of the ship lift would need to be supported, for example, by a floating crane. However, such an operation would entail risks and increase costs.

- (25) As regard the capacity of the yard, VWS states that total capacity measured in CGT will not increase. In 2005 VWS built six container vessels of 2 500 TEU, equivalent to 110 000 CGT. This required the processing of 56 000 tonnes of steel taking up 1 725 000 working hours. After completion of the investment project, the yard will be able to deliver seven panamax vessels in 2006 and 2007 using 64 000 tonnes of steel and 1 900 000 working hours per year. Output will be 108 000 CGT in 2006 and in 2007. With CGT unchanged, the amount of steel processed and the number of working hours taken up will increase by 14 %.

⁽⁵⁾ OJ C 317, 30.12.2003, p. 11.

⁽⁶⁾ Twenty-foot Equivalent Units.

- (26) VWS stresses that it signed the contracts for the construction of panamax vessels in 2003, when the trend away from smaller vessels to larger vessels of the panamax class started to pose a serious threat to the viability of the yard if it continued building smaller vessels. An analysis of the yard's production flow showed that the investments in question would allow larger ships to be built with a degree of productivity that would be competitive.
- (27) The only yards active in the market segment for vessels of between 2 500 and 4 000 TEU (22 000 to 50 000 CGT), i.e. the market segment that will in future be served by VWS, are the German yards of Aker TW (HDW and Schichau Seebeck) and the Polish yards in Gdynia and Szczecin.
- (28) The market share of European yards in this segment is 26,3 %, behind Korea (39,1 %) and ahead of China (24,8 %). Korea and China are therefore the main competitors in this segment and will determine the competitive conditions in the future. If VWS did not enter the panamax market, it would remain in the market for offshore vessels, which is characterised by strong intra-European competition, and would rule itself out of participation in the fast-growing segment for panamax vessels. VWS submitted figures showing that the market is increasingly turning towards larger vessels and that the segment for vessels of 2 500 to 5 000 TEU is showing above-average growth.
- (31) The Association also maintains that a restrictive interpretation of the rules would run counter to the LeaderSHIP 2015 initiative, which is one of the measures for implementing the Lisbon Strategy. The competitiveness and productivity of the European industry should be increased through investment in research, development and innovation, including in modern production equipment. If State aid for investment cannot be linked to capacity increases, this would go against the objective of LeaderSHIP 2015, and in particular the objective of safeguarding and expanding the industry's position in selected market segments. One such segment comprised small and medium-sized container vessels, where Europe is still in a very good market position vis-à-vis Korea and China.
- (32) The Association argues that the planned investments will not distort competition. There is currently no overcapacity as the world shipbuilding market is experiencing a boom. Demand continues to be favourable, although some weakening is to be expected in 2008/2009. With world trade growing steadily, maritime transport is also expanding, and in particular the transport of industrial goods on container ships. Demand for such vessels can thus be expected to grow further.
- (33) The planned investments will enable VWS to build container vessels of up to 5 000 TEU. Until now, it was able to build only vessels of up to 3 000 TEU. The market for container vessels of up to 3 000 TEU is characterised by strong competition since these vessels are built by several German yards, but also by other European yards, and in particular the Polish yards at Gdynia and Szczecin. Even so, the main competitors are still Korea and China.

2. Comments from the German Shipbuilding and Ocean Industries Association

- (29) The German Shipbuilding and Ocean Industries Association (the Association) observes that the Commission's concern about a potential increase in capacity cannot follow from the Framework on State aid to shipbuilding. Its misgivings are not justified by the current market situation and, in particular, the planned aid will not distort competition.
- (30) The Association argues that the orientation of the EU policy on State aid to shipbuilding has changed over time. The Framework does not contain any provision that would prohibit the granting of investment aid in order to increase capacity. The Association presumes therefore that such a provision was no longer considered appropriate. It also points out that the Framework dispenses as far as possible with any sector-specific rules. The capacity issue is mentioned only in the context of closure aid. Other types of aid, e.g. restructuring aid, are covered by the general State aid rules.
- (34) The structure of the market for vessels of more than 3 000 TEU is different. Although several German and Polish yards are technically equipped to build these vessels, they are built almost exclusively in Korea and China.
- (35) The Association assesses the growth potential of the market segment for vessels of more than 3 000 TEU as positive given that the segment of panamax container vessels has grown steadily in recent years. It stresses that the investments by VWS will not distort intra-European competition as these vessels are currently built almost exclusively in Korea and China. It should also be noted that China will continue to increase its shipbuilding capacities and market share, demonstrating that it is a global and not a European market as regards competition. Limiting the investment possibilities for European yards would thus simply benefit competitors in Korea and China.

3. Comments from the Danish Maritime Industries Association

- (36) The Danish Maritime Industries Association explains that, in the present case, the aid will not have a distortive effect as the ship types that are built and will be built by VWS do not overlap with the production programme of Danish shipyards. It also points out that the planned State aid is aimed at increasing the competitiveness of VWS in the market for larger container vessels. Competition in this new market will presumably come primarily from third countries outside Europe. There is also a general trend towards building larger vessels.
- (37) Furthermore, the Danish Maritime Industries Association stresses that the shipbuilding industry in third countries outside Europe is heavily subsidised. In order to be able to withstand the increasing competition, the European shipbuilding industry has to carry out extensive investments.

V. COMMENTS FROM GERMANY

- (38) In its comments on the initiation of the formal investigation procedure, Germany maintains that point 26 of the Framework on State aid to shipbuilding does not contain any provisions on capacity and, in particular, does not stipulate that investment aid for projects resulting in a capacity increase following an improvement in productivity is inadmissible. It also stresses that improving the productivity of the shipbuilding industry is one of main objectives of Community policy in this sector. It mentions the LeaderSHIP 2015 initiative, which aims at improving the competitive situation of European yards and at reducing the disadvantages faced by the European shipbuilding industry following the subsidisation of shipbuilding in Asia. According to Germany, this can be achieved only through productivity increases.
- (39) In Germany's opinion, it cannot be deduced from point 3 of the Framework on State aid to shipbuilding that the impact of an investment project on capacities has to be taken into account in assessing compatibility. Germany goes on to argue that the shipbuilding market is no longer characterised by the factors mentioned in point 3 but instead by a healthy order-book, high prices and capacity shortages.
- (40) Germany also points out that the market share of the European shipbuilding industry has contracted in the last twenty years or so and that Japan, Korea and China have increased their shares with the help of State subsidies.

This subsidisation is mentioned in point 3(c) of the Framework as one of the sector-specific factors which have to be taken into account. European shipyards must, therefore, make every effort to increase productivity.

- (41) According to Germany, every increase in productivity automatically also increases the output of the installation. An increase in productivity as required by the Framework cannot therefore be taken to mean that the same amount is produced but with less input, i.e. less labour. Germany goes on to stress that the purpose of regional aid is to contribute to regional development and job creation. Productivity increases should therefore not result in job cutbacks.
- (42) As regards the market situation, Germany points out that freight transport is increasing and that the trend towards larger vessels is discernible in the container vessel market. Vessels with 5 000 TEU already exist and recent forecasts point to vessels with a capacity of 8 000 TEU. As such large vessels can enter only a few ports, smaller vessels such as the ones to be built by VWS will still be needed to handle freight. The trend towards larger vessels therefore has no negative impact on the demand for smaller vessels such as those built by VWS.
- (43) Germany furthermore provides details on the investment project of VWS, the steel-processing capacity and the labour input and productivity of the yard before and after completion of the project. It argues that the investments are necessary to ensure the competitiveness of the yard and to safeguard the 1 200 jobs.
- (44) As regards a potential increase in the yard's capacity as a result of the investments, Germany points out that the investments do not affect the areas which were identified as technical bottlenecks at the yard. In its decision to initiate the formal investigation procedure, the Commission explained that these technical bottlenecks determine a yard's capacity. Germany thus argues that, according to the Commission's own criteria, the capacity of the yard remains unchanged.
- (45) Germany also maintains that Article 87(1) of the EC Treaty is not affected by the granting of the investment aid and makes reference to the market economy investor principle. As VWS is financing 77,5 % of the investments costs from its own funds and is thus taking on a risk, it can be assumed that the investments satisfy market economy criteria.

- (46) In Germany's view, the investment aid does not distort competition and so Article 87(1) is not affected as shipbuilding is a worldwide market and is already distorted by the subsidisation of Asian shipyards. European yards also currently operate at high capacity and a significant growth potential is forecast for the coming years. Moreover, in assessing the competitive situation, only competitors that are active in the same market segment, i.e. the construction of panamax vessels, should be taken into account. Their order books for the coming years are full and their capacities are fully taken up.
- (47) As regards the future market developments and future potential overcapacities described by the Commission in its decision to initiate the formal investigation procedure, Germany points out that forecasts are not very reliable and that the Commission did not provide any proof for the expected market developments. The fact that there may be overcapacities in the future cannot be taken to mean that planned aid will lead to a distortion of competition within the meaning of Article 87(1) of the Treaty. For the same reasons, trade between Member States is not affected either.
- (48) Lastly, as regards compatibility with Article 87(3) of the EC Treaty, Germany argues that the aid is in line with European industrial policy, which aims to improve the position and competitiveness of the European shipbuilding industry as laid down in the LeaderSHIP 2015 initiative.
- (49) As regards the comments from third parties, Germany points out that they support Germany's assessment that the planned aid is compatible with the common market.
- critterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.
- (51) The aid is provided by the Land of Mecklenburg-Western Pomerania and is thus imputable to the State. It confers on VWS an advantage that the company would not have obtained on the market.
- (52) VWS builds sea-going vessels. As these vessels are widely traded, the measure threatens to distort competition and affects trade between Member States. The arguments put forward by Germany in this connection are unconvincing. According to settled case law, where aid strengthens the position of an undertaking as compared with other undertakings competing in intra-Community trade, the latter must normally be regarded as being affected by that aid ⁽⁷⁾.
- (53) As regards Germany's argument concerning the absence of proof for future potential overcapacities and thus for a distortion of competition within the meaning of Article 87(1) of the Treaty, it must be pointed out that a measure fulfils the conditions for the application of Article 87(1) of the EC Treaty if it threatens to distort competition and is capable of affecting trade between Member States ⁽⁸⁾.
- (54) As regards the argument of the Association to the effect that the measure at issue does not distort intra-European competition as the vessels that will be built by VWS are currently built almost exclusively in Korea and China, the Commission points out that the container ships to be built by VWS cannot be considered as a separate market but are in competition with other container ships built by other European yards.
- (55) Consequently, the grant constitutes State aid within the meaning of Article 87(1) of the EC Treaty and has to be assessed accordingly.

VI. ASSESSMENT

1. Existence of aid within the meaning of Article 87(1) of the EC Treaty

- (50) According to Article 87 of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. Pursuant to the established case law of the Courts of the European Community, the

2. Derogations under Article 87(2) and (3) of the EC Treaty

- (56) Article 87(2) and (3) of the EC Treaty provides for exemptions to the general prohibition of State aid laid down in Article 87(1).

⁽⁷⁾ Case 730/79 *Philip Morris v Commission* [1980] 2671, at paragraph 11.

⁽⁸⁾ Case T-23/98 *Alzetta v Commission* [2000] ECR II-2319, at paragraph 80.

- (57) For assessing aid to shipbuilding, the Commission has adopted the Framework on State aid to shipbuilding (the Framework), according to which shipbuilding means the building, in the Community, of self-propelled seagoing commercial vessels. The activities of VWS fall under this definition and so the aid to VWS has to be assessed in the light of the Framework. The Commission has no indication that VWS also builds fishing vessels for the Community. According to the Guidelines for the examination of State aid to fisheries and aquaculture⁽⁹⁾, no aid may be granted to shipyards for the construction of Community fishing vessels.
- (58) Point 26 of the Framework reads as follows: '*Regional aid to shipbuilding, ship repair or ship conversion may be deemed compatible with the common market only if the aid is granted for investment in upgrading or modernising existing yards, not linked to a financial restructuring of the yard(s) concerned, with the objective of improving the productivity of existing installations.*'
- (59) The aid intensity may not exceed 22,5 % in regions referred to in Article 87(3)(a) of the EC Treaty or the applicable regional aid ceiling, whichever is the lower. Further, the aid must be limited to the eligible expenditure as defined in the applicable Community guidelines on regional aid.
- (60) Implementation of the project will allow VWS to build panamax vessels efficiently. According to information submitted by the beneficiary, with the existing installations the yard could already build panamax vessels, which are larger than the vessels it currently builds. Nevertheless, they would be assembled from 170 sections of up to 16 m in length, and this would be inefficient and not competitive. In order to lift these vessels with the existing ship lift, a floating crane would be needed to support the part of the vessel exceeding the current length of the ship lift. This would not be profitable and would entail an increased risk of accident.
- (61) After completion of the investment project, the yard will be able to build panamax vessels using 110 sections of up to 32 m in length. The investments in a new production line for panels and section parts and in the building of four additional sites for section construction
- are necessary for the production of these larger sections. The enlargement of conservation facilities will enable the yard to handle these larger sections. The investment project will thus rationalise the production process of VWS.
- (62) The investments in the extension of the ship lift will adapt the length of the lift to the length of the ships that will be lifted. The use of a floating crane would not therefore be necessary. The extension thus improves the lifting process for panamax vessels.
- (63) The Commission therefore considers that the adaptation of the production facilities in order to build panamax vessels efficiently can be regarded as a modernisation or upgrading of an existing yard.
- (64) After completion of the investment project, productivity will increase from around 32,6 t steel/1 000 working hours in 2005 to around 38,2 t steel/1 000 working hours. The project will thus improve the productivity of the existing installations. The capacity of the yard measured in CGT will not be affected⁽¹⁰⁾. Capacity measured in terms of steel processing will increase from 56 000 tonnes in 2005 to 64 000 tonnes in 2006. The Commission considers that this increase in steel-processing capacity is a side-effect of the productivity improvements and is not disproportionate to the productivity increases achieved.
- (65) The Commission therefore concludes that, overall, the investment project fulfils the condition of comprising investments in upgrading or modernising existing yards with the objective of improving the productivity of existing installations. It also notes that the aid is limited to supporting eligible expenditure as defined in the Community guidelines on regional aid and that the applicable aid ceiling of 22,5 % is respected.

VII. CONCLUSION

- (66) The Commission comes to the conclusion that the planned regional aid for VWS is in line with the conditions for regional aid as laid down in the Framework. The aid therefore fulfils the conditions for it to be considered compatible with the common market,

⁽⁹⁾ OJ C 229, 14.9.2004, p. 5.

⁽¹⁰⁾ Capacity amounted to 110 000 CGT in 2005 and will amount to around 108 000 CGT annually in 2006 and 2007 (following the switch from medium-sized to large container vessels).

HAS ADOPTED THIS DECISION:

Article 2

This Decision is addressed to the Federal Republic of Germany.

Article 1

The State aid which Germany is planning to implement for Volkswerft Stralsund amounting to EUR 4 200 500 is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

Done at Brussels, 6 December 2006.

Implementation of the aid amounting to EUR 4 200 500 is accordingly authorised.

For the Commission
Neelie KROES
Member of the Commission

COMMISSION DECISION**of 20 December 2006****declaring a concentration compatible with the common market and the functioning of the EEA Agreement****(Case COMP/M.4215 — Glatfelter/Crompton Assets)***(notified under document number C(2006) 6764)***(Only the English text is authentic)****(Text with EEA relevance)**

(2007/403/EC)

On 20 December 2006 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) ⁽¹⁾, and in particular Article 8(1) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html

I. SUMMARY

- (1) On 16 August 2006, the Commission received a notification pursuant to Article 4 of Regulation (EC) No 139/2004 of a concentration whereby PH Glatfelter Company (Glatfelter, USA) acquired sole control of the Lydney Business of JR Crompton Ltd in Administration (Lydney Business, UK) by way of purchase of assets.
- (2) Both Glatfelter and the Lydney business are active in the production of wet laid fibre material for tea and coffee filtration. The Commission's market investigation has revealed that despite high market shares on the global market for wet laid fibre material for tea and coffee filtration, the notifying party will be constrained by a number of competitors, in particular by the British company Purico that has recently significantly increased production capacity in China. Furthermore, competition from alternative materials to wet laid fibre material for tea and coffee filtration will constrain the notifying party's ability to increase prices. The decision therefore concludes that no significant impediment to effective competition will result from the merger.

II. THE PARTIES

- (3) Glatfelter is a New York stock market listed manufacturer in the specialty papers and composite fibres business areas. Specialty papers include wall covering papers, special printing paper, etc. Through its subsidiaries' factories Glatfelter manufactures wet laid fibre for the production of tea-bags, coffee filters and coffee pads, as well as other specialty papers.
- (4) The Lydney Business is a part of the assets of former Crompton Ltd in Administration (hereinafter Crompton,

United Kingdom). Crompton was a manufacturer of specialty papers and wet laid fibre materials, and the leading supplier to the tea-bag and coffee filter industry. Crompton comprised three production facilities with a total of six inclined wire paper machines in the UK: the Lydney mill with three inclined wire machines and a polypropylene fibre operation, the Simpson Clough Mill with two inclined wire machines and the Devon Valley Mill with one inclined wire machine and one flat wire machine.

III. THE OPERATION

- (5) After Crompton was placed in court ordered administration (a United Kingdom insolvency procedure) on 7 February 2006, the appointed administrators (the Administrators) decided, to sell off Crompton's assets. Hence the Administrators held a public sales process. After evaluation of the several initial indicative bids, the Administrators decided, according to the notifying party, to invite Glatfelter and other companies to submit a final offer.
- (6) Glatfelter acquired on 9 March 2006, through its subsidiary Glatfelter UK, the majority of assets of Crompton's production facility at Lydney, Gloucestershire, UK including all tangible and intangible assets necessary to carry on the Lydney Business as a going concern. However, certain contracts and the back office functions formerly provided by Crompton's head office were excluded. The assets subject to the transaction are collectively referred to as the 'Lydney Business'. The transaction concerning the acquisition of the Lydney Business by Glatfelter is referred to as 'the Lydney Transaction'.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

- (7) After referral pursuant to Article 22 of the Merger Regulation to the Commission, the Administrators terminated the conditional contract with Glatfelter that related to the Simpson Clough Business. Subsequently the Administrators sold the Simpson Clough Business to Purico in June 2006. Besides the Simpson Clough Mill and the Devon Valley Mill, the Simpson Clough Business also includes Crompton's head office, business name rights, certain contracts and Crompton's US sales subsidiary.

IV. THE RELEVANT PRODUCT MARKETS

- (8) The present case concerns wet laid fibre material. Wet laid fibre material are thin sheets of porous tissue made from a mixture of natural and/or synthetic fibres and are produced on inclined wire machines. Wet laid fibre material is paper-like or fabric-like webs of non-woven fibre, manufactured in a modified papermaking process.
- (9) With regard to wet laid fibre material, the activities of Glatfelter and the Lydney Business overlap in the segment for the manufacture and sale of wet laid fibre material for tea and coffee filtration (tea-bags, coffee filters, coffee pods/pads). There also is an overlap with regard to wet laid fibre for battery applications.
- (10) The notifying party acknowledged that due to different applications (e.g. tea and coffee filtration, battery pastings, sausage casings, overlay) demand-side substitutability between different types of wet laid fibre material is limited. However, based on a high degree of supply-side substitutability, the notifying party has identified the market for wet laid fibre material as the relevant product market.

Wet laid fibre material for tea and coffee filtration

- (11) On the market of wet laid fibre material for tea and coffee filtration, the Commission's investigation has shown that, due to product specifications, customers do not source wet laid fibre material designed for other applications to package tea and/or coffee. Demand-side substitutability therefore is limited, since the grades of wet laid fibre materials need to match very strict requirements in order to ensure compatibility with the converting machines and specific product requirements of the end application (e.g. porosity, thickness, flexibility, compliance with regulatory standards).
- (12) Concerning supply-side substitutability, the notifying party submits that switching production from wet laid fibre material for one application to wet laid fibre material for another application does not usually

require a significant investment. This was not confirmed in the Commission's market investigation. Some inclined wire paper machines are to a certain extent flexible in their use. However, most inclined wire paper machines are designed with a particular use in mind. Therefore those machines are optimized for the production of a particular type of wet laid fibre material. As a consequence hereof generally only those inclined wire paper machines are capable of producing wet laid fibre materials for tea and coffee production, which have been designed for this purpose.

- (13) Even on inclined wire machines that are capable of producing wet laid fibre materials for tea and coffee filtration but are currently not producing it, significant investments need to be made in order to be able to produce wet laid fibre materials for tea and coffee filtration. Modifying an inclined wire machine would also take a considerable time.
- (14) Greenfield entry would need an even bigger investment and considerably longer lead time. Apart from the considerable investment for a new inclined wire machine, it would require the setup of a sales, technical support and distribution network. The market investigation also shows that wet laid fibre material for tea and coffee filtration needs to be certified in most countries before it is marketed and customers need to qualify the material on their machines.
- (15) The decision therefore concludes that the relevant product market comprises wet laid fibre material for tea and coffee filtration.

Wet laid fibre material for battery pasting paper

- (16) On the market segment of wet laid fibre material for battery pastings, the Commission's investigation has shown that there is a certain degree of supply-side substitutability. As wet laid fibre material for battery pasting paper does not require the food contact standard, the number of inclined wire paper machines capable of producing wet laid fibre material for battery pastings is not limited to the machines that are used for, e.g. tea and coffee filtration or sausage casings. Most of the machines capable of producing tea and coffee filtration types of wet laid fibre material are, however, able to produce battery pasting paper. The market investigation shows that wet laid fibre material for battery pastings is furthermore produced on machines which, amongst other uses, produce wet laid fibre material for vacuum cleaner bags, adhesive tapes and sausage casings.

- (17) The decision left the exact product market definition open as even on the basis of the narrowest delineation of a relevant product market, namely, wet laid fibre materials for battery pasting paper the transaction will not lead to a significant impediment of competition.

V. THE RELEVANT GEOGRAPHIC MARKETS

- (18) The notifying parties submitted that the relevant geographic markets are global.

Wet laid fibre material for tea and coffee filtration

- (19) The Commission's market investigation confirmed that the geographic market for wet laid fibre materials for tea and coffee filtration is global. This is due to world-wide trading patterns and the absence of prohibitive transport costs. Moreover, new capacity (the ZPM machine) has emerged in China, which could constrain the incumbents, who are mostly producing in the EEA. Suppliers of wet laid fibre materials for tea and coffee filtration and most of the customers who have world-wide activities also corroborate these findings.
- (20) The decision therefore concludes that the relevant geographic market for wet laid fibre material for tea and coffee filtration is global.

Wet laid fibre material for battery pasting paper

- (21) Even though customers indicated to procure and process wetlaid fibre material for battery pasting paper within the EEA, the market investigation confirmed that regulatory requirements are not perceived as a barrier to trading on a global level. Producers of battery pasting typically ship their product around the world. Furthermore, low transportation costs point in the direction of a world-wide market. The lack of technical assistance, a fear expressed by some customers to motivate their reluctance to imports, could be overcome by a local sales and technical support network.
- (22) The decision therefore concludes that the relevant geographic market for wet laid fibre material for battery pasting paper is global.

VI. ASSESSMENT

Wet laid fibre material for tea and coffee filtration

- (23) On the global market for wet laid fibre materials for tea and coffee filtration applications, the merged entity's share in sales amounted to approximately 60 to 70 % (Glatfelter 30 to 40 %, Lydney Business 20 to 30 %) in 2005. Before Crompton went into administration, there were three principal competitors active in the market (Glatfelter, Crompton and Ahlstrom). After implementation of the notified operation, there will also be three credible competitors (Glatfelter, Purico and Ahlstrom). Purico, in addition to acquiring Crompton's Simpson Clough and Devon Valley mills (along with the Crompton trademark) is also putting on-stream its new ZPM capacity in China, thus entering the market for wet laid fibre material for tea and coffee filtration more or less concomitantly with the notified transaction. Ahlstrom currently holds a global market share of approximately [10 to 30 %] and Purico holds currently a global market share of approximately [10 to 30 %].
- (24) The high market share and significant increment in capacity of the post acquisition entity are indications of market power. However, the party's ability to increase prices will be constrained by a number of competitors, in particular by Purico. By acquiring the Simpson Clough and Devon Valley plants, Purico has gained the position and advantages of an established supplier with respect to customers, including those active on a global level. The assets that Purico acquired from Crompton, together with its state of the art ZPM in China will give Purico a particularly good position to compete effectively with its ZPM production of wet laid fibre material for tea and coffee filtration. As confirmed in the market investigation, this machine constitutes a significant competitive constraint on European manufacturers, as it is at present capable of producing around 1-10 kt/per annum of products for the same industries as Simpson Clough, which is wet laid fibre material predominantly for tea and coffee filtration.
- (25) Furthermore, in case the notifying party increased prices or decreased output for wet laid fibre material for tea and coffee filtration, Ahlstrom could increase output. If Glatfelter increased the price significantly and profitability for wet laid fibre materials for tea and coffee filtration thus possibly increased for Ahlstrom, Ahlstrom could divert capacity or could invest in adding capacity by converting an existing machine or purchasing and converting a second hand machine. Ahlstrom has the know-how and technology in order to be able to convert and operate such a machine. Ahlstrom also has the distribution and sales network already in place.

- (26) Finally, other suppliers of wet laid fibre material with the capability of producing wet laid fibre material for tea and coffee filtration are also constraining Glatfelter. They currently do not all have the ability to produce double layer wet laid fibre materials and also seem to target smaller customers with lower quality standards than most of the bigger customers. However, when those suppliers have developed their wet laid fibre materials for coffee and tea filtration further they may also target bigger customers. Moreover, even without targeting the bigger customers they may be able to increase their sales volume, thereby taking away sales of other producers in tea and coffee filtration, leaving Glatfelter unable to increase its prices or restrict output.
- (27) The Commission has also found that some competitive pressure is exerted by alternative materials to wet laid fibre materials for tea and coffee filtration (e.g. spun bond and nylon). While these alternative materials are presently not expected to substitute wet laid fibre material to a significant extent, a portion of customer demand is likely to be redirected towards alternative materials in the future, freeing up additional capacity for wet laid fibre material for tea and coffee filtration and thus to some extent constraining the notifying party's ability to exercise market power and raise prices.
- (28) The decision therefore concludes that unilateral effects are unlikely because the party will be constrained in its ability to increase prices by a number of strong competitors and to a certain extent by alternative materials. With regard to co-ordinated effects, the decision also concludes that such effects are unlikely having carefully examined the market structure, the reaction of customers and the reaction of current and potential competitors.

Wet laid fibre material for battery pasting paper

- (29) The Commission's investigation indicates that the market segment for battery pasting paper is characterised by low demand with high potential supply from other wet laid fibre producers, a concentrated demand side and that the projected market share of the combined entity would be low. On that basis the Commission considers that this market is unlikely to suffer an anti-competitive impact from the proposed transaction.
- (30) On 6 December 2006, the 146th Advisory Committee on Concentrations gave a favourable opinion on the draft decision and gave approval to the adoption of the decision.

VII. CONCLUSION

- (31) The decision concludes that the proposed concentration will not significantly impede effective competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position. It therefore declares the concentration compatible with the common market and the EEA Agreement, in accordance with Articles 2(2) and Article 8(1) of the Merger Regulation, and Article 57 of the EEA Agreement. It is therefore concluded that the Commission, by oral procedure has: taken note of the opinion of the Advisory Committee of 6 December 2006; taken note of the final report of the Hearing Officer in this case; and adopted the attached decision in English, which is the authentic language.

COMMISSION DECISION

of 12 June 2007

allowing Member States to extend provisional authorisations granted for the new active substance
novaluron

(notified under document number C(2007) 2454)

(Text with EEA relevance)

(2007/404/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular the fourth subparagraph of Article 8(1) thereof,

Whereas:

- (1) In accordance with Article 6(2) of Directive 91/414/EEC, in March 2001 the United Kingdom received an application from Makhteshim Agan Ltd. for the inclusion of the active substance novaluron in Annex I to Directive 91/414/EEC. Commission Decision 2001/861/EC ⁽²⁾ confirmed that the dossier was complete and could be considered as satisfying, in principle, the data and information requirements of Annex II and Annex III to that Directive.
- (2) Confirmation of the completeness of the dossier was necessary in order to allow it to be examined in detail and to allow Member States the possibility of granting provisional authorisations, for periods of up to three years, for plant protection products containing the active substance concerned, while complying with the conditions laid down in Article 8(1) of Directive 91/414/EEC and, in particular, the condition relating to the detailed assessment of the active substance and the plant protection product in the light of the requirements laid down by that Directive.
- (3) For this active substance, the effects on human health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of Directive 91/414/EEC, for the uses proposed by the applicant. The rapporteur Member State submitted the draft assessment report to the Commission on 19 September 2005.
- (4) Following submission of the draft assessment report by the rapporteur Member State, it has been found to be necessary to request further information from the

applicant and to have the rapporteur Member State examine that information and submit its assessment. Therefore, the examination of the dossier is still ongoing and it will not be possible to complete the evaluation within the timeframe provided for in Directive 91/414/EEC.

- (5) As the evaluation so far has not identified any reason for immediate concern, Member States should be given the possibility of prolonging provisional authorisations granted for plant protection products containing the active substance concerned for a period of 24 months in accordance with the provisions of Article 8 of Directive 91/414/EEC so as to enable the examination of the dossier to continue. It is expected that the evaluation and decision-making process with respect to a decision on possible Annex I inclusion for novaluron will have been completed within 24 months.
- (6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Member States may extend provisional authorisations for plant protection products containing novaluron for a period not exceeding 24 months from the date of adoption of this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 12 June 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

⁽¹⁾ OJ L 230, 19.8.1991, p. 1. Directive as last amended by Commission Directive 2007/31/EC (OJ L 140, 1.6.2007, p. 44).

⁽²⁾ OJ L 321, 6.12.2001, p. 34.

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2007/405/CFSP

of 12 June 2007

on the European Union police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 and Article 25, third paragraph, thereof,

Whereas:

- (1) Further to an official invitation from the Government of the Democratic Republic of the Congo (DRC), on 9 December 2004 the Council adopted Joint Action 2004/847/CFSP on the European Union Police Mission in Kinshasa (DRC) regarding the Integrated Police Unit (EUPOL 'Kinshasa')⁽¹⁾, as provided for in the Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo, signed in Pretoria on 17 December 2002, and the Memorandum on the Army and Security of 29 June 2003.
- (2) Following the promulgation on 18 February 2006 of the Constitution of the Democratic Republic of the Congo, the elections held in the DRC in 2006 marked the end of the transition process and enabled a government to be formed in 2007. Its programme provides in particular for a comprehensive reform of the security sector (SSR), the drawing up of a national plan, and priority reforms in the police, armed forces and judicial sectors.
- (3) The United Nations has reaffirmed its support for the reform of the security sector in several Security Council resolutions, and is conducting the MONUC operation in

the DRC which is contributing to the security and stability of the country. On 15 May 2007, the United Nations Security Council adopted Resolution 1756 (2007) extending MONUC's mandate and allowing it, in close cooperation with other international partners including the European Union, to contribute to efforts to support the government in the initial process of planning security sector reform.

- (4) The European Union has consistently shown its support for the transition process in the DRC and for the reform of the security sector, including by the organisation of three operations under the Common Foreign and Security Policy (CFSP): EUSEC RD Congo⁽²⁾, EUPOL Kinshasa and Operation EUFOR RD Congo⁽³⁾.
- (5) As it is aware of the benefits to be gained from adopting a comprehensive approach combining the different initiatives underway, the EU indicated in the conclusions adopted by the Council on 15 September 2006 that it was prepared to assume a coordinating role in international efforts in the security sector, in close cooperation with the United Nations, to support the Congolese authorities in this field.
- (6) In this context, the General Secretariat of the Council and staff of the Commission carried out two evaluation missions in the DRC, in cooperation with the Congolese authorities, in October 2006 and March 2007, to develop an overall EU approach to security sector reform.

⁽¹⁾ OJ L 367, 14.12.2004, p. 30. Joint Action as last amended by Joint Action 2006/913/CFSP (OJ L 346, 9.12.2006, p. 67).

⁽²⁾ Council Joint Action 2005/355/CFSP of 2 May 2005 on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC) (OJ L 112, 3.5.2005, p. 20). Joint Action as last amended by Joint Action 2007/192/CFSP (OJ L 87, 28.3.2007, p. 22).

⁽³⁾ Council Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process. (OJ L 116, 29.4.2006, p. 98). Joint Action repealed by Joint Action 2007/147/CFSP (OJ L 64, 2.3.2007, p. 44).

- (7) On 7 December 2006 the Council adopted Joint Action 2006/913/CFSP amending and extending Joint Action 2004/847/CFSP. The new mandate, which runs until 30 June 2007, also enabled EUPOL 'Kinshasa' to increase its advisory role with the Congolese police in order to facilitate, in liaison with the EUSEC RD Congo mission, the process of security sector reform in the DRC.
- (8) On 14 May 2007, the Council approved an operations concept relating to a police mission conducted under the European Security and Defence Policy on security sector reform (SSR) and its interface with the justice system in the Democratic Republic of the Congo. The concept provides in particular that there should be no break in continuity when the activities of EUPOL Kinshasa cease and those of EUPOL RD Congo commence.
- (9) On the same date, 14 May 2007, the Council approved a revised general concept on continuation of the mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo, EUSEC RD Congo.
- (10) Synergies between the two missions, EUSEC RD Congo and EUPOL RD Congo, should be promoted taking into account equally the prospect that the two missions may eventually become a single mission.
- (11) To increase the consistency of the EU's activities in the DRC, the closest possible coordination between the various EU players should be ensured in Kinshasa as well as in Brussels, in particular through appropriate arrangements. The European Union Special Representative (EUSR) for the African Great Lakes Region should have a key role to play in this respect, taking account of his mandate.
- (12) On 15 February 2007 the Council adopted Joint Action 2007/112/CFSP⁽¹⁾ appointing Mr Roeland VAN DE GEER as the new EUSR for the African Great Lakes Region.
- (13) On 11 May 2007 the Secretary-General/High Representative (SG/HR) sent a letter to the Congolese authorities to inform them of the EU's willingness to continue and increase its current commitment in the field of security sector reform and to obtain their formal consent. In a letter dated 2 June 2007, the Congolese authorities formally accepted the EU's offer and invited it to organise a mission to that effect.
- (14) Third States should participate in the project in accordance with the general guidelines defined by the European Council.

- (15) The mandate of the mission is being carried out in a security context that is liable to deteriorate and to undermine the objectives of the Common Foreign and Security Policy (CFSP) as defined in Article 11 of the Treaty,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. The European Union is conducting a mission to provide advice and assistance for security sector reform (SSR) in the Democratic Republic of the Congo (DRC), called EUPOL RD Congo, with the aim of contributing to Congolese efforts to reform and restructure the National Congolese Police (PNC) and its interaction with the judicial system. The mission must provide advice and assistance directly to the responsible Congolese authorities and through the police reform monitoring committee (CSRP) and the joint committee on justice, while taking care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law.

2. The mission shall operate in accordance with the provisions contained in the mission statement set out in Article 2.

Article 2

Mission Statement

1. The mission will support SSR in the field of policing and its interface with the justice system. By means of monitoring, mentoring and advisory action with emphasis on the strategic dimension, EUPOL RD Congo shall:

- contribute to the reform and restructuring of the Congolese National Police (PNC) through support for the setting up of a viable, professional and multiethnic/integrated police force, which takes account of the importance of proximity policing throughout the whole country with the direct involvement of the Congolese authorities in that process,
- contribute to improving interaction between the police and the criminal justice system in the broader sense,
- contribute to ensuring the consistency of all SSR efforts,
- operate in close interaction with EUSEC RD Congo and the projects of the Commission, and coordinate its action with the other international efforts in the field of reform of the police and the criminal justice system.

⁽¹⁾ OJ L 46, 16.2.2007, p. 79.

2. EUPOL RD Congo shall be a mission without executive powers. It shall accomplish its tasks through, *inter alia*, mentoring, monitoring and advisory duties.

3. The mission shall advise the Member States and third States and shall coordinate and facilitate, under their responsibility, the implementation of their projects in fields which are of interest to the mission and in furtherance of its objectives.

Article 3

Structure of the mission and deployment zone

1. The mission shall have headquarters (HQ) in Kinshasa consisting of:

- (a) the Head of Mission;
- (b) a team of police advisers at strategic level;
- (c) a team of police advisers at operational level;
- (d) a team of legal advisers at strategic and operational level;
- (e) administrative support.

2. The operational breakdown of tasks will be as follows:

- (a) experts forming an integral part of the various working parties on police reform, and advisers assigned to the key organisational and decision-making posts of the Police Reform Monitoring Committee (CSRP) planned by the Congolese authorities;
- (b) experts assigned to the Congolese National Police (PNC), particularly in key posts, and assigned to mentor the criminal police and the police responsible for the maintenance of law and order;
- (c) justice interface in the field of criminal law in order to add to activities in the police field an interface with criminal justice and follow up important aspects of reform of criminal justice, including in the case of military criminal law;
- (d) expertise aimed at contributing to the horizontal aspects of SSR.

3. The deployment zone shall be Kinshasa. Given the geographical implications of the mission throughout the territory of the DRC, as a result of the mission statement, movement of experts and their presence in the provinces could prove necessary, on the instructions of the Head of Mission or of any person so authorised by the Head of Mission and taking due account of the security situation.

Article 4

Planning

The Head of Mission shall draw up the Operational Plan (OPLAN) for the mission so that it may be submitted for approval by the Council. The Head of Mission shall be assisted in this task by the General Secretariat of the Council.

Article 5

Head of Mission

1. Superintendent Adílio Ruivo Custódio shall be appointed Head of Mission.

2. The Head of Mission shall exercise operational control over and assume day-to-day management of the EUPOL RD mission.

3. The national authorities shall delegate operational control to the Head of Mission of EUPOL RD Congo.

4. The Head of Mission shall be responsible for disciplinary control of the staff. In the case of seconded staff, any disciplinary action shall be taken by the national or European authority concerned.

5. In order to execute the budget for the mission, the Head of Mission shall sign a contract with the Commission.

6. The Head of Mission shall collaborate closely with the EUSR.

7. The Head of Mission shall ensure that EUPOL RD Congo closely coordinates its action with the Government of the DRC, the United Nations, via the MONUC mission, and the third States involved in the SSR field (aspects of the police/justice interface).

8. The Head of Mission shall ensure that the mission has a sufficiently high profile.

Article 6

Staff

1. Mission experts shall be seconded by Member States and by the EU institutions. Each Member State or institution shall bear the costs relating to the seconded experts, including travel expenses to and from the DRC, salaries, medical coverage and allowances, other than per diems and allowances linked to risks and living conditions.

2. International civilian staff and local staff shall be recruited on a contractual basis by the mission as required.

3. Mission experts shall remain under the authority of their Member State or the appropriate EU institution, and shall fulfil their duties and act in the interest of the mission. Both during and after the mission, mission experts shall exercise the greatest discretion with regard to all facts and information relating to the mission.

Article 7

Chain of command

1. The mission, as a crisis-management operation, shall have a unified chain of command.
2. The Political and Security Committee (PSC) shall exercise political control and strategic direction.
3. The SG/HR shall give guidance to the Head of Mission through the EUSR.
4. The Head of Mission shall lead the mission and assume its day-to-day management.
5. The Head of Mission shall report to the SG/HR through the EUSR.
6. The EUSR shall report to the Council through the SG/HR.

Article 8

Political control and strategic direction

1. Under the responsibility of the Council, the PSC shall exercise the political control and strategic direction of the mission. The Council authorises the PSC to take the relevant decisions in accordance with Article 25 of the Treaty. This authorisation shall include the power to amend the Operational Plan (OPLAN). It shall also include powers to take decisions regarding the appointment of the Head of Mission. The power of decision with respect to the objectives and termination of the mission shall remain vested in the Council, assisted by the SG/HR.
2. The PSC shall report to the Council at regular intervals.
3. The PSC shall receive, at regular intervals, reports by the Head of Mission. The PSC may invite the Head of Mission to its meetings as appropriate.

Article 9

Financial arrangements

1. The financial reference amount to cover expenditure relating to the mission shall be EUR 5 500 000.
2. As regards expenditure financed out of the amount stipulated in paragraph 1, the following shall apply:
 - (a) expenditure shall be managed in accordance with the Community rules and procedures applicable to the budget, with the exception that any pre-financing shall not remain the property of the Community. Nationals of third States shall be allowed to tender for contracts;
 - (b) the Head of Mission shall report fully to, and be supervised by, the Commission regarding the activities undertaken in the framework of his contract.
3. The financial arrangements shall respect the operational requirements of the mission, including compatibility of equipment.
4. The expenditure connected with the mission shall be eligible as from the entry into force of this Joint Action.

Article 10

Participation by third States

1. Without prejudice to the decision-making autonomy of the EU and its single institutional framework, third States may be invited to contribute to the mission, provided that they bear the cost of the staff seconded by them, including salaries, all-risks insurance cover, daily subsistence allowances and travel expenses to and from the DRC, and that they contribute to the running costs of the mission, as appropriate.
2. Third States contributing to the mission shall have the same rights and obligations in terms of day-to-day management of the project as EU Member States.
3. The Council hereby authorises the PSC to take the relevant decisions on acceptance of the contributions proposed and to establish a Committee of Contributors.
4. Detailed arrangements regarding the participation of third States shall be covered by agreements concluded in accordance with the procedure laid down in Article 24 of the Treaty. The Secretary General/High Representative, who shall assist the Presidency, may negotiate such arrangements on the latter's behalf. Where the EU and a third State have concluded an agreement establishing a framework for the third State's participation in EU crisis-management operations, the provisions of that agreement shall apply in the context of the mission.

*Article 11***Coordination**

1. The Council and the Commission shall each, in accordance with their respective powers, ensure that this Joint Action is consistent with the Community's external activities, in accordance with the second paragraph of Article 3 of the Treaty. The Council and the Commission shall cooperate to this end. Arrangements for coordinating EU activities in the DRC shall be put in place in Kinshasa, as well as in Brussels.

2. Without prejudice to the chain of command, the Head of Mission shall act in close coordination with the Commission delegation.

3. Without prejudice to the chain of command, the Head of Mission EUSEC RD Congo and the Head of Mission EUPOL RD Congo shall closely coordinate their actions and shall seek synergies between the two missions, particularly as regards the horizontal aspects of security-sector reform in the DRC.

4. In accordance with his mandate, the EUSR shall ensure consistency between the actions undertaken by the EUPOL RD Congo mission and the EUSEC RD Congo mission. He shall contribute to coordination with the other international players involved in security-sector reform in the DRC.

5. The Head of Mission shall cooperate with the other international players present, in particular MONUC and the third States involved in the DRC.

*Article 12***Release of classified information**

1. The Secretary-General/High Representative shall be authorised to release to the third States associated with the present Joint Action any European Union classified information and documents up to the 'EU CONFIDENTIAL' level which are generated for the purposes of the operation, in accordance with the Council's security regulations ⁽¹⁾.

2. The Secretary-General/High Representative shall also be authorised to release to the United Nations, in accordance with the operational needs of the mission, any European Union information and documents up to the 'EU RESTRICTED' level which are generated for the purposes of the operation, in accordance with the Council's security regulations. Local arrangements will be made to that end.

⁽¹⁾ Decision 2001/264/EC(OJ L 101, 11.4.2001, p. 1). Decision as last amended by Decision 2005/952/EC (OJ L 346, 29.12.2005, p. 18).

3. In the case of precise and immediate operational need, the Secretary-General/High Representative shall also be authorised to release to the host State any European Union information and documents up to the 'EU RESTRICTED' level which are generated for the purposes of the operation, in accordance with the Council's security regulations. In all other cases, such information and documents will be released to the host State in accordance with the appropriate procedures for cooperation by the host State with the European Union.

4. The Secretary-General/High Representative shall be authorised to release to the third States associated with the present Joint Action any European Union non-classified documents connected with the deliberations of the Council relating to the operation and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽²⁾.

*Article 13***Status of the mission and of its staff**

1. The status of mission staff, including where appropriate the privileges, immunities and any further guarantees necessary for the completion and smooth functioning of the mission, shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty on European Union. The SG/HR, who shall assist the Presidency, may negotiate such arrangements on its behalf.

2. The State or Community institution having seconded a staff member shall be responsible for dealing with any complaints linked to the secondment, from or concerning the staff member. The State or Community institution in question shall be responsible for bringing any action against the person seconded.

*Article 14***Security**

1. The Head of Mission shall be responsible for the security of EUPOL RD Congo.

2. The Head of Mission shall exercise that responsibility in accordance with EU directives concerning the security of EU staff deployed outside the territory of the EU in an operational mission under Title V of the Treaty and the relevant documents.

⁽²⁾ Decision 2006/683/EC, Euratom (OJ L 285, 16.10.2006, p. 47). Decision as last amended by Decision 2007/4/EC, Euratom (OJ L 1, 4.1.2007, p. 9).

3. Appropriate training in security measures will be carried out for all staff in accordance with the OPLAN. A reminder of the security regulations will be provided regularly by the EUPOL RD Congo officer in charge of security.

Article 15

Review of the mission

The Political and Security Committee shall, on the basis of a report by the General Secretariat of the Council, presented at the latest in March 2008, agree recommendations to the Council for a decision to be taken as to whether the two missions, namely EUSEC RD Congo and EUPOL RD Congo, should become a single mission.

Article 16

Entry into force and duration

This Joint Action shall enter into force on 1 July 2007.

It shall apply until 30 June 2008.

Article 17

Publication

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

Done at Luxembourg, 12 June 2007.

For the Council

The President

W. SCHÄUBLE

COUNCIL JOINT ACTION 2007/406/CFSP**of 12 June 2007****on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (EUSEC RD Congo)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14, Article 25, third paragraph, and Article 28(3), first subparagraph thereof,

Whereas:

- (1) Further to an official invitation from the Government of the Democratic Republic of the Congo (DRC), on 2 May 2005 the Council adopted Joint Action 2005/355/CFSP on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC) ⁽¹⁾ (EUSEC RD Congo), in particular in order to support the transition process in the DRC, including the formation of a restructured and integrated national army, as established by the Global and Inclusive Agreement signed by the Congolese parties in Pretoria on 17 December 2002, followed by the Final Act signed in Sun City on 2 April 2003.
- (2) Following the ratification in 2005 of the Constitution of the Third Republic of the Congo, the elections held in the DRC in 2006 marked the end of the transition process and enabled a government to be formed in 2007, which has adopted a programme providing in particular for the comprehensive reform of the security sector, the drawing up of a national plan, and priority reforms in the police, armed forces and judicial sectors.
- (3) The United Nations has reaffirmed its support for the transition process and the reform of the security sector (SSR) by means of several Security Council resolutions, and is conducting the United Nations Mission in the Democratic Republic of the Congo (MONUC), which is contributing to the security and stability of the country. On 15 May 2007, the United Nations Security Council adopted Resolution 1756 (2007) extending MONUC's mandate and allowing it, in close coordination with other international partners, and especially the European Union (EU), to contribute to efforts to support the government in the initial process of planning security sector reform.
- (4) The European Union has consistently shown its support for the transition process in the DRC and for the reform of the security sector, including by the adoption of two other Joint Actions: Joint Action 2004/847/CFSP of

9 December 2004 on the European Union Police Mission in Kinshasa (DRC) regarding the Integrated Police Unit (EUPOL Kinshasa) ⁽²⁾ and Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process ⁽³⁾ (Operation EUFOR RD Congo).

- (5) As it is aware of the benefits to be gained from a comprehensive approach combining the different initiatives underway, the EU indicated in the conclusions adopted by the Council on 15 September 2006 that it was prepared to assume a coordinating role in international efforts in the security sector, in close cooperation with the United Nations, to support the Congolese authorities in this field.
- (6) On 14 May 2007, the Council approved a revised General Concept on continuation of the mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo.
- (7) On 14 May 2007, the Council approved an operations concept relating to a police mission conducted under the European Security and Defence Policy on security sector reform (SSR) and its interface with justice in the Democratic Republic of the Congo, referred to as EUPOL RD Congo. On 12 June 2007 the Council adopted the Council Joint Action on the police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (DRC) (EUPOL RD Congo). That mission will replace EUPOL Kinshasa.
- (8) The synergies between the two missions EUPOL RD Congo and EUSEC RD Congo should be promoted, taking into account also the prospect that the two missions may eventually become a single mission.
- (9) In order to increase the consistency of the EU's activities in the DRC, the closest possible coordination between the various EU players should be ensured in Kinshasa as well as in Brussels, through appropriate arrangements. The European Union Special Representative (EUSR) for the African Great Lakes Region will have an important role to play in this respect, taking account of his mandate.

⁽¹⁾ OJ L 112, 3.5.2005, p. 20. Joint Action as last amended by Joint Action 2007/192/CFSP (OJ L 87, 28.3.2007, p. 22).

⁽²⁾ OJ L 367, 14.12.2004, p. 30. Joint Action as last amended by Joint Action 2006/913/CFSP (OJ L 346, 9.12.2006, p. 67).

⁽³⁾ OJ L 116, 29.4.2006, p. 98. Joint Action repealed by Joint Action 2007/147/CFSP (OJ L 64, 2.3.2007, p. 44).

- (10) On 15 February 2007 the Council adopted Joint Action 2007/112/CFSP⁽¹⁾ appointing Mr Roeland VAN DE GEER as the new EUSR for the African Great Lakes Region.
- (11) The Secretary-General/High Representative for Common Foreign and Security Policy (SG/HR) sent a letter to the DRC government dated 11 May 2007 stating the European Union's renewed commitment.
- (12) Joint Action 2005/355/CFSP has been amended several times in order to boost the mission, most notably by Joint Action 2005/868/CFSP with regard to setting up a technical assistance project on the modernisation of the chain of payments of the Ministry of Defence in the DRC and by Joint Action 2007/192/CFSP on the establishment of a unit responsible for specific projects financed or implemented by the Member States and advisers at provincial military administration level. The mission's mandate runs until 30 June 2007 and should be extended and revised in the light of the revised concept for the mission.
- (13) For the sake of clarity, the said Joint Action and the successive amendments thereto should be replaced by a new Joint Action.
- (14) Third States should participate in the project in accordance with the general guidelines defined by the European Council.
- (15) The current security situation in the DRC may deteriorate, with potentially serious repercussions for the process of strengthening democracy, the rule of law and international and regional security. A continued commitment of EU political effort and resources will help to embed stability in the region,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. The European Union (EU) is conducting a mission to provide advice and assistance for security sector reform (SSR) in the Democratic Republic of the Congo (DRC), named 'EUSEC RD Congo', with the aim of contributing to completing the integration of the various armed factions in the Democratic Republic of the Congo, and of contributing to Congolese efforts to restructure and rebuild the Congolese army. The mission must provide advice and assistance directly to the responsible Congolese authorities or by means of concrete projects, while taking care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law.

⁽¹⁾ OJ L 46, 16.2.2007, p. 79.

2. The mission shall operate in accordance with the mission statement set out in Article 2.

Article 2

Mission statement

The mission shall aim, in close cooperation and coordination with the other actors in the international community, in particular the United Nations, and in pursuit of the objectives laid down in Article 1, to provide practical support in the field of reform of the security sector in the DRC, as set out in the revised General Concept, including:

- (a) providing advice and assistance to the Congolese authorities in their work to integrate, restructure and rebuild the Congolese army, particularly by:
- contributing to the development of various national plans and policies, including work on horizontal issues which cover all the areas involved in the reform of the security sector in the DRC,
 - providing support for the committees and bodies involved in that work, and contributing to the definition of the priorities and practical needs of the Congolese;
- (b) running and bringing to completion the technical assistance project on the modernisation of the chain of payments of the Ministry of Defence of the DRC, hereinafter referred to as the 'chain of payments project', so as to carry out the tasks specified in the General Concept for the project;
- (c) identifying and contributing to the development of various projects and options that the European Union or its Member States may decide to support relating to the reform of the security sector;
- (d) supervising specific projects financed or initiated by the Member States in pursuit of the objectives of the mission and overseeing their implementation, in coordination with the Commission;

and

- (e) contributing to ensuring that all efforts made as regards SSR are consistent.

Article 3

Structure of the mission

The mission shall be structured as follows:

- (a) an office in Kinshasa, composed of:
- the mission leadership,
 - experts assigned to a team responsible for contributing to the reform of the security sector conducted by the Congolese administration at inter-ministerial level, and

- experts assigned to a unit responsible in particular for identifying and supporting the specific projects financed or implemented by the Member States;
- (b) advisers assigned to key posts at the Ministry of Defence's central administration in Kinshasa and to the provincial administrations coming under that Ministry;
- (c) a team responsible for the chain of payments project comprising:
- a project leader, based in Kinshasa, appointed by, and acting under the authority of, the Head of Mission,
 - an 'advice, expertise and implementation' division, based in Kinshasa, composed of staff not attached to the general staff of the integrated brigades and including a mobile team of experts involved in checks on the military personnel of the integrated brigades, and
 - experts assigned to the general staff of the integrated brigades.

Article 4

Implementation plan

The Head of Mission, assisted by the General Secretariat of the Council, shall draw up a revised implementation plan (OPLAN) for the mission for approval by the Council.

Article 5

Head of Mission

1. General Pierre Michel JOANA shall be appointed Head of Mission. He shall assume day-to-day management of the mission and shall be responsible for staff and disciplinary matters.
2. In implementing the mission statement as set out in Article 2(d), the Head of Mission shall be authorised to have recourse to financial contributions from the Member States. To that end, the Head of Mission shall enter into arrangements with the Member States concerned. These arrangements shall in particular cover the specific procedures for dealing with any complaint from third parties concerning damage caused as a result of acts or omissions by the Head of Mission in the use of the funds provided by the contributing Member States.

Under no circumstances may the European Union or the Secretary-General/High Representative (SG/HR) be held liable by contributing Member States as a result of acts or omissions by the Head of Mission in the use of funds from those States.

3. The Head of Mission shall sign a contract with the European Commission to execute the budget for the mission.
4. The Head of Mission shall cooperate closely with the EUSR.

Article 6

Staff

1. Mission experts shall be seconded by Member States and by the EU institutions. Except for the Head of Mission, each Member State or institution shall bear the costs relating to the experts seconded, including travel expenses to and from the DRC, salaries, medical coverage and allowances other than daily allowances.
2. International civilian staff and local staff shall be recruited on a contractual basis by the mission as required.
3. All mission experts shall remain under the authority of the appropriate Member State or EU institution, and shall fulfil their duties and act in the interest of the mission. Both during and after the mission, mission experts shall exercise the greatest discretion with regard to all facts and information relating to the mission.

Article 7

Chain of command

1. The mission shall have a unified chain of command.
2. The Political and Security Committee (PSC) shall exercise political control and strategic direction.
3. The SG/HR shall give guidance to the Head of Mission through the EUSR.
4. The Head of Mission shall lead the mission and assume its day-to-day management.
5. The Head of Mission shall report to the SG/HR through the EUSR.
6. The EUSR shall report to the Council through the SG/HR.

Article 8

Political control and strategic direction

1. Under the responsibility of the Council, the PSC shall exercise the political control and strategic direction of the mission. The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 25 of the Treaty. This authorisation shall include the power to amend the implementation plan and the chain of command. It shall also include powers to take subsequent decisions regarding the appointment of the Head of Mission. The power of decision with respect to the objectives and termination of the mission shall remain vested in the Council, assisted by the SG/HR.

2. The EUSR shall provide the Head of Mission with the political guidance required to fulfil his duties at local level.

3. The PSC shall report to the Council at regular intervals.

4. The PSC shall receive, at regular intervals, reports by the Head of Mission. The PSC may invite the Head of Mission to its meetings as appropriate.

Article 9

Financial arrangements

1. The financial reference amount to cover expenditure relating to the mission shall be EUR 9 700 000.

2. As regards expenditure financed out of the amount stipulated in paragraph 1, the following shall apply:

(a) expenditure shall be managed in accordance with the Community rules and procedures applicable to the budget, with the exception that any pre-financing shall not remain the property of the Community. Nationals of third States shall be allowed to tender for contracts;

(b) the Head of Mission shall report fully to, and be supervised by, the Commission regarding the activities undertaken in the framework of his contract.

3. The financial arrangements shall respect the operational requirements of the mission, including compatibility of equipment.

4. The expenditure connected with the mission shall be eligible as from the entry into force of this Joint Action.

Article 10

Participation by third States

1. Without prejudice to the decision-making autonomy of the EU and its single institutional framework, third States may be invited to contribute to the mission, provided that they bear the cost of the staff seconded by them, including salaries, all risks insurance cover, daily allowances and travel expenses to and from the DRC, and that they contribute to the running costs of the mission, as appropriate.

2. Third States contributing to the mission shall have the same rights and obligations in terms of day-to-day management of the mission as Member States.

3. The Council hereby authorises the PSC to take the relevant decisions on acceptance of the contributions proposed and to establish a Committee of Contributors.

4. Detailed arrangements regarding the participation of third States shall be covered by agreements concluded in accordance with the procedure laid down in Article 24 of the Treaty. The Secretary General/High Representative, who shall assist the Presidency, may negotiate such arrangements on the latter's behalf. Where the EU and a third State have concluded an agreement establishing a framework for the third State's participation in EU crisis-management operations, the provisions of that agreement shall apply in the context of the mission.

Article 11

Consistency and coordination

1. The Council and the Commission shall each, in accordance with their respective powers, ensure that this Joint Action is consistent with the Community's external activities, in accordance with the second paragraph of Article 3 of the Treaty. The Council and the Commission shall cooperate to this end. Arrangements for the coordination of the EU's activities in the DRC shall be established in Kinshasa as well as in Brussels.

2. Without prejudice to the chain of command, the Head of Mission shall also act in close coordination with the Commission delegation.

3. Without prejudice to the chain of command, the Head of the EUSEC RD Congo mission and the Head of the EUPOL RD Congo mission shall coordinate their activities closely and shall seek synergies between the two missions, particularly as regards the horizontal aspects of security sector reform in the DRC, and as regards the sharing of functions between the two missions.

4. In accordance with his mandate, the EUSR shall ensure consistency between the activities of the EUSEC and EUPOL missions. He shall contribute to coordination with the other international players involved in security sector reform in the DRC.

5. The Head of Mission shall cooperate with the other international players present, in particular MONUC and the third States involved in the DRC.

Article 12

Release of classified information

1. The Secretary-General/High Representative shall be authorised to release to third States associated with this Joint Action EU classified information and documents up to the level 'CONFIDENTIEL UE' generated for the purposes of the operation, in accordance with the Council's security regulations ⁽¹⁾.

⁽¹⁾ Decision 2001/264/EC (OJ L 101, 11.4.2001, p. 1). Decision as last amended by Decision 2005/952/EC (OJ L 346, 29.12.2005, p. 18).

2. The Secretary-General/High Representative shall be authorised further to release to the United Nations, in accordance with the operational needs of the operation, EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the operation, in accordance with the Council's security regulations. Local arrangements shall be drawn up for this purpose.

3. In the event of a specific and immediate operational need, the Secretary-General/High Representative shall also be authorised to release to the host State EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the operation, in accordance with the Council's security regulations. In all other cases, such information and documents shall be released to the host State in accordance with procedures appropriate to the host State's level of cooperation with the European Union.

4. The Secretary-General/High Representative shall be authorised to release to third States associated with this Joint Action EU non-classified documents relating to the deliberations of the Council with regard to the operation and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽¹⁾.

Article 13

Status of the mission and of its staff

1. The status of mission staff, including where appropriate the privileges, immunities and any further guarantees necessary for the completion and smooth functioning of the mission, shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty. The SG/HR, who shall assist the Presidency, may negotiate such arrangements on its behalf.

2. The State or Community institution having seconded a staff member shall be responsible for dealing with any complaints linked to the secondment, from or concerning the staff member. The State or Community institution in question shall be responsible for bringing any action against the person seconded.

Article 14

Security

1. The Head of Mission shall be responsible for the security of EUSEC RD Congo.

2. The Head of Mission shall exercise this responsibility in accordance with EU directives on the security of staff deployed outside EU territory in an operational mission under Title V of the Treaty and related documents.

3. Appropriate training on security measures shall be provided for all staff, in accordance with the implementation plan (OPLAN). A reminder of security instructions shall be given regularly by the EUSEC RD Congo officer in charge of security.

Article 15

Review of the mission

The Political and Security Committee shall, on the basis of a report by the General Secretariat of the Council presented at the latest in March 2008, approve recommendations to the Council for a decision to be taken as to whether the two missions, namely EUSEC RD Congo and EUPOL RD Congo, should become a single mission.

Article 16

Entry into force and duration

This Joint Action shall enter into force on 1 July 2007.

It shall apply until 30 June 2008.

Article 17

Publication

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

Done at Luxembourg, 12 June 2007.

For the Council

The President

W. SCHÄUBLE

⁽¹⁾ Decision 2006/683/EC, Euratom (OJ L 285, 16.10.2006, p. 47).
Decision as amended by Decision 2007/4/EC, Euratom (OJ L 1, 4.1.2007, p. 9).