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[1] Text with EEA relevance

(Continued overleaf)

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EN

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

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

II *Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory*

DECISIONS

Council

Commission

EN

(Continued on inside back cover)

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 410/2009

of 19 May 2009

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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [2], and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 20 May 2009.

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

Done at Brussels, 19 May 2009.

For the Commission
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 350, 31.12.2007, p. 1.

ANNEX

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	JO	73,9
	MA	42,7
	MK	72,5
	TN	101,3
	TR	88,0
	ZZ	75,7
0707 00 05	EG	127,4
	MA	32,7
	TR	136,7
	ZZ	98,9
0709 90 70	TR	122,7
	ZZ	122,7
0805 10 20	EG	41,7
	IL	57,6
	MA	42,7
	TN	49,2
	TR	107,8
	US	49,3
	ZA	56,7
	ZZ	57,9
0805 50 10	AR	67,3
	TR	48,0
	ZA	53,8
	ZZ	56,4
0808 10 80	AR	98,0
	BR	73,4
	CL	82,5
	CN	90,9
	MK	42,0
	NZ	99,4
	US	124,4
	UY	71,7
	ZA	83,2
	ZZ	85,1

(1) Nomenclature of countries laid down 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 411/2009

of 18 May 2009

amending Regulation (EC) No 798/2008 laying down a list of third countries, territories, zones or compartments from which poultry and poultry products may be imported into and transit through the Community and the veterinary certification requirements

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs [1], and in particular Article 22(3) and Article 24(2),

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption [2], and in particular Article 9(2)(b) thereof,

Whereas:

(1) Commission Regulation (EC) No 798/2008 [3] lays down veterinary certification requirements for imports into, and transit through, the Community of poultry and certain poultry products. It provides that the commodities covered by that Regulation ('the commodities') are only to be imported into, and transit through, the Community from third countries, territories, zones or compartments which are free from disease and are listed in the table in Part 1 of Annex I thereto. In addition, model veterinary certificates are set out in Part 2 of that Annex. Regulation (EC) No 798/2008 also provides that where examination, sampling and testing for certain diseases are required for imports of the commodities, they are to be carried out in accordance with Annex III thereto.

(2) Article 7 of Regulation (EC) No 798/2008 provides that the commodities may only be imported into the Community where the third country informs the Commission of any initial outbreaks of Newcastle Disease or highly pathogenic avian influenza (HPAI) and submits virus isolates to the Community reference laboratory for avian influenza and Newcastle disease.

(3) Where an outbreak of avian influenza is detected on the territory of a third country, or a zone or compartment(s) thereof, the competent authority of that third country may no longer certify that its territory, zone or compartment(s) thereof, as listed in Part 1 of Annex I to Regulation (EC) No 798/2008, is free from that disease.

(4) In the interests of animal health and the prevention and monitoring of low pathogenic avian influenza (LPAI) at Community level, it is appropriate that initial outbreaks of that disease be reported to the Commission. Article 7 of Regulation (EC) 798/2008 should therefore be amended accordingly.

(5) Canada has demonstrated its capability to respond to outbreaks of LPAI in poultry holdings on its territory and to successfully prevent the spread of infection.

(6) Canada has also provided the Commission with detailed information on the epidemiological situation and the disease control measures taken by it, including a description of the areas placed under official restrictions in relation to outbreaks of LPAI.

(7) Council Decision 1999/201/EC of 14 December 1998 on the conclusion of the Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in live animals and animal products [4] approved that Agreement, which provides that each Party to it is to recognise a sanitary measure of the other Party as equivalent if the latter objectively demonstrates that its measure achieves the appropriate level of protection.

(8) In view of that Agreement and the disease control system put in place in Canada, it is appropriate to apply alternative certification provisions for day-old chicks and hatching eggs originating from areas outside those placed under official restrictions for LPAI. Accordingly, the model veterinary certificates for day-old chicks other than ratites and hatching eggs of poultry other than ratites should be amended to allow for alternative certification provisions for Canada in the case of future outbreaks of LPAI.

[1] OJ L 303, 31.10.1990, p. 6.
[2] OJ L 18, 23.1.2003, p. 11.
[3] OJ L 226, 23.8.2008, p. 1.
[4] OJ L 71, 18.3.1999, p. 1.

(9) The World Organisation for Animal Health (OIE) has recently issued recommendations on certain treatment procedures for the commodities for the inactivation of disease agents. The model veterinary certificate for egg products should therefore be amended in order to take account of those recommendations.

(10) Part 2 of Annex I to Regulation (EC) No 798/2008 should therefore be amended accordingly.

(11) In addition, the testing method for a *Salmonella* subspecies of animal health relevance should be amended to allow third countries to use laboratory methods as recommended by the OIE. Annex III to Regulation (EC) No 798/2008 should therefore be amended accordingly.

(12) In addition, a footnote should be corrected in the model veterinary certificate for transit/storage of specified pathogen-free eggs, meat, minced meat and mechanically separated meat of poultry, ratites and wild game-birds, eggs and egg products. Annex XI to Regulation (EC) No 798/2008 should therefore be amended accordingly.

(13) Furthermore, it is appropriate to provide for a transitional period to permit Member States and industry to take the necessary measures to comply with the applicable veterinary certification.

(14) Regulation (EC) No 798/2008 should therefore be amended accordingly.

(15) 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

Regulation (EC) No 798/2008 is amended as follows:

1. In Article 7, points (a) and (b) are replaced by the following:

'(a) informs the Commission of the disease situation within 24 hours of confirmation of any initial outbreaks of LPAI, HPAI or Newcastle disease;

(b) submits virus isolates from initial outbreaks of HPAI and Newcastle disease, without undue delay to the Community reference laboratory for avian influenza and Newcastle disease (*); such virus isolates shall not be required for imports of eggs, egg products and specified pathogen-free eggs from third countries, territories, zones or compartments from which the import of such commodities into the Community is authorised;

(*) Veterinary Laboratories Agency, New Haw, Weybridge, Surrey KT 153NB, United Kingdom.'

2. Annexes I, III and XI are amended in accordance with the Annex to this Regulation.

Article 2

Commodities in respect of which the relevant veterinary certificates have been issued in accordance with Regulation (EC) No 798/2008 before the amendments introduced by the present Regulation may still be imported or transit through the Community until 15 July 2009.

Article 3

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

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

Done at Brussels, 18 May 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

ANNEX

Annexes I, III and XI are amended as follows:

(1) In Annex I, Part 2 is amended as follows:

(a) The model veterinary certificate for day-old chicks other than of ratites (DOC) is replaced by the following:

'**Model veterinary certificate for day-old chicks other than of ratites (DOC)**

COUNTRY **Veterinary certificate to EU**

Part I: Details of dispatched consignment

I.1. Consignor
Name
Address
Tel. No

I.2. Certificate reference number | I.2.a

I.3. Central Competent Authority

I.4. Local Competent Authority

I.5. Consignee
Name
Address
Postal code
Tel. No

I.6.

I.7. Country of origin ISO code | I.8. Region of origin Code

I.9. Country of destination ISO code | I.10.

I.11. Place of origin
Name Approval number
Address
Name Approval number
Address
Name Approval number
Address

I.12.

I.13. Place of loading
Address Approval number

I.14. Date of departure time of departure

I.15. Means of transport
Aeroplane ☐ Ship ☐ Railway wagon ☐
Road vehicle ☐ Other ☐
Identification:
Documentary references:

I.16. Entry BIP in EU

I.17. No.(s) of CITES

I.18. Description of commodity

I.19. Commodity code (HS code)

I.20. Quantity

I.21.

I.22. Number of packages

I.23. Identification of container/seal number

I.24.

I.25. Commodities certified for:
Breeding ☐

I.26.

I.27. For import or admission into EU ☐

I.28. Identification of the commodities
Species (Scientific name) Breed/Category Quantity

COUNTRY **DOC (day-old chicks other than of ratites)**

Part II: Certification

II. Health information	II.a. Certificate reference number	II.b.

II.1. **Animal health attestation**

I, the undersigned official veterinarian, hereby certify that the day-old chicks ([1]) described in this certificate:

II.1.1 meet the provisions of Directive 90/539/EEC;

II.1.2 have been hatched on:

([2])([3]) *either* [the territory of code .....;]

([3])([4]) *or* [compartment(s) .....;]

where the flocks from which the hatching eggs come were imported into the country, territory, zone or compartment of origin, this took place in accordance with veterinary conditions at least as strict as the relevant requirements of Directive 90/539/EEC and any subsidiary Decisions;

II.1.3 come from:

([2])([3]) *either* [the territory of code .....;]

([3])([4]) *or* [compartment(s) .....;]

(a) which, at the date of issue of this certificate, was (were) free from Newcastle disease as defined in Regulation (EC) No 798/2008;

(b) where a surveillance programme for avian influenza according to Regulation (EC) No 798/2008 is carried out;

II.1.4 come from:

([2])([3]) *either* [the territory of code .....;]

([2])([3])([12]) *or* [the territory of code ....., excluding any area under official restrictions in relation to low pathogenic avian influenza as defined in Regulation (EC) No 798/2008;]

([3])([4]) *or* [compartment(s) .....;]

([3]) *either* [II.1.4.1 which, at the date of issue of this certificate was (were) free from highly pathogenic and low pathogenic avian influenza as defined in Regulation (EC) No 798/2008;]

([3]) *or* [II.1.4.1 which, at the date of issue of this certificate was (were) free from highly pathogenic avian influenza as defined in Regulation (EC) No 798/2008, and

([3]) *either* [(a) were derived from parent flocks which have been kept in an establishment in which avian influenza surveillance has been carried out with negative results within 21 days prior to the time of collection of eggs from which the day-old chicks were hatched;]

([3]) *or* [(a) were derived from parent flocks which have been kept in an establishment in which during the past 21 days prior to the collection of the eggs from which the day-old chicks were hatched a virus detection test with negative testing results for avian influenza has been carried out on a random sample of cloacal and tracheal/or oropharyngeal swabs taken from at least 60 poultry in the establishment or from all poultry if less than 60 are present in the establishment;]

(b) the day-old chicks come from an establishment:

— around which within a 1 km radius low pathogenic avian influenza has not been present within the last 30 days on any establishment;

— where there has been no epidemiological link to an establishment where avian influenza has been detected within the last 30 days;]

II.1.5 (a) have not been vaccinated against avian influenza;

(b) were derived from parent flocks which:

([3]) *either* [have not been vaccinated against avian influenza;]

([3]) *or* [have been vaccinated against avian influenza in accordance with a vaccination plan under Regulation (EC) No 798/2008 using:

.....

(name and type of used vaccine(s))

at the age of ..... weeks;]

II.	Health information	II.a. Certificate reference number	II.b.

II.1.6 have been hatched in the establishment(s) defined in Box I.11 of Part I officially approved in accordance with requirements which are at least equivalent to those laid down in Annex II to Directive 90/539/EEC, and

(a) the approval of which has not been suspended or withdrawn;

(b) which, at the time of consignment, was (were) not subject to any animal health restriction;

(c) within a 10 km radius of which, including, where appropriate, the territory of a neighbouring country, there has been no outbreak of highly pathogenic avian influenza or Newcastle disease for at least the previous 30 days;

II.1.7 have been hatched from eggs coming from flocks which:

(a) have been kept for at least six weeks immediately prior to import to the Community in officially approved establishments, the approval of which, at the time of consignment of the hatching eggs to the hatchery, had not been suspended or withdrawn;

(b) at the time of consignment, were not subject to any animal health restriction;

(c) have undergone a disease surveillance programme for:

([3]) *either* [*Salmonella* pullorum, S. gallinarum and Mycoplasma gallisepticum (fowls);]

([3]) *or* [*Salmonella* arizonae, S. pullorum and S. gallinarum, Mycoplasma meleagridis and M. gallisepticum (turkeys);]

([3]) *or* [*Salmonella* pullorum and S. gallinarum (guinea fowls, quails, pheasants, partridges and ducks);]

in accordance with Chapter III of Annex II to Directive 90/539/EEC and have not been found to be infected, or showed any grounds for suspecting infection, by these agents;

([3]) *either* [(d) have not been vaccinated against Newcastle disease;]

([3]) *or* [(d) have been vaccinated against Newcastle disease using:

.....

(name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s))

at the age of ..... weeks;]

([5]) *and/or* [(e) have been vaccinated using officially approved vaccines

on ..... against ..... (repeat as necessary);]

II.1.8 have been hatched from eggs which:

(a) prior to consignment to the hatchery, had been marked in accordance with the instructions of the competent authority;

(b) had been disinfected in accordance with the instructions of the competent authority;

II.1.9 hatched on ..... (dates);

([5]) [II.1.10 have been vaccinated using officially approved vaccines on ..... against ..... (repeat as necessary);]

II.1.11 at the time of consignment were examined and showed no clinical signs of or grounds for suspecting any disease;

II.1.12 have had no contact with poultry not meeting the requirements laid down in this certificate or with wild birds.

II.2. **Public health additional guarantees**

([6]) [II.2.1 The *Salmonella* control programme referred to in Article 10 of Regulation (EC) No 2160/2003 and the specific requirements for the use of antimicrobials and vaccines in Regulation (EC) No 1177/2006, have been applied to the parent flock of origin and this parent flock has been tested for *Salmonella* serotypes of public health significance.

Date of last sampling of the parent flock from which the testing result is known: .....

II.	Health information	II.a. Certificate reference number	II.b.

Result of all testing in the parent flock:

([3]) ([7]) *either* [positive;]

([3]) ([7]) *or* [negative;]

The specific requirements for the use of antimicrobials and vaccines in Regulation (EC) No 1177/2006, have been applied to the day-old chicks.

For reasons other than the Salmonella control programme:

([3]) *either* [antimicrobials were not administered to the day-old chicks (including in-ovo injection);]

([3]) ([8]) *or* [the following antimicrobials were administered to the day-old chicks (including in-ovo) injection .....

([6]) [II.2.2 If the day-old chicks are intended for breeding, neither Salmonella Enteritidis nor Salmonella Typhimurium were detected within the control programme referred to in point II.2.1.]

II.3. **Animal health additional guarantees**

I, the undersigned official veterinarian, further certify that:

([9]) [II.3.1 where the consignment is intended for a Member State the status of which has been established pursuant to Article 12(2) of Directive 90/539/EEC, the day-old chicks described in this certificate come from hatching eggs coming from flocks which:

([3]) *either* [have not been vaccinated against Newcastle disease;]

([3]) *or* [have been vaccinated against Newcastle disease using an inactivated vaccine;]

([3]) *or* [have been vaccinated against Newcastle disease using a live vaccine at the latest 60 days before the date the eggs were collected;]

([5]) [II.3.2 the following additional guarantees, laid down by the Member State of destination under Articles 13 and/or 14 of Directive 90/539/EEC, are provided:

.....

([9]) [II.3.3 if the Member State of destination is Finland or Sweden, the day-old chicks for introduction into flocks of breeding poultry or flocks of productive poultry come from flocks which have tested negative in accordance with the rules laid down in Commission Decision 2003/644/EC.]

II.4. **Additional health requirements**

I, the undersigned official veterinarian, further certify that:

([10]) [II.4.1 although the use of vaccines against Newcastle disease which do not fulfil the specific requirements of Annex VI (II) to Regulation (EC) No 798/2008 is not prohibited in:

([2]) ([3]) *either* [the territory of code .....;]

([3]) ([4]) *or* [compartment(s) .....;]

the breeding poultry from which the day-old chicks are derived:

(a) have not been vaccinated for at least the previous 12 months with such vaccines;

(b) comes from a flock or flocks which underwent a virus isolation test for Newcastle disease, carried out in an official laboratory not earlier than 14 days preceding consignment on a random sample of cloacal swabs from at least 60 birds in each flock and in which no avian paramyxoviruses with an Intracerebral Pathogenicity Index (ICPI) of more than 0,4 were found;

(c) have not been in contact during the last 60 days before consignment with poultry which does not fulfil the conditions in (a) and (b);

(d) have been kept in isolation under official surveillance on the establishment of origin in the 14-day period mentioned in (b);

([10]) [II.4.2 the hatching eggs from which day-old chicks have been hatched have not been in contact in the hatchery or during transport with eggs or poultry which do not fulfil the abovementioned requirements.]

([11]) II.5. **Animal transport attestation**

I, the undersigned official veterinarian, further certify that:

II.5.1 the day-old chicks described in this certificate are transported in disposable boxes used for the first time and:

(a) contain only day-old chicks of the same species, category and type coming from the same establishment;

II.	Health information	II.a. Certificate reference number	II.b.

(b) bear the following information:

— the name of the country, territory, zone or compartment of consignment,

— the species of poultry concerned,

— the number of chicks,

— the category and type of production for which they are intended,

— the name, address and approval number of the production establishment,

— the approval number of the establishment of origin,

— the Member State of destination;

(c) are closed in accordance with the instructions of the competent authority to avoid any possibility of substitution of the contents;

The containers and vehicles in which the boxes mentioned above have been transported have been cleansed and disinfected before loading in accordance with the instructions of the competent authority.

Notes

Part I:

— Box I.8: provide the code for the zone or the compartment of origin, if necessary, as defined under code in column 2 of Part 1 of Annex I to Regulation (EC) No 798/2008.

— Box I.11: Name, address and approval number of hatcheries and the breeding establishment.

— Box I.15: Indicate the registration number(s) of railway wagons and lorries, the names of ships and, if known, the flight numbers of aircraft. In the case of transport in containers or boxes, the total number of these and their registration and where there is a serial number of the seal it has to be indicated in box I.23.

— Box I.19: use the appropriate Harmonised System (HS) code of the World Customs Organisation: 01.05 or 01.06.39.

— Box I.28: (Category): select one of the following: Pure line/grandparents/parents/laying stock/broilers/others.

Part II:

([1]) "Day-old chicks" as defined in Regulation (EC) No 798/2008.

([2]) Code of the territory as it appears in column 2 of Part 1 of Annex I to Regulation (EC) No 798/2008.

([3]) Keep as appropriate.

([4]) Insert the name of compartment(s).

([5]) Keep if appropriate.

([6]) This guarantee applies only for day-old chicks belonging to the species of *Gallus gallus*.

([7]) If any of the results were positive for the serotypes below during the life of the flock, indicate as positive:

— flocks of breeding poultry: *Salmonella Hadar, Salmonella Virchow* and *Salmonella Infantis*;

— flocks of productive poultry: *Salmonella Enteritidis* and *Salmonella Typhimurium*.

([8]) Keep if appropriate: indicate the name and active substance of antimicrobials used.

([9]) To delete if consignment is not intended for Finland and Sweden.

([10]) This guarantee is required only for poultry coming from countries, territories, zones or compartments where Article 13(1) of Regulation (EC) No 798/2008 applies.

([11]) Please note that pursuant to Council Regulation (EC) No 1/2005 animals are to be checked by the competent authorities of the Member States to check if they are fit to continue the journey after entry into the Community. In the case the requirements are not fulfilled, the animals must be unloaded and further measures taken.

([12]) This option only applies for Canada.

This certificate is valid for 10 days.

Official veterinarian

Name (in capital letters): Qualification and title:

Date: Signature:

Stamp:'

(b) The model veterinary certificate for hatching eggs of poultry other than of ratites (HEP) is replaced by the following:

'**Model veterinary certificate for hatching eggs of poultry other than ratites (HEP)**

COUNTRY **Veterinary certificate to EU**

Part I: Details of dispatched consignment

I.1. Consignor Name Address Tel. No		I.2. Certificate reference number	I.2.a
		I.3. Central Competent Authority	
		I.4. Local Competent Authority	
I.5. Consignee Name Address Postal code Tel. No		I.6.	
I.7. Country of origin ISO code	I.8. Region of origin Code	I.9. Country of destination ISO code	I.10.
I.11. Place of origin Name Approval number Address Name Approval number Address Name Approval number Address		I.12.	
I.13. Place of loading Address Approval number		I.14. Date of departure time of departure	
I.15. Means of transport Aeroplane ☐ Ship ☐ Railway wagon ☐ Road vehicle ☐ Other ☐ Identification: Documentary references:		I.16. Entry BIP in EU I.17. No.(s) of CITES	
I.18. Description of commodity		I.19. Commodity code (HS code) **04.07**	
		I.20. Quantity	
I.21.		I.22. Number of packages	
I.23. Identification of container/seal number		I.24.	
I.25. Commodities certified for: Breeding ☐			
I.26.		I.27. For import or admission into EU ☐	

I.28. Identification of the commodities

Species (Scientific name)	Breed/Category	Identification system	IIdentification number	Quantity

COUNTRY **HEP (hatching eggs of poultry other than ratites)**

Part II: Certification

II. Health information	II.a. Certificate reference number	II.b.

II.1. **Animal health attestation**

I, the undersigned official veterinarian, hereby certify that the hatching eggs ([1]) described in this certificate:

II.1.1 meet the provisions of Directive 90/539/EEC;

II.1.2 come from flocks which have remained on:

([2])([3]) *either* [the territory of code .....;]

([3])([4]) *or* [compartment(s) .....;]

for at least three months. Where the flocks from which the hatching eggs come were imported into the country, territory, zone or compartment of origin, this took place in accordance with veterinary conditions at least as strict as the relevant requirements of Directive 90/539/EEC and any subsidiary Decisions;

II.1.3 come from:

([2])([3]) *either* [the territory of code .....;]

([3])([4]) *or* [compartment(s) .....;]

(a) which, at the date of issue of this certificate, was (were) free from Newcastle disease as defined in Regulation (EC) No 798/2008;

(b) where a surveillance programme for avian influenza according to Regulation (EC) No 798/2008 is carried out;

II.1.4 come from:

([2])([3]) *either* [the territory of code .....;]

([2])([3])([10]) *or* [the territory of code ....., excluding any area under official restrictions for low pathogenic avian influenza as defined in Regulation (EC) No 798/2008;]

([3])([4]) *or* [compartment(s) .....;]

([3]) *either* [II.1.4.1 which, at the date of issue of this certificate was (were) free from highly pathogenic and low pathogenic avian influenza as defined in Regulation (EC) No 798/2008;]

([3]) *or* [II.1.4.1 which, at the date of issue of this certificate was (were) free from highly pathogenic avian influenza as defined in Regulation (EC) No 798/2008, and

([3]) *either* [(a) were derived from parent flocks which have been kept in an establishment in which avian influenza surveillance has been carried out with negative results within 21 days prior to the time of collection of eggs;]

([3]) *or* [(a) were derived from parent flocks which have been kept in an establishment in which during the past 21 days prior to the collection of the eggs a virus detection test with negative testing results for avian influenza has been carried out on a random sample of cloacal and tracheal/or oropharyngeal swabs taken from at least 60 poultry in the establishment or from all poultry if less than 60 are present in the establishment;]

(b) the hatching eggs come from an establishment:

— around which within a 1 km radius low pathogenic avian influenza has not been present within the last 30 days on any establishment;

— where there has been no epidemiological link to an establishment where avian influenza has been detected within the last 30 days;]

II.1.5 were derived from parent flocks which:

([3]) *either* [have not been vaccinated against avian influenza;]

([3]) *or* [have been vaccinated against avian influenza in accordance with a vaccination plan under Regulation (EC) No 798/2008 using:

.....

(name and type of used vaccine(s))

at the age of ..... weeks;]

II.	Health information	II.a. Certificate reference number	II.b.

II.1.6 come from flocks which:

(a) have been examined at the date of issue of this certificate and showed no clinical signs of or grounds for suspecting any disease;

(b) have been kept for at least six weeks immediately prior to import to the Community in the establishment(s) defined in Box I.11 of Part I, officially approved in accordance with requirements that are at least equivalent to those laid down in Annex II to Directive 90/539/EEC:

— the approval of which has not been suspended or withdrawn;

— which is (are) not subject to any animal health restriction;

— within a 10 km radius of which, including, where appropriate, the territory of a neighbouring country, there has been no outbreak of highly pathogenic avian influenza or Newcastle disease for at least the previous 30 days;

(c) during the period mentioned in (b), have had no contact with poultry not meeting the requirements laid down in this certificate or with wild birds;

(d) have undergone a disease surveillance programme for:

([3]) *either* [*Salmonella* pullorum, S. gallinarum and Mycoplasma gallisepticum (fowls);]

([3]) *or* [*Salmonella* arizonae, S. pullorum and S. gallinarum, Mycoplasma meleagridis and M. gallisepticum (turkeys);]

([3]) *or* [*Salmonella* pullorum and S. gallinarum (guinea fowls, quails, pheasants, partridges and ducks)]

in accordance with Chapter III of Annex II to Directive 90/539/EEC and were not found to be infected, or showed any grounds for suspecting infection, by these agents;

([3]) *either* [(e) have not been vaccinated against Newcastle disease;]

([3]) *or* [(e) have been vaccinated against Newcastle disease using:

.....

(name and type (live or inactivated) of Newcastle disease virus strain used in vaccine(s))

at the age of ..... weeks;]

([3]) *and/or* [(f) have been vaccinated using officially approved vaccines

on ..... against ..... (repeat as necessary);]

([9]) II.1.7 have been marked as indicated in point I.28 of the certificate using ..... (colour ink);

II.1.8 have been disinfected in accordance with my instructions, using ..... (name of the product and active substance) for ..... (time in minutes);

II.1.9 were collected from ..... to ..... (dates);

II.1.10 have been examined at the date of issue of this certificate and showed no clinical signs of or grounds for suspecting any disease.

II.2. **Public health additional guaranties**

([5]) [II.2.1 The Salmonella control programme referred to in Article 10 of Regulation (EC) No 2160/2003 and the specific requirements for the use of antimicrobials and vaccines in Regulation (EC) No 1177/2006, have been applied to the parent flock of origin and this parent flock has been tested for Salmonella serotypes of public health significance.

Date of last sampling of the parent flock from which the testing result is known: .....

II.	Health information	II.a. Certificate reference number	II.b.

Result of all testing in the parent flock:

(3) (6) *either* [positive;]

(3) (6) *or* [negative;]

(5) [II.2.2 Neither Salmonella Enteritidis nor Salmonella Typhimurium were detected within the control programme referred to in point II.2.1.]

II.3. **Animal health additional guarantees**

I, the undersigned official veterinarian, further certify that:

(7) [II.3.1 where the consignment is intended for a Member State the status of which has been established in accordance with Article 12(2) of Directive 90/539/EEC, the hatching eggs described in this certificate are derived from poultry which:

(3) *either* [have not been vaccinated against Newcastle disease;]

(3) *or* [have been vaccinated against Newcastle disease using an inactivated vaccine;]

(3) *or* [have been vaccinated against Newcastle disease using a live vaccine at the latest 60 days before the date the eggs were collected;]

(8) [II.3.2 the following additional guarantees, laid down by the Member State of destination in accordance with Articles 13 and/or 14 of Directive 90/539/EEC, are provided:

.....

(7) [II.3.3 if the Member State of destination is Finland or Sweden, the hatching eggs come from flocks which have tested negative in accordance with the rules laid down in Commission Decision 2003/644/EC.]

II.4. **Additional health requirements**

I, the undersigned official veterinarian, further certify that:

(8) [II.4.1 although the use of vaccines against Newcastle disease which do not fulfil the specific requirements of Annex VI (II) to Regulation (EC) No 798/2008 is not prohibited in:

(2) (3) *either* [the territory of code .....;]

(3) (4) *or* [compartment(s) .....;]

the poultry from which the hatching eggs are derived:

(a) has not been vaccinated for at least the previous 12 months with such vaccines;

(b) comes from a flock or flocks that underwent a virus isolation test for Newcastle disease, carried out in an official laboratory not earlier than 14 days preceding consignment on a random sample of cloacal swabs from at least 60 birds in each flock concerned and in which no avian paramyxoviruses with an Intracerebral Pathogenicity Index (ICPI) of more than 0,4 have been found;

(c) has not been in contact during the last 60 days before consignment with poultry that does not fulfil the conditions in (a) and (b);

(d) has been kept in isolation under official surveillance on the establishment of origin in the 14-day period mentioned in (b).]

II.5. **Animal transport attestation**

I, the undersigned official veterinarian, further certify that:

II.5.1 the hatching eggs are transported in perfectly clean disposable boxes used for the first time and which:

(a) contain only hatching eggs of the same species, category and type coming from the same establishment;

II.	Health information	II.a. Certificate reference number	II.b.

(b) bear the following indications:

— the word “hatching”,

— the name of the country, territory, zone or compartment of consignment,

— the species of poultry concerned,

— the number of eggs,

— the category and type of production for which they are intended,

— the name, address and approval number of the production establishment,

— the approval number of the establishment of origin,

— the Member State of destination;

(c) are closed in accordance with the instructions of the competent authority to avoid any possibility of substitution of the contents;

II.5.2 the containers and vehicles in which the boxes mentioned above have been transported have been cleansed and disinfected before loading in accordance with the instructions of the competent authority

Notes

Part I:

— Box I.8: provide the code for the zone or the compartment of origin, if necessary, as defined under code in column 2 of Part 1 of Annex I to Regulation (EC) No 798/2008.

— Box I.11: Name, address and approval number of the breeding establishment.

— Box I.15: Indicate the registration number(s) of railway wagons and lorries, the names of ships and, if known, the flight numbers of aircraft. In the case of transport in containers or boxes, the total number of these and their registration and where there is a serial number of the seal it has to be indicated in box I.23.

— Box I.28 (Category): select one of the following: Pure line/grandparents/parents/laying pullets/eggs of turkeys for consumption/others; (Identification system & Identification number): introduce the egg mark.

Part II:

([1]) For hatching eggs of poultry as defined in Regulation (EC) No 798/2008 with the exception of ratites.

([2]) Code of the territory as it appears in column 2 of Part 1 of Annex I to Regulation (EC) No 798/2008.

([3]) Keep as appropriate.

([4]) Insert the name of compartment(s).

([5]) Apply to the poultry which belongs to the species *Gallus gallus.*

([6]) If any of the results were positive for the following serotypes during the life of the parent flock, indicate as positive: *Salmonella* Infantis, *Salmonella* Virchow and *Salmonella* Hadar.

([7]) To delete if consignment is not intended for Finland and Sweden.

([8]) Keep if appropriate.

([9]) At the time of consignment the eggs must be individually marked in accordance with Commission Regulation (EEC) No 1868/77, including the approval number of the breeding establishment, in indelible black ink; such markings must be in legible writing and in at least one Community language.

([10]) This option only applies for Canada.

This certificate is valid for 10 days.

Official veterinarian

Name (in capital letters): Qualification and title:

Date: Signature:

Stamp:’

(c) The model veterinary certificate for egg products (EP) is replaced by the following:

'**Model veterinary certificate for egg products (EP)**

COUNTRY **Veterinary certificate to EU**

Part I: Details of dispatched consignment

I.1. Consignor
Name
Address
Tel. No

I.2. Certificate reference number | I.2.a

I.3. Central Competent Authority

I.4. Local Competent Authority

I.5. Consignee
Name
Address
Postal code
Tel. No

I.6.

I.7. Country of origin ISO code | I.8. Region of origin Code

I.9. Country of destination ISO code | I.10.

I.11. Place of origin
Name Approval number
Address

I.12.

I.13. Place of loading

I.14. Date of departure

I.15. Means of transport
Aeroplane ☐ Ship ☐ Railway wagon ☐
Road vehicle ☐ Other ☐
Identification:
Documentary references:

I.16. Entry BIP in EU

I.17.

I.18. Description of commodity

I.19. Commodity code (HS code)

I.20. Quantity

I.21. Temperature of product
Ambient ☐ Chilled ☐ Frozen ☐

I.22. Number of packages

I.23. Identification of container/Seal number

I.24. Type of packaging

I.25. Commodities certified for:
Human consumption ☐

I.26.

I.27. For import or admission into EU ☐

I.28. Identification of the commodities

Species (Scientific name)	Nature of commodity	Approval number of establishments: Manufacturing plant	Approval number of establishments: Cold store	Number of packages	Net weight

COUNTRY **EP (egg products)**

Part II: Certification

II.	Health information	II.a. Certificate reference number	II.b.

II.1. **Animal health attestation**

I, the undersigned official veterinarian, hereby certify that the egg products described in this certificate were produced from eggs coming from an establishment which at the date of issue of the certificate is free from highly pathogenic avian influenza as defined in Regulation (EC) No 798/2008 and

either

([1]) II.1.1 [within a 10km radius of which, including, where appropriate, the territory of a neighbouring country, there has been no outbreak of highly pathogenic avian influenza or Newcastle disease for at least the previous 30 days.]

or

([1]) II.1.1 [the egg products were processed:

([1]) *either* [liquid egg white was treated:

([1]) *either* [with 55,6 °C for 870 seconds.]

([1]) *or* [with 56,7 °C for 232 seconds.]

([1]) *or* [10 % salted yolk was treated with 62,2 °C for 138 seconds.]

([1]) *or* [dried egg white was treated:

([1]) *either* [with 67 °C for 20 hours.]

([1]) *or* [with 54.4 °C for 513 hours.]

II.2. **Public health attestation**

I, the undersigned, official veterinarian/official inspector declare that I am aware of the relevant provisions of Regulations (EC) Nos 178/2002, 852/2004 and 853/2004 and hereby certify that the egg products described in this certificate have been obtained in accordance with those requirements, and in particular that:

II.2.1 they come from (an) establishments(s) implementing a programme based on the HACCP principles in accordance with Regulation (EC) No 852/2004;

II.2.2 they have been produced from raw material which meets the requirements of Section X, Chapter II (II) of Annex III to Regulation (EC) No 853/2004;

II.2.3 they have been manufactured in compliance with the hygiene requirements laid down in Section X, Chapter II (III) of Annex III to Regulation (EC) No 853/2004;

II.2.4 they satisfy the analytical specifications in Section X, Chapter II (IV) of Annex III to Regulation (EC) No 853/2004 and the relevant criteria in Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs;

II.2.5 they have been marked with an identification mark in accordance with Section I of Annex II and Section X, Chapter II (V) of Annex III to Regulation (EC) No 853/2004;

II.2.6 the guarantees covering live animals and products thereof provided by the residue plans submitted in accordance with Directive 96/23/EC, and in particular Article 29 thereof, are fulfilled.

Notes

Part I:

— Box I.8: provide the code for the zone or the compartment of origin, if necessary, as defined under code of column 2 of Part 1 of Annex I to Regulation (EC) No 798/2008.

— Box I.11: Name, address and approval number of establishment of dispatch.

— Box I.15: Indicate the registration number(s) of railway wagons and lorries, the names of ships and, if known, the flight numbers of aircraft. In the case of transport in containers or boxes, the total number of these and their registration and where there is a serial number of the seal it has to be indicated in box I.23.

— Box I.19: use the appropriate Harmonised System (HS) code the World Customs Organisation: 04.08 or 21.06.10

— Box I.28: Nature of commodity: specify the egg content percentage.

Part II:

([1]) Keep as appropriate.

Official veterinarian

Name (in capital letters): Qualification and title:

Date: Signature:

Stamp:'

(2) In Part I of Annex III, point 4 is replaced by the following:

'4. *Salmonella arizonae*

— Chapter III of Annex II to Directive 90/539/EEC; or

— Manual of Diagnostic Tests and Vaccines for Terrestrial Animals of the World Organisation for animal Health (OIE).'

(3) Annex XI is replaced by the following:

'ANNEX XI

(as referred to in Article 18(2))

Model veterinary certificate for transit/storage of specified pathogen-free eggs, meat, minced meat and mechanically separated meat of poultry, ratites and wild game-birds, eggs and egg products

COUNTRY **Veterinary certificate to EU**

Part I: Details of dispatched consignment

I.1. Consignor Name Address Tel. No		I.2. Certificate reference number	I.2.a
		I.3. Central Competent Authority	
		I.4. Local Competent Authority	
I.5. Consignee Name Address Postal code Tel. No		I.6. Person responsible for the load in EU Name Address Postal code Tel. No	
I.7. Country of origin ISO code	I.8. Region of origin Code	I.9. Country of destination ISO code	I.10. Region of destination Code
I.11. Place of origin Name Approval number Address		I.12. Place of destination Custom warehouse ☐ Ship supplier ☐ Name Approval number Address Postal code	
I.13. Place of loading		I.14. Date of departure	
I.15. Means of transport Aeroplane ☐ Ship ☐ Railway wagon ☐ Road vehicle ☐ Other ☐ Identification: Documentary references:		I.16. Entry BIP in EU I.17.	
I.18. Description of commodity		I.19. Commodity code (HS code)	I.20. Quantity
I.21. Temperature of product Ambient ☐ Chilled ☐ Frozen ☐			I.22. Number of packages
I.23. Identification of container/Seal number			I.24. Type of packaging
I.25. Commodities certified for: Human consumption ☐			
I.26. For transit through EU to 3rd Country ☐ 3rd country ISO code		I.27.	

I.28. Identification of the commodities

Species (Scientific name)	Nature of commodity	Treatment type	Approval number of establishments: Abattoir	Manufacturing plant	Cold store	Number of packages	Net weight

COUNTRY

Transit/storage of specified pathogen-free eggs, meat, minced meat and mechanically separated meat of poultry, ratites and wild game-birds, eggs and egg products

Part II: Certification

II. Health information	II.a. Certificate reference number	II.b.

II.1. **Health attestation**

I, the undersigned official veterinarian, hereby certify that specified pathogen-free eggs, the meat, minced meat and mechanically separated meat of poultry, ratites and wild game-birds, eggs and egg products (1) described in this certificate:

II.1.1 come from a third country, territory, zone or compartment appearing in Part 1 of Annex I to Regulation (EC) No 798/2008, and

(2) II.1.2 complies (comply) with the relevant animal health conditions laid down in the animal health attestation in the model certificates in Annex I to Regulation (EC) No 798/2008.

Notes

Part I:

— Box I.8: provide the code for the zone or the compartment of origin, if necessary, as defined under code of column 2 of Part 1 of Annex I to Regulation (EC) No 798/2008.

— Box I.11: Name, address and approval number of the establishment of dispatch.

— Box I.15: Indicate the registration number(s) of railway wagons and lorries, the names of ships and, if known, the flight numbers of aircraft. In the case of transport in containers or boxes, the total number of these and their registration and where there is a serial number of the seal it has to be indicated in box I.23.

— Box I.19: use the appropriate Harmonised System (HS) code of the World Customs Organisation: 02.07; 02.08.90; 04.07; 04.08 or 21.06.10

Part II

(1) Specified pathogen-free eggs, meat, minced meat and mechanically separated meat of poultry, ratites and wild game-birds, eggs and egg products as laid down in Part 1 of Annex I to Regulation (EC) No 798/2008.

(2) In the case of specified pathogen-free eggs [SPF], meat of poultry [POU], meat of ratites [RAT], wild game-bird meat [WGM], minced meat and mechanically separated meat of poultry [POU-MI/MSM], minced meat and mechanically separated meat of ratites [RAT-MI/MSM], wild game-bird minced meat and mechanically separated meat [WGM-MI/MSM], eggs [E] or egg products [EP].

Official veterinarian

Name (in capital letters): Qualification and title:

Date: Signature:

Stamp:'

DIRECTIVES

DIRECTIVE 2009/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 May 2009

on foodstuffs intended for particular nutritional uses

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) Council Directive 89/398/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses [3] has been substantially amended several times [4]. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Differences between national laws relating to foodstuffs for particular nutritional uses impede their free movement, may create unequal conditions of competition, and thus have a direct impact on the functioning of the internal market.

(3) The approximation of national laws presupposes the drawing-up of a common definition, the determination of measures enabling the consumer to be protected against fraud concerning the nature of these products and the adoption of rules to be complied with in labelling the products in question.

(4) The products covered by this Directive are foodstuffs the composition and preparation of which must be specially designed to meet the particular nutritional requirements of the persons for whom they are mainly intended. It may be necessary, therefore, to provide for derogations from the general or specific provisions applicable to foodstuffs in order to achieve the specific nutritional objective.

(5) Although foodstuffs intended for particular nutritional uses which are the subject of specific provisions can be efficiently monitored on the basis of the general rules for monitoring all types of foodstuffs, this is not always the case for those foodstuffs in respect of which no such specific provisions exist.

(6) For the latter the usual means available to the monitoring bodies might not, in certain cases, enable them to check whether a foodstuff actually has the particular nutritional properties attributed to it. It is necessary, therefore, to provide that, where necessary, the person responsible for placing that foodstuff on the market should assist the monitoring body in carrying out its activities.

(7) Specific provisions applicable to certain groups of foodstuffs should be laid down by means of specific Directives.

(8) A procedure should be laid down which allows the foodstuffs resulting from technological innovations to be placed on the market on a temporary basis in order that proper benefit may be derived from the fruits of industry research pending the amendment of the specific Directive concerned. However, on the grounds of consumer health protection, marketing authorisation may be granted only after consultation of the European Food Safety Authority.

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[1] OJ C 211, 19.8.2008, p. 44.
[2] Opinion of the European Parliament of 23 September 2008 (not yet published in the Official Journal) and Council Decision of 30 March 2009.
[3] OJ L 186, 30.6.1989, p. 27.
[4] See Annex II, Part A.

(9) Since it is not clear whether an adequate basis exists for specific provisions to be adopted for the group of foods intended for persons suffering from carbohydrate metabolism disorders (diabetes), the Commission should be allowed to adopt or propose the relevant provisions at a later stage, after consultation of the European Food Safety Authority.

(10) It is still possible to harmonise, at Community level, rules applicable to other groups of foodstuffs for particular nutritional uses, in the interests of consumer protection and the free movement of such foodstuffs.

(11) The drawing-up of specific Directives implementing the basic principles of Community rules and amendments thereto are implementing measures of a technical nature. Their adoption should be entrusted to the Commission in order to simplify and expedite the procedure.

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

(13) In particular, the Commission should be empowered to adopt certain specific Directives, a list of substances with specific nutritional purposes and of other substances intended to be added to foodstuffs intended for particular nutritional uses, together with the purity criteria applicable to them, and, where appropriate, the conditions under which they should be used, provisions rendering it possible to indicate on foodstuffs for normal consumption that they are suitable for a particular nutritional use, special provisions for foods for persons suffering from carbohydrate metabolism disorders (diabetes), rules for the use of terms concerning the reduction or absence of sodium or salt content or the absence of gluten, which may be used to describe the products, as well as conditions under which reference may be made in labelling, presentation and advertising to a diet or to a category of persons. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(14) When, on imperative grounds of urgency, the normal time limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to apply the urgency procedure provided for in Article 5a(6) of Decision 1999/468/EC for the adoption and amendment of a list of substances with specific nutritional purposes and of other substances intended to be added to foodstuffs intended for particular nutritional uses, together with the purity criteria applicable to them and, where appropriate, the conditions under which they should be used, as well as for adoption of amendments to this Directive or to specific Directives when it is established that a foodstuff intended for a particular nutritional use endangers human health although it complies with the relevant specific Directive.

(15) The new elements introduced into this Directive only concern the committee procedures. They therefore do not need to be transposed by the Member States.

(16) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive concerns foodstuffs for particular nutritional uses.

2. Foodstuffs for particular nutritional uses are foodstuffs which, owing to their special composition or manufacturing process, are clearly distinguishable from foodstuffs for normal consumption, which are suitable for their claimed nutritional purposes and which are marketed in such a way as to indicate such suitability.

3. A particular nutritional use shall fulfil the particular nutritional requirements:

(a) of certain categories of persons whose digestive processes or metabolism are disturbed; or

(b) of certain categories of persons who are in a special physiological condition and who are therefore able to obtain special benefit from controlled consumption of certain substances in foodstuffs; or

(c) of infants or young children in good health.

Article 2

1. The products covered by points (a) and (b) of Article 1(3) may be characterised as 'dietetic' or 'dietary'.

([1]) OJ L 184, 17.7.1999, p. 23.

2. In the labelling, presentation and advertising of foodstuffs for normal consumption the following shall be prohibited:

(a) the use of the adjectives 'dietetic' or 'dietary' either alone or in conjunction with other words, to designate those foodstuffs;

(b) all other markings or any presentation likely to give the impression that one of the products referred to in Article 1 is involved.

However, in accordance with provisions to be adopted by the Commission, it shall be possible for foodstuffs for normal consumption which are suitable for a particular nutritional use to indicate such suitability.

Such provisions may lay down the arrangements for indicating that suitability.

The measures referred to in the second subparagraph, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3).

Article 3

1. The nature or composition of the products referred to in Article 1 shall be such that the products are appropriate for the particular nutritional use intended.

2. The products referred to in Article 1 shall also comply with any mandatory provisions applicable to foodstuffs for normal consumption, save as regards changes made to them to ensure their conformity with the definitions given in Article 1.

Article 4

1. The specific provisions applicable to the groups of foodstuffs for particular nutritional uses appearing in Annex I shall be laid down by means of specific Directives.

Such specific Directives may cover in particular:

(a) essential requirements as to the nature or composition of the products;

(b) provisions regarding the quality of raw materials;

(c) hygiene requirements;

(d) permitted changes within the meaning of Article 3(2);

(e) a list of additives;

(f) provisions regarding labelling, presentation and advertising;

(g) sampling procedures and methods of analysis necessary for checking compliance with the requirements of the specific Directives.

Such specific Directives shall be adopted:

— in the case of point (e), in accordance with the procedure laid down in Article 95 of the Treaty,

— in the case of the other points, by the Commission. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3).

Provisions likely to have an effect on public health shall be adopted after consultation of the European Food Safety Authority.

2. To enable foodstuffs intended for particular nutritional uses and resulting from scientific and technological progress to be placed on the market rapidly, the Commission may, after consulting the European Food Safety Authority, authorise for a two-year period the placing on the market of foodstuffs which do not comply with the rules as to composition laid down by the specific Directives for groups of foodstuffs for particular nutritional uses referred to in Annex I. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3).

If necessary, the Commission may add in the authorisation decision labelling rules relating to the change in composition.

3. The Commission shall adopt a list of substances with specific nutritional purposes such as vitamins, mineral salts, amino acids and of other substances intended to be added to foodstuffs intended for particular nutritional uses, together with the purity criteria applicable to them, and, where appropriate, the conditions under which they should be used.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3).

On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 15(4).

Article 5

The Commission shall adopt rules for the use of terms concerning the reduction or absence of sodium or salt (sodium chloride, table salt) content or the absence of gluten, which may be used to describe the products referred to in Article 1.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3).

Article 6

Before 8 July 2002, the Commission shall, after consulting the European Food Safety Authority, present to the European Parliament and to the Council a report on the desirability of special provisions for foods for persons suffering from carbohydrate metabolism disorders (diabetes).

In the light of the conclusions of that report, the Commission shall either:

(a) proceed with the preparation of the special provisions concerned; or

(b) present, in accordance with the procedure laid down in Article 95 of the Treaty, any appropriate proposals for amendments to this Directive.

The measures referred to in point (a), designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3).

Article 7

The Commission may adopt conditions under which reference may be made in labelling, presentation and advertising to a diet or to a category of persons for which a product referred to in Article 1 is intended.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3).

Article 8

1. The labelling and the labelling methods used, the presentation and the advertising of the products referred to in Article 1 shall not attribute properties to such products for the prevention, treatment or cure of human disease or imply such properties.

Derogations from the first subparagraph may be provided for in exceptional and clearly defined cases. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3). Derogations may be continued until that procedure has been completed.

2. Paragraph 1 shall not prevent the dissemination of any useful information or recommendations exclusively intended for persons having qualifications in medicine, nutrition or pharmacy.

Article 9

1. Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [1] shall apply to the products referred to in Article 1 of this Directive, under the conditions set out in paragraphs 2, 3 and 4 of this Article.

2. The designation under which a product is sold shall be accompanied by an indication of its particular nutritional characteristics. However, in the case of the products covered by point (c) of Article 1(3), that reference shall be replaced by a reference to the purpose for which they are intended.

3. The labelling of products for which no specific Directive has been adopted in accordance with Article 4 shall also include:

(a) the particular elements of the qualitative and quantitative composition or the special manufacturing process which gives the product its particular nutritional characteristics;

(b) the available energy value expressed in kilojoules and kilocalories and the carbohydrate, protein and fat content per 100 grams or 100 millilitres of the product as marketed and, where appropriate, per specified quantity of the product as proposed for consumption.

If, however, the energy value is less than 50 kilojoules (12 kilocalories) per 100 grams or 100 millilitres of the product as marketed, those particulars may be replaced either by the words 'energy value less than 50 kilojoules (12 kilocalories) per 100 grams' or by the words 'energy value less than 50 kilojoules (12 kilocalories) per 100 millilitres'.

[1] OJ L 109, 6.5.2000, p. 29.

4. The particular labelling requirements for those products for which a specific Directive has been adopted shall be laid down in that Directive.

Article 10

1. The products referred to in Article 1 shall only be allowed on the retail market in pre-packaged form, and the packaging shall completely cover the products.

2. Member States may permit derogations from paragraph 1 for purposes of the retail trade provided that the product is accompanied by the particulars provided for in Article 9 at the time when it is put on sale.

Article 11

1. To permit efficient official monitoring of foodstuffs intended for a particular nutritional use which do not belong to one of the groups listed in Annex I, the following specific provisions shall apply:

(a) when a product as referred to above is placed on the market for the first time the manufacturer or, where a product is manufactured in a third State, the importer, shall notify the competent authority of the Member State where the product is being marketed by forwarding it a model of the label used for the product;

(b) where the same product is subsequently placed on the market in another Member State the manufacturer or, where appropriate, the importer, shall provide the competent authority of that Member State with the same information, together with an indication of the recipient of the first notification;

(c) where necessary, the competent authority shall be empowered to require the manufacturer or, where appropriate, the importer, to produce the scientific work and the data establishing the product's compliance with Article 1(2) and (3) together with the information provided for in point (a) of Article 9(3). If such work is contained in a readily available publication, a mere reference to this publication shall suffice.

2. Member States shall communicate to the Commission the identity of the competent authorities within the meaning of paragraph 1 and any other useful information on them. The Commission shall publish this information in the *Official Journal of the European Union*.

3. Detailed rules for implementing paragraph 2 may be adopted in accordance with the regulatory procedure referred to in Article 15(2).

4. Every three years, and for the first time before 8 July 2002, the Commission shall send the European Parliament and the Council a report on the implementation of this Article.

Article 12

1. Member States shall not, for reasons related to their composition, manufacturing specifications, presentation or labelling, prohibit or restrict trade in products referred to in Article 1 which comply with this Directive and, where appropriate, with Directives adopted in implementation of this Directive.

2. Paragraph 1 shall not affect national provisions which are applicable in the absence of Directives adopted in implementation of this Directive.

Article 13

1. Where a Member State has detailed grounds for establishing that a foodstuff intended for a particular nutritional use which does not belong to one of the groups listed in Annex I does not comply with Article 1(2) and (3) or endangers human health, albeit freely circulating in one or more Member States, that Member State may temporarily suspend or restrict trade in that product within its territory. It shall immediately inform the Commission and the other Member States thereof and give reasons for its decision.

2. The Commission shall examine, as soon as possible, the grounds adduced by the Member State concerned, shall consult the Member States within the Committee referred to in Article 15(1), and shall then deliver its opinion without delay and take appropriate measures.

3. If the Commission considers that the national measure must be dispensed with or modified, it shall adopt the appropriate measures in accordance with the regulatory procedure referred to in Article 15(2).

Article 14

1. Where a Member State, as a result of new information or of a reassessment of existing information made since one of the specific Directives was adopted, has detailed grounds for establishing that a foodstuff intended for a particular nutritional use endangers human health although it complies with the relevant specific Directive, that Member State may temporarily suspend or restrict application of the provisions in question within its territory. It shall immediately inform the other Member States and the Commission thereof and give reasons for its decision.

2. The Commission shall examine as soon as possible the grounds adduced by the Member State concerned and shall consult the Member States within the Committee referred to in Article 15(1), and shall then deliver its opinion without delay and take appropriate measures.

3. If the Commission considers that amendments to this Directive or to the specific Directives are necessary in order to remedy the difficulties mentioned in paragraph 1 and to ensure the protection of human health, it shall adopt those amendments.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 15(3). On imperative grounds of urgency, the Commission may have recourse to the urgency procedure referred to in Article 15(4).

The Member State which has adopted safeguard measures may in that event retain them until the amendments have been adopted.

Article 15

1. The Commission shall be assisted by the Standing Committee on the Food Chain and Animal Health, set up by Article 58 of Regulation (EC) No 178/2002 of the European Parliament and of the Council [1].

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

4. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 16

Directive 89/398/EEC, as amended by the acts listed in Annex II, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex II, Part B.

References made to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 17

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

Article 18

This Directive is addressed to the Member States.

Done at Strasbourg, 6 May 2009.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	J. KOHOUT

[1] Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

ANNEX I

A. Groups of foodstuffs for particular nutritional uses for which specific provisions will be laid down by specific Directives ([1]):

1. infant formulae and follow-on formulae;

2. processed cereal-based foods and baby foods for infants and young children;

3. food intended for use in energy-restricted diets for weight reduction;

4. dietary foods for special medical purposes;

5. foods intended to meet the expenditure of intense muscular effort, especially for sportsmen.

B. Groups of foodstuffs for particular nutritional uses for which specific provisions will be laid down by a specific Directive ([1]), dependent on the outcome of the procedure described in Article 6:

Foods for persons suffering from carbohydrate metabolism disorders (diabetes).

([1]) It is understood that products already on the market when a specific Directive is adopted will not be affected by it.

ANNEX II

PART A

Repealed Directive with list of its successive amendments

(referred to in Article 16)

Council Directive 89/398/EEC
(OJ L 186, 30.6.1989, p. 27)

Directive 96/84/EC of the European Parliament and of the Council
(OJ L 48, 19.2.1997, p. 20)

Directive 1999/41/EC of the European Parliament and of the Council
(OJ L 172, 8.7.1999, p. 38)

Regulation (EC) No 1882/2003 of the European Parliament and of the Council — point 15 of Annex III only
(OJ L 284, 31.10.2003, p. 1)

PART B

Time limits for transposition into national law and application

(referred to in Article 16)

Directive	Time limits for transposition	Permission of trade in products complying with this Directive	Prohibition of trade in products not complying with this Directive
89/398/EEC	—	16 May 1990 (1)	16 May 1991 (1)
96/84/EC	30 September 1997	—	—
1999/41/EC	8 July 2000	8 July 2000 (2)	8 January 2001 (2)

(1) In accordance with Article 15 of Directive 89/398/EEC:
'1. Member States shall amend their laws, regulations and administrative provisions in such a way as:
— to permit trade in products complying with this Directive not later than 16 May 1990,
— to prohibit trade in products not complying with this Directive with effect from 16 May 1991.
They shall forthwith inform the Commission thereof.
2. Paragraph 1 shall not affect those national provisions which in the absence of the Directives referred to in Article 4 apply to certain groups of foodstuffs intended for particular nutritional uses.'.

(2) In accordance with Article 2 of Directive 1999/41/EC:
'Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive not later than 8 July 2000. They shall forthwith inform the Commission thereof.
These measures shall be applied in such a way as to:
— permit trade in products complying with this Directive by 8 July 2000,
— prohibit trade in products not complying with this Directive by 8 January 2001.
When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.'.

ANNEX III

CORRELATION TABLE

Directive 89/398/EEC	This Directive
Article 1(1)	Article 1(1)
Article 1(2) point (a)	Article 1(2)
Article 1(2) point (b)	Article 1(3)
Article 1(2) point (b)(i), (ii) and (iii)	Article 1(3) points (a), (b) and (c)
Article 2(1)	Article 2(1)
Article 2(2)	Article 2(2), first subparagraph
Article 2(3)	Article 2(2), second and third subparagraphs
—	Article 2(2), fourth subparagraph
Article 3	Article 3
Article 4(1)	Article 4(1)
Article 4(1a)	Article 4(2)
Article 4(2)	Article 4(3)
Article 4a	Article 5
Article 4b	Article 6
Article 5	Article 7
Article 6	Article 8
Article 7	Article 9
Article 8	Article 10
Article 9, introductory words	Article 11(1), introductory words
Article 9, points 1, 2 and 3	Article 11(1)(a), (b) and (c)
Article 9, point 4, first and second sentence	Article 11(2)
Article 9 point 4, third sentence	Article 11(3)
Article 9 point 5	Article 11(4)
Article 10	Article 12
Article 11	Article 13
Article 12	Article 14
Article 13(1) and (2)	Article 15(1) and (2)
Article 13(3)	—
—	Article 15(3) and (4)
Articles 14 and 15	—
—	Articles 16 and 17
Article 16	Article 18
Annex I	Annex I
Annex II	—
—	Annexes II and III

COUNCIL DIRECTIVE 2009/13/EC

of 16 February 2009

implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 139(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Management and labour, hereinafter referred to as 'the social partners', may, in accordance with Article 139(2) of the Treaty, request jointly that agreements concluded by them at Community level be implemented by a Council decision on a proposal from the Commission.

(2) On 23 February 2006, the International Labour Organisation adopted the Maritime Labour Convention, 2006, desiring to create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour conventions.

(3) The Commission has consulted management and labour, in accordance with Article 138(2) of the Treaty, on the advisability of developing the existing Community *acquis* by adapting, consolidating or supplementing it in view of the Maritime Labour Convention, 2006.

(4) On 29 September 2006 the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) informed the Commission of their wish to enter into negotiations in accordance with Article 138(4) of the Treaty.

(5) On 19 May 2008, the said organisations wishing to help create of a global level playing field throughout the maritime industry, concluded an Agreement on the Maritime Labour Convention, 2006, hereinafter referred to as 'the Agreement'. This Agreement and its Annex contain a joint request to the Commission to implement them by a Council decision on a proposal from the Commission, in accordance with Article 139(2) of the Treaty.

(6) The Agreement applies to seafarers on board ships registered in a Member State and/or flying flag of a Member State.

(7) The Agreement amends the European Agreement on the organisation of working time of seafarers concluded in Brussels on 30 September 1998 by the European Community Shipowners' Associations (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST).

(8) For the purpose of Article 249 of the Treaty, the appropriate instrument for implementing the Agreement is a directive.

(9) The Agreement will enter into force simultaneously with the Maritime Labour Convention, 2006, and the social partners wish the national measures implementing this Directive to enter into force not earlier than on the date of entry into force of the said Convention.

(10) For any terms used in the Agreement and which are not specifically defined therein, this Directive leaves Member States free to define them in accordance with national law and practice, as is the case for other social policy Directives using similar terms, provided that those definitions respect the content of the Agreement.

(11) The Commission has drafted its proposal for a Directive, in accordance with its Communication of 20 May 1998 on adapting and promoting the social dialogue at Community level, taking into account the representative status of the signatory parties and the legality of each clause of the Agreement.

(12) The Member States may entrust management and labour, at their joint request, with the implementation of this Directive, as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results imposed by this Directive.

(13) The provisions of this Directive should apply without prejudice to any existing Community provisions being more specific and/or granting a higher level of protection to seafarers, and in particular those included in Community legislation.

(14) Compliance with the general principle of employer responsibility as provided for in Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work [1], and in particular in its Article 5(1) and (3), should be ensured.

(15) This Directive should not be used to justify a reduction in the general level of protection of workers in the fields covered by the Agreement annexed to it.

(16) This Directive and the Agreement lay down minimum standards. The Member States and/or the social partners should be able to maintain or introduce more favourable provisions.

(17) The Commission has informed the European Parliament and the European Economic and Social Committee, in accordance with its communication of 14 December 1993 concerning the application of the Agreement on Social Policy, by sending them the text of its proposal for a Directive containing the Agreement.

(18) This instrument complies with the fundamental rights and principles set out in the Charter of Fundamental Rights of the European Union and in particular with Article 31 thereof which provides that all workers have the right to healthy, safe and dignified working conditions, to a limit on their maximum working time and to weekly and daily rest periods and an annual period of paid leave.

(19) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(20) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making [2], Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.

(21) Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) [3] containing the European Agreement on the organisation of working time of seafarers in its Annex should therefore be amended accordingly.

(22) The implementation of the Agreement contributes to achieving the objectives under Article 136 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive implements the Agreement on Maritime Labour Convention, 2006, concluded on 19 May 2008 between the organisations representing management and labour in the maritime transport sector (European Community Shipowners' Associations, ECSA and European Transport Workers' Federation, ETF) as set out in the Annex.

Article 2

The Annex to Council Directive 1999/63/EC is amended as follows:

1. in Clause 1, the following point 3 shall be added:

'3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Agreement, the question shall be determined by the competent authority in each Member State after consultation with the shipowners' and seafarers' organisations concerned with this question. In this context due account shall be taken of the Resolution of the 94th (Maritime) Session of the General Conference of the International Labour Organisation concerning information on occupational groups.';

2. in Clause 2, points (c) and (d) shall be replaced by the following:

'(c) the term "seafarer" means any person who is employed or engaged or works in any capacity on board a ship to which this Agreement applies;

[1] OJ L 183, 29.6.1989, p. 1.
[2] OJ C 321, 31.12.2003, p. 1.
[3] OJ L 167, 2.7.1999, p. 33.

(d) the term "shipowner" means the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Agreement, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.';

3. Clause 6 shall be replaced by the following:

'1. Night work of seafarers under the age of 18 shall be prohibited. For the purposes of this Clause, "night" shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m.

2. An exception to strict compliance with the night work restriction may be made by the competent authority when:

(a) the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired; or

(b) the specific nature of the duty or a recognised training programme requires that the seafarers covered by the exception perform duties at night and the authority determines, after consultation with the shipowners' and seafarers' organisations concerned, that the work will not be detrimental to their health or well-being.

3. The employment, engagement or work of seafarers under the age of 18 shall be prohibited where the work is likely to jeopardise their health or safety. The types of such work shall be determined by national laws or regulations or by the competent authority, after consultation with the shipowners' and seafarers' organisations concerned, in accordance with relevant international standards.';

4. Clause 13 shall be replaced by the following:

'1. Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.

2. Exceptions can only be permitted as prescribed in this Agreement.

3. The competent authority shall require that, prior to beginning work on a ship, seafarers hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.

4. In order to ensure that medical certificates genuinely reflect seafarers' state of health, in light of the duties they are to perform, the competent authority shall, after consultation with the shipowners' and seafarers' organisations concerned, and giving due consideration to applicable international guidelines, prescribe the nature of the medical examination and certificate.

5. This Agreement is without prejudice to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW). A medical certificate issued in accordance with the requirements of STCW shall be accepted by the competent authority, for the purpose of points 1 and 2 of this Clause. A medical certificate meeting the substance of those requirements, in the case of seafarers not covered by STCW, shall similarly be accepted.

6. The medical certificate shall be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognised by the competent authority as qualified to issue such a certificate. Practitioners must enjoy full professional independence in exercising their medical judgement in undertaking medical examination procedures.

7. Seafarers that have been refused a certificate or have had a limitation imposed on their ability to work, in particular with respect to time, field of work or trading area, shall be given the opportunity to have a further examination by another independent medical practitioner or by an independent medical referee.

8. Each medical certificate shall state in particular that:

(a) the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and

(b) the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.

9. Unless a shorter period is required by reason of the specific duties to be performed by the seafarer concerned or is required under STCW:

   (a) a medical certificate shall be valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year;

   (b) a certification of colour vision shall be valid for a maximum period of six years.

10. In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:

   (a) the period of such permission does not exceed three months; and

   (b) the seafarer concerned is in possession of an expired medical certificate of recent date.

11. If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.

12. The medical certificates for seafarers working on ships ordinarily engaged on international voyages must as a minimum be provided in English.

13. The nature of the health assessment to be made and the particulars to be included in the medical certificate shall be established after consultation with the shipowners' and seafarers' organisations concerned.

14. All seafarers shall have regular health assessments. Watchkeepers suffering from health problems certified by a medical practitioner as being due to the fact that they perform night work shall be transferred, wherever possible, to day work to which they are suited.

15. The health assessment referred to in points 13 and 14 shall be free and comply with medical confidentiality. Such health assessments may be conducted within the national health system.';

5. Clause 16 shall be replaced by the following:

'Every seafarer shall be entitled to paid annual leave. The annual leave with pay entitlement shall be calculated on the basis of a minimum of 2,5 calendar days per month of employment and *pro rata* for incomplete months. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.'.

Article 3

1. Member States may maintain or introduce more favourable provisions than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This shall be without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are complied with.

3. The application and/or interpretation of this Directive shall be without prejudice to any Community or national provision, custom or practice providing for more favourable conditions for the seafarers concerned.

4. The provision of Standard A4.2 point 5(b) shall not affect the principle of responsibility of the employer as provided for in Article 5 of Directive 89/391/EEC.

Article 4

Member States shall determine what penalties are applicable when national provisions enacted pursuant to this Directive are infringed. The penalties shall be effective, proportionate and dissuasive.

Article 5

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive or shall ensure that management and labour have introduced the necessary measures by agreement, not later than 12 months after the date of entry into force of this Directive.

2. When Member States adopt provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States. They shall forthwith communicate to the Commission the text of those provisions.

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

Article 6

The application of the principle of substantial equivalence mentioned in the preamble of the Agreement is without prejudice to the obligations of the Member States emanating from this Directive.

Article 7

This Directive shall enter into force on the date of entry into force of the Maritime Labour Convention, 2006.

Article 8

This Directive is addressed to the Member States.

Done at Brussels, 16 February 2009.

For the Council

The President

O. LIŠKA

ANNEX

AGREEMENT

concluded by the ECSA and the ETF on the Maritime Labour Convention, 2006

PREAMBLE

THE SIGNATORY PARTIES,

Whereas the ILO Maritime Labour Convention, 2006 (hereinafter referred to as the Convention) requires each Member to satisfy itself that the provisions of its laws and regulations respect, in the context of the Convention, the fundamental rights to freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation;

Whereas the Convention provides that every seafarer has the rights to a safe and secure workplace that complies with safety standards, to fair terms of employment, to decent working and living conditions and to health protection, medical care, welfare measures and other forms of social protection;

Whereas the Convention requires Members to ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraph of this preamble are fully implemented in accordance with the requirements of the Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice;

Whereas the signatory parties wish to draw particular attention to the 'Explanatory Note to the Regulations and Code of the Maritime Labour Convention', which sets out the format and structure of the Convention;

Having regard to the Treaty establishing the European Community (hereinafter referred to as the Treaty) and in particular Articles 137, 138 and 139 thereof;

Whereas Article 139(2) of the Treaty provides that agreements concluded at European level may be implemented at the joint request of the signatory parties by a Council Decision on a proposal from the Commission;

Whereas the signatory parties hereby make such a request;

Whereas the proper instrument for implementing the Agreement is a Directive, within the meaning of Article 249 of the Treaty, which binds Member States as to the result to be achieved, whilst leaving to national authorities the choice of form and methods; Article VI of the Convention permits Members of the ILO to implement measures that are to their satisfaction substantially equivalent to the Standards of the Convention which is aimed both at full achievement of the general objective and purpose of the Convention and at giving effect to the said provisions of the Convention; the implementation of the Agreement by a Directive and the principle of 'substantial equivalence' in the Convention are thus aimed at giving Member States the ability to implement the rights and principles in a manner provided by Article VI points 3 and 4 of the Convention,

HAVE AGREED THE FOLLOWING:

DEFINITIONS AND SCOPE OF APPLICATION

1. For the purpose of this Agreement and unless provided otherwise in particular provisions, the term:

(a) 'competent authority' means the minister, government department or other authority designated by a Member State having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned;

(b) 'gross tonnage' means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention; for ships covered by the tonnage measurement interim scheme adopted by the International Maritime Organisation, the gross tonnage is that which is included in the 'Remarks' column of the International Tonnage Certificate (1969);

(c) 'seafarer' means any person who is employed or engaged or works in any capacity on board a 'ship' to which this Agreement applies;

(d) 'seafarers employment' agreement includes both a contract of employment and articles of agreement;

(e) 'ship' means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;

(f) 'shipowner' means the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Agreement, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

2. Except as expressly provided otherwise, this Agreement applies to all seafarers.

3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Agreement, the question shall be determined by the competent authority in each Member State after consultation with the shipowners' and seafarers' organisations concerned with this question. In this context due account shall be taken of the Resolution of the 94th (Maritime) Session of the General Conference of the International Labour Organisation concerning information on occupational groups.

4. Except as expressly provided otherwise, this Agreement applies to all ships whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Agreement does not apply to warships or naval auxiliaries.

5. In the event of doubt as to whether this Agreement applies to a ship or particular category of ships, the question shall be determined by the competent authority in each Member State after consultation with the shipowners' and seafarers' organisations concerned.

THE REGULATIONS AND THE STANDARDS

TITLE 1

MINIMUM REQUIREMENTS FOR SEAFARERS TO WORK ON A SHIP

Regulation 1.1 — Minimum age

1. No person below the minimum age shall be employed or engaged or work on a ship.

2. A higher minimum age shall be required in the circumstances set out in this Agreement.

Standard A1.1 — Minimum age

The minimum age is regulated by Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organisation of working time for seafarers (to be amended in accordance with Annex A to this Agreement).

Regulation 1.2 — Medical certificate

Medical certificates are regulated by Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organisation of working time for seafarers (to be amended in accordance with Annex A to this Agreement).

Regulation 1.3 — Training and qualifications

1. Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties.

2. Seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship.

3. Training and certification in accordance with the mandatory instruments adopted by the International Maritime Organisation shall be considered as meeting the requirements of paragraphs 1 and 2 of this Regulation.

TITLE 2

CONDITIONS OF EMPLOYMENT

Regulation 2.1 — Seafarers' employment agreements

1. The terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with the standards set out in this Agreement.

2. Seafarers' employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them before signing.

3. To the extent compatible with the Member State's national law and practice, seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreements.

Standard A2.1 — Seafarers' employment agreements

1. Each Member State shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:

(a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Agreement;

(b) seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;

(c) the shipowner and seafarer concerned shall each have a signed original of the seafarers' employment agreement;

(d) measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited; and

(e) seafarers shall be given a document containing a record of their employment on board the ship.

2. Where a collective bargaining agreement forms all or part of a seafarers' employment agreement, a copy of that agreement shall be available on board. Where the language of the seafarers' employment agreement and any applicable collective bargaining agreement is not in English, the following shall also be available in English (except for ships engaged only in domestic voyages):

(a) a copy of a standard form of the agreement; and

(b) the portions of the collective bargaining agreement that are subject to a port State inspection.

3. The document referred to in paragraph 1(e) of this Standard shall not contain any statement as to the quality of the seafarers' work or as to their wages. The form of the document, the particulars to be recorded and the manner in which such particulars are to be entered, shall be determined by national law.

4. Each Member State shall adopt laws and regulations specifying the matters that are to be included in all seafarers' employment agreements governed by its national law. Seafarers' employment agreements shall in all cases contain the following particulars:

(a) the seafarer's full name, date of birth or age, and birthplace;

(b) the shipowner's name and address;

(c) the place where and date when the seafarers' employment agreement is entered into;

(d) the capacity in which the seafarer is to be employed;

(e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them;

(f) the amount of paid annual leave or, where applicable, the formula used for calculating it;

(g) the termination of the agreement and the conditions thereof, including:

(i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;

(ii) if the agreement has been made for a definite period, the date fixed for its expiry; and

(iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;

(h) the health and social security protection benefits to be provided to the seafarer by the shipowner;

(i) the seafarer's entitlement to repatriation;

(j) reference to the collective bargaining agreement, if applicable; and

(k) any other particulars which national law may require.

5. Each Member State shall adopt laws or regulations establishing minimum notice periods to be given by the seafarers and shipowners for the early termination of a seafarers' employment agreement. The duration of these minimum periods shall be determined after consultation with the shipowners' and seafarers' organisations concerned, but shall not be shorter than seven days.

6. A notice period shorter than the minimum may be given in circumstances which are recognised under national law or regulations or applicable collective bargaining agreements as justifying termination of the employment agreement at shorter notice or without notice. In determining those circumstances, each Member State shall ensure that the need of the seafarer to terminate, without penalty, the employment agreement on shorter notice or without notice for compassionate or other urgent reasons is taken into account.

Regulation 2.3 — Hours of work and hours of rest

Seafarers' hours of work and rest are regulated by Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organisation of working time for seafarers (to be amended in accordance with Annex A to this Agreement).

Regulation 2.4 — Entitlement to leave

1. Each Member State shall require that seafarers employed on ships that fly its flag are given paid annual leave under appropriate conditions in accordance with this Agreement and Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organisation of working time for seafarers (to be amended in accordance with Annex A to this Agreement).

2. Seafarers shall be granted shore leave to benefit their health and well-being and with the operational requirements of their positions.

Regulation 2.5 — Repatriation

1. Seafarers have a right to be repatriated at no cost to themselves.

2. Each Member State shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated.

Standard A2.5 — Repatriation

1. Each Member State shall ensure that seafarers on ships that fly its flag are entitled to repatriation in the following circumstances:

(a) if the seafarers' employment agreement expires while they are abroad;

(b) when the seafarers' employment agreement is terminated:

(i) by the shipowner; or

(ii) by the seafarer for justified reasons; and also

(c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.

2. Each Member State shall ensure that there are appropriate provisions in its laws and regulations or other measures or in collective bargaining agreements, prescribing:

(a) the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;

(b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation — such periods to be less than 12 months; and

(c) the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.

3. Each Member State shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations.

4. National laws and regulations shall not prejudice any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements.

5. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:

(a) the competent authority of the Member State whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member State whose flag the ship flies;

(b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member State whose flag the ship flies;

(c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this Standard.

6. Taking into account applicable international instruments, including the International Convention on Arrest of Ships, 1999, a Member State which has paid the cost of repatriation may detain, or request the detention of, the ships of the shipowner concerned until the reimbursement has been made in accordance with paragraph 5 of this Standard.

7. Each Member State shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board.

8. In particular, a Member State shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer.

9. Each Member State shall require that ships that fly its flag carry and make available to seafarers a copy of the applicable national provisions regarding repatriation written in an appropriate language.

Regulation 2.6 — Seafarer compensation for the ship's loss or foundering

Seafarers are entitled to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering.

Standard A2.6 — Seafarer compensation for the ship's loss or foundering

1. Each Member State shall make rules ensuring that, in every case of loss or foundering of any ship, the shipowner shall pay to each seafarer on board an indemnity against unemployment resulting from such loss or foundering.

2. The rules referred to in paragraph 1 of this Standard shall be without prejudice to any other rights a seafarer may have under the national law of the Member State concerned for losses or injuries arising from a ship's loss or foundering.

Regulation 2.7 — Manning levels

Provisions as to the sufficient, safe and efficient manning of ships are contained in Council Directive 1999/63/EC of 21 June 1999 (to be amended) concerning the European Agreement on the organisation of working time for seafarers (to be amended in accordance with Annex A to this Agreement).

Regulation 2.8 — Career and skill development and opportunities for seafarers' employment

Each Member State shall have national policies to promote employment in the maritime sector and to encourage career and skill development and greater employment opportunities for seafarers domiciled in its territory.

Standard A2.8 — Career and skill development and employment opportunities for seafarers

1. Each Member State shall have national policies that encourage career and skill development and employment opportunities for seafarers, in order to provide the maritime sector with a stable and competent workforce.

2. The aim of the policies referred to in paragraph 1 of this Standard shall be to help seafarers strengthen their competencies, qualifications and employment opportunities.

3. Each Member State shall, after consulting the shipowners' and seafarers' organisations concerned, establish clear objectives for the vocational guidance, education and training of seafarers whose duties on board ship primarily relate to the safe operation and navigation of the ship, including ongoing training.

TITLE 3

ACCOMMODATION, RECREATIONAL FACILITIES, FOOD AND CATERING

Standard A3.1 — Accommodation and recreational facilities

1. Ships regularly trading to mosquito-infested ports shall be fitted with appropriate devices as required by the competent authority.

2. Appropriate seafarers' recreational facilities, amenities and services, as adapted to meet the special needs of seafarers who must live and work on ships, shall be provided on board for the benefit of all seafarers, taking into account provisions on health and safety protection and accident prevention.

3. The competent authority shall require frequent inspections to be carried out on board ships, by or under the authority of the master, to ensure that seafarer accommodation is clean, decently habitable and maintained in a good state of repair. The results of each such inspection shall be recorded and be available for review.

4. In the case of ships where there is need to take account, without discrimination, of the interests of seafarers having differing and distinctive religious and social practices, the competent authority may, after consultation with the shipowners' and seafarers' organisations concerned, permit fairly applied variations in respect of this Standard on condition that such variations do not result in overall facilities less favourable than those which would result from the application of this Standard.

Regulation 3.2 — Food and catering

1. Each Member State shall ensure that ships that fly its flag carry on board and serve food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship and takes into account the differing cultural and religious backgrounds.

2. Seafarers on board a ship shall be provided with food free of charge during the period of engagement.

3. Seafarers employed as ships' cooks with responsibility for food preparation must be trained and qualified for their position on board ship.

Standard A3.2 — Food and catering

1. Each Member State shall adopt laws and regulations or other measures to provide minimum standards for the quantity and quality of food and drinking water and for the catering standards that apply to meals provided to seafarers on ships that fly its flag, and shall undertake educational activities to promote awareness and implementation of the standards referred to in this paragraph.

2. Each Member State shall ensure that ships that fly its flag meet the following minimum standards:

(a) food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage, shall be suitable in respect of quantity, nutritional value, quality and variety;

(b) the organisation and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions; and

(c) catering staff shall be properly trained or instructed for their positions.

3. Shipowners shall ensure that seafarers who are engaged as ships' cooks are trained, qualified and found competent for the position in accordance with requirements set out in the laws and regulations of the Member State concerned.

4. The requirements under paragraph 3 of this Standard shall include a completion of a training course approved or recognised by the competent authority, which covers practical cookery, food and personal hygiene, food storage, stock control, and environmental protection and catering health and safety.

5. On ships operating with a prescribed manning of less than ten which, by virtue of the size of the crew or the trading pattern, may not be required by the competent authority to carry a fully qualified cook, anyone processing food in the galley shall be trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.

6. In circumstances of exceptional necessity, the competent authority may issue a dispensation permitting a non-fully qualified cook to serve in a specified ship for a specified limited period, until the next convenient port of call or for a period not exceeding one month, provided that the person to whom the dispensation is issued is trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.

7. The competent authority shall require that frequent documented inspections be carried out on board ships, by or under the authority of the master, with respect to:

(a) supplies of food and drinking water;

(b) all spaces and equipment used for the storage and handling of food and drinking water; and

(c) galley and other equipment for the preparation and service of meals.

8. No seafarer under the age of 18 shall be employed or engaged or work as a ship's cook.

TITLE 4

HEALTH PROTECTION, MEDICAL CARE AND WELFARE

Regulation 4.1 — Medical care on board ship and ashore

1. Each Member State shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board.

2. Each Member State shall ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the Member State's medical facilities on shore.

3. The requirements for on-board health protection and medical care include standards for measures aimed at providing seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore.

Standard A4.1 — Medical care on board ship and ashore

1. Each Member State shall ensure that measures providing for health protection and medical care, including essential dental care, for seafarers working on board a ship that flies its flag are adopted which:

(a) ensure the application to seafarers of any general provisions on occupational health protection and medical care relevant to their duties, as well as of special provisions specific to work on board ship;

(b) ensure that seafarers are given health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise;

(c) give seafarers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable;

(d) are not limited to treatment of sick or injured seafarers but include measures of a preventive character such as health promotion and health education programmes.

2. The competent authority shall adopt a standard medical report form for use by the ships' masters and relevant onshore and on-board medical personnel. The form, when completed, and its contents shall be kept confidential and shall only be used to facilitate the treatment of seafarers.

3. Each Member State shall adopt laws and regulations establishing requirements for on-board hospital and medical care facilities and equipment and training on ships that fly its flag.

4. National laws and regulations shall as a minimum provide for the following requirements:

(a) all ships shall carry a medicine chest, medical equipment and a medical guide, the specifics of which shall be prescribed and subject to regular inspection by the competent authority; the national requirements shall take into account the type of ship, the number of persons on board and the nature, destination and duration of voyages and relevant national and international recommended medical standards;

(b) ships carrying 100 or more persons and ordinarily engaged on international voyages of more than 72 hours duration shall carry a qualified medical doctor who is responsible for providing medical care; national laws or regulations shall also specify which other ships shall be required to carry a medical doctor, taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board;

(c) ships which do not carry a medical doctor shall be required to have either at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide medical first aid; persons in charge of medical care on board who are not medical doctors shall have satisfactorily completed training in medical care that meets the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW); seafarers designated to provide medical first aid shall have satisfactorily completed training in medical first aid that meets the requirements of STCW; national laws or regulations shall specify the level of approved training required taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board; and

(d) the competent authority shall ensure by a prearranged system that medical advice by radio or satellite communication to ships at sea, including specialist advice, is available 24 hours a day; medical advice, including the onward transmission of medical messages by radio or satellite communication between a ship and those ashore giving the advice, shall be available free of charge to all ships irrespective of the flag that they fly.

Regulation 4.2 — Shipowners' liability

1. Each Member State shall ensure that measures are in place on ships that fly its flag to provide seafarers employed on the ships with a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while they are serving under a seafarers' employment agreement or arising from their employment under such agreement.

2. This Regulation does not affect any other legal remedies that a seafarer may seek.

Standard A4.2 — Shipowners' liability

1. Each Member State shall adopt laws and regulations requiring that shipowners of ships that fly its flag are responsible for health protection and medical care of all seafarers working on board the ships in accordance with the following minimum standards:

(a) shipowners shall be liable to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates;

(b) shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or collective agreement;

(c) shipowners shall be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character; and

(d) shipowners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement.

2. National laws or regulations may limit the liability of the shipowner to defray the expense of medical care and board and lodging to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

3. Where the sickness or injury results in incapacity for work the shipowner shall be liable:

(a) to pay full wages as long as the sick or injured seafarers remain on board or until the seafarers have been repatriated in accordance with this Agreement; and

(b) to pay wages in whole or in part as prescribed by national laws or regulations or as provided for in collective agreements from the time when the seafarers are repatriated or landed until their recovery or, if earlier, until they are entitled to cash benefits under the legislation of the Member State concerned.

4. National laws or regulations may limit the liability of the shipowner to pay wages in whole or in part in respect of a seafarer no longer on board to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

5. National laws or regulations may exclude the shipowner from liability in respect of:

(a) injury incurred otherwise than in the service of the ship;

(b) injury or sickness due to the wilful misconduct of the sick, injured or deceased seafarer; and

(c) sickness or infirmity intentionally concealed when the engagement is entered into.

6. National laws or regulations may exempt the shipowner from liability to defray the expense of medical care and board and lodging and burial expenses in so far as such liability is assumed by the public authorities.

7. Shipowners or their representatives shall take measures for safeguarding property left on board by sick, injured or deceased seafarers and for returning it to them or to their next of kin.

Regulation 4.3 — Health and safety protection and accident prevention

1. Each Member State shall ensure that seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment.

2. Each Member State shall develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative shipowners' and seafarers' organisations and taking into account applicable codes, guidelines and standards recommended by international organisations, national administrations and maritime industry organisations.

3. Each Member State shall adopt laws and regulations and other measures addressing the matters specified in this Agreement taking into account relevant international instruments, and set standards for occupational safety and health protection and accident prevention on ships that fly its flag.

Standard A4.3 — Health and safety protection and accident prevention

1. The laws and regulations and other measures to be adopted in accordance with Regulation 4.3, paragraph 3, shall include the following subjects:

(a) the adoption and effective implementation and promotion of occupational safety and health policies and programmes on ships that fly the Member State's flag, including risk evaluation as well as training and instruction of seafarers;

(b) on-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection, involving seafarers' representatives and all other persons concerned in their implementation, taking account of preventive measures, including engineering and design control, substitution of processes and procedures for collective and individual tasks, and the use of personal protective equipment; and

(c) requirements for inspecting, reporting and correcting unsafe conditions and for investigating and reporting on-board occupational accidents.

2. The provisions referred to in paragraph 1 of this Standard shall:

(a) take account of relevant international instruments dealing with occupational safety and health protection in general and with specific risks, and address all matters relevant to the prevention of occupational accidents, injuries and diseases that may be applicable to the work of seafarers and particularly those which are specific to maritime employment;

(b) specify the duties of the master or a person designated by the master, or both, to take specific responsibility for the implementation of and compliance with the ship's occupational safety and health policy and programme; and

(c) specify the authority of the ship's seafarers appointed or elected as safety representatives to participate in meetings of the ship's safety committee; such a committee shall be established on board a ship on which there are five or more seafarers.

3. The laws and regulations and other measures referred to in Regulation 4.3, paragraph 3, shall be regularly reviewed in consultation with the representatives of the shipowners' and seafarers' organisations and, if necessary, revised to take account of changes in technology and research in order to facilitate continuous improvement in occupational safety and health policies and programmes and to provide a safe occupational environment for seafarers on ships that fly the Member State's flag.

4. Compliance with the requirements of applicable international instruments on the acceptable levels of exposure to workplace hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes shall be considered as meeting the requirements of this Agreement.

5. The competent authority shall ensure that:

(a) occupational accidents, injuries and diseases are adequately reported;

(b) comprehensive statistics of such accidents and diseases are kept, analysed and published and, where appropriate, followed up by research into general trends and into the hazards identified; and

(c) occupational accidents are investigated.

6. Reporting and investigation of occupational safety and health matters shall be designed to ensure the protection of seafarers' personal data.

7. The competent authority shall cooperate with shipowners' and seafarers' organisations to take measures to bring to the attention of all seafarers information concerning particular hazards on board ships, for instance, by posting official notices containing relevant instructions.

8. The competent authority shall require that shipowners conducting risk evaluation in relation to management of occupational safety and health refer to appropriate statistical information from their ships and from general statistics provided by the competent authority.

Regulation 4.4 — Access to shore-based welfare facilities

Each Member State shall ensure that shore-based welfare facilities, where they exist, are easily accessible. The Member State shall also promote the development of welfare facilities in designated ports to provide seafarers on ships that are in its ports with access to adequate welfare facilities and services.

Standard A4.4 — Access to shore-based welfare facilities

1. Each Member State shall require, where welfare facilities exist on its territory, that they are available for the use of all seafarers, irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the flag State of the ship on which they are employed or engaged or work.

2. Each Member State shall promote the development of welfare facilities in appropriate ports of the country and determine, after consultation with the shipowners' and seafarers' organisations concerned, which ports are to be regarded as appropriate.

3. Each Member State shall encourage the establishment of welfare boards which shall regularly review welfare facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.

TITLE 5

COMPLIANCE AND ENFORCEMENT

Regulation 5.1.5 — On-board complaint procedures

1. Each Member State shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of the Convention (including seafarers' rights).

2. Each Member State shall prohibit and penalise any kind of victimisation of a seafarer for filing a complaint.

3. The provisions in this Regulation are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.

Standard A5.1.5 — On-board complaint procedures

1. Without prejudice to any wider scope that may be given in national laws or regulations or collective agreements, the on-board procedures may be used by seafarers to lodge complaints relating to any matter that is alleged to constitute a breach of the requirements of the Convention (including seafarers' rights).

2. Each Member State shall ensure that, in its laws or regulations, appropriate on-board complaint procedures are in place to meet the requirements of Regulation 5.1.5. Such procedures shall seek to resolve complaints at the lowest level possible. However, in all cases, seafarers shall have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities.

3. The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimisation of seafarers for filing complaints. The term 'victimisation' covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.

4. In addition to a copy of their seafarers' employment agreement, all seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship. This shall include contact information for the competent authority in the flag State and, where different, in the seafarers' country of residence, and the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.

FINAL PROVISIONS

Subsequent to any amendments to any of the provisions of the Maritime Labour Convention, 2006, and if requested by either one of the Parties to this Agreement, a review of the application of this Agreement shall be carried out.

The social partners make this Agreement on condition that it shall not enter into force until the date when the ILO Maritime Labour Convention, 2006 enters into force, such date being 12 months after the date on which there have been registered with the International Labour Office ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33 per cent.

Member States and/or the social partners can maintain or introduce more favourable provisions for seafarers than set out in this Agreement.

This Agreement shall be without prejudice to any more stringent and/or specific existing Community legislation.

This Agreement shall not affect any law, custom or agreement which provides for more favourable conditions for the seafarers concerned. For example, the terms of this Agreement are without prejudice to Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, to Council Directive 92/29/EEC on the minimum safety and health requirements for improved medical treatment on board vessels and to Council Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers (to be amended in accordance with Annex A to this Agreement).

Implementation of this Agreement shall not constitute valid grounds for reducing the general level of protection afforded to seafarers in the field of the Agreement.

EUROPEAN TRANSPORT WORKERS' FEDERATION (ETF)

EUROPEAN COMMUNITY SHIPOWNERS' ASSOCIATIONS (ECSA)

CHAIRPERSON MARITIME TRANSPORT SECTORAL DIALOGUE COMMITTEE

BRUSSELS, 19 MAY 2008.

ANNEX A

AMENDMENTS TO THE AGREEMENT ON THE ORGANISATION OF WORKING TIME OF SEAFARERS CONCLUDED ON 30 SEPTEMBER 1998

In their discussions leading to the conclusion of their Agreement on the Maritime Labour Convention, 2006, the social partners additionally reviewed the Agreement on the Organisation of Working Time of Seafarers concluded on 30 September 1998, in order to verify that it was consistent with corresponding provisions of the Convention and agree any necessary amendments.

As a result, the social partners have agreed the following amendments to the Agreement on the Organisation of Working Time of Seafarers:

1. Clause 1

Insert new paragraph 3:

'3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Agreement, the question shall be determined by the competent authority in each Member State after consultation with the shipowners' and seafarers' organisations concerned with this question. In this context due account shall be taken of the Resolution of the 94th (Maritime) Session of the General Conference of the International Labour Organisation concerning information on occupational groups.';

2. Clause 2(c)

Replace Clause 2(c) with:

'(c) the term "seafarer" means any person who is employed or engaged or works in any capacity on board a ship to which this Agreement applies;';

3. Clause 2 (d)

Replace Clause 2(d) with:

'(d) the term "shipowner" means the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Agreement, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.';

4. Clause 6

Replace Clause 6 with:

'1. Night work of seafarers under the age of 18 shall be prohibited. For the purposes of this Clause, "night" shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m.

2. An exception to strict compliance with the night work restriction may be made by the competent authority when:

(a) the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired; or

(b) the specific nature of the duty or a recognised training programme requires that the seafarers covered by the exception perform duties at night and the authority determines, after consultation with the shipowners' and seafarers' organisations concerned, that the work will not be detrimental to their health or well-being.

3. The employment, engagement or work of seafarers under the age of 18 shall be prohibited where the work is likely to jeopardise their health or safety. The types of such work shall be determined by national laws or regulations or by the competent authority, after consultation with the shipowners' and seafarers' organisations concerned, in accordance with relevant international standards.';

5. Clause 13

Replace Clause 13(1) first sentence with:

'1. Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.

2. Exceptions can only be permitted as prescribed in this Agreement.

3. The competent authority shall require that, prior to beginning work on a ship, seafarers hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.

4. In order to ensure that medical certificates genuinely reflect seafarers' state of health, in light of the duties they are to perform, the competent authority shall, after consultation with the shipowners' and seafarers' organisations concerned, and giving due consideration to applicable international guidelines, prescribe the nature of the medical examination and certificate.

5. This Agreement is without prejudice to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW). A medical certificate issued in accordance with the requirements of STCW shall be accepted by the competent authority, for the purpose of paragraphs 1 and 2 of this Clause. A medical certificate meeting the substance of those requirements, in the case of seafarers not covered by STCW, shall similarly be accepted.

6. The medical certificate shall be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognised by the competent authority as qualified to issue such a certificate. Practitioners must enjoy full professional independence in exercising their medical judgement in undertaking medical examination procedures.

7. Seafarers that have been refused a certificate or have had a limitation imposed on their ability to work, in particular with respect to time, field of work or trading area, shall be given the opportunity to have a further examination by another independent medical practitioner or by an independent medical referee.

8. Each medical certificate shall state in particular that:

(a) the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and

(b) the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.

9. Unless a shorter period is required by reason of the specific duties to be performed by the seafarer concerned or is required under STCW:

(a) a medical certificate shall be valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year;

(b) a certification of colour vision shall be valid for a maximum period of six years.

10. In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:

    (a) the period of such permission does not exceed three months; and

    (b) the seafarer concerned is in possession of an expired medical certificate of recent date.

11. If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.

12. The medical certificates for seafarers working on ships ordinarily engaged on international voyages must as a minimum be provided in English.'

The subsequent sentences of Clause 13(1) and paragraph 13(2) become paragraphs 13 to 15;

6. Clause 16:

Replace first sentence with:

'Every seafarer shall be entitled to paid annual leave. The annual leave with pay entitlement shall be calculated on the basis of a minimum of 2,5 calendar days per month of employment and *pro rata* for incomplete months.'.

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 27 November 2008

on the conclusion, on behalf of the European Community and its Member States, of a Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons regarding the participation, as contracting parties of the Republic of Bulgaria and Romania pursuant to their accession to the European Union

(2009/392/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 310, in conjunction with the second sentence of the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

Having regard to the Act of Accession annexed to the Treaty of Accession and in particular Article 6(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament,

Whereas:

(1) Following the authorisation given to the Commission on 5 May 2006, negotiations with the Swiss Confederation for a the Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of Persons, regarding the participation, as contracting parties, of the Republic of Bulgaria and Romania, pursuant to their accession to the European Union have been concluded.

(2) According to the Council Decision of 26 May 2008, and pending its final conclusion at a later date, this Protocol has been signed on behalf of the European Community and its Member States on 27 May 2008.

(3) The Protocol should be concluded,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, regarding the participation, as contracting parties, of the Republic of Bulgaria and Romania, pursuant to their accession to the European Union, is hereby approved on behalf of the European Community and its Member States.

The text of the Protocol is attached to this Decision.

Article 2

The President of the Council shall, on behalf of the Community and its Member States, transmit the notification of approval in the terms provided for in Article 6 of the Protocol.

Article 3

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

Done at Brussels, 27 November 2008.

For the Council
The President
L. CHATEL

PROTOCOL

to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, regarding the participation, as contracting parties of the Republic of Bulgaria and Romania pursuant to their accession to the European Union

THE EUROPEAN COMMUNITY,

represented by the Council of the European Union, and

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

hereinafter referred to as 'the Member States', also represented by the Council of the European Union,

of the one part, and

THE SWISS CONFEDERATION, hereinafter referred to as 'Switzerland',

of the other part,

hereinafter referred to as 'the Contracting Parties',

HAVING REGARD to the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (hereinafter referred to as the Agreement), which entered into force on 1 June 2002,

HAVING REGARD to the Protocol of 26 October 2004 to the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons regarding the participation, as contracting parties, of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic pursuant to their accession to the European Union (hereinafter referred to as the Protocol of 2004), which entered into force on 1 April 2006,

HAVING REGARD to the accession of the Republic of Bulgaria and Romania (hereinafter referred to as the new Member States) to the European Union on 1 January 2007,

WHEREAS the new Member States are to become Contracting Parties to the Agreement,

CONSIDERING that the Act of Accession grants the Council of the European Union the power to conclude on behalf of the Member States of the European Union a protocol on the accession of the new Member States to the Agreement,

HAVE AGREED AS FOLLOWS:

Article 1

1. The new Member States hereby become Contracting Parties to the Agreement.

2. From the entry into force of this Protocol, the provisions of the Agreement shall be binding on the new Member States as on the present Contracting Parties to the Agreement under the terms and conditions laid down in this Protocol.

Article 2

In the main body of the Agreement and in Annex I thereto the following adaptations shall be made:

1. the list of Contracting Parties to the Agreement shall be replaced by the following:

'THE EUROPEAN COMMUNITY,

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

of the one part, and

THE SWISS CONFEDERATION,

of the other part,';

2. Article 10 of the Agreement shall be amended as follows:

(a) the following paragraph shall be inserted after paragraph 1a:

'1b. Switzerland may maintain until two years after the entry into force of the Protocol to this Agreement regarding the participation, as Contracting Parties, of the Republic of Bulgaria and Romania quantitative limits in respect of access by workers employed in Switzerland and for self-employed persons who are nationals of the Republic of Bulgaria and Romania for the following two categories of residence: residence for a period of more than four months and less than one year and residence for a period equal to, or exceeding, one year. There shall be no quantitative restriction on residence for less than four months.

Before the end of the transitional period mentioned above, the Joint Committee shall review the functioning of the transitional period applied to nationals of the new Member States on the basis of a report from Switzerland. Upon completion of the review, and no later than at the end of the period mentioned above, Switzerland shall notify the Joint Committee whether it will continue applying quantitative limits to workers employed in Switzerland. Switzerland may continue to apply such measures until five years after the entry into force of the aforementioned Protocol. In the absence of such notification, the transitional period shall expire at the end of the two-year period specified in the first subparagraph.

At the end of the transitional period defined in this paragraph, all quantitative limits applicable to nationals of the Republic of Bulgaria and Romania shall be abolished. These Member States are entitled to introduce the same quantitative limitations for Swiss nationals for the same periods.';

(b) the following paragraph shall be inserted after paragraph 2a:

'2b. Switzerland and the Republic of Bulgaria and Romania may maintain, until two years after the entry into force of the Protocol to this Agreement regarding the participation, as Contracting Parties, of the Republic of Bulgaria and Romania, for workers of one of these Contracting Parties employed in their own territory the controls on the priority of workers integrated into the regular labour market and wage and working conditions applicable to nationals of the other Contracting Party concerned. The same controls may be maintained for persons providing services, as referred to in Article 5(1) of this Agreement, in the following four sectors: Horticultural service activities; Construction, including related branches; Security activities; Industrial cleaning (NACE (*) codes 01.41; 45.1 to 4; 74.60; 74.70 respectively). Switzerland shall, during the transitional periods mentioned in paragraphs 1b, 2b, 3b and 4c, give preference to workers who are nationals of the new Member States over workers who are nationals of non-EU and non-EFTA countries as regards access to its labour market. The controls on the priority of workers integrated into the regular labour market shall not apply to providers of services liberalised by a specific agreement between the Contracting Parties concerning the provision of services (including the Agreement on certain aspects of government procurement in so far as it covers the provision of services). For the same period, qualification requirements may be maintained for residence permits of less than four months (**) and to persons providing services, as referred to in Article 5(1) of this Agreement, in the four sectors mentioned above.

Within two years of the entry into force of the Protocol to this Agreement regarding the participation, as Contracting Parties, of the Republic of Bulgaria and Romania, the Joint Committee shall review the functioning of the transitional measures contained in this paragraph on the basis of a report prepared by each of the Contracting Parties implementing them. Upon completion of the review, and no later than two years after the entry into force of the aforementioned Protocol, the Contracting Party which has implemented the transitional measures contained in this paragraph, and has notified the Joint Committee of its intention to continue applying such transitional measures, may continue to do so until five years after the entry into force of the aforementioned Protocol. In the absence of such notification, the transitional period will expire at the end of the two-year period specified in the first subparagraph.

At the end of the transitional period defined in this paragraph, all restrictions referred to above in this paragraph shall be abolished.

(*) NACE: Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1). Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and the Council of 29 September 2003 (OJ L 284, 31.10.2003, p. 1).

(**) Workers may apply for short-term residence permits under the quotas mentioned in subparagraph 3b even for a period of less than four months.';

(c) the following paragraph shall be inserted after paragraph 3a:

'3b. Upon entry into force of the Protocol to this Agreement regarding the participation, as Contracting Parties, of the Republic of Bulgaria and Romania and until the end of the period described in paragraph 1b, Switzerland shall reserve on a yearly basis (pro rata temporis), within its overall quota for third countries, for workers employed in Switzerland and for self-employed persons who are nationals of these new Member States a minimum number of new residence permits (*) according to the following schedule:

Period of time	Number of permits for a period equal to or exceeding one year	Number of permits for a period of more than four months and less than one year
Until the end of the first year	362	3 620
Until the end of the second year	523	4 987
Until the end of the third year	684	6 355
Until the end of the fourth year	885	7 722
Until the end of the fifth year	1 046	9 090

(*) These permits will be granted in addition to the quotas mentioned in Article 10 of this Agreement which are reserved for employed and self-employed persons who are nationals of the Member States at the time of the signing of this Agreement (21 June 1999) and of the Member States that became Contracting Parties to this Agreement by the Protocol of 2004. These permits are also in addition to permits granted through existing bilateral trainee exchange agreements between Switzerland and the new Member States.';

(d) the following paragraph shall be inserted after paragraph 4b:

'4c. At the end of the period described in paragraph 1b and in this paragraph and up to 10 years after entry into force of the Protocol to this Agreement regarding the participation, as Contracting Parties, of the Republic of Bulgaria and Romania, the provisions of Article 10(4) of this Agreement shall apply to nationals of these new Member States.

In case of serious disturbances of its labour market or threat thereof, Switzerland and any of the new Member States which has implemented transitional measures shall notify such circumstances to the Joint Committee before the end of the five-year transitional period specified in paragraph 2b(2). In this case, the notifying country may continue to apply to workers employed on its own territory the measures described in paragraphs 1b, 2b and 3b until seven years after the entry into force of the aforementioned Protocol. In such a case, the annual number of residence permits referred to in paragraph 1b shall be:

Period of time	Number of permits for a period equal to or exceeding one year	Number of permits for a period of more than four months and less than one year
Until the end of the sixth year	1 126	10 457
Until the end of the seventh year	1 207	11 664'

(e) the following paragraph shall be inserted after paragraph 5a:

'5b. The transitional provisions of paragraphs 1b, 2b, 3b and 4c, and in particular those of paragraph 2b concerning the priority of workers integrated into the regular labour market and controls on wage and working conditions, shall not apply to employed and self-employed persons who, at the time of the entry into force of the Protocol to this Agreement regarding the participation, as Contracting Parties, of the Republic of Bulgaria and Romania, are authorised to pursue an economic activity on the territory of the Contracting Parties. Such persons shall in particular enjoy occupational and geographical mobility.

The holders of residence permits valid for less than one year shall be entitled to have their permits renewed; the exhaustion of quantitative limits may not be invoked against them. The holders of residence permits valid for a period equal to, or exceeding, one year shall automatically be entitled to have their permits extended. Such employed and self-employed persons shall therefore enjoy the rights to free movement accorded to established persons in the basic provisions of this Agreement, and in particular Article 7 thereof, from the entry into force of the aforementioned Protocol.';

3. in Article 27(2) of Annex I to the Agreement, the reference to 'Article 10(2, 2a, 4a and 4b)' shall be replaced by the reference to 'Article 10(2, 2a, 2b, 4a, 4b and 4c)'.

Article 3

By derogation from Article 25 of Annex I to the Agreement, the transitional periods in Annex 1 to this Protocol shall apply.

Article 4

1. Annex II to the Agreement shall be amended in accordance with Annex 2 to this Protocol.

2. Annex III to the Agreement shall be adapted by decision of the Joint Committee established by Article 14 of the Agreement.

Article 5

1. Annexes 1 and 2 to this Protocol shall form an integral part thereof.

2. This Protocol, together with the Protocol of 2004, shall form an integral part of the Agreement.

Article 6

1. This Protocol shall be ratified or approved by the Council of the European Union, on behalf of the Member States and the European Community, and by Switzerland in accordance with their own procedures.

2. The Council of the European Union and Switzerland shall notify each other of the completion of these procedures.

Article 7

This Protocol shall enter into force on the first day of the first month following the date of the last notification of ratification or approval.

Article 8

This Protocol shall remain in force for the same duration and in accordance with the same arrangements as the Agreement.

Article 9

1. This Protocol, as well as the Declarations annexed thereto, shall be drawn up in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of those texts being equally authentic.

2. The Bulgarian and Romanian language versions of the Agreement, including all Annexes and Protocols thereto and the Final Act shall be equally authentic. The Joint Committee established by Article 14 of the Agreement shall approve the authentic texts of the Agreement in the new languages.

Съставено в Брюксел, на двадесет и седми май две хиляди и осма година.

Hecho en Bruselas, el veintisiete de mayo de dos mil ocho.

V Bruselu dne dvacátého sedmého května dva tisíce osm.

Udfærdiget i Bruxelles den syvogtyvende maj to tusind og otte.

Geschehen zu Brüssel am siebenundzwanzigsten Mai zweitausendacht.

Kahe tuhande kaheksanda aasta maikuu kahekümne seitsmendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις εἰκοσι εφτά Μαΐου δύο χιλιάδες οκτώ.

Done at Brussels on the twenty-seventh day of May in the year two thousand and eight.

Fait à Bruxelles, le vingt-sept mai deux mille huit.

Fatto a Bruxelles, addì ventisette maggio duemilaotto.

Briselē, divtūkstoš astotā gada divdesmit septītajā maijā.

Priimta du tūkstančiai aštuntų metų gegužės dvidešimt septintą dieną Briuselyje.

Kelt Brüsszelben, a kétezer-nyolcadik év május havának huszonhetedik napján.

Magħmul fi Brussell, fis-sebgħa u għoxrin jum ta' Mejju tas-sena elfejn u tmienja.

Gedaan te Brussel, de zevenentwintigste mei tweeduizend acht.

Sporządzono w Brukseli, dnia dwudziestego siódmego maja roku dwa tysiące ósmego.

Feito em Bruxelas, em vinte e sete de Maio de dois mil e oito.

Întocmit la Bruxelles, douăzeci și șapte mai două mii opt.

V Bruseli dňa dvadsiateho siedmeho mája dvetisícosem.

V Bruslju, dne sedemindvajsetega maja leta dva tisoč osem.

Tehty Brysselissä kahdentenakymmenentenäseitsemäntenä päivänä toukokuuta vuonna kaksituhattakahdeksan.

Som skedde i Bryssel den tjugosjunde maj tjugohundraåtta.

За държавите-членки
Por los Estados miembros
Za členské státy
For medlemsstaterne
Für die Mitgliedstaaten
Liikmesriikide nimel
Για τα κράτη μέλη
For the Member States
Pour les États membres
Per gli Stati membri
Dalībvalstu vārdā
Valstybių narių vardu
A tagállamok részéről
Ghall-Istati Membri
Voor de lidstaten
W imieniu państw członkowskich
Pelos Estados-Membros
Pentru statele membre
Za členské štáty
Za države članice
Jäsenvaltioiden puolesta
På medlemsstaternas vägnar

За Европейската общност
Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
Az Európai Közösség részéről
Ghall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Pentru Comunitatea Europeană
Za Európske spoločenstvo
Za Evropsko skupnost
Euroopan yhteisön puolesta
För Europeiska gemenskapen

Für die Schweizerische Eidgenossenschaft
Pour la Confédération suisse
Per la Confederazione svizzera

ANNEX 1

Transitional measures on the purchase of land and secondary residence

1. The Republic of Bulgaria

The Republic of Bulgaria may maintain in force for five years from the date of entry into force of this Protocol the restrictions laid down in its legislation, existing at the time of the signing of this Protocol, on the acquisition of ownership of land for secondary residences by Swiss nationals non-resident in Bulgaria and by legal persons set up in accordance with the laws of Switzerland.

Swiss nationals who are legally resident in Bulgaria shall not be subject to the provisions of the preceding subparagraph or to any rules and procedures other than those to which nationals of Bulgaria are subject.

The Republic of Bulgaria may maintain in force for seven years from the date of entry into force of this Protocol the restrictions laid down in its legislation, existing at the time of the signing of this Protocol, on the acquisition of agricultural land, forests and forestry land by Swiss nationals and by legal persons set up in accordance with the laws of Switzerland. In no instance may a Swiss national be treated less favourably in respect of the acquisition of agricultural land, forests and forestry land than at the date of the signing of this Protocol or be treated in a more restrictive way than a national of a third country.

Self-employed farmers who are Swiss nationals and who wish to establish themselves and reside in the Republic of Bulgaria shall not be subject to the provisions of the preceding subparagraph or to any procedures other than those to which nationals of the Republic of Bulgaria are subject.

A general review of these transitional measures shall be held in the third year following the date of entry into force of this Protocol. The Joint Committee may decide to shorten or terminate the transitional period indicated in the first subparagraph.

2. Romania

Romania may maintain in force for five years from the date of entry into force of this Protocol the restrictions laid down in its legislation, existing at the time of the signing of this Protocol, on the acquisition of ownership of land for secondary residences by Swiss nationals non-resident in Romania and by companies set up in accordance with the laws of Switzerland and being neither established nor having a branch or a representative agency in the territory of Romania.

Swiss nationals who are legally resident in Romania shall not be subject to the provisions of the preceding subparagraph or to any rules and procedures other than those to which nationals of Romania are subject.

Romania may maintain in force for seven years from the date of entry into force of this Protocol the restrictions laid down in its legislation, existing at the time of the signing of this Protocol, on the acquisition of agricultural land, forests and forestry land by Swiss nationals and by companies set up in accordance with the laws of Switzerland which are neither established nor registered in Romania. In no instance may a Swiss national be treated less favourably in respect of the acquisition of agricultural land, forests and forestry land than at the date of the signing of this Protocol or be treated in a more restrictive way than a national of a third country.

Self-employed farmers who are Swiss nationals and who wish to establish themselves and reside in Romania shall not be subject to the provisions of the preceding subparagraph or to any procedures other than those to which nationals of Romania are subject.

A general review of these transitional measures shall be held in the third year following the date of entry into force of this Protocol. The Joint Committee may decide to shorten or terminate the transitional period indicated in the first subparagraph.

ANNEX 2

Annex II to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons is hereby amended as follows:

1. under the heading 'For the purposes of this Agreement, the Regulation shall be adapted as follows:', point 1 of Section A of Annex II to the Agreement shall be amended as follows:

   (a) under (i), concerning Annex III, Part A, the following shall be added after the last entry 'Slovakia — Switzerland':

   'Bulgaria — Switzerland

   None.

   Romania — Switzerland

   No convention.';

   (b) under (j), concerning Annex III, Part B, the following shall be added after the last entry 'Slovakia — Switzerland':

   'Bulgaria — Switzerland

   None.

   Romania — Switzerland

   No convention.';

2. the following shall be inserted under the Title 'Section A: Acts referred to' under point 1 'Regulation (EEC) No 1408/71' after '304 R 631: Regulation (EC) No 631/2004 …':

   'Section 2 (Freedom of Movement of Persons — Social Security) of Council Regulation (EC) No 1791/2006 of 20 November 2006 adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions, by reason of the accession of Bulgaria and Romania, in so far as its provisions concern Community acts referred to in Annex II to this Agreement.';

3. the following shall be inserted under the Title 'Section A: Acts referred to' under point 2 'Regulation (EEC) No 574/72' after '304 R 631: Regulation (EC) No 631/2004 …':

   'Section 2 (Freedom of Movement of Persons — Social Security) of Council Regulation (EC) No 1791/2006 of 20 November 2006 adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions, by reason of the accession of Bulgaria and Romania, in so far as its provisions concern Community acts referred to in Annex II to this Agreement.';

4. the following shall be inserted under the Title 'Section B: Acts of which the contracting parties shall take due account' under the points '4.18. 383 D 0117: Decision No 117 …', '4.27. 388 D 64: Decision No 136 …', '4.37. 393 D 825: Decision No 150 …', after '12003 TN 02/02 A: Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, …', and under the point '4.77: Decision No 192 …':

   'Section 2 (Freedom of Movement of Persons — Social Security) of Council Regulation (EC) No 1791/2006 of 20 November 2006 adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions, by reason of the accession of Bulgaria and Romania, in so far as its provisions concern Community acts referred to in Annex II to this Agreement.';

5. for workers who are nationals of the Republic of Bulgaria and Romania, the arrangements contained in paragraph 1 of the section Unemployment Insurance of the Protocol to Annex II shall apply until the end of the seventh year after the entry into force of this Protocol.

JOINT DECLARATION ON THE ADAPTATION OF ANNEX III TO THE AGREEMENT

The Contracting Parties declare that, with a view to ensuring the smooth implementation of the Agreement, Annex III thereto shall be adapted as soon as possible in order to integrate, among other things, Directive 2005/36/EC as amended by Directive 2006/100/EC and new Swiss entries.

DECLARATION BY SWITZERLAND ON AUTONOMOUS MEASURES AS OF THE DATE OF SIGNING

Switzerland will provide provisional access to its labour market for citizens of the new Member States, based on its national legislation, before the entry into force of the transitional arrangements contained in this Protocol. For this purpose, Switzerland will open specific quotas for short-term as well as long-term working permits, as defined in Article 10(1) of the Agreement, in favour of citizens from the new Member States, as of the date of the signing of this Protocol. The quotas will consist of 282 long-term permits and 1 006 short-term permits per year. In addition, 2 011 short-term workers per year will be admitted for a stay of less than four months.

COUNCIL DECISION

of 18 May 2009

establishing the position to be adopted, on behalf of the Community, within the International Grains Council as regards the extension of the Grains Trade Convention 1995

(2009/393/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the second subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Grains Trade Convention 1995 was concluded by the Community by Council Decision 96/88/EC [1] and was regularly extended for further periods of two-year. It was last extended by decision of the International Grains Council in June 2007 and remains into force until 30 June 2009. A further extension is in the interest of the Community. The Commission, which represents the Community in the Grains Trade Convention, should therefore be authorised to vote in favour of such extension,

HAS DECIDED AS FOLLOWS:

Sole Article

The European Community's position within the International Grains Council shall be to vote in favour of the extension of the Grains Trade Convention 1995 for a further period of up to two years.

The Commission is hereby authorised to express this position within the International Grains Council.

Done at Brussels, 18 May 2009.

For the Council
The President
J. KOHOUT

[1] OJ L 21, 27.1.1996, p. 47.

COUNCIL DECISION

of 18 May 2009

establishing the position to be adopted, on behalf of the Community, within the International Sugar Council as regards the extension of the International Sugar Agreement 1992

(2009/394/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 in conjunction with the second subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

The International Sugar Agreement 1992 was concluded by the Community by Council Decision 92/580/EEC [1] and entered into force on 1 January 1993 for a period of three years until 31 December 1995. Since then, it has been regularly extended for further periods of two years. That Agreement was last extended by decision of the International Sugar Council in May 2007 and remains into force until 31 December 2009. A further extension is in the interest of the Community. The Commission, which represents the Community in the International Sugar Council, should therefore be authorised to vote in favour of such extension,

HAS DECIDED AS FOLLOWS:

Sole Article

The Community's position within the International Sugar Council shall be to vote in favour of the extension of the International Sugar Agreement 1992 for a further period up to two years.

The Commission is hereby authorised to express this position within the International Sugar Council.

Done at Brussels, 18 May 2009.

For the Council
The President
J. KOHOUT

[1] OJ L 379, 23.12.1992, p. 15.

COMMISSION

COMMISSION DECISION

of 14 May 2009

concerning the placing on the market for essential use of biocidal products containing temephos in the French overseas departments

(notified under document number C(2009) 3744)

(Only the French text is authentic)

(2009/395/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market [1], and in particular Article 5(3) thereof,

Whereas:

(1) The first subparagraph of Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council [2] (hereinafter referred to as 'the Directive') provides that the Commission shall commence a 10-year work programme for the systematic examination of all active substances already on the market on 14 May 2000 (hereinafter referred to as 'the review programme').

(2) Temephos was identified as available on the market before 14 May 2000 as an active substance of biocidal products for purposes other than those referred to in Article 2(2)(c) and (d) of Directive 98/8/EC. No dossier was submitted in support of the inclusion of temephos in Annex I, IA or IB to the Directive within the prescribed deadline.

(3) In accordance with the first subparagraph of Article 4(2) of Commission Regulation (EC) No 2032/2003 [3], Member States had to cancel existing authorisations or registrations for biocidal products containing temephos with effect from 1 September 2006. Pursuant to Article 4(1) of Regulation (EC) No 1451/2007 (hereinafter referred to as 'the Regulation'), biocidal products containing temephos shall no longer be placed on the market.

(4) Article 5 of the Regulation lays down the conditions under which Member States may apply to the Commission for derogation from the provision laid down in Article 4(1) of the Regulation and the conditions for granting such derogation.

(5) By Commission Decision 2007/226/EC [4], the Commission granted such derogation for biocidal products containing temephos used for vector mosquito control in the French overseas departments. The derogation was granted until 14 May 2009.

(6) France has submitted an application to the Commission for extension of the derogation until 14 May 2010, together with information demonstrating a need for further use of temephos. The Commission made the French application publicly available by electronic means on 13 February 2009. No concern was expressed during the 60-days public consultation period against this application.

(7) With regard to the magnitude of the outbreaks of mosquito-spread diseases in the French overseas departments, it is appropriate to continue allowing the use of temephos in situations where treatment with other substances or biocidal products is not efficient. A further extension of the phase-out period for this substance seems, therefore, necessary to allow for its replacement by other suitable substances,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 4(1) of Regulation (EC) No 1451/2007, France may allow the placing on the market of biocidal products containing Temephos (EC No 222-191-1; CAS No 3383-96-8), for vector mosquito control in the French overseas departments until 14 May 2010.

[1] OJ L 325, 11.12.2007, p. 3.
[2] OJ L 123, 24.4.1998, p. 1.
[3] OJ L 307, 24.11.2003, p. 1.
[4] OJ L 97, 12.4.2007, p. 47.

Article 2

1. When allowing the placing on the market of biocidal products containing temephos in accordance with Article 1, France shall ensure that the following conditions are complied with:

(a) continued use is only possible under the conditions that biocidal products containing temephos are approved for the intended essential use;

(b) the continued use is only accepted so far as it has no unacceptable effect on human or animal health or on the environment;

(c) all appropriate risk reduction measures are imposed when granting approval;

(d) such biocidal products remaining on the market after 1 September 2006 are relabelled in order to match the restricted use conditions;

(e) where appropriate, alternatives for such uses are being sought by the holders of the approvals or by France.

2. At the latest by 14 May 2010, France shall inform the Commission on the application of paragraph 1 and in particular on the actions taken pursuant to point (e) of that paragraph.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 14 May 2009.

For the Commission

Stavros DIMAS

Member of the Commission

RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 7 May 2009

on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU

(2009/396/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) [1] and in particular Article 19(1) thereof,

After consulting the Communications Committee,

Whereas:

(1) According to Article 8(3) of Directive 2002/21/EC, National Regulatory Authorities (NRAs) shall contribute to the development of the internal market, inter alia, by cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice. However, during the assessment of more than 850 draft measures notified under Article 7 of Directive 2002/21/EC it appeared that inconsistencies in the regulation of voice call termination rates still exist.

(2) Although some form of cost orientation is generally provided for in most Member States, a divergence between price control measures prevails across the Member States. In addition to a significant variety in the chosen costing tools, there are also different practices in implementing those tools. This widens the spread between wholesale termination rates applied across the European Union, which can only be partly explained by national specificities. The European Regulators Group (ERG) established by Commission Decision 2002/627/EC [2] recognised this in its Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates. NRAs have also, in a number of cases, authorised higher termination rates for smaller fixed or mobile operators on the grounds that these operators are new entrants into the market and have not benefited from economies of scale and/or are subject to differing cost conditions. These asymmetries exist both within and across national boundaries, although they are slowly decreasing. The ERG recognised in its Common Position that termination rates should normally be symmetric and asymmetry requires an adequate justification.

(3) Significant divergences in the regulatory treatment of fixed and mobile termination rates create fundamental competitive distortions. Termination markets represent a situation of two-way access where both interconnecting operators are presumed to benefit from the arrangement but, as these operators are also in competition with each other for subscribers, termination rates can have important strategic and competitive implications. Where termination rates are set above efficient costs, this creates substantial transfers between fixed and mobile markets and consumers. In addition, in markets where operators have asymmetric market shares, this can result in significant payments from smaller to larger competitors. Furthermore, the absolute level of mobile termination rates remains high in a number of Member States compared to those applied in a number of countries outside of the European Union, and also compared to fixed termination rates generally, thus continuing to translate into high, albeit decreasing, prices for end-consumers. High termination rates tend to lead to high retail prices for originating calls and correspondingly lower usage rates, thus decreasing consumer welfare.

[1] OJ L 108, 24.4.2002, p. 33.

[2] OJ L 200, 30.7.2002, p. 38.

(4) The lack of harmonisation in the application of cost-accounting principles to termination markets to-date demonstrates a need for a common approach which will provide greater legal certainty and the right incentives for potential investors, and reduce the regulatory burden on existing operators that are currently active in several Member States. The objective of coherent regulation in termination markets is clear and recognised by the NRAs and has been repeatedly expressed by the Commission in the context of its assessment of draft measures under Article 7 of Directive 2002/21/EC.

(5) Certain provisions of the regulatory framework for electronic communications networks and services require necessary and appropriate cost-accounting mechanisms and price control obligations to be implemented, namely Articles 9, 11 and 13 in conjunction with recital 20 of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) [1].

(6) Commission Recommendation 2005/698/EC of 19 September 2005 on accounting separation and cost accounting under the regulatory framework for electronic communications [2] has provided a framework for the consistent application of the specific provisions concerning cost accounting and accounting separation, with a view to improving the transparency of regulatory accounting systems, methodologies, auditing and reporting processes to the benefit of all parties involved.

(7) Wholesale voice call termination is the service required in order to terminate calls to called locations (in fixed networks) or subscribers (in mobile networks). The charging system in the EU is based on Calling Party Network Pays, which means that the termination charge is set by the called network and paid by the calling network. The called party is not billed for this service and generally has no incentive to respond to the termination price set by its network provider. In this context, excessive pricing is the main competition concern of regulatory authorities. High termination prices are ultimately recovered through higher call charges for end-users. Taking into account the two-way access nature of termination markets, further potential competition problems include cross-subsidisation between operators. These potential competition problems are common to both fixed and mobile termination markets. Therefore, in the light of the ability and incentives of terminating operators to raise prices substantially above cost, cost orientation is considered the most appropriate intervention to address this concern over the medium term. Recital 20 of Directive 2002/19/EC notes that the method of cost recovery should be appropriate to the particular circumstances. In view of the specific characteristics of call termination markets and the associated competitive and distributional concerns, the Commission has for a long time recognised that setting a common approach based on an efficient cost standard and the application of symmetrical termination rates would promote efficiency, sustainable competition and maximise consumer benefits in terms of price and service offerings.

(8) According to Article 8(1) of Directive 2002/21/EC, Member States shall ensure that when carrying out the regulatory tasks specified in that Directive and the specific directives, in particular those designed to ensure effective competition, NRAs take the utmost account of the desirability of making regulations technologically neutral. Article 8(2) of Directive 2002/21/EC further requires NRAs to promote competition by, amongst other things, ensuring that all users derive maximum benefit in terms of choice, price and quality of service and that there is no distortion or restriction of competition. In order to achieve these objectives and a consistent application in all Member States, the regulated termination rates should be brought down to the costs of an efficient operator as soon as possible.

(9) In a competitive environment, operators would compete on the basis of current costs and would not be compensated for costs which have been incurred through inefficiencies. Historic cost figures therefore need to be adjusted into current cost figures to reflect the costs of an efficient operator employing modern technology.

(10) Operators which are compensated for actual costs incurred for termination have few incentives to increase efficiency. The implementation of a bottom-up model is consistent with the concept of developing a network for an efficient operator whereby an economic/engineering model of an efficient network is constructed using current costs. It reflects the equipment quantity needed rather than that actually provided and it ignores legacy costs.

(11) Given the fact that a bottom-up model is based largely on derived data, e.g. network costs are computed using information from equipment vendors, regulators may wish to reconcile the results of a bottom-up model with the results of a top-down model in order to produce as robust results as possible and to avoid large discrepancies in operating cost, capital cost and cost allocation between a hypothetical and a real operator. In order to identify and improve possible shortcomings of the bottom-up model, such as information asymmetry, the NRA may compare the results of the bottom-up modelling approach with those resulting from a corresponding top-down model which uses audited data.

[1] OJ L 108, 24.4.2002, p. 7.
[2] OJ L 266, 11.10.2005, p. 64.

(12) The cost model should be based on the efficient technological choices available in the time frame considered by the model, to the extent that they can be identified. Hence, a bottom-up model built today could in principle assume that the core network for fixed networks is Next-Generation-Network (NGN)-based. The bottom-up model for mobile networks should be based on a combination of 2G and 3G employed in the access part of the network, reflecting the anticipated situation, while the core part could be assumed to be NGN-based.

(13) Taking account of the particular characteristics of call termination markets, the costs of termination services should be calculated on the basis of forward-looking long-run incremental costs (LRIC). In a LRIC model, all costs become variable, and since it is assumed that all assets are replaced in the long run, setting charges based on LRIC allows efficient recovery of costs. LRIC models include only those costs which are caused by the provision of a defined increment. An incremental cost approach which allocates only efficiently incurred costs that would not be sustained if the service included in the increment was no longer produced (i.e. avoidable costs) promotes efficient production and consumption and minimises potential competitive distortions. The further termination rates move away from incremental cost, the greater the competitive distortions between fixed and mobile markets and/or between operators with asymmetric market shares and traffic flows. Therefore, it is justified to apply a pure LRIC approach whereby the relevant increment is the wholesale call termination service and which includes only avoidable costs. A LRIC approach would also allow the recovery of all fixed and variable costs (as the fixed costs are assumed to become variable over the long run) which are incremental to the provision of the wholesale call termination service and would thereby facilitate efficient cost recovery.

(14) Avoidable costs are the difference between the identified total long-run costs of an operator providing its full range of services and the identified total long-run costs of that operator providing its full range of services except for the wholesale call termination service supplied to third parties (i.e. stand-alone cost of an operator not offering termination to third parties). To ensure an appropriate attribution of the costs, a distinction needs to be made between those costs that are traffic-related, i.e. all those fixed and variable costs which rise with increased levels of traffic, and those costs that are non-traffic-related, i.e. all those costs which do not rise with increased levels of traffic. To identify the avoidable costs relevant for wholesale call termination, non-traffic-related costs should be disregarded. Then, it may be appropriate to attribute traffic-related costs firstly to other services (e.g. call origination, SMS, MMS, broadband, leased lines, etc.) with wholesale voice call termination being the final service to be taken into account. The cost allocated to the wholesale call termination service should thus be equal only to the additional cost incurred to provide the service. As a consequence, cost accounting based on a LRIC approach for wholesale call termination services in fixed and mobile markets should allow the recovery only of costs which would be avoided if a wholesale call termination service was no longer provided to third parties.

(15) It can be seen that call termination is a service which generates benefits to both calling and called parties (if the receiver did not receive a benefit it would not accept the call), which in turn suggests that both parties have a part in the creation of costs. The use of cost causation principles to set cost-orientated prices would suggest that the creator of the costs should bear those costs. Recognising the two-sided nature of call termination markets with costs being driven by two sides, not all related costs need to be recovered via the regulated wholesale termination charge. However, for the purposes of this Recommendation, all of the avoidable costs of providing the wholesale call termination service can be recovered via the wholesale charge, i.e. all of those costs which increase in response to an increase in wholesale termination traffic.

(16) In setting termination rates, any deviation from a single efficient cost level should be based on objective cost differences outside the control of operators. In fixed networks, no such objective cost differences outside the control of the operator have been identified. In mobile networks, uneven spectrum assignment may be considered an exogenous factor which results in per-unit-cost differences between mobile operators. Exogenous cost differences may arise where spectrum assignments have not taken place using market-based mechanisms but on the basis of a sequential licensing process. Where the spectrum assignment takes place through a market-based mechanism such as an auction or where there is a secondary market in place, frequency-induced cost differences become more endogenously determined and are likely to be significantly reduced or eliminated.

(17) New entrants in mobile markets may also be subject to higher unit costs for a transitional period before having reached the minimum efficient scale. In such situations, NRAs may allow them, after having determined that there are impediments on the retail market to market entry and expansion, to recoup their higher incremental costs compared to those of a modelled operator for a transitional period of up to four years after market entry. Drawing upon the ERG Common Position, it is reasonable to envisage a time frame of four years for phasing out asymmetries based on the estimation that in the mobile market it can be expected to take three to four years after entry to reach a market

share of between 15 and 20 %, thereby approaching the level of the minimum efficient scale. This is distinct to the situation for new entrants in fixed markets which have the opportunity to achieve low unit costs by focusing their networks on high-density routes in particular geographic areas and/or by renting relevant network inputs from the incumbents.

(18) A depreciation method that reflects the economic value of an asset is the preferred approach. If, however, the development of a robust economic depreciation model is not feasible, other approaches are possible, including straight-line depreciation, annuities and tilted annuities. The criterion for choosing among the alternative approaches is how closely they are likely to approximate an economic measure of depreciation. Thus, if the development of a robust economic depreciation model is not feasible, the depreciation profile of each major asset in the bottom-up model should be examined separately, and the approach which generates a depreciation profile similar to that of economic depreciation should be chosen.

(19) With regard to efficient scale, different considerations apply in fixed and in mobile markets. The minimum efficient scale may be reached at different levels in the fixed and mobile sectors as this depends on the different regulatory and commercial environments applicable to each.

(20) When regulating wholesale termination charges, NRAs should neither preclude nor inhibit operators from moving to alternative arrangements for the exchange of terminating traffic in the future to the extent that these arrangements are consistent with a competitive market.

(21) A period of transition until 31 December 2012 should be considered long enough to allow NRAs to put the cost model in place and for operators to adapt their business plans accordingly while, on the other hand, recognising the pressing need to ensure that consumers derive maximum benefits in terms of efficient cost-based termination rates.

(22) For NRAs with limited resources, an additional transitional period may exceptionally be needed in order to prepare the recommended cost model. In such circumstances, if an NRA is able to demonstrate that a methodology (e.g. benchmarking) other than a bottom-up LRIC model based on current costs results in outcomes consistent with this Recommendation and generates efficient outcomes consistent with those in a competitive market, it could consider setting interim prices based on an alternative approach until 1 July 2014. Where it would be objectively disproportionate for those NRAs with limited resources to apply the recommended cost methodology after this date, such NRAs may continue to apply an alternative methodology up to the date for review of this Recommendation, unless the body established for cooperation among NRAs and the Commission, including its related working groups, provides sufficient practical support and guidance to overcome this limitation of resources and, in particular, the cost of implementing the recommended methodology. Any such outcome resulting from alternative methodologies should not exceed the average of the termination rates set by NRAs implementing the recommended cost methodology.

(23) This Recommendation has been subject to a public consultation,

HEREBY RECOMMENDS:

1. When imposing price control and cost-accounting obligations in accordance with Article 13 of Directive 2002/19/EC on the operators designated by National Regulatory Authorities (NRAs) as having significant market power on the markets for wholesale voice call termination on individual public telephone networks (hereinafter referred to as 'fixed and mobile termination markets') as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC, NRAs should set termination rates based on the costs incurred by an efficient operator. This implies that they would also be symmetric. In doing so, NRAs should proceed in the way set out below.

2. It is recommended that the evaluation of efficient costs is based on current cost and the use of a bottom-up modelling approach using long-run incremental costs (LRIC) as the relevant cost methodology.

3. NRAs may compare the results of the bottom-up modelling approach with those of a top-down model which uses audited data with a view to verifying and improving the robustness of the results and may make adjustments accordingly.

4. The cost model should be based on efficient technologies available in the time frame considered by the model. Therefore the core part of both fixed and mobile networks could in principle be Next-Generation-Network (NGN)-based. The access part of mobile networks should also be based on a combination of 2G and 3G telephony.

5. The different cost categories referred to herein should be defined as follows:

   (a) 'Incremental costs' are those costs that can be avoided if a specific increment is no longer provided (also known as avoidable costs);

   (b) 'Traffic-related costs' are all those fixed and variable costs which rise with increased levels of traffic.

6. Within the LRIC model, the relevant increment should be defined as the wholesale voice call termination service provided to third parties. This implies that in evaluating the incremental costs NRAs should establish the difference between the total long-run cost of an operator providing its full range of services and the total long-run costs of this operator in the absence of the wholesale call termination service being provided to third parties. A distinction needs to be made between traffic-related costs and non-traffic-related costs, whereby the latter costs should be disregarded for the purpose of calculating wholesale termination rates. The recommended approach to identifying the relevant incremental cost would be to attribute traffic-related costs firstly to services other than wholesale voice call termination, with finally only the residual traffic-related costs being allocated to the wholesale voice call termination service. This implies that only those costs which would be avoided if a wholesale voice call termination service were no longer provided to third parties should be allocated to the regulated voice call termination services. Principles for calculating the wholesale voice call termination service increment in fixed and mobile termination networks respectively are further elaborated in the Annex.

7. The recommended approach for asset depreciation is economic depreciation wherever feasible.

8. When deciding on the appropriate efficient scale of the modelled operator, NRAs should take into account the principles for defining the appropriate efficient scale in fixed and mobile termination networks as set out in the Annex.

9. Any determination of efficient cost levels which deviates from the principles set out above should be justified by objective cost differences which are outside the control of the operators concerned. Such objective cost differences may emerge in mobile termination markets due to uneven spectrum assignments. To the extent that additional spectrum acquired to provide wholesale call termination is included in the cost model, NRAs should review any objective cost differences regularly, taking into account, inter alia, whether on a forward-looking basis additional spectrum is likely to be made available through market-based assignment processes which might erode any cost differences arising from existing assignments or whether this relative cost disadvantage decreases over time as the volumes of the later entrants increase.

10. In case it can be demonstrated that a new mobile entrant operating below the minimum efficient scale incurs higher per-unit incremental costs than the modelled operator, after having determined that there are impediments on the retail market to market entry and expansion, the NRAs may allow these higher costs to be recouped during a transitional period via regulated termination rates. Any such period should not exceed four years after market entry.

11. This Recommendation is without prejudice to previous regulatory decisions taken by NRAs in respect of the matters raised herein. Notwithstanding this, NRAs should ensure that termination rates are implemented at a cost-efficient, symmetric level by 31 December 2012, subject to any objective cost differences identified in accordance with points 9 and 10.

12. In exceptional circumstances where an NRA is not in a position, in particular due to limited resources, to finalise the recommended cost model in a timely manner and where it is able to demonstrate that a methodology other than a bottom-up LRIC model based on current costs results in outcomes consistent with this Recommendation and generates efficient outcomes consistent with those in a competitive market, it could consider setting interim prices based on an alternative approach until 1 July 2014. Where it would be objectively disproportionate for those NRAs with limited resources to apply the recommended cost methodology after this date, such NRAs may continue to apply an alternative methodology up to the date for review of this Recommendation, unless the body established for cooperation among NRAs and the Commission, including its related working groups, provides sufficient practical support and guidance to overcome this limitation of resources and, in particular, the cost of implementing the recommended methodology. Any such outcome resulting from alternative methodologies should not exceed the average of the termination rates set by NRAs implementing the recommended cost methodology.

13. This Recommendation will be reviewed not later than four years after the date of application.

14. This Recommendation is addressed to the Member States.

Done at Brussels, 7 May 2009.

For the Commission
Viviane REDING
Member of the Commission

ANNEX

Principles for the calculation of wholesale termination rates in fixed networks

The relevant incremental costs (i.e. avoidable costs) of the wholesale call termination service are the difference between the total long-run costs of an operator providing its full range of services and the total long-run costs of that operator not providing a wholesale call termination service to third parties.

A distinction needs to be made between traffic-related costs and non-traffic-related costs to ensure the appropriate attribution of those costs. The non-traffic-related costs should be disregarded for the purpose of calculating wholesale termination rates. From the traffic-related costs only those costs which would be avoided in the absence of a wholesale call termination service being provided should be allocated to the relevant termination increment. These avoidable costs may be calculated by allocating traffic-related costs first to services other than wholesale call termination (e.g. call origination, data services, IPTV, etc.) with only the residual traffic-related costs being allocated to the wholesale voice call termination service.

The default demarcation point between traffic- and non-traffic-related costs is typically where the first point of traffic concentration occurs. In a PSTN network this is normally deemed to be the upstream side of the line card in the (remote) concentrator. The broadband NGN equivalent is the line card in the DSLAM/MSAN [1]. Where the DSLAM/MSAN is located in a street cabinet, then it needs to be considered whether the former loop between the cabinet and the exchange/MDF is a shared medium and should be treated as part of the traffic-sensitive cost category, in which case the traffic-/non-traffic-related demarcation point will be located in the street cabinet. If dedicated capacity is allocated to the voice call termination service irrespective of the technology deployed, then the demarcation point remains at the level of the (remote) concentrator.

Following the approach outlined above, examples of costs which would be included in the termination service increment would include additional network capacity needed to transport additional wholesale termination traffic (e.g. additional network infrastructure to the extent that it is driven by the need to increase capacity for the purposes of carrying the additional wholesale termination traffic) as well as additional wholesale commercial costs directly related to the provision of the wholesale termination service to third parties.

To determine the efficient scale of an operator for the purposes of the cost model, NRAs should take into account that in fixed networks operators have the opportunity to build their networks in particular geographic areas and to focus on high-density routes and/or to rent relevant network inputs from the incumbents. When defining the single efficient scale for the modelled operator, NRAs should therefore take into account the need to promote efficient entry while also recognising that under certain conditions smaller operators can produce at low unit costs in smaller geographic areas. Furthermore, smaller operators that cannot match the largest operators' scale advantages over broader geographic areas can be assumed to purchase wholesale inputs rather than self-provide termination services.

Principles for the calculation of wholesale termination rates in mobile networks

The relevant incremental costs (i.e. avoidable costs) of the wholesale call termination service are the difference between the total long-run costs of an operator providing its full range of services and the total long-run costs of an operator not providing a wholesale call termination service to third parties.

A distinction needs to be made between traffic-related costs and non-traffic-related costs to ensure the appropriate attribution of those costs. The non-traffic-related costs should be disregarded for the purpose of calculating wholesale termination rates. From the traffic-related costs only those costs which would be avoided in the absence of a wholesale call termination service being provided should be allocated to the relevant termination increment. These avoidable costs may be calculated by allocating traffic-related costs first to services other than wholesale call termination (e.g. call origination, SMS, MMS, etc.) with only the residual traffic-related costs being allocated to the wholesale voice call termination service.

The costs of the handset and the SIM card are not traffic-related and should be excluded from any costing model for wholesale voice call termination services.

Coverage can be best described as the capability or option to make a single call from any point in the network at a point in time, and capacity represents the additional network costs which are necessary to carry increasing levels of traffic. The need to provide such coverage to subscribers will cause non-traffic-related costs to be incurred which should not be attributed to the wholesale call termination increment. Investments in mature mobile markets are more driven by capacity increases and by the development of new services and this should be reflected in the cost model. The incremental cost of wholesale voice call termination services should therefore exclude coverage costs but should include additional capacity costs to the extent that they are caused by the provision of wholesale voice call termination services.

[1] Digital Subscriber Line Access Multiplexer/Multi-Service Access Node.

The costs of spectrum usage (the authorisation to retain and use spectrum frequencies) incurred in providing retail services to network subscribers are initially driven by the number of subscribers and thus are not traffic-driven and should not be calculated as part of the wholesale call termination service increment. The costs of acquiring additional spectrum to increase capacity (above the minimum necessary to provide retail services to subscribers) for the purposes of carrying additional traffic resulting from the provision of a wholesale voice call termination service should be included on the basis of forward-looking opportunity costs, where possible.

Following the approach outlined above, examples of costs which would be included in the termination service increment would include additional network capacity needed to transport additional wholesale traffic (e.g. additional network infrastructure to the extent that it is driven by the need to increase capacity for the purposes of carrying the additional wholesale traffic). Such network-related costs could include additional Mobile Switching Centres (MSCs) or backbone infrastructure directly required to carry the terminating traffic for third parties. Furthermore, where certain network elements are shared for the purposes of supplying origination and termination services, such as cell sites or Base Transceiver Stations (BTS), these network elements will be included in the termination cost model to the extent that they are needed because of the additional capacity necessary to carry terminating traffic by third parties. In addition, the additional spectrum costs and wholesale commercial costs directly related to the provision of the wholesale termination service to third parties would also be taken into account. This implies that coverage costs, unavoidable business overhead costs and retail commercial costs are not included.

To determine the minimum efficient scale for the purposes of the cost model, and taking account of market share developments in a number of EU Member States, the recommended approach is to set that scale at 20 % market share. It may be expected that mobile operators, having entered the market, would strive to maximise efficiency and revenues and thus be in a position to achieve a minimum market share of 20 %. In case an NRA can prove that the market conditions in the territory of that Member State would imply a different minimum efficient scale, it could deviate from the recommended approach.

CORRIGENDA

Corrigendum to Council Regulation (EC) No 43/2009 of 16 January 2009 fixing for 2009 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

(Official Journal of the European Union L 22 of 26 January 2009)

1. On pages 32 to 35, Annex I:

   (a) the entry '*Germo alalunga* ALB Albacore tunna' shall be deleted;

   (b) *for:* 'Lampanyctus achirus',

   read: 'Nannobrachium achirus';

   (c) *for:* 'Pseudochaenichthus georgianus',

   read: 'Pseudochaenichthys georgianus';

   (d) *for:* 'Radjiformes',

   read: 'Rajiformes';

   (e) *for:* 'Spanish ling SLI Molva macrophthalmus',

   read: 'Spanish ling SLI Molva macrophthalma',

2. on pages 32 to 35, Annex I, and page 118, second table:

   for: 'Tetrapturus alba',

   read: 'Tetrapturus albidus';

3. on pages 32 to 35, Annex I, and page 96, first and second tables:

   for: 'Trisopterus esmarki',

   read: 'Trisopterus esmarkii';

4. on page 41, Annex IA, second table 'Species: Herring, Zone: By-catches in zone IIIa':

   for: '(HER/03A-BC.)',

   read: '(HER/03A-BC)';

5. on page 41, Annex IA, third table 'Species: Herring, Zone: By-catches in IV, VIId and in EC waters of IIa':

   for: '(HER/2A47DX.)',

   read: '(HER/2A47DX)';

6. on page 42, Annex IA, first table 'Species: Herring, Zone: VIId; IVc':

   for: '(HER/4CXB7D.)',

   read: '(HER/4CXB7D)';

7. on page 43, Annex IA, third table 'Species: Herring, Zone: VIIa':

   for: '(HER/07A/MM.)',

   read: '(HER/07A/MM)';

8. on page 65, Annex IA, first table 'Species: Blue whiting, Zone: VIIIc, IX and X; EC waters of CECAF 34.1.1':

for:

'**Species:**	Blue whiting *Micromesistius poutassou*	**Zone:**	VIIIc, IX and X; EC waters of CECAF 34.1.1 (WHB/8C3411)
Spain	12 124		
Portugal	3 031	Analytical TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 applies. Article 5(2) of Regulation (EC) No 847/96 applies.	
EC	15 155 (1) (2)		
TAC	590 000		

(1) Of which up to 68 % may be fished in Norwegian Exclusive Economic Zone or in the fishery zone around Jan Mayen (WHB/*NZJM2).
(2) Of which up to 27 % may be fished in Faroese waters (WHB/*05B-F).',

read:

'**Species:**	Blue whiting *Micromesistius poutassou*	**Zone:**	VIIIc, IX and X; EC waters of CECAF 34.1.1 (WHB/8C3411)
Spain	12 124		
Portugal	3 031	Analytical TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 applies. Article 5(2) of Regulation (EC) No 847/96 applies.	
EC	15 155 (1) (2)		
TAC	590 000		

(1) Of which up to 68 % may be fished in Norwegian Exclusive Economic Zone or in the fishery zone around Jan Mayen (WHB/*NZJM2).
(2) Of which up to 27 % may be fished in Faroese waters (WHB/*5B-F.).';

9. on page 67, Annex IA, second table 'Species: Ling, Zone: EC waters of IV':

for:

'**Species:**	Ling *Molva molva*	**Zone:**	EC waters of IV (LIN/04.)
Belgium	18		
Denmark	286		
Germany	177		
France	159	Analytical TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 applies. Article 5(2) of Regulation (EC) No 847/96 applies.',	
The Netherlands	6		
Sweden	12		
United Kingdom	2 196		
EC	2 856		

read:

'**Species:**	Ling *Molva molva*	**Zone:**	EC waters of IV (LIN/04.)
Belgium	18		
Denmark	286		
Germany	177		
France	159	Analytical TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 applies. Article 5(2) of Regulation (EC) No 847/96 applies.';	
The Netherlands	6		
Sweden	12		
United Kingdom	2 196		
EC	2 854		

10. on page 67, Annex IA, third table 'Species: Ling, Zone: EC and international waters of V':

for:

'Species: Ling *Molva molva*		**Zone:** EC and international waters of V (LIN/05.)
Belgium	9	
Denmark	6	Analytical TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 applies. Article 5(2) of Regulation (EC) No 847/96 applies.',
Germany	6	
France	6	
United Kingdom	6	
EC	34	

read:

'Species: Ling *Molva molva*		**Zone:** EC and international waters of V (LIN/05.)
Belgium	9	
Denmark	6	Analytical TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 applies. Article 5(2) of Regulation (EC) No 847/96 applies.';
Germany	6	
France	6	
United Kingdom	6	
EC	33	

11. on page 68, Annex IA, first table 'Species: Ling, Zone: EC and international waters of VI, VII, VIII, IX, X, XII and XIV':

for:

'Species: Ling *Molva molva*		**Zone:** EC and international waters of VI, VII, VIII, IX, X, XII and XIV (LIN/6X14.)
Belgium	40	
Denmark	7	
Germany	147	
Spain	2 969	
France	3 166	
Ireland	793	
Portugal	7	Analytical TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 applies. Article 5(2) of Regulation (EC) No 847/96 applies.
United Kingdom	3 645	
EC	10 776	
Norway	5 638 ([1]) ([2])	
Faroe Islands	250 ([3]) ([4])	
TAC	16 664	

(…)',

read:

'Species: Ling *Molva molva*		**Zone:** EC and international waters of VI, VII, VIII, IX, X, XII and XIV (LIN/6X14.)
Belgium	40	
Denmark	7	
Germany	147	
Spain	2 969	
France	3 166	
Ireland	793	
Portugal	7	Analytical TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 applies. Article 5(2) of Regulation (EC) No 847/96 applies.
United Kingdom	3 645	
EC	10 774	
Norway	5 638 (1) (2)	
Faroe Islands	250 (3) (4)	
TAC	16 662	

(…)';

12. on page 81, Annex IA, first table 'Species: Skates and rays, Zone: EC waters of VIa-b and VIIa-c, e-k':

for:

'Species: Skates and rays *Rajidae*		**Zone:** EC waters of VIa-b and VIIa-c, e-k (SRX/67AKXD)
Belgium	1 422 (1) (2)	
Estonia	8 (1) (2)	
France	6 383 (1) (2)	
Germany	19 (1) (2)	
Ireland	2 055 (1) (2)	
Lithuania	33	
Netherlands	6 (1) (2)	Precautionary TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.
Portugal	35 (1) (2)	
Spain	1 718 (1) (2)	
United Kingdom	4 070 (1) (2)	
EC	15 748 (1) (2)	
TAC	15 748 (2)	

(…)',

read:

'Species: Skates and rays *Rajidae*		**Zone:** EC waters of VIa-b and VIIa-c, e-k (SRX/67AKXD)
Belgium	1 422 (1) (2)	
Estonia	8 (1) (2)	
France	6 383 (1) (2)	
Germany	19 (1) (2)	
Ireland	2 055 (1) (2)	
Lithuania	33	
Netherlands	6 (1) (2)	Precautionary TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.
Portugal	35 (1) (2)	
Spain	1 718 (1) (2)	
United Kingdom	4 070 (1) (2)	
EC	15 749 (1) (2)	
TAC	15 749 (2)	

(…)';

13. on page 81, Annex IA, second table 'Species: Skates and rays, Zone: EC waters of VIId':

for:

'Species: Skates and rays *Rajidae*		**Zone:** EC waters of VIId (SRX/07D)
Belgium	94 (1) (2)	
France	789 (1) (2)	
The Netherlands	5 (1) (2)	Precautionary TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.
United Kingdom	157 (1) (2)	
EC	1 044 (1) (2)	
TAC	1 044 (2)	

(…)',

read:

'Species: Skates and rays *Rajidae*		**Zone:** EC waters of VIId (SRX/07D)
Belgium	94 (1) (2)	
France	789 (1) (2)	
The Netherlands	5 (1) (2)	Precautionary TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.
United Kingdom	157 (1) (2)	
EC	1 045 (1) (2)	
TAC	1 045 (2)	

(…)';

14. on page 82, Annex IA, first table 'Species: Skates and rays, Zone: EC waters of VIII and IX':

for:

'**Species:**	Skates and rays *Rajidae*	**Zone:**	EC waters of VIII and IX (SRX/8910-C)
Belgium	13 (1) (2)		
France	2 435 (1) (2)		
Portugal	1 974 (1) (2)	Precautionary TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.	
Spain	1 986 (1) (2)		
United Kingdom	14 (1) (2)		
EC	6 423 (1) (2)		
TAC	6 423 (2)		

(1) Catches of Cuckoo ray (*Leucoraja naevus*) (RJN/8910-C), Thornback ray (*Raja clavata*) (RJC/8910-C) shall be reported separately.

(…)',

read:

'**Species:**	Skates and rays *Rajidae*	**Zone:**	EC waters of VIII and IX (SRX/8910-C)
Belgium	13 (1) (2)		
France	2 435 (1) (2)		
Portugal	1 974 (1) (2)	Precautionary TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.	
Spain	1 986 (1) (2)		
United Kingdom	14 (1) (2)		
EC	6 422 (1) (2)		
TAC	6 422 (2)		

(1) Catches of Cuckoo ray (*Leucoraja naevus*) (RJN/89-C.), Thornback ray (*Raja clavata*) (RJC/89-C.) shall be reported separately.

(…)';

15. on page 86, Annex IA, first table 'Species: Mackerel, Zone: VIIIc, IX and X; EC waters of CECAF 34.1.1':

for:

'**Species:**	Mackerel *Scomber scombrus*	**Zone:**	VIIIc, IX and X; EC waters of CECAF 34.1.1 (MAC/8C3411)
Spain	29 529 (1)		
France	196 (1)	Analytical TAC Article 3 of Regulation (EC) No 847/96 does not apply. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.	
Portugal	6 104 (1)		
EC	35 829 (1)		
TAC	35 829		

(1) Quantities subject to exchanges with other Member States may be taken in ICES zones VIIIa, VIIIb and VIIId (MAC/*8ABD). However, the quantities provided by Spain, Portugal or France for exchange purposes and to be taken in VIIIa, VIIIb and VIIId shall not exceed 25 % of the quotas of the donor Member State.

(…)',

read:

'Species: Mackerel *Scomber scombrus*		**Zone:** VIIIc, IX and X; EC waters of CECAF 34.1.1 (MAC/8C3411)
Spain	29 529 (1)	Analytical TAC Article 3 of Regulation (EC) No 847/96 does not apply. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.
France	196 (1)	
Portugal	6 104 (1)	
EC	35 829 (1)	
TAC	35 829	

(1) Quantities subject to exchanges with other Member States may be taken in ICES zones VIIIa, VIIIb and VIIId (MAC/*8ABD.). However, the quantities provided by Spain, Portugal or France for exchange purposes and to be taken in VIIIa, VIIIb and VIIId shall not exceed 25 % of the quotas of the donor Member State.

(…)';

16. on page 91, Annex IA, second table 'Species: Sprat, Zone: VIId and VIIe':

for:

'Species: Sprat *Sprattus sprattus*		**Zone:** VIId and VIIe (SPR/7DE.)
Belgium	31	
Denmark	1 997	
Germany	31	
France	430	Precautionary TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.',
The Netherlands	430	
United Kingdom	3 226	
EC	6 144	
TAC	6 144	

read:

'Species: Sprat *Sprattus sprattus*		**Zone:** VIId and VIIe (SPR/7DE.)
Belgium	31	
Denmark	1 997	
Germany	31	
France	430	Precautionary TAC Article 3 of Regulation (EC) No 847/96 applies. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.',
The Netherlands	430	
United Kingdom	3 226	
EC	6 145	
TAC	6 145	

17. on page 101, Annex IB, first table 'Species: Cod, Zone: I and IIb':

for:

'**Species:** Cod *Gadus morhua*		**Zone:** I and IIb (COD/1/2B.)
Germany	3 476	
Spain	8 984	
France	1 483	
Poland	1 628	
Portugal	1 897	
United Kingdom	2 226	Article 3 of Regulation (EC) No 847/96 does not apply. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.
All Member States	100 (1)	
EC	19 793 (2)	
TAC	525 000	

(…)',

read:

'**Species:** Cod *Gadus morhua*		**Zone:** I and IIb (COD/1/2B.)
Germany	3 476	
Spain	8 984	
France	1 483	
Poland	1 628	
Portugal	1 897	
United Kingdom	2 226	Article 3 of Regulation (EC) No 847/96 does not apply. Article 4 of Regulation (EC) No 847/96 does not apply. Article 5(2) of Regulation (EC) No 847/96 applies.
All Member States	100 (1)	
EC	19 794 (2)	
TAC	525 000	

(…)';

18. on page 120, Annex IE, fifth table 'Species: Krill, Zone: FAO 58.4.2 Antarctic':

for:

'(…)	
Division 58.4.2 West	1 448 000
Division 58.4.2 East of 55° E	1 080 000

(1) This TAC shall be applicable for the period 1 December 2008 to 30 November 2009.',

read:

'(…)	
Division 58.4.2 West (KRI/*F-42W)	1 448 000
Division 58.4.2 East of 55° E (KRI/*F-42E)	1 080 000

(1) This TAC shall be applicable for the period 1 December 2008 to 30 November 2009.';

19. on page 125, Annex IIA 'General provisions', point 4 'Regulated gears',

on pages 129 and 130, Appendix 1 to Annex IIa, tables,

on page 131, Appendix 2 to Annex IIa, Table III 'Data format':

(a) *for:* 'GN1',

read: 'GN';

(b) *for:* 'GT1',

read: 'GT';

(c) *for:* 'LL1',

read: 'LL';

20. on page 163, Annex III, Part D 'Eastern Pacific Ocean', point 21.1:

for: '21.1. The fishing by purse-seine vessels for yellowfin tuna (*Thunnus albacares*), bigeye tuna (Thunnus obesus) and skipjack tunas (*Katsuwonus pelamis*) shall be prohibited from either, 1 August to 28 September 2009, or, 10 November 2009 to 31 December 2010 in the area defined by the following limits: (…)',

read: '21.1. The fishing by purse-seine vessels for yellowfin tuna (*Thunnus albacares*), bigeye tuna (*Thunnus obesus*) and skipjack tunas (*Katsuwonus pelamis*) shall be prohibited from either, 1 August to 28 September 2009, or, 10 November 2009 to 8 January 2010 in the area defined by the following limits: (…)'.

RECOMMENDATIONS

Commission

Corrigenda

EN

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