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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.

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[1] Text with EEA relevance

(Continued on inside back cover)

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 17 June 2009

on State aid C 5/07 (ex N 469/05) as regards alleviation of information obligations imposed on maritime companies entered into the Danish tonnage tax regime

(notified under document C(2009) 4522)

(Only the Danish text is authentic)

(Text with EEA relevance)

(2009/868/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above [1],

Whereas:

1. PROCEDURE

(1) By letter of 13 September 2005 [2], Denmark notified the Commission of an amendment to the Danish tonnage tax scheme, initially authorised by decision of 12 March 2002 [3] (Case N 563/01).

(2) This amendment has been registered as notified aid under N 469/05. The notified amendment was introduced by Law No 408 of 1 June 2005.

(3) By letters of 28 October 2005, 19 May and 29 August 2006 [4], the Commission requested the Danish authorities to provide further information, which was transmitted in their replies of 22 November 2005, 30 June 2006 and 29 September 2006 [5].

(4) By Decision of 7 February 2007, the Commission decided to initiate the formal investigation procedure (hereinafter 'the opening decision'), pursuant to Article 4(4) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [6] (hereinafter the State Aid Procedure Regulation). By decision of 4 April 2007, the Commission adopted a Corrigendum decision modifying the opening decision at the request of the Danish authorities. A notice summarising the decision and the full content of the letter in the official language — and in its corrected version — were published in OJ C 135/6 of 19 June 2007 [7].

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[1] OJ C 135, 19.6.2007, p. 6.

[2] Registered under Reference TREN(2005) A/23228.

[3] The text of the decision is available in the official language at the following Internet address: http://ec.europa.eu/community_law/state_aids/transports-2001/n563-01.pdf The Commission approved by a decision of 1 December 2004 (Case N 171/04) the extension of the list of types of eligible ancillary operations (those in close connection with, and directly related to, the provision of transport services), to the renting out of on-board commercial premises, such as shops or kiosks, be it for third companies or for an independent part of the maritime company and be it for eligible or non-eligible activities carried out in these kiosks. The text of this second decision is available in the official language at the following Internet address: http://ec.europa.eu/community_law/state_aids/transports-2004/n171-04.pdf

[4] References TREN(2005) D/122520, TREN (2006) D/209990 and D/217824.

[5] Registered under References TREN (2005) A/29975, TREN(2006) A/26422 and A/33708.

[6] OJ L 83, 27.3.1999, p. 1.

[7] See: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/c_135/c_13520070619en00060019.pdf

(5) By letter of 7 March 2007 ([8]), Denmark commented on the opening decision. Only one interested party made observations by letter of 19 July 2007 ([9]).

2. DESCRIPTION OF THE MEASURE

2.1. Description of the notified measure to the tonnage tax scheme

(6) The notified measure was described in the opening decision and will be recalled in this section.

(7) The commercial transactions between two companies belonging to the same group have to be made on the basis of the arm length's principle. In accordance with this principle a verification of the consistency of the prices in the transactions between affiliates belonging to the same company group with market prices shall be carried out. In order to allow the fiscal administration to check that this principle is fulfilled, companies have to provide all necessary information on their commercial transactions with affiliates belonging to the same group.

(8) Act No 408 of 1 June 2005 exempts Danish maritime companies taxed under the Danish tonnage tax ([10]) from their obligation to provide the fiscal authorities with all necessary information on their financial transactions with foreign companies belonging to the same group.

(9) More precisely, Article 1(9) of the said Act holds that 'paragraphs 1 to 8 do not apply either to companies etc. who declare their income under the Tonnage Tax Act with regard to controlled transactions with foreign legal persons or permanent establishments (cf. paragraph 1(2) to (4)) where the revenue accruing from such transactions shall be allocated to revenue subject to Tonnage Tax.' Paragraphs 1 to 8 to which the Article refers are contained in Article 3B(9) of the Tax Management Act (Consolidated Act 869 of 12 August 2004, as last amended by Article 1 of Act 1441 of 22 December 2004).These paragraphs relate to two major obligations imposed on all Danish companies operating in Denmark, namely:

(a) to provide systematically together with the income tax return information about commercial transactions with foreign affiliates; and

(b) to prepare written documentation on how prices and conditions in these transactions have been established. This documentation should only be submitted to the tax authorities upon request.

(10) Indeed, the notified amendments provide for the exemption of the tonnage tax companies from both obligations in relation to their cross-border transactions, while they remain in force for tonnage tax companies as regards transactions between affiliates within Denmark.

(11) The notified measure will therefore have an impact on the 'arm's length principle' referred to in Section 2.11.1 of the initial decision of 12 March 2002 approving the Danish tonnage scheme ([11]), since it will modify the obligation to provide information and records imposed on the companies benefiting from tonnage tax in respect of their cross-border transactions.

(12) The exemption from the obligation to provide information and records obligation is specific to companies under tonnage tax.

2.2. Description of the existing regime

(13) The tonnage tax scheme is described in Commission decisions of 12 March 2002 in Case N 563/01 and of 7 February 2007 in Case N 469/05. Its main features are recalled hereafter in the present section.

(14) The income pertaining to all eligible operations and taxable under the tonnage tax scheme is a lump sum corresponding to the sum of fixed amounts determined for each vessel by reference to its tonnage, regardless of the real profit made by the shipping company, as follows:

Up to 1 000 NT (net tons)	DKK 7 (~ EUR 0,90) per 100 NT per day
1 001-10 000 NT	DKK 5 (~ EUR 0,70) per 100 NT per day
10 001-25 000 NT	DKK 3 (~ EUR 0,40) per 100 NT per day
> 25 000 NT	DKK 2 (~ EUR 0,30) per 100 NT per day

(15) The income calculated in this manner is taxed at the ordinary rate of the corporation tax.

([8]) Registered under Reference TREN(2007) A/25703.
([9]) Registered under References TREN(2007) A/38091.
([10]) Described in Section 2.2 thereafter.
([11]) See footnote 3. Section 2.11.1 of the decision explains that the provisions on the 'arm's length principle' in the Danish tax law are also applicable to the Danish tonnage tax scheme.

(16) Implemented with effect as from 1 January 2001, this regime is open to companies that are tax-liable in Denmark (those having a fixed place of operation in Denmark) and that provide maritime transport services. The scheme is also open to foreign companies that become registered in Denmark by moving their administrative base thereto. Only revenue derived from shipping transport operations can fall under the scheme.

(17) Shipping companies are free to opt for the regime or not. The choice is to be made no later than the submission of the tax return in respect of the year in which tonnage taxation has been made use of for the first time. The decision whether to choose or to opt out of tonnage taxation is binding for a period of 10 years. Within Denmark, shipping companies belonging to the same company group have to make the same choice with regard to the option for the tonnage tax scheme. When a maritime company opts for the tonnage tax regime, all its vessels and its operations that meet the conditions fall under this fiscal regime.

(18) To the best knowledge of the Commission, Denmark applies at present only one other scheme in favour of maritime transport operators, in addition to the tonnage tax regime: that exempting ship-owners from the payment of the income tax and social contributions for their seafarers working on board eligible vessels (the so-called DIS regime) ([12]).

2.3. **Duration**

(19) As recalled in the decision of 7 February 2007, the Danish authorities committed themselves by letter of 14 February 2006 to notify again the notified modification within 10 years. The measure under examination is thus deemed to expire at the end of 2015.

2.4. **Budget**

(20) As recalled in the decision of 7 February 2007, the Danish authorities indicated that this modification should have no budgetary impact on the existing regime. Individual aids will not be modified by the amendment envisaged.

3. **REASONS FOR OPENING THE INVESTIGATION PROCEDURE**

(21) In its opening decision, the Commission raised two main concerns with respect to the notified measure.

— Firstly, it should be determined how Denmark could still ensure that, after the implementation of the notified measure, its fiscal authorities would remain able to detect any attempt of tax evasion on the part of foreign affiliates of maritime companies taxed under the Danish tonnage tax and inform the foreign country concerned by this attempt. If not, the Commission wondered whether other countries, including the Member States other than Denmark, should bear the burden of checking all cross-border transactions with companies taxed under the Danish tonnage tax (most of which are very likely to be Danish-based companies).

— Secondly, the Commission wondered whether the unequal treatment as regards the obligation to provide information and records, between beneficiaries having only national affiliates not eligible for tonnage tax and beneficiaries having only foreign affiliates, would also appear legitimate. In the light of the Matra jurisprudence ([13]), such an inequality of treatment may indeed also impact the compatibility of the regime.

(22) The Commission recalled that ring-fencing measures are crucial to ensuring the 'waterproofness' of tonnage tax regimes.

(23) In particular, without an effective implementation of the ring-fencing measure at stake, sectors other than maritime transport, be it in the Member State in question or in other countries, may benefit from the possibility to evade corporation tax through commercial transactions with an affiliate taxed under the tonnage tax regime of the Member State in question.

(24) The Commission also feared that the alteration of the ring-fencing measure concerned by the notification will lead to a situation where activities tax-liable in other countries, thus not covered by the tonnage tax regime in Denmark will unduly benefit from the latter through unfairly priced transactions with Danish-based affiliates taxed under the Danish tonnage tax.

([12]) Case NN 116/98 approved by Commission decision of 13 November 2002. The text of the decision is available in the official language at the following Internet address: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/transports-1998/nn116-98.pdf

([13]) See the Matra judgment of 15 June 1993 of the Court of Justice in Case C-225/91, Matra v Commission and in particular its point 41: '41 It must be noted in this respect that while the procedure provided for in Articles 92 and 93 leaves a wide discretion to the Commission, and under certain conditions to the Council, in coming to a decision on the compatibility of a system of State aid with the requirements of the common market, it is clear from the general scheme of the Treaty that that procedure must never produce a result which is contrary to the specific provisions of the Treaty (judgment in Case 73/79 Commission v Italy [1980] ECR 1533, paragraph 11). The Court has also held that those aspects of aid which contravene specific provisions of the Treaty other than Articles 92 and 93 may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately (judgment in Case 74/76 Iannelli v Meroni [1977] ECR 557).'

(25) The Commission noted that the Danish fiscal authorities would keep however the possibility to perform *ex post* verifications of intra-group transactions involving only Danish tonnage tax companies.

4. COMMENTS FROM THE DANISH AUTHORITIES ON THE DECISION OPENING THE INVESTIGATION

(26) By letter of 15 March 2007 ([14]), the Danish authorities reacted to the opening decision by indicating that they had no further comments to make and that they therefore referred to the answers they had previously gave by the letters of 22 November 2005, 30 June 2006 and 29 September 2006.

(27) The letter of 22 November 2005 mentions the following: 'The notified scheme will not involve any transfer of State resources to the beneficiary companies. It is a reduction of the reporting and documentation requirement which has no economic value in itself. The notified scheme does not therefore involve any additional financial or fiscal advantages, etc. as compared to the schemes previously approved by the Commission. Shipping companies subject to tonnage tax must comply with the arms-length principle for all their controlled transactions. The notified scheme does not change this. The scheme merely comprises a reduction in the requirement for documentation of compliance with the arms-length principle, for certain controlled transactions.'

(28) In their letter of 30 June 2006, the Danish authorities indicate that before the entry into force of Act 408 of 1 June 2005, the obligation to provide information and records only applies to cross-border transactions between affiliates. The said Act has extended this obligation to transactions between a Danish tonnage tax company and one non-tonnage tax affiliate tax-liable in Denmark.

(29) In their letter of 29 September 2006, the Danish authorities indicated the following with respect to the issue of whether foreign countries, including the Member States other than Denmark, should bear the burden of controlling all cross-border transactions with companies taxed under the Danish Tonnage Tax:

'A country's tax authorities have a duty to check the income statements of businesses and persons liable for tax in that country. Under international commitments it may also be necessary to forward information to other countries — either spontaneously or on request.

It must be within the remit of the Member State's tax authority itself to decide how to fulfil its control tasks. It is of crucial importance to the Danish tax authorities that Danish tax revenue is safeguarded taking account of the available resources. This also means that its control work will naturally concentrate on taxable entities which have been risk-assessed as worthy of close monitoring.

The proposed amendment of the Danish tonnage tax scheme does not alter that state of affairs. In contrast, it may affect the Danish tax authorities' opportunities to comply with requests for information from other countries' tax authorities.

Where transfer pricing in particular is concerned, it may be difficult to obtain after the fact the necessary evidence that internal group transactions have been effected in accordance with the arm's-length principle. Often, the basis for comparison to be used for the assessment will not be complete. It is therefore considerably easier to obtain the necessary records at the time the internal group transaction is effected. The duty to provide records is a clear incentive on an ongoing basis to secure material to support the conclusion that the internal transactions were effected in accordance with the arm's-length principle.

The significance of the notified amendment is that those subject to the tonnage tax are exempted from the obligation to provide records if transactions concern foreign group companies. Under the exemption such entities will not be subject to the same requirement to secure material on an ongoing basis or, indeed, at all to support the conclusion that transactions with those group companies were effected in accordance with the arm's-length principle. A request from another country to supply information can be met if the material exists, for example company accounts with vouchers. However, the Danish tax authorities will not be able to require new material to be drawn up solely for use by another country's tax authorities. If a taxable entity is not subject to the obligation to provide records, it will not, for instance, be possible to require that that entity draw up a comparative analysis for the benefit of another country. To that extent the exemption may be to the detriment of other countries.'

(30) The same letter of 29 September 2006 mentions the following with respect to the issue of whether, after the introduction of the notified measure, its ring fence would remain waterproof against any attempt at tax evasion on the part of foreign affiliates of maritime companies taxed under the Danish Tonnage Tax:

'For such an assurance to be possible, this would require at least that each year all entities liable for tonnage tax with foreign group companies be checked and that all transactions between the two parties be checked in that connection. However, that would be completely unrealistic. The Danish tax authorities are required to prioritise their resources and to attempt to optimise their control work.

([14]) Registered under Reference TREN(2007)A/26997.

The applicable rules are an expression of the fact that attempts have been made to create the best possible ring-fence against tax evasion. The notified amendment — exemption from the obligation to provide information and records — will weaken that fence a little. Hence the notification to the Commission.'

(31) By the aforementioned letter, the Danish authorities announced that the modification will undermine the ring-fence measure a little, specifying however that 'a little does mean only a little'. According to the Danish authorities, 'where the other Member State concerned by a cross-border transaction also has a tonnage tax scheme, the amendment will have no significance. Problems can only arise with countries which have not implemented such a tonnage tax scheme. However, it will be important here whether the country has itself introduced an obligation to provide records or has not found it necessary to impose such an obligation on its taxable subjects.'

(32) To the question of how to justify an unequal treatment, as regards the obligation to provide information and records, between companies taxed under the Danish tonnage tax scheme and those that are not (but which are tax liable for the Danish corporation tax), the Danish authorities replied that the special income statement, including the unavailability of deductions, means that the obligation to provide information and records is of less relevance to persons liable to tonnage tax.

5. OBSERVATIONS EXPRESSED BY INTERESTED PARTIES

(33) Only one interested party, the Danish Shipowners' Association, *Danmarks Rederiforening*, reacted to the publication in the OJ of the notice summarising the opening decision.

(34) By letter of 19 July 2007 ([15]), the Danish Shipowners' Association recalls that a Danish shipping company must, as before, act under arm's-length conditions both internally, between the tonnage-taxed activity and the general activity, and externally in relation to foreign grouped companies. The company must also continue to be able to provide evidence for the prices used.

(35) The Danish Shipowners' Association underlines that, under the notified measure, the companies would not have to provide in advance the information in relation to commercial transactions with foreign affiliates, but only when requested to.

(36) With respect to the issue of whether it is legitimate to treat companies differently in terms of administrative procedures, the Danish Shipowners' Association points out that it cannot surely be the Commission's opinion that certain companies should have unnecessary administrative burdens imposed on them merely so as to treat them equally in competition terms with other companies in respect of which the authorities feel that the procedures in question are necessary.

6. COMMENTS OF DENMARK ON THE OBSERVATIONS FROM THIRD PARTIES

(37) Denmark did not send comments on the observations submitted by the Danish Ship-owners' Association.

7. ASSESSMENT OF THE AID

7.1. Existence of aid under Article 87(1) of the EC Treaty

(38) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be regarded as incompatible with the common market.

(39) Through the tonnage tax scheme the Danish authorities grant an advantage, by lowering the corporate tax that this sector would otherwise have to bear, through State resources, thereby favouring certain undertakings since the measure is specific to the international shipping sector. Such subsidies threaten to distort competition and could affect trade between Member States, since such shipping activities are essentially carried out on a worldwide market.

(40) The Commission considers that the notified measure does not alter the qualification of the scheme as State aid within the meaning of Article 87(1) of the EC Treaty.

(41) In this context, the main issue at stake is to determine whether the envisaged measure would modify the assessment made in Commission decision of 12 March 2002 ([16]) regarding the overall compatibility of the regime with the common market.

7.2. Compatibility of the measure

(42) Under Article 87(3)(c) of the EC Treaty, aid to facilitate the development of certain economic activities may be considered compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, and thus provides a possible basis for an exemption from the general prohibition of State aid. In the present case, the Commission considers that the notified measure should be examined under Article 87(3)(c) of the EC Treaty.

([15]) Registered under Reference TREN(2007)A/38091.

([16]) See footnote 3.

(43) In particular, aid in favour of the maritime sector should be examined in the light of the 2004 Community guidelines on State aid to maritime transport [17] (hereinafter 'the Guidelines').

7.2.1. *The relaxation of the ring-fencing measures*

(44) As recalled in the opening decision, one of the main conditions for the compatibility of tonnage tax schemes with the common market is the implementation of ring-fencing measures attached to such schemes. In particular, this condition is reflected by section 3.1, last subparagraph of the Guidelines, which states that 'in cases where a shipowning company is also engaged in other commercial activities, transparent accounting will be required in order to prevent "spill-over" into non-shipping activities'.

(45) The ring-fencing measures which are an integral part of the scheme are intended to ensure that no activities other than maritime transport, in the Member State in question, or in any other Member State or third country, would indirectly benefit from the scheme. Should the tonnage tax scheme as amended potentially result in non-maritime activities benefiting from the Danish tonnage tax scheme, the compatibility of the latter would be called into question.

(46) One of the main ring-fencing measures is the verification — on the basis of the arm's length principle — of commercial transactions between companies taxed under tonnage tax and their possible affiliates (or the part of the companies in question which is subjected to the normal corporation tax), be these affiliates national or foreign enterprises.

(47) Indeed, even if the Danish authorities consider that a reporting and documentation requirement has no economic value in itself, it is in fact related to financial transactions which have an economic nature per se; without an effective implementation of the ring-fencing measure concerning commercial transactions, sectors other than maritime transport, be it in the Member State in question or in other countries, may benefit from the possibility to avoid corporation tax through commercial transactions with an affiliate taxed under the tonnage tax regime of the Member State in question, without this being justified by any legitimate objective of common interest.

(48) Moreover, where ring-fencing measures prove ineffective or are likely to be ineffective, even partially, the Commission considers that the tonnage tax regime may create the possibility for tax evasion to the detriment of other Member States or EAA countries

(49) For these reasons already, the relaxation of the ring-fencing measures must be regarded as adversely affect trading conditions to an extent contrary to the common interest. The regime, under these circumstances, would be incompatible with the common market.

7.2.2. *The distinction between domestic and foreign affiliates*

(50) In addition, the Commission understands that the Danish authorities intend to continue to verify — in application of the ring-fencing measure based on the arm's length principle — transactions between two affiliated companies, where one of them benefits from the Tonnage tax, as previously, but only in case they are both tax-liable in Denmark.

(51) Consequently, while the verification of infra-national transactions with a company under the tonnage tax would remain under the supervision and responsibility of the Danish fiscal authorities, the verification of cross-border transactions between a tonnage tax company in Denmark and a foreign affiliate would be left to the responsibility of the foreign country concerned which would lead to a lack of supervision and surveillance regarding international financial transactions.

(52) It results that the notified measure modifies the Danish tonnage tax scheme, approved by the Commission in 2002 [18] as it will exempt tonnage tax companies from requirements that were in force in 2002. Activities other than maritime transport exercised in another Member State or EEA country by an affiliate of an undertaking subject to tonnage tax in Denmark, might more easily benefit from the Danish tonnage tax and escape normal corporation tax in the Member State or EEA country concerned. This is recognised by Denmark when it says that the ring-fencing measure in question will be weakened 'a little'. However, the principles of non-discrimination and equal treatment for all companies in the sector should be applied; the Danish authorities are assuming that fraud and tax evasion in commercial transactions are uncommon, however, even if that was the case, control seems to be necessary to ensure an accurate practice in international transactions.

(53) The Commission considers that the ring-fencing measure concerning intra-group transactions must protect against distortions of the common market arising equally from advantages to affiliated companies in the Member State concerned and in the other Member States. Otherwise, the consequences of tax evasion through a tonnage tax company would seriously impact the functioning of the common market.

[17] OJ C 13, 17.1.2004, p. 3.

[18] See footnote 3.

(54) As a consequence, the Commission considers that the Member State, which has introduced a tonnage tax scheme must treat cross-border intra-group transactions (cross-border transactions that could benefit affiliated companies in any other Member State or EEA country) as if these transactions benefited such companies on its own territory. In other terms, a Member State, for the purpose of implementing the ring-fencing measure concerning intra-group transactions, must apply the same standards to transactions of a tonnage tax company with a foreign affiliate as those it applies to transactions with a national non-tonnage tax affiliate.

(55) Under the principles of non-discrimination and equal treatment the tonnage tax Member State must impose the same obligation to provide information and records, under the ring-fencing measure in question, on infra-national transactions (that may be detrimental to this Member State) and on cross-border transactions (that may be detrimental to other Member States or EEA countries). This information is indeed essential for checking transfer prices within a group of companies.

(56) By alleviating the verifications that the Danish authorities have to perform on transactions between a company under the Danish tonnage tax scheme and any of its foreign affiliate, Denmark fails to comply with the principles of non-discrimination and equal treatment. By doing so, Denmark would transfer at least part of the burden of verifying that the objectives of the system are respected, and consequent possible distortion of the common market, to the other Member State and to the EEA country where the non-tonnage tax affiliate concerned by the transaction is taxed.

(57) Therefore, the Commission concludes that the notified measure will result in significant weakening of the ring-fencing measure from another Member State or an EEA country.

(58) Furthermore, the Commission considers as unjustified the unequal treatment in terms of obligation to provide information and records, between beneficiaries having only national affiliates not eligible for tonnage tax and beneficiaries having also foreign affiliates. The measure would thus create an unjustified distortion of competition between companies which have foreign affiliates, and others which do not.

(59) As a result, the effects of the notified measure are such that they affect trading conditions to an extent contrary to the common interest within the meaning of Article 87(3)(c) of the EC Treaty and they do not fulfil the requirement contained in section 3.1, last subparagraph of the Guidelines. Therefore, the measure in question should be declared incompatible with the common market within the meaning of Article 87(1) of the EC Treaty.

7.3. **Conclusion**

(60) To conclude, the Commission considers that the notified measure would lead to distortions counter to the common interest within the meaning of Article 87(3)(c) of the EC Treaty and thus render the Danish tonnage tax scheme incompatible with the common market within the meaning of Article 87(1) of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The notified measure consisting of repealing for ship-owners taxed under the Danish tonnage tax the obligation imposed otherwise on all other companies to provide the Danish fiscal authorities with commercial information on all commercial transactions with foreign-based affiliates on the basis of Law No 408 of 1 June 2005 is incompatible with the common market.

The measure may accordingly not be implemented.

Article 2

Denmark shall inform the Commission, within 2 months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 17 June 2009.

For the Commission

Antonio TAJANI

Vice-President

COMMISSION DECISION

of 27 November 2009

amending Annexes XI, XII, XV and XVI to Council Directive 2003/85/EC as regards the list of and minimum security standards applicable to laboratories authorised to handle live foot-and-mouth disease virus

(notified under document C(2009) 9094)

(Text with EEA relevance)

(2009/869/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC [1], and in particular Articles 67(2) and 87(3) thereof,

Whereas:

(1) Directive 2003/85/EC sets out minimum control measures to be applied in the event of an outbreak of foot-and-mouth disease and certain preventive measures aimed at increasing the awareness and preparedness of the competent authorities and the farming community concerning that disease.

(2) Article 65 of Directive 2003/85/EC provides that Member States are to ensure that the handling of live foot-and-mouth disease virus for research, diagnosis or manufacture is carried out only in approved laboratories listed in Annex XI and operated at least according to the bio-security standards set out in Annex XII to that Directive.

(3) Part A of Annex XI to Directive 2003/85/EC lists national laboratories authorised to handle live foot-and-mouth disease virus for research and diagnostic purposes. Part B of that Annex lists laboratories handling virus antigen during the manufacture of vaccines.

(4) France has officially informed the Commission that one of their national reference laboratories and a vaccine manufacturing laboratory are no longer considered to meet the bio-security standards provided for in Article 65(d) of Directive 2003/85/EC.

(5) The Netherlands have officially informed the Commission of a further change of name of their national diagnostic laboratory authorised to handle live foot-and-mouth disease virus, and of the takeover by the private company 'Lelystad Biologicals BV, Lelystad' of that part of the former Central Institute for Animal Disease Control (CIDC-Lelystad) authorised to handle live foot-and-mouth disease virus for the production of vaccines.

(6) It is therefore necessary to amend the lists of laboratories authorised to handle live foot-and-mouth disease virus set out in Annex XI to Directive 2003/85/EC.

(7) Point 1 of Annex XII to Directive 2003/85/EC sets out bio-security standards for laboratories handling live foot-and-mouth disease virus. It provides that such laboratories are to meet or exceed the minimum requirements laid down in the 'Minimum standards for laboratories working with foot-and-mouth virus in vitro and in vivo' established by the European Commission for the control of foot-and-mouth disease, 26th session, Rome, April 1985, as modified in 1993.

(8) Point 1 of Annex XV to Directive 2003/85/EC provides that all national laboratories handling live foot-and-mouth disease virus are to operate under high security conditions laid down in 'Minimum standards for laboratories working with foot-and-mouth disease virus in vitro and in vivo', European Commission for the control of foot-and-mouth disease — 26th Session, Rome, 1985, as amended by Appendix 6(ii) of the Report of the 30th Session, Rome, 1993.

(9) In addition, point 7 of Annex XVI to Directive 2003/85/EC provides that the Community Reference Laboratory is to operate according to recognised conditions of strict disease security as indicated in 'Minimum standards for laboratories working with foot-and-mouth disease virus in vitro and in vivo', European Commission for the control of foot-and-mouth disease — 26th Session, Rome, April 1985, as amended by Appendix 6 (ii) of the report to the 30th Session of the European Commission for the control of foot-and-mouth disease 1993, referred to in Annex XII to that Directive.

[1] OJ L 306, 22.11.2003, p. 1.

(10) Following an outbreak of foot-and-mouth disease in 2007 in a Member State that was related to foot-and-mouth disease virus escape from a laboratory, those 'Minimum standards for laboratories working with foot-and-mouth disease virus in vitro and in vivo' (bio-security standards) were amended. Following discussions on the bio-security standards with the Member States in the framework of the Standing Committee on the Food Chain and Animal Health, the amended version of those standards was adopted at the 38th General Session of the European Commission for the control of foot-and-mouth disease on 29 April 2009 [1] and is included in the Report of the 38th General Session of the European Commission for the control of foot-and-mouth disease, Rome 28-30 April 2009 (the Report). It replaces the bio-security standards established in 1985, as modified in 1993. Annexes XII, XV and XVI to Directive 2003/85/EC should therefore be amended accordingly.

(11) Directive 2003/85/EC should be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Annexes XI, XII, XV and XVI to Directive 2003/85/EC are amended in accordance with the Annex to this Decision.

Article 2

The Decision is addressed to the Member States.

Done at Brussels, 27 November 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

[1] Report of the 38 General Session of the European Commission for the control of foot-and-mouth disease, Rome 28-30 April 2009, Appendix 10, p. 82, available at: http://www.fao.org/ag/againfo/commissions/docs/SecurityStandards_2009.pdf

ANNEX

Annexes XI, XII, XV and XVI are amended as follows:

1. Annex XI is amended as follows:

(a) in Part A, the entry for France is replaced by the following:

'FR	France	Agence française de sécurité sanitaire des aliments (AFSSA), Laboratoire d'études et de recherches en pathologie animale et zoonoses, Maisons-Alfort	France'

(b) in Part A, the entry for the Netherlands is replaced by the following:

'NL	Netherlands	Centraal Veterinair Instituut, Lelystad (CVI-Lelystad)	Netherlands'

(c) in Part B, the following entry for France is deleted:

'FR	France	Merial, SAS, Laboratoire IFFA, Lyon'

(d) in Part B, the entry for the Netherlands is replaced by the following:

'NL	Netherlands	Lelystad Biologicals BV, Lelystad	Netherlands'

2. in Annex XII, point 1 is replaced by the following:

'1. The laboratories and establishments handling live foot-and-mouth disease virus must operate at least according to the "Minimum standards for laboratories working with foot-and-mouth disease virus in vitro and in vivo" in Appendix 10 to the Report adopted by the 38th General Session of the European Commission for the control of foot-and-mouth disease (EuFMD) on 29 April 2009 in Rome (bio-security standards).';

3. in Annex XV, point 1 is replaced by the following:

'1. All national laboratories handling live foot-and-mouth disease virus must operate at least according to the bio-security standards referred to in point 1 of Annex XII.';

4. in Annex XVI, point 7 is replaced by the following:

'7. The Community Reference Laboratory must operate at least according to the bio-security standards referred to in point 1 of Annex XII.'.

COMMISSION DECISION

of 27 November 2009

amending Decision 2009/821/EC as regards the list of border inspection posts

(notified under document C(2009) 9199)

(Text with EEA relevance)

(2009/870/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC [1], and in particular the last sentence of the second subparagraph of Article 6(4) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries [2], and in particular Article 6(2) thereof,

Whereas:

(1) Commission Decision 2009/821/EC of 28 September 2009 drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces [3] lays down a list of border inspection posts approved in accordance with Directives 91/496/EEC and 97/78/EC. That list is set out in Annex I to that Decision.

(2) The Commission inspection service, the Food and Veterinary Office (FVO) carried out an inspection at the border inspection post at the airport of Copenhagen in Denmark. The results of the inspection were satisfactory. An additional inspection centre should therefore be added for that border inspection post in the list set out in Annex I to Decision 2009/821/EC.

(3) Following communications from Denmark, France, Italy and Portugal, certain categories of animals or products of animal origin that can be checked at certain border inspection posts already approved in accordance with Decision 2009/821/EC should be added to the list of border inspection posts for those Member States set out in Annex I to that Decision.

(4) Following results of FVO inspections, in accordance with Decision 2009/821/EC, and communications from France, Ireland and Italy, certain categories of animals and products of animal origin that can be checked at certain border inspection posts already approved in accordance with Decision 2009/821/EC should be removed from the list of border inspection posts for those Member States set out in Annex I to that Decision.

(5) Following a communication from Latvia, the list of border inspection posts for that Member State should be amended to take account of the suspension of one of its border inspection posts.

(6) Following communications from Belgium, Germany and France, certain border inspection posts for those Member States should be deleted from the list of border inspection posts set out in Annex I to Decision 2009/821/EC.

(7) Following communication from Italy, the list of border inspection posts for that Member State should be amended to take account of the change of the name of one of its border inspection posts.

(8) In addition, Belgium communicated that the OCHZ facility at the border inspection post at Zeebrugge has been closed and a new inspection facility has been put in place.

(9) Decision 2009/821/EC should therefore be amended accordingly.

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

[1] OJ L 268, 24.9.1991, p. 56.
[2] OJ L 24, 30.1.1998, p. 9.
[3] OJ L 296, 12.11.2009, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Decision 2009/821/EC is amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 27 November 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

ANNEX

Annex I is amended as follows:

1) The part concerning Belgium is amended as follows:

(a) the entry for the port at Oostende is deleted;

(b) the entry for the port at Zeebrugge is replaced by the following:

'Zeebrugge	BE ZEE 1	P		HC(2), NHC(2)'	

2) The part concerning Denmark is amended as follows:

(a) the entry for the airport at Copenhagen is replaced by the following:

'København	DK CPH 4	A	Centre 1, SAS 1 (North)	HC(1)(2), NHC (*)	
			Centre 2, SAS 2 (East)	HC (*), NHC(2)	
			Centre 3		U, E, O
			Centre 4	HC(2)'	

(b) the entry for the port at Skagen is replaced by the following:

'Skagen	DK SKA 1	P		HC-(FR)(1)(2)(3), NHC(6)'	

3) In the part concerning Germany, the entries for the border inspection posts at Kiel, Lübeck and Rügen are deleted.

4) The part concerning Ireland is amended as follows:

(a) the entry for the airport at Dublin is replaced by the following:

'Dublin Airport	IE DUB 4	A			E'

(b) the entry for the airport at Shannon is replaced by the following:

'Shannon	IE SNN 4	A		HC(2), NHC(2)	U, E'

5) The part concerning France is amended as follows:

(a) the entry for the port at Concarneau–Douarnenez is deleted;

(b) the entry for the airport at Roissy Charles–de–Gaulle is replaced by the following:

'Roissy Charles-de-Gaulle	FR CDG 4	A	Air France	HC-T(1), HC-NT, NHC-NT	
			France Handling	HC-T(1), HC-NT, NHC	
			Station animalière		E, O(14)'

(c) the entry for the airport at Vatry is replaced by the following:

'Vatry	FR VRY 4	A		HC-T(CH)(1)(2), NHC-NT(2)'	

6) The part concerning Italy is amended as follows:

(a) the entry for the port at Civitavecchia is replaced by the following:

'Civitavecchia	IT CVV 1	P		HC(2), NHC(2)'	

(b) the entry for the port at Gioia Tauro is replaced by the following:

'Gioia Tauro	IT GIT 1	P		HC(2), NHC-NT(2)'	

(c) the entry for the port at Vado Ligure Savona port is replaced by the following:

'Vado Ligure Savona	IT VDL 1	P		HC(2),NHC-NT(2)'	

7) In the part concerning Latvia, the entry for the port at Riga (Baltmarine Terminal) is replaced by the following:

'Riga (*Baltmarine Terminal*) (*)	LV BTM 1	P		HC-T(FR)(2) (*)'	

8) In the part concerning Portugal, the entry for the airport at Lisbon is replaced by the following:

'Lisboa	PT LIS 4	A		HC(2), NHC-NT(2)	O'

COMMISSION DECISION

of 30 November 2009

conferring on the Republic of Croatia management of aid relating to the Component V — Agriculture and rural development of the instrument for pre-accession assistance (IPA) for pre-accession measures 101 and 103 in the pre-accession period

(2009/871/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) ([1]),

Having regard to Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance (IPA) ([2]) and in particular Articles 18 and 186 thereof,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ([3]) (hereinafter referred to as the Financial Regulation), and in particular Article 53c and 56(2) thereof,

Having regard to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (hereinafter referred to as the Implementing Rules) ([4]) and in particular Article 35 thereof,

Whereas:

(1) Regulation (EC) No 1085/2006 lays down the objectives and main principles for pre-accession assistance to candidate and potential candidate countries for the period from 2007 to 2013 and confers the responsibility for its implementation to the Commission.

(2) Articles 11, 12, 13, 14, 18 and 186 of Regulation (EC) No 718/2007 give the Commission the possibility to confer management powers to the beneficiary country and define the requirements for such conferral relating to the Component V — Agriculture and rural development of the instrument for pre-accession assistance.

(3) Under Article 7 of Regulation (EC) No 718/2007 the Commission and the beneficiary country shall conclude a framework agreement, in order to set out and agree on the rules for cooperation concerning EC financial assistance to the beneficiary country. Where necessary, the framework agreement may be complemented by a sectoral agreement, or sectoral agreements, covering component specific provisions.

(4) For conferring management powers to the beneficiary country the conditions laid down in Article 53c and 56(2) of the Financial Regulation and in Article 35 of the Implementing Rules must be fulfilled.

(5) The Framework Agreement on the rules for cooperation concerning EC financial assistance to the Republic of Croatia in the framework of the implementation of the assistance under the instrument for pre-accession assistance (IPA) between the Government of the Republic of Croatia and the Commission of the European Communities was concluded on 17 December 2007.

(6) The Programme for Agriculture and Rural Development of the Republic of Croatia under the IPA (hereinafter referred to as the IPARD Programme), approved by Commission Decision C(2008) 690 of 25 February 2008, in accordance with Article 7(3) of Regulation (EC) No 1085/2006, and Article 184 of Regulation (EC) No 718/2007, included a plan for the annual Community contributions as well as the financing agreement.

(7) The Sectoral Agreement concluded on 12 January 2009 between the Commission of the European Community, acting for and on behalf of the European Community and the Government of the Republic of Croatia, acting on behalf of the Republic of Croatia, complements the provisions of the Framework Agreement, laying down the specific provisions applicable for the implementation and the execution of the IPARD Programme for Agriculture and Rural Development of the Republic of Croatia under the instrument for pre-accession assistance (IPA).

(8) The IPARD Programme was last amended on 10 September 2009 by Commission Decision C(2009) 6770.

([1]) OJ L 210, 31.7.2006, p. 82.
([2]) OJ L 170, 29.6.2007, p. 1.
([3]) OJ L 248, 16.9.2002, p. 1.
([4]) OJ L 357, 31.12.2002, p. 1.

(9) Pursuant to Article 21 of Commission Regulation (EC) No 718/2007 the beneficiary country has to designate bodies and authorities responsible for implementation of the IPARD Programme: the Competent Accrediting Officer, the National Authorising Officer, the National Fund, the Managing Authority, the IPARD Agency and the Audit Authority.

(10) The Government of Croatia has appointed the National Fund Sector, an organisational unit of the State Treasury within the Ministry of Finance, acting as the National Fund, which will execute the functions and responsibilities as defined in Annex I of the Sectoral Agreement.

(11) The Government of Croatia has appointed the Directorate for Market and Structural Support in Agriculture, an organisational unit of the Ministry of Agriculture, Fisheries and Rural Development, to act as the IPARD Agency, which will execute the functions and responsibilities as defined in Annex I of the Sectoral Agreement.

(12) The Government of Croatia has appointed the Directorate for Rural Development, Sapard/IPARD Programme Managing Authority, within the Ministry of Agriculture, Fisheries and Rural Development, to act as the Managing Authority, which will execute the functions and responsibilities as defined in Annex I of the Sectoral Agreement.

(13) The Competent Accrediting Officer notified the European Commission on 12 November 2008 of the accreditation of the National Authorising Officer and the National Fund in accordance with Article 12(3) of Regulation (EC) No 718/2007.

(14) The National Authorising Officer notified the European Commission on 12 November 2008 of the accreditation of the operating structure in charge of the management and implementation of IPA Component V — Rural development, in accordance with Article 13(3) of Regulation (EC) No 718/2007.

(15) The Directorate for Market and Structural Support in Agriculture, acting as the IPARD Agency, and the Directorate for Rural Development, Sapard/IPARD Programme Managing Authority, acting as the Managing Authority, will be responsible for implementing the three measures accredited by the National Authorising Officer out of seven from the IPARD Programme: 101 'Investments in agriculture holdings to restructure and to upgrade to community standards', 103 'Investments in the processing and marketing of agricultural and fishery products to restructure these activities and to upgrade them to Community standards' and 301 'Improvement and development of rural infrastructure' as defined in the Programme.

(16) On 16 March 2009 the Croatian Authorities submitted to the Commission the list of eligible expenditure in conformity with Article 32(3) of the Sectoral Agreement. The Commission approved this list on 8 April 2009.

(17) In order to take into account the requirements of Article 19(1) of the Framework Agreement the expenditure pursuant to this Decision shall be eligible for Community co-finance only if not paid earlier than the date of conferral decision, with the exception of general costs referred to in Article 172(3c) of Regulation (EC) No 718/2007. Expenditure shall be eligible if it is in accordance with the principles of sound financial management and, in particular, of economy and cost-effectiveness.

(18) Regulation (EC) No 718/2007 provides that the *ex-ante* approval requirement referred to in Article 18(2) of Regulation (EC) No 718/2007 may be waived on the basis of a case-by-case analysis of effective functioning of the management and control system concerned and provides for detailed rules for the carrying out of the said analysis.

(19) Pursuant to Articles 14 and 18 of Regulation (EC) No 718/2007, the accreditations referred to in Articles 11, 12 and 13 of Regulation (EC) No 718/2007 have been reviewed; and the procedures and structures of the bodies and authorities concerned, as set out in the application submitted by the National Authorising Officer, have been examined, including by on-the-spot verifications.

(20) None the less, the verifications carried out by the Commission for measure 101 'Investments in agriculture holdings to restructure and to upgrade to community standards' and measure 103 'Investments in the processing and marketing of agricultural and fishery products to restructure these activities and to upgrade them to Community standards' are based on a system that is operational, but not yet operating, with regard to all relevant elements.

(21) Although the Audit Authority is not itself part of this Decision, its level of readiness to operate as a functionally independent audit body by the time of submission to the Commission of the accreditation package for the conferral of management has been evaluated by on-the-spot verifications.

(22) Croatia's compliance with the requirements of Article 56(2) of the Financial Regulation and Articles 11, 12 and 13 of Regulation (EC) No 718/2007 has been assessed by on-the-spot verifications.

(23) The assessment has shown that Croatia complies with the requirements for measures 101 and 103. However, the Directorate for Market and Structural Support in Agriculture, acting as the IPARD Agency, has not yet implemented properly the accreditation criteria for the functions it is due to perform in the framework of the implementation of measure 301 of the Programme for Croatia.

(24) It is therefore appropriate to waive the *ex-ante* approval requirements referred to in Article 18(1) of Regulation (EC) No 718/2007 and Article 165 of the Financial Regulation and to confer on the National Authorising Officer, on the National Fund, on the IPARD Agency and on the Managing Authority, the management powers relating to the measures 101 and 103 of the Programme for Croatia on a decentralised basis,

HAS DECIDED AS FOLLOWS:

Article 1

1. The management of assistance provided for under IPA — Component V as regards agriculture and rural development of the instrument for pre-accession assistance (IPA) is conferred on the concerned bodies under the conditions laid down in this Decision.

2. The requirement for *ex-ante* approval by the Commission of managing, paying and implementing functions for measure 101 'Investments in agriculture holdings to restructure and to upgrade to community standards' and measure 103 'Investments in the processing and marketing of agricultural and fishery products to restructure these activities and to upgrade them to Community standards' by the Republic of Croatia for in Article 18 of Regulation (EC) No 718/2007, is hereby waived.

Article 2

This Decision shall apply on the basis of the following structures, bodies and authorities designated by the Republic of Croatia for the management of measures 101 and 103 of the Programme provided for under IPA — Component V:

(a) the National Authorising Officer;

(b) the National Fund;

(c) the Operating Structure for IPA — Component V:

— the Managing Authority,

— the IPARD Agency.

Article 3

1. The management powers are conferred on the structures, bodies and authorities as specified in Article 2 of this Decision.

2. The national authorities shall carry out further verifications with regard to the structures, bodies and authorities set out in Article 2 of this Decision, in order to ensure that the management and control system operates satisfactorily. Verifications shall be carried out before the submission of the first Declaration of Expenditure requesting the reimbursement related to measures stated in Article 1(2) above.

Article 4

1. Expenditure paid earlier than the date of this Decision shall in no case be eligible with the exception of general costs referred to in Article 172(3c) of Regulation (EC) No 718/2007.

2. Expenditure shall be eligible if it is in accordance with the principles of sound financial management and, in particular, of economy and cost-effectiveness.

Article 5

Without prejudice to any decisions granting aid under the IPARD Programme to individual beneficiaries, the rules for eligibility of expenditure proposed by Croatia by letter No 'Class: NP 018-04/09-01/106, Ref. number: 525-12-3-0472/09-2' of 16 March 2009 and registered in the Commission on 26 March 2009 under No 8151 shall apply.

Article 6

1. The Commission shall monitor compliance with the requirements for the conferral of management powers as laid down in Article 17 of Regulation (EC) No 718/2007.

2. At any time during the implementation of this Decision, should the Commission consider that the obligations of the Republic of Croatia under this Decision are no longer met, the Commission may decide to withdraw or suspend the conferral of management powers.

Done at Brussels, 30 November 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

COMMISSION DECISION

of 30 November 2009

establishing a European Union Committee of Experts on Rare Diseases

(2009/872/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 152 thereof,

Whereas:

(1) The Commission White Paper 'Together for health: a strategic approach for the EU 2008-2013' ([1]) adopted by the Commission on 23 October 2007, developing the EU health strategy, identified rare diseases as a priority for action.

(2) In parallel, the European Parliament and the Council adopted Decision No 1350/2007/EC of 23 October 2007 establishing a second programme of Community action in the field of health (2008 to 2013) ([2]). According to Article 7(2) as well as to the Annex to that Decision, the actions in the field of generation and dissemination of health information and knowledge shall be implemented in close cooperation with Member States developing consultation mechanisms and participatory processes.

(3) The European Commission adopted on 11 November 2008 the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on rare diseases: Europe's challenges' ([3]) (hereafter referred to as the Commission Communication) and the Council on 8 June 2009 a Council Recommendation on an action in the field of rare diseases ([4]) (hereafter referred to as the Council Recommendation).

(4) The preparation and implementation of Community activities in the field of rare diseases require close cooperation with the specialised bodies in Member States and with the interested parties.

(5) Therefore, a framework is required for the purpose of regular consultations with those bodies, with the managers of projects supported by the European Commission in the fields of research and public health action and with other relevant stakeholders acting in the field.

(6) This need for a framework was reflected in the Communication COM(2008) 679 final on rare diseases. Point 7 of the Communication recommended that the Commission be assisted by a European Union Advisory Committee on Rare Diseases.

(7) The Committee shall not act as a Committee within the meaning of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([5]),

HAS DECIDED AS FOLLOWS:

Article 1

The Commission hereby establishes a Committee of Experts on Rare Diseases, hereinafter referred to as 'the Committee'.

Article 2

1. The Committee acting in the public interest shall assist the Commission in formulating and implementing the Community's activities in the field of rare diseases, and shall foster exchanges of relevant experience, policies and practices between the Member States and the various parties involved.

2. The tasks of the Committee shall not comprise issues covered by Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products ([6]) and issues that fall under the tasks of the Committee of Orphan Medicinal Products (COMP), set up by Article 4 of that Regulation, nor issues that fall under the tasks of the Pharmaceutical Committee, set up by Council Decision 75/320/EEC ([7]).

3. To achieve the aims referred to in paragraph 1, the Committee shall:

(a) assist the Commission in the monitoring, evaluating and disseminating the results of measures taken at Community and national level in the field of rare diseases;

(b) contribute to the implementation of Community actions in the field, in particular by analysing the results and suggesting improvements to the measures taken;

([1]) COM(2007) 630 final, 23.10.2007.
([2]) OJ L 301, 20.11.2007, p. 3.
([3]) COM(2008) 679 final, 11.11.2008.
([4]) OJ C 151, 3.7.2009, p. 7.
([5]) OJ L 184, 17.7.1999, p. 23.
([6]) OJ L 18, 22.1.2000, p. 1.
([7]) OJ L 147, 9.6.1975, p. 23.

(c) contribute to the preparation of Commission reports on the implementation of the Commission Communication and the Council Recommendation;

(d) deliver opinions, recommendations or submit reports to the Commission either at the latter's request or on its own initiative;

(e) assist the Commission in international cooperation on matters relating to rare diseases;

(f) assist the Commission in drawing up guidelines, recommendations and any other action defined in the Commission Communication and in the Council Recommendation;

(g) provide an annual report of its activities to the Commission.

4. The Committee shall adopt its rules of procedure in agreement with the Commission.

Article 3

1. The Committee shall comprise 51 members and the corresponding alternates, namely:

(a) one representative per Member State from ministries or government agencies responsible for rare diseases; the representative shall be designated by the government of each Member State;

(b) four representatives from patients' organisations;

(c) four representatives of the pharmaceutical industry;

(d) nine representatives of ongoing and/or past Community projects in the field of rare diseases financed by the programmes of Community action in the field of health ([1]) including three members of the pilot European Reference Networks on rare diseases;

(e) six representatives of the ongoing and/or past rare diseases projects financed by the Community Framework Programmes for Research and Technological Development ([2]);

(f) one representative of the European Centre for Disease Prevention and Control (ECDC), whose mandate, established in accordance with Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for disease prevention and control ([3]) includes activities on rare emerging infectious diseases.

On request of the governments of the States concerned, the Commission can decide to extend the composition of the Committee with a representative of each of the EFTA States which are party to the Agreement on the European Economic Area, from the ministry or government agency responsible for rare diseases and designated by the government of the State concerned.

2. Representatives of the Commission, of the European Medicines Agency (EMEA) as well as the Chair or Vice-Chair of the Committee for Orphan Medicinal Products (COMP) may attend the meetings of the Committee.

3. Representatives of international and professional organisations and other associations acting in the field of rare diseases making duly substantiated requests to the Commission may be given observer status.

4. The Commission shall appoint the members of the Committee corresponding to groups (b) to (e) of paragraph 1 from a list of suitable candidates established following publication of a call for expressions of interest in the *Official Journal of the European Union* and on the Commission website. The call for expressions of interests shall specify the required qualifications and conditions to become member of the Committee. All members of the Committee shall undertake to act in the public interest.

5. Members of the Committee corresponding to groups (b) to (e) shall undertake to act in an independent manner. They are under no power of direction from their body of origin when carrying out their tasks as Committee member.

Article 4

The term of office of members of the Committee shall be three years and shall be renewable. They shall remain in office until such time as they are replaced.

A member's term of office shall come to an end before the expiry of the three-year period in the event of her/his resignation, the termination of her/his membership of the organisation which she/he represents, permanent incapacity to attend the meetings, incapacity to contribute effectively to the committee's deliberations, non-respect of the conditions set in Article 287 of the Treaty establishing the European Community, or in case of subsequent non-compliance with the qualifications and conditions specified in the call for expression of interests. A member's terms of office may also be terminated if the organisation which nominated her/him requests her/his replacement.

Members whose term of office comes to an end before the expiry of the three-year period may be replaced for the remaining period of their mandate.

([1]) OJ L 155, 22.6.1999, p. 1; OJ L 271, 9.10.2002, p. 1; OJ L 301, 20.11.2007, p. 3.
([2]) OJ L 412, 30.12.2006, p. 1.
([3]) OJ L 142, 30.4.2004, p. 1.

Article 5

1. The Committee shall elect a chairperson and three vice-chairpersons, with a one-year term of office, from different categories of members of the Committee, in accordance with the procedure laid down in Article 10. The vice-chairpersons shall stand in for the chairperson in the absence of the chairperson.

2. The chairperson and vice-chairpersons together with a representative of the Commission shall constitute the Bureau of the Committee, which shall prepare the work of the Committee.

3. The Secretariat of the Committee shall be provided by the Commission. The minutes of the Committee's meetings shall be drawn up by the Commission.

Article 6

The Bureau of the Committee may invite any person who is specially qualified in a particular subject on the agenda to take part in the work of the Committee as an external expert.

External experts shall only take part in the work on the particular subject for which their attendance is requested.

Article 7

1. The Committee may set up temporary working groups. These groups may notably be established when work of a temporary or ad-hoc nature is required such as preparation of proposals on a specific scientific topic, or preparation of responses to specific questions raised by the Committee in relation to specific scientific fields.

2. Working groups consist of external experts selected according to their specific expertise.

3. The Committee shall adopt a mandate for each working group, indicating its objectives, composition, meeting frequency and the duration of its activity.

4. For the preparation of its opinions, the Committee may entrust a rapporteur, who can be one of its members or an external expert, with the task of drawing up reports in accordance with its rules of procedure.

5. One or more members of the Committee may be nominated by the Committee to participate as observers in the activities of other expert groups of the Commission.

Article 8

No remuneration shall be attached to a member's duties; travelling and subsistence expenses for meetings of the Committee and of the working groups set up under Article 7 shall be met by the Commission in accordance with the administrative rules in force.

Measures adopted under Articles 6 and 7 having financial implications for the budget of the European Communities shall be submitted for the prior agreement of the Commission and shall be implemented in accordance with the Financial Regulation applicable to the general budget of the European Communities.

Article 9

The Committee shall be convened by the Commission and shall meet on its premises. It shall meet at least three times per year.

Article 10

1. The quorum required for the adoption of opinions, reports or recommendations by the Committee shall be reached when two thirds of the total members of the Committee are present.

2. Whenever possible, scientific opinions, reports or recommendations of the Committee shall be taken by consensus. If such a consensus cannot be reached, the opinion shall be adopted by a majority of the Committee members who are present.

3. The Commission, when requesting the Committee's opinion or a recommendation, may set a deadline within which the opinion should be delivered.

4. The views expressed by the different categories represented in the Committee shall be recorded in the minutes, which shall be transmitted to the Commission. Where the opinion requested has been agreed unanimously by the Committee, the Committee shall draft common conclusions which shall be annexed to the minutes.

5. Draft opinions and recommendations can, after approval of the Chairperson, be submitted by the Secretariat to the Committee for adoption by a written procedure to be laid down in the rules of procedure of the Committee. However, such written procedures should be, as much as possible, restricted to urgent measures required to be taken between scheduled meetings.

Article 11

Without prejudice to Article 287 of the Treaty, members of the Committee are required not to disclose information obtained in the course of their work on the Committee or its sub-groups or working groups when informed by the Commission that the opinion requested or question asked concerns a confidential matter.

In such cases, only members of the Committee and representatives of the Commission shall attend meetings.

Article 12

This Committee will replace the current European Union Rare Diseases Task Force created on the basis of Commission Decision 2004/192/EC of 25 February 2004 adopting the work plan for 2004 for the implementation of the programme of Community action in the field of public health (2003 to 2008), including the annual work programme for grants [1].

Done at Brussels, 30 November 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

[1] OJ L 60, 27.2.2004, p. 58.

COMMISSION DECISION

of 30 November 2009

amending Decision 2006/168/EC as regards the listing of embryo collection and production teams approved for imports of bovine embryos into the Community

(notified under document C(2009) 9320)

(Text with EEA relevance)

(2009/873/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/556/EEC of 25 September 1989 on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species [1], and in particular Article 7(1) and Article 9(1)(b) thereof,

Whereas:

(1) Directive 89/556/EEC sets out the animal health conditions governing intra-Community trade in and importation from third countries of fresh and frozen embryos of domestic animals of the bovine species.

(2) Commission Decision 2006/168/EC of 4 January 2006 establishing the animal health and veterinary certification requirements for imports into the Community of bovine embryos [2] provides that Member States are to authorise imports of embryos of domestic animals of the bovine species collected or produced in a third country listed in Annex I to that Decision by approved embryo collection or production teams listed in the Annex to Commission Decision 92/452/EEC of 30 July 1992 establishing lists of embryo collection teams and embryo production teams approved in third countries for export of bovine embryos to the Community [3].

(3) Commission Decision 2008/155/EC of 14 February 2008 establishing a list of embryo collection and production teams in third countries approved for imports of bovine embryos into the Community [4] repealed and replaced Decision 92/452/EEC. Decision 2008/155/EC provides that Member States are to import embryos from third countries only if they have been collected, processed and stored by embryo collection and production teams listed in the Annex to that Decision.

(4) Council Directive 2008/73/EC of 15 July 2008 simplifying procedures of listing and publishing information in the veterinary and zootechnical fields and amending Directives 64/432/EEC, 77/504/EEC, 88/407/EEC, 88/661/EEC, 89/361/EEC, 89/556/EEC, 90/426/EEC, 90/427/EEC, 90/428/EEC, 90/429/EEC, 90/539/EEC, 91/68/EEC, 91/496/EEC, 92/35/EEC, 92/65/EEC, 92/66/EEC, 92/119/EEC, 94/28/EC, 2000/75/EC, Decision 2000/258/EC and Directives 2001/89/EC, 2002/60/EC and 2005/94/EC [5] amended Directive 89/556/EEC and introduced a simplified procedure of listing and publishing the list of embryo collection and production teams in third countries approved for imports of bovine embryos into the Community. Under that new procedure, which is to apply from 1 January 2010, the competence to establish the list will no longer lie with the Commission. The list of embryo collection or production teams that the competent authority of the third country has approved in accordance with the conditions laid down in Directive 89/556/EEC and from which embryos may be dispatched to the Community will only have to be communicated to the Commission, which is to make it available to the public for information purposes.

(5) As a consequence of the new procedure introduced by Directive 2008/73/EC, Decision 2008/155/EC will be applicable until 31 December 2009.

(6) Decision 2006/168/EC should therefore be amended accordingly.

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

[1] OJ L 302, 19.10.1989, p. 1.
[2] OJ L 57, 28.2.2006, p. 19.
[3] OJ L 250, 29.8.1992, p. 40.
[4] OJ L 50, 23.2.2008, p. 51.
[5] OJ L 219, 14.8.2008, p. 40.

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Decision 2006/168/EC is replaced by the following:

'*Article 1*

General conditions for imports of embryos

Member States shall authorise imports of embryos of domestic animals of the bovine species (embryos) collected or produced in a third country listed in Annex I to this Decision by embryo collection or production teams approved in accordance with Article 8 of Directive 89/556/EEC.'

Article 2

This Decision shall apply from 1 January 2010.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 30 November 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

COMMISSION DECISION

of 30 November 2009

correcting Directive 2003/23/EC amending Council Directive 91/414/EEC to include imazamox, oxasulfuron, ethoxysulfuron, foramsulfuron, oxadiargyl and cyazofamid as active substance

(notified under document C(2009) 9349)

(Text with EEA relevance)

(2009/874/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [1], and in particular Article 6(1) thereof,

Whereas:

(1) Commission Directive 2003/23/EC [2] contains an error concerning the minimum purity of the active substance oxasulfuron. That error must be corrected.

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

HAS ADOPTED THIS DECISION:

Article 1

In the Annex to Directive 2003/23/EC, in the row concerning oxasulfuron, in the fourth column (purity), the words '960 g/kg' are replaced by the words '930 g/kg'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 30 November 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

[1] OJ L 230, 19.8.1991, p. 1.
[2] OJ L 81, 28.3.2003, p. 39.

COMMISSION DECISION

of 30 November 2009

adopting Community import decisions for certain chemicals pursuant to Regulation (EC) No 689/2008 of the European Parliament and of the Council

(2009/875/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals ([1]), and in particular the second subparagraph of Article 12(1) thereof,

After consulting the Committee established by Article 133 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ([2]),

Whereas:

(1) Under Regulation (EC) No 689/2008 the Commission is to decide on behalf of the Community whether or not to permit the import into the Community of each chemical subject to the prior informed consent (PIC) procedure.

(2) The United Nations Environment Programme (UNEP) and the Food and Agriculture Organisation (FAO) have been appointed to provide secretariat services for the operation of the PIC procedure established by the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, hereinafter 'the Rotterdam Convention', approved by the Community by Council Decision 2006/730/EC ([3]).

(3) The Commission, acting as common designated authority, is required to forward import decisions on chemicals subject to the PIC procedure to the Secretariat of the Rotterdam Convention, on behalf of the Community and its Member States.

(4) The group of chemicals tributyltin compounds has been added to the PIC procedure, as pesticides, by decision RC.4/5 of the fourth meeting of the Conference of the Parties and for which the Commission has received information from the Secretariat of the Rotterdam Convention in the form of a decision guidance document. Tributyltin compounds fall within the scope of Regulation (EC) No 1907/2006 and belong to those organostannic compounds that are severely restricted for use as substances and constituents of preparations acting as biocides.

(5) The active substance bis(tributyltin) oxide falls within the scope of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market ([4]). Bis(tributyltin) oxide belongs to the group of tributyltin compounds and was used as wood preservative until this remaining use was banned by Commission Regulation (EC) No 1048/2005 of 13 June 2005 amending Regulation (EC) No 2032/2003 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 ([5]).

(6) Accordingly, a final import decision concerning tributyltin compounds should be taken,

HAS DECIDED AS FOLLOWS:

Sole Article

The final decision on the import of tributyltin compounds as set out in the form for import response in the Annex is adopted.

Done at Brussels, 30 November 2009.

For the Commission

Stavros DIMAS

Member of the Commission

([1]) OJ L 204, 31.7.2008, p. 1.
([2]) OJ L 396, 30.12.2006, p. 1.
([3]) OJ L 299, 28.10.2006, p. 23.
([4]) OJ L 123, 24.4.1998, p. 1.
([5]) OJ L 178, 9.7.2005, p. 1.

ANNEX

FORM FOR IMPORT RESPONSE

Country	European Community (Member States: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom)

SECTION 1 IDENTITY OF CHEMICAL

1.1	**Common name**	Tributyltin (TBT) compounds ([1]) including: tributyltin oxide; tributyltin benzoate; tributyltin chloride; tributyltin fluoride; tributyltin linoleate; tributyltin methacrylate; tributyltin naphthenate.
1.2	**CAS number**	Tributyltin oxide: 56-35-9 Tributyltin benzoate: 4342-36-3 Tributyltin chloride: 1461-22-9 Tributyltin fluoride: 1983-10-4 Tributyltin linoleate: 24124-25-2 Tributyltin methacrylate: 2155-70-6 Tributyltin naphthenate: 85409-17-2
1.3	**Category**	☒ Pesticide ☐ Industrial ☐ Severely hazardous pesticide formulation

SECTION 2 INDICATION REGARDING PREVIOUS RESPONSE, IF ANY

2.1 ☒ This is a first time import response for this chemical in the country.

2.2 ☐ This is a modification of a previous response.

Date of issue of the previous response: .....

SECTION 3 RESPONSE REGARDING FUTURE IMPORT

☒ Final decision (Fill in section 4 below) OR ☐ Interim response (Fill in section 5 below)

SECTION 4 FINAL DECISION, PURSUANT TO NATIONAL LEGISLATIVE OR ADMINISTRATIVE MEASURES

4.1 ☒ No consent to import

Is the import of the chemical from all sources simultaneously prohibited? ☒ Yes ☐ No

Is domestic production of the chemical for domestic use simultaneously prohibited? ☒ Yes ☐ No

([1]) 'TBT' is used in the present document to represent all tributyltin derivatives (or compounds), as the active form is the same for all compounds.

4.2 ☐ Consent to import

4.3 ☐ Consent to import only subject to specified conditions

The specified conditions are:

Are the conditions for import of the chemical the same for all sources of import? ☐ Yes ☐ No

Are the conditions for domestic production of the chemical for domestic use the same as for all imports? ☐ Yes ☐ No

4.4 National legislative or administrative measure upon which the final decision is based

Description of the national legislative or administrative measure:

It is prohibited to place on the market or use plant protection products containing tributyltin compounds, since these active substances are not included in Annex I to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1) and in accordance with Commission Regulation (EC) No 2076/2002 of 20 November 2002 extending the time period referred to in Article 8(2) of Council Directive 91/414/EEC and concerning the non-inclusion of certain active substances in Annex I to that Directive and the withdrawal of authorisations for plant protection products containing these substances (OJ L 319, 23.11.2002, p. 3). It is prohibited to place on the market or use biocidal products containing tributyltin compounds since these active substances are not included in Annex I to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1) and in accordance with 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 (OJ L 325, 11.12.2007, p. 3). Furthermore, it is prohibited to place on the market or use all organostannic compounds for treatment of industrial waters in accordance with point 20 of Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

SECTION 5 INTERIM RESPONSE

5.1 ☐ No consent to import

Is the import of the chemical from all sources simultaneously prohibited? ☐ Yes ☐ No

Is domestic production of the chemical for domestic use simultaneously prohibited? ☐ Yes ☐ No

5.2 ☐ Consent to import

5.3 ☐ Consent to import only subject to specified conditions

The specified conditions are:

Are the conditions for import of the chemical the same for all sources of import? ☐ Yes ☐ No

Are the conditions for domestic production of the chemical for domestic use the same as for all imports? ☐ Yes ☐ No

5.4 Indication of active consideration in order to reach a final decision

Is a final decision under active consideration? ☐ Yes ☐ No

5.5 Information or assistance requested in order to reach a final decision

The following additional information is requested from the Secretariat:

The following additional information is requested from the country that notified the final regulatory action:

The following assistance is requested from the Secretariat in evaluating the chemical:

SECTION 6 RELEVANT ADDITIONAL INFORMATION, WHICH MAY INCLUDE:

Is this chemical currently registered in the country? ☐ Yes ☐ No

Is this chemical manufactured in the country? ☐ Yes ☐ No

If yes to either one of these questions:

Ils this intended for domestic use? ☐ Yes ☐ No

Is this intended for export? ☐ Yes ☐ No

Other remarks

In accordance with Council Directive 67/548/EEC tributyltin compounds are classified as: T (toxic): R25 — toxic if swallowed; R48/23/25 — toxic, danger of serious damage to health by prolonged exposure through inhalation and if swallowed; N (dangerous for the environment): R50/53 — very toxic to aquatic organisms, may cause long-term adverse effect in the aquatic environment; Xn (harmful): R21 — harmful in contact with skin; Xi (irritant): R36/38 — irritating to eyes and skin.

SECTION 7	DESIGNATED NATIONAL AUTHORITY
Institution	European Commission, DG Environment
Address	BU 9 6/167, avenue de Beaulieu/de Beaulieulaan 9, 1049 Bruxelles/Brussel, BELGIQUE/BELGIË
Name of person in charge	Mr Paul Speight
Position of person in charge	Deputy Head of Unit
Telephone	+32 22964135
Fax	+32 22967616
E-mail address	Paul.Speight@ec.europa.eu

Date, signature of DNA and official seal: .....

PLEASE RETURN THE COMPLETED FORM TO:

Secretariat for the Rotterdam Convention
Food and Agriculture Organisation
of the United Nations (FAO)
Viale delle Terme di Caracalla
00100 Rome, ITALY
Tel. (+ 39 06) 57053441
Fax (+ 39 06) 57056347

E-mail: pic@pic.int

OR

Secretariat for the Rotterdam Convention
United Nations Environment
Programme (UNEP)
11-13, Chemin des Anémones
1219 Châtelaine, Geneva, SWITZERLAND
Tel. (+ 41 22) 9178177
Fax (+ 41 22) 9178082

E-mail: pic@pic.int

COMMISSION DECISION

of 30 November 2009

adopting technical implementing measures for entering the data and linking applications, for accessing the data, for amending, deleting and advance deleting of data and for keeping and accessing the records of data processing operations in the Visa Information System

(notified under document C(2009) 9402)

(Only the Bulgarian, Czech, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are authentic)

(2009/876/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) [1], and in particular Articles 45(2)(a) to (d) thereof,

Whereas:

(1) Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) [2] established the VIS as a system for the exchange of visa data between Member States and gave a mandate to the Commission to develop the VIS.

(2) Regulation (EC) No 767/2008 defines the purpose and the functionalities of, and the responsibilities for the VIS and establishes the conditions and procedures for the exchange of visa data between Member States to facilitate the examination of visa applications and related decisions.

(3) Article 45(2) of Regulation (EC) No 767/2008 provides that the measures necessary for the technical implementation of the central VIS, the national interfaces and the communication infrastructure between the central VIS and the national interfaces shall be adopted in accordance with the procedure referred to in Article 49(2).

(4) Commission Decision 2009/377/EC [3] lays down measures for the consultation mechanism and the procedures referred to in Article 16 of Regulation (EC) No 767/2008. Commission Decision 2009/756/EC [4] lays down specifications for the resolution and use of fingerprints for biometric identification and verification in the VIS.

(5) Pursuant to Article 45(2) of Regulation (EC) No 767/2008, measures necessary for the technical implementation of the VIS, in relation to the procedures for entering data and linking applications, for accessing data, for amending, deleting and advance deleting of data and for keeping and accessing the records of data processing operations shall be adopted.

(6) A technical concept of ownership shall be adopted to ensure that data within the VIS can solely be maintained by the visa authorities of the Member States responsible for entering the data in the VIS.

(7) The measures laid down by the present Decision for the technical implementation of the VIS should be completed by the Detailed Technical Specifications and the Interface Control Document of the VIS.

(8) In accordance with Article 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark did not take part in the adoption of Regulation (EC) No 767/2008 and is not bound by it nor subject to its application. However, given that Regulation (EC) No 767/2008 builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark, in accordance with Article 5 of the Protocol, notified by letter of 13 October 2008 the transposition of this *acquis* in its national law. It is therefore bound under international law to implement this Decision.

(9) In accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* [5], the United Kingdom has not taken part in the adoption of Regulation (EC) No 767/2008 and is not bound by it or subject to its application as it constitutes a development of provisions of the Schengen *acquis*. The United Kingdom is therefore not an addressee of this Decision.

[1] OJ L 218, 13.8.2008, p. 60.
[2] OJ L 213, 15.6.2004, p. 5.
[3] OJ L 117, 12.5.2009, p. 3.
[4] OJ L 270, 15.10.2009, p. 14.
[5] OJ L 131, 1.6.2000, p. 43.

(10) In accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* [1], Ireland has not taken part in the adoption of Regulation (EC) No 767/2008 and is not bound by it or subject to its application as it constitutes a development of provisions of the Schengen *acquis*. Ireland is therefore not an addressee of this Decision.

(11) This Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession and Article 4(2) of the 2005 Act of Accession.

(12) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* [2], which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* [3].

(13) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC [4] on the conclusion of that Agreement on behalf of the European Community.

(14) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC [5] on the signature, on behalf of the European Community, and on the provisional application of certain provisions of that Protocol.

(15) The measures provided for in this Decision are in accordance with the opinion of the Committee set up by Article 51(1) of Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [6],

HAS ADOPTED THIS DECISION:

Article 1

The measures necessary for the technical implementation of the VIS, in relation to the procedures for entering data of visa applicants and linking applications in accordance with Article 8 of the VIS Regulation, for accessing the data in accordance with Article 15 and Articles 17 to 22 of the VIS Regulation, for amending, deleting and advance deleting of data in accordance with Articles 23 to 25 of the VIS Regulation and for keeping and accessing the records of data in accordance with Article 34 of the VIS regulation shall be as set out in the Annex.

Article 2

This Decision is addressed to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, 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, the Republic of 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 and the Kingdom of Sweden.

Done at Brussels, 30 November 2009.

For the Commission
Jacques BARROT
Vice-President

[1] OJ L 64, 7.3.2002, p. 20.
[2] OJ L 176, 10.7.1999, p. 36.
[3] OJ L 176, 10.7.1999, p. 31.
[4] OJ L 53, 27.2.2008, p. 1.
[5] OJ L 83, 26.3.2008, p. 3.
[6] OJ L 381, 28.12.2006, p. 4.

ANNEX

1. TECHNICAL CONCEPT OF OWNERSHIP

A technical concept of ownership shall apply to the relationship between the Member State responsible for entering data in the VIS and these data.

The ownership shall be implemented by attaching the responsible Member State's identification to the data entered in the visa application file.

The ownership of a visa application and of related decisions taken by visa authorities shall be registered in the VIS upon the creation of the application file or the entering of the related decision in the VIS and cannot be changed subsequently.

2. ENTERING THE DATA AND LINKING APPLICATIONS

2.1. Entering data upon the application

In cases where an application is lodged with the authority of a Member State representing another Member State, the entry of data into the VIS and the subsequent communication regarding that application file shall include the represented Member State identification, which shall be stored as an attribute 'represented User', taken from the same code table as the Member State entering the data in the VIS.

All application files linked pursuant to Article 8(4) of the VIS Regulation shall have the ownership of the same Member State.

When a Member State copies fingerprints from an application file registered in the VIS, it shall have ownership of the new application file into which fingerprints are copied.

2.2. Entering data after lodging the application

In cases where decisions to issue a visa, to discontinue the examination of the application, to refuse a visa, to annul or revoke or shorten the validity period or to extend a visa in accordance with Articles 10 to 14 of the VIS Regulation, are taken by a Member State representing another Member State, the communication for data-entering in the VIS shall include the represented Member State's identification, taken from the same code table as the Member State entering the data in the VIS.

Decisions to issue a visa, to extend a visa with a new visa sticker and to shorten the validity period of a visa with a new visa sticker shall be entered in the VIS with the visa sticker data and with the same ownership.

The number of the visa sticker entered in the VIS according to Article 10(1)(e) of the VIS Regulation shall be, compliant with the provisions of Council Regulation (EC) No 856/2008 [1], a combination of a 9-digit national number of the visa sticker and the 3-letter identification code for the issuing Member State [2] and include any preceding zeros up to the nine digits of the national number of the visa sticker.

2.3. Linking applications

2.3.1. *Linking applications if a previous application has been registered*

Only the Member State having ownership of an application file shall be allowed to link it with other application file(s) of the same applicant or, for the purposes of correction, remove the linkage, in accordance with Article 8(3) of the VIS Regulation.

The fingerprints of an applicant shall only be copied, within the 59 months time frame, from his/her linked files. In case the fingerprint data of an application are copied from a previous application file not older than 59 months, the linkage between the application files shall not be removed.

2.3.2. *Linking applications of persons travelling together*

In order to link application files of persons travelling together, in accordance with Article 8(4) of the VIS Regulation, the application numbers shall be transmitted to the VIS together with the appropriate type of group value, which shall be either family or travellers. Creation of a group or, for the purposes of correction, removal of the linkage between the individual group members, can only be performed by the Member State having the ownership of the application file(s) of the individual applicants within the group.

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[1] OJ L 235, 2.9.2008, p. 1.

[2] Exception for Germany: The country code for Germany is 'D'.

2.4. **Procedures when particular data are not required to be provided for legal reasons or factually cannot be provided**

In accordance with Article 8(5) of the VIS Regulation the entry 'not applicable' shall be entered into textual fields manually or, when available, by selecting the value from a code table. If the data field consists of more than one element, such an entry shall be used for each of them.

In case fingerprints are not required or cannot be provided, in accordance with Article 8(5) of the VIS Regulation, two Boolean fields shall be implemented in the VIS:

— 'fingerprintsNotRequired',

— 'fingerprintsNotApplicable',

These fields shall be set according to the table below indicating three possible situations:

— the fingerprints are required to be provided,

— the fingerprints are not required to be provided for legal reasons,

— the fingerprints cannot factually be provided.

Field in the VIS	Fingerprints are required to be provided	Fingerprints are not required to be provided for legal reasons	Fingerprints cannot be factually provided
'fingerprintsNotRequired'	FALSE	TRUE	FALSE
'fingerprintsNotApplicable'	FALSE	TRUE	TRUE

In addition, the appropriate free text field 'ReasonForFingerprintNotApplicable' shall contain the actual reason.

When a Member State transmits only data referred to in Article 5(1)(a) and (b) of the VIS Regulation, pursuant to Article 48(3), the absence of data referred to in Article 5(1)(c) shall be indicated by entering the remark 'not applicable', complemented by a reference to Article 48(3) of the VIS regulation in the free text field indicating that the data are not required to be provided for legal reasons. The relevant fields shall be set up as 'FingerprintsNotRequired' TRUE and 'FingerprintsNotApplicable' TRUE.

3. **ACCESSING THE DATA**

The date of an asylum application shall be used in connection with searches and retrievals of data for the purposes referred to in Article 21(2) of the VIS Regulation. In addition, retrieval of applications, which have been linked together in accordance with Article 8(4) of the VIS Regulation, shall be possible only for family type groups (spouse and/or children) referred to in section 2.3.2.

4. **AMENDING, DELETING AND ADVANCE DELETING OF DATA PURSUANT TO ARTICLE 24 OF THE VIS REGULATION**

The following data registered in the VIS cannot be modified:

— the application number,

— the visa sticker number,

— the type of the decision,

— the represented Member State (if applicable),

— the Member State responsible for entering the data in the VIS.

If the above-mentioned data have to be corrected, the application file or the data relating to decisions taken by visa authorities shall be deleted and a new one shall be created. Only the Member State having the ownership of the data contained in the application file shall be able to delete it.

5. KEEPING AND ACCESSING RECORDS OF DATA PROCESSING OPERATIONS

5.1. Keeping the records of data processing operations

Each data processing operation within the VIS shall be recorded as a log entry with a field 'TypeOfAction' including the purpose of access in accordance with Article 34(1) of the VIS Regulation.

The log entry shall be recorded with the timestamp of the moment it was received. This timestamp shall later be used to identify the log entries to be deleted.

For all data processing operations, the authority entering or retrieving the data shall be stored in the log entry. The user and the central VIS shall be specified in the log entry either as a sender or as a recipient.

No other operational data than the authority entering or retrieving the data and the visa application number shall be included in the log entry. The type of data transmitted or used for interrogation referred to in Article 34(1) of the VIS Regulation shall be stored.

When records referred in Article 34(2) of the VIS Regulation, having the field 'TypeOfAction' set to either 'Delete Application' or 'Automatic Deletion' are found by the VIS, it shall calculate that one year has passed since the expiration of the retention period referred to in Article 23(1) of the VIS Regulation and then proceed to the deletion. All records of data processing operations having the same application number shall be deleted simultaneously, if not required for data-protection monitoring purposes, in accordance with Article 34(2) of the VIS Regulation.

Records of data processing operations shall neither be modified nor deleted before one year after the expiration of the retention period referred to in Article 23(1) of the VIS Regulation.

5.2. Accessing the records of data processing operations

Access to the records (logs) kept by the Management Authority in accordance with Article 34(1) of the VIS Regulation shall be restricted to duly authorised administrators of the VIS and the European Data Protection Supervisor. This provision shall apply to records of access to the records *mutatis mutandis*.

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL DECISION 2009/877/CFSP

of 23 October 2009

on the signing and provisional application of the Exchange of Letters between the European Union and the Republic of Seychelles on the conditions and modalities for the transfer of suspected pirates and armed robbers from EUNAVFOR to the Republic of Seychelles and for their treatment after such transfer

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

(1) On 2 June 2008, the United Nations Security Council (UNSC) adopted Resolution 1816 (2008) calling upon all States to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia. Those provisions were reaffirmed by UNSC Resolution 1846 (2008), adopted on 2 December 2008.

(2) On 10 November 2008, the Council adopted Joint Action 2008/851/CFSP on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast [1] (operation 'Atalanta').

(3) Article 12 of Joint Action 2008/851/CFSP provides that persons having committed, or suspected of having committed acts of piracy or armed robbery in Somali territorial waters, who are arrested and detained, with a view to their prosecution, and property used to carry out such acts, may be transferred to a third State which wishes to exercise its jurisdiction over the aforementioned persons and property, provided that the conditions for the transfer have been agreed with that third State in a manner consistent with relevant international law, notably international law on human rights, in order to guarantee in particular that no-one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment.

(4) In accordance with Article 24 of the Treaty, the Presidency, assisted by the Secretary-General/High Representative (SG/HR), negotiated an Exchange of Letters between the European Union and the Government of Seychelles on the conditions and modalities for the transfer of suspected pirates and armed robbers from EUNAVFOR to the Republic of Seychelles and for their treatment after such transfer.

(5) The Exchange of Letters should be signed and provisionally applied, subject to its conclusion at a later date,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Exchange of Letters between the European Union and the Republic of Seychelles on the conditions and modalities for the transfer of suspected pirates and armed robbers from EUNAVFOR to the Republic of Seychelles and for their treatment after such transfer, is hereby approved on behalf of the European Union, subject to the conclusion of the said Agreement.

The text of the Exchange of Letters is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the respective letter on behalf of the European Union, subject to its conclusion.

Article 3

The Exchange of Letters shall be applied on a provisional basis from the date of its signature, pending its entry into force.

[1] OJ L 301, 12.11.2008, p. 33.

Article 4

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

Article 5

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

Done at Luxembourg, 23 October 2009.

For the Council
The President
T. BILLSTRÖM

Exchange of Letters between the European Union and the Republic of Seychelles on the Conditions and Modalities for the Transfer of Suspected Pirates and Armed Robbers from EUNAVFOR to the Republic of Seychelles and for their Treatment after such Transfer

A. *Letter from the Republic of Seychelles*

Your Excellency,

Reference is made to the working session held in Seychelles on the 18th and 19th August 2009 to discuss the EU Agreements on Piracy and Armed Robbery which involved the participation of representatives of the EU, the members of the Seychelles High Level Committee and other related institutions and to our subsequent letter of August 21, 2009.

In the course of the working session, the concerns of the different related institutions on the transfer of suspected pirates and armed robbers were tabled. The *'Guidance for the Transfer of Suspected pirates, armed robbers and seized property to Seychelles'* prepared by the Attorney General of the Republic of Seychelles, which is intended to ensure that any transfer of persons suspected of acts of piracy and armed robbery is done in accordance with the laws of Seychelles was approved in principle. It was also agreed that the Implementing Arrangements (which clarifies Article 10 of the proposed Transfer Agreement) could be agreed upon after the proposed Transfer Agreement has been finalised and that a common Guidance on the handover of suspected pirates, armed robbers and seized property is prepared. Furthermore, that the Republic of Seychelles will be provided with the necessary assistance for the detention, maintenance, investigation, prosecution trial and repatriation of the suspected pirates and armed robbers.

Following the working session and our letter, further discussions have taken place within the High Level Committee on the transfer of suspected pirates and armed robbers to the territory of the Republic of Seychelles.

The Government of the Republic of Seychelles would like to take this opportunity to renew its reassurance to the EU of its commitment to cooperate to its fullest possible extent, having regard to its available resources and infrastructure capacities, in the repression of piracy to accept the transfer of captured suspected pirates and armed robbers.

At the same time, the Government of the Republic of Seychelles would like to express its desire that the EU SOFA be signed as discussions continue on the proposed EU Transfer Agreement.

In view of ongoing negotiations and pending conclusion of a mutually acceptable arrangement between the EU and the Government of the Republic of Seychelles on the transfer of pirates and armed robbers to its territory, the Government of the Republic of Seychelles may authorize the EUNAVFOR to transfer suspected pirates and armed robbers captured in the course of its operations in the exclusive economic zone, territorial sea, archipelagic waters and internal waters of the Republic of Seychelles. This authorization is extended to the protection of Seychelles flagged vessels and Seychellois Citizens on a non-Seychelles flagged vessel beyond the limit aforementioned and in other circumstances on the high seas at the discretion of the Republic of the Seychelles.

Provided always that:

— The EU, aware of the limited capacities of the Republic of Seychelles to accept, try, detain and incarcerate suspected pirates and armed robbers and in consideration of the acceptance by the Republic of Seychelles of the transfer of any suspected pirates and armed robbers to its territory, shall provide the Republic of Seychelles with such full financial, human resource, material, logistical and infrastructural assistance for the detention, incarceration maintenance, investigation, prosecution, trial and repatriation of the suspected or convicted pirates and armed robbers;

— The Attorney General shall have at least 10 days from the date of transfer of the suspected pirates or armed robbers to decide on the sufficiency of the available evidence in view of prosecution,

— In the event that the Attorney General decides that there is insufficient evidence to prosecute, the EUNAVFOR shall take the full responsibility, including the financial costs, of transferring the suspected pirates and armed robbers back to their country of origin within 10 days of EUNAVFOR having been notified of such a decision;

— Any transfer of suspected pirates and armed robbers shall as far as possible be in accordance with the '*Guidance for the Transfer of Suspected pirates, armed robbers and seized property to Seychelles*',

— The Government of the Republic of the Seychelles also confirms that:

— Any transferred person will be treated humanely and will not be subjected to torture or cruel, inhuman or degrading treatment or punishment, will receive adequate accommodation and nourishment, access to medical treatment and will be able to carry out religious observance.

— Any transferred person will be brought promptly before a judge or other officer authorised by law to exercise judicial power, who will decide without delay on the lawfulness of his detention and will order his release if the detention is not lawful,

— Any transferred person will be entitled to trial within a reasonable time or to release,

— In the determination of any criminal charge against him, any transferred person will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law,

— Any transferred person charged with a criminal offence will be presumed innocent until proved guilty according to law,

— In the determination of any criminal charge against him, every transferred person will be entitled to the following minimum guarantees, in full equality:

(1) to be informed promptly and in detail in a language which he understands of the nature of the charge against him;

(2) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choice;

(3) to defend himself in person or through legal assistance of his own choice; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(4) to examine, or have examined, all evidence against him, including affidavits of witnesses who conducted the arrest, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(5) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(6) not to be compelled to testify against himself or to confess guilt.

— Any transferred person convicted of a crime will be permitted to have the right to have its conviction and sentence reviewed by or appealed to a higher tribunal in accordance with the law of the Seychelles,

— The Seychelles will not transfer any transferred person to any other State without prior written consent from EUNAVFOR,

This arrangement has been discussed and agreed by the Seychelles authorities. The arrangements proposed herewith may come into force when the European Union indicates its agreement in writing.

Yours Sincerely,

Mr J. Morgan

THE MINISTER

Chairman of the High Level Committee of Piracy

B. *Letter from the European Union*

Your Excellency,

I have the honour to acknowledge receipt of your letter dated 29 September 2009 regarding the conditions and modalities for the transfer of suspected pirates and armed robbers from EUNAVFOR to the Republic of Seychelles and for their treatment after such transfer, which reads as follows:

'Reference is made to the working session held in Seychelles on August 18 and 19, 2009 to discuss the EU Agreements on Piracy and Armed Robbery which involved the participation of representatives of the EU, the members of the Seychelles High Level Committee and other related institutions and to our subsequent letter of August 21, 2009.

In the course of the working session, the concerns of the different related institutions on the transfer of suspected pirates and armed robbers were tabled. The *"Guidance for the Transfer of Suspected pirates, armed robbers and seized property to Seychelles"* prepared by the Attorney General of the Republic of Seychelles, which is intended to ensure that any transfer of persons suspected of acts of piracy and armed robbery is done in accordance with the laws of Seychelles was approved in principle. It was also agreed that the Implementing Arrangements (which clarifies Article 10 of the proposed Transfer Agreement) could be agreed upon after the proposed Transfer Agreement has been finalised and that a common Guidance on the handover of suspected pirates, armed robbers and seized property is prepared. Furthermore, that the Republic of Seychelles will be provided with the necessary assistance for the detention, maintenance, investigation, prosecution trial and repatriation of the suspected pirates and armed robbers.

Following the working session and our letter, further discussions have taken place within the High Level Committee on the transfer of suspected pirates and armed robbers to the territory of the Republic of Seychelles.

The Government of the Republic of Seychelles would like to take this opportunity to renew its reassurance to the EU of its commitment to cooperate to its fullest possible extent, having regard to its available resources and infrastructure capacities, in the repression of piracy to accept the transfer of captured suspected pirates and armed robbers.

At the same time, the Government of the Republic of Seychelles would like to express its desire that the EU SOFA be signed as discussions continue on the proposed EU Transfer Agreement.

In view of ongoing negotiations and pending conclusion of a mutually acceptable arrangement between the EU and the Government of the Republic of Seychelles on the transfer of pirates and armed robbers to its territory, the Government of the Republic of Seychelles may authorize the EUNAVFOR to transfer suspected pirates and armed robbers captured in the course of its operations in the exclusive economic zone, territorial sea, archipelagic waters and internal waters of the Republic of Seychelles. This authorization is extended to the protection of Seychelles flagged vessels and Seychellois Citizens on a non-Seychelles flagged vessel beyond the limit aforementioned and in other circumstances on the high seas at the discretion of the Republic of the Seychelles.

Provided always that:

— The EU, aware of the limited capacities of the Republic of Seychelles to accept, try, detain and incarcerate suspected pirates and armed robbers and in consideration of the acceptance by the Republic of Seychelles of the transfer of any suspected pirates and armed robbers to its territory, shall provide the Republic of Seychelles with such full financial, human resource, material, logistical and infrastructural assistance for the detention, incarceration maintenance, investigation, prosecution, trial and repatriation of the suspected or convicted pirates and armed robbers;

— The Attorney General shall have at least 10 days from the date of transfer of the suspected pirates or armed robbers to decide on the sufficiency of the available evidence in view of prosecution,

— In the event that the Attorney General decides that there is insufficient evidence to prosecute, the EUNAVFOR shall take the full responsibility, including the financial costs, of transferring the suspected pirates and armed robbers back to their country of origin within 10 days of EUNAVFOR having been notified of such a decision;

— Any transfer of suspected pirates and armed robbers shall as far as possible be in accordance with the "*Guidance for the Transfer of Suspected pirates, armed robbers and seized property to Seychelles*",

— The Government of the Republic of the Seychelles also confirms that:

— Any transferred person will be treated humanely and will not be subjected to torture or cruel, inhuman or degrading treatment or punishment, will receive adequate accommodation and nourishment, access to medical treatment and will be able to carry out religious observance.

— Any transferred person will be brought promptly before a judge or other officer authorised by law to exercise judicial power, who will decide without delay on the lawfulness of his detention and will order his release if the detention is not lawful,

— Any transferred person will be entitled to trial within a reasonable time or to release,

— In the determination of any criminal charge against him, any transferred person will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law,

— Any transferred person charged with a criminal offence will be presumed innocent until proved guilty according to law,

— In the determination of any criminal charge against him, every transferred person will be entitled to the following minimum guarantees, in full equality:

(1) to be informed promptly and in detail in a language which he understands of the nature of the charge against him;

(2) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choice;

(3) to defend himself in person or through legal assistance of his own choice; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(4) to examine, or have examined, all evidence against him, including affidavits of witnesses who conducted the arrest, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(5) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(6) not to be compelled to testify against himself or to confess guilt.

— Any transferred person convicted of a crime will be permitted to have the right to have its conviction and sentence reviewed by or appealed to a higher tribunal in accordance with the law of the Seychelles,

— The Seychelles will not transfer any transferred person to any other State without prior written consent from EUNAVFOR,

This arrangement has been discussed and agreed by the Seychelles authorities. The arrangements proposed herewith may come into force when the European Union indicates its agreement in writing. This is without prejudice to the legal or policy positions taken by the delegations of both parties in the ongoing negotiations.'.

I have the honour to confirm, on behalf of the European Union, that the content of your letter is acceptable to the European Union. This Instrument will be applied provisionally by the European Union from the date of signature of this letter and will enter into force definitively once the European Union has completed its internal procedures for conclusion.

With regard to the reference in your letter to the consideration by the Seychelles Attorney General of the sufficiency of the available evidence in view of prosecution, the European Union understands that you have agreed that, since EUNAVFOR will communicate in each case all the evidence available to it at the time, such as logbooks, pictures and videos, this will allow the Seychelles Attorney General to take a decision on the sufficiency of such evidence before accepting the transfer of suspected pirates and armed robbers.

I also recall that, as mentioned in your letter, this Instrument will apply on a transitional basis, pending the conclusion of a mutually acceptable transfer agreement between the EU and the Republic of Seychelles on the transfer of pirates and armed robbers to the territory of the Republic of Seychelles.

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

For the European Union

J. SOLANA MADARIAGA

DECLARATION BY THE EUROPEAN UNION ON THE OCCASION OF THE SIGNATURE OF THE EXCHANGE OF LETTERS BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF SEYCHELLES ON THE CONDITIONS AND MODALITIES FOR THE TRANSFER OF SUSPECTED PIRATES AND ARMED ROBBERS FROM EUNAVFOR TO THE REPUBLIC OF SEYCHELLES AND FOR THEIR TREATMENT AFTER SUCH TRANSFER

1. The European Union (EU) notes that nothing in the Exchange of letters between the European Union and the Republic of Seychelles on the conditions and modalities for the transfer of suspected pirates and armed robbers is intended to derogate, or may be construed as derogating, from any rights that a transferred person may have under applicable domestic or international law.

2. The EU notes that representatives of the EU and of EUNAVFOR will be granted access to any persons transferred to the Republic of Seychelles (Seychelles) pursuant to the Exchange of Letters as long as such persons are held in custody there, and that representatives of the EU and of EUNAVFOR will be entitled to question them.

   For this purpose, the EU notes that an accurate account will be made available to representatives of the EU and of EUNAVFOR of all transferred persons, including records of any seized property, the persons' physical condition, their place of detention, any charges against them and any significant decisions taken in the course of their prosecution and trial.

   EUNAVFOR is willing to provide timely assistance to Seychelles through the attendance of witnesses from EUNAVFOR and the provision of relevant evidence. For this purpose, Seychelles should notify EUNAVFOR of its intention to initiate criminal proceedings against any transferred person and the timetable for the provision and hearing of evidence.

   The EU notes that national and international humanitarian agencies will also be allowed, at their request, to visit persons transferred under the Exchange of Letters.

V

(Acts adopted from 1 December 2009 under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Euratom Treaty)

ACTS WHOSE PUBLICATION IS OBLIGATORY

COMMISSION REGULATION (EU) No 1178/2009

of 1 December 2009

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 2 December 2009.

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

Done at Brussels, 1 December 2009.

For the Commission, on behalf of the President,

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	AL	36,8
	MA	37,2
	MK	52,7
	TR	64,3
	ZZ	47,8
0707 00 05	MA	59,4
	TR	129,9
	ZZ	94,7
0709 90 70	MA	35,6
	TR	127,6
	ZZ	81,6
0805 20 10	MA	65,9
	ZZ	65,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	49,3
	HR	58,2
	MA	63,0
	TR	77,5
	ZZ	62,0
0805 50 10	AR	64,7
	MA	61,1
	TR	68,1
	ZZ	64,6
0808 10 80	AU	142,2
	CA	70,1
	CN	108,9
	MK	20,3
	US	78,6
	ZA	106,5
	ZZ	87,8
0808 20 50	CN	81,9
	TR	91,0
	US	258,9
	ZZ	143,9

(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'.

ACTS WHOSE PUBLICATION IS NOT OBLIGATORY

DECISION OF THE COUNCIL (GENERAL AFFAIRS)

of 1 December 2009

establishing the list of Council configurations in addition to those referred to in the second and third subparagraphs of Article 16(6) of the Treaty on European Union

(2009/878/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol on transitional provisions, and in particular Article 4 thereof,

Whereas:

(1) Article 4 of the Protocol on transitional provisions provides that until the entry into force of the European Council Decision referred to in the first subparagraph of Article 16(6) of the Treaty on European Union regarding the list of Council configurations, the list of Council configurations, in addition to the General Affairs and the Foreign Affairs ones, should be established by the General Affairs Council, acting by a simple majority.

(2) The list of Council configurations was established by the Council (General Affairs) on 22 July 2002, as part of Annex I to the Council's Rules of Procedure and following the list agreed upon at the European Council meeting in Seville on 21 and 22 June 2002.

(3) In order to comply with the provisions of the Treaties, it is appropriate to adapt this list, which is to be inserted in the Council's Rules of Procedure,

HAS ADOPTED THIS DECISION:

Article 1

The list of Council configurations referred to in Article 4 of the Protocol on transitional provisions is set out in Annex.

Article 2

This Decision shall enter into force on the day of its adoption.

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

Done at Brussels, 1 December 2009.

For the Council
The President
C. BILDT

ANNEX

LIST OF COUNCIL CONFIGURATIONS

1. General affairs ([1]);
2. Foreign affairs ([2]);
3. Economic and financial affairs ([3]);
4. Justice and home affairs ([4]);
5. Employment, social policy, health and consumer affairs;
6. Competitiveness (internal market, industry and research) ([5]);
7. Transport, telecommunications and energy;
8. Agriculture and fisheries;
9. Environment;
10. Education, youth and culture ([6]).

([1]) This configuration is established by Article 16(6), second subparagraph, of the Treaty on European Union.
([2]) This configuration is established by Article 16(6), third subparagraph, of the Treaty on European Union.
([3]) Including budget.
([4]) Including civil protection.
([5]) Including tourism.
([6]) Including audiovisual affairs.

EUROPEAN COUNCIL DECISION

of 1 December 2009

electing the President of the European Council

(2009/879/EU)

THE EUROPEAN COUNCIL,

Having regard to the Treaty on the European Union, and in particular Article 15(5) thereof,

Whereas:

(1) The Treaty of Lisbon institutes the new office of President of the European Council.

(2) The President of the European Council should be elected,

HAS ADOPTED THIS DECISION:

Article 1

Mr Herman VAN ROMPUY is hereby elected President of the European Council for the period from 1 December 2009 until 31 May 2012.

Article 2

This Decision shall be notified to Mr Herman VAN ROMPUY by the Secretary-General of the Council.

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

Done at Brussels, 1 December 2009.

For the European Council
The President
F. REINFELDT

EUROPEAN COUNCIL DECISION

taken with the agreement of the President of the Commission

of 1 December 2009

appointing the High Representative of the Union for Foreign Affairs and Security Policy

(2009/880/EU)

THE EUROPEAN COUNCIL,

Having regard to the Treaty on the European Union, and in particular Article 18(1) thereof,

Whereas:

(1) The Treaty of Lisbon institutes the new office of High Representative of the Union for Foreign Affairs and Security Policy.

(2) In accordance with Article 5 of the Protocol (No 36) on transitional provisions and as foreseen in the Declaration (No 12) annexed to the Final Act of the Intergovernmental Conference which has adopted the Treaty of Lisbon, the High Representative of the Union for Foreign Affairs and Security Policy appointed during the term of office of a Commission should become a Member of the Commission for the remainder of the Commission's term of office.

(3) The High Representative of the Union for Foreign Affairs and Security Policy should be appointed,

HAS ADOPTED THIS DECISION:

Article 1

Baroness Catherine Margaret ASHTON OF UPHOLLAND is hereby appointed High Representative of the Union for Foreign Affairs and Security Policy for the period from 1 December 2009 until the end of the current term of office of the Commission.

Article 2

This Decision shall be notified to Baroness Catherine Margaret ASHTON OF UPHOLLAND by the President of the European Council.

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

Done at Brussels, 1 December 2009.

For the European Council

The President

H. VAN ROMPUY

EUROPEAN COUNCIL DECISION

of 1 December 2009

on the exercise of the Presidency of the Council

(2009/881/EU)

THE EUROPEAN COUNCIL,

Having regard to the Treaty on the European Union, and in particular Article 16(9) thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 236(b) thereof,

Whereas:

(1) Declaration (nº 9) annexed to the Final Act of the Intergovernmental Conference which has adopted the Treaty of Lisbon foresees that the European Council adopts, on the date of entry into force of the Treaty, the Decision the text of which is contained in the said Declaration.

(2) It is therefore appropriate to adopt that Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

Article 2

The Committee of Permanent Representatives of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council.

The Chair of the Political and Security Committee shall be held by a representative of the High Representative of the Union for Foreign Affairs and Security Policy.

The chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4.

Article 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

Article 4

The Council shall adopt a decision establishing the measures for the implementation of this decision.

Article 5

This Decision shall enter into force on the day of its adoption.

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

Done at Brussels, 1 December 2009.

For the European Council
The President
H. VAN ROMPUY

EUROPEAN COUNCIL DECISION

of 1 December 2009

adopting its Rules of Procedure

(2009/882/EU)

THE EUROPEAN COUNCIL,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 235(3) thereof,

Whereas:

(1) The Treaty of Lisbon transforms the European Council into an institution of the European Union.

(2) The European Council should therefore adopt its Rules of Procedure.

(3) To enable these Rules of Procedure to be adopted immediately on the day on which the Treaty of Lisbon enters into force, this Decision should provide that the European Council may use the written procedure laid down in Article 7 of its Rules of Procedure for the adoption of those Rules of Procedure,

HAS ADOPTED THIS DECISION:

Article 1

1. The European Council hereby adopts its Rules of Procedure, as set out in the Annex.

2. For the adoption of its Rules of Procedure, the European Council may use the written procedure laid down in Article 7 of those Rules of Procedure.

Article 2

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

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

Done at Brussels, 1 December 2009.

For the European Council
The President
H. VAN ROMPUY

ANNEX

RULES OF PROCEDURE OF THE EUROPEAN COUNCIL

Article 1

Notice and venue of meetings

1. The European Council shall meet twice every six months, convened by its President ([1]).

   At the latest one year before the beginning of a six-month period, in close cooperation with the Member State which will hold the Presidency during that six-month period, the President of the European Council shall make known the dates which he or she envisages for the meetings of the European Council during that six-month period.

   When the situation so requires, the President shall convene a special meeting of the European Council ([2]).

2. The European Council shall meet in Brussels.

   In exceptional circumstances, the President of the European Council, with the agreement of the General Affairs Council or the Committee of Permanent Representatives, acting unanimously, may decide that a meeting of the European Council will be held elsewhere.

Article 2

Preparation for and follow-up to the proceedings of the European Council

1. The President of the European Council shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council ([3]).

2. The General Affairs Council shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission ([4]).

3. The President shall establish close cooperation and coordination with the Presidency of the Council and the President of the Commission, particularly by means of regular meetings.

4. In the event of an impediment because of illness, in the event of his or her death or if his or her term of office is ended in accordance with Article 15(5) of the Treaty on European Union, the President of the European Council shall be replaced, where necessary until the election of his or her successor, by the member of the European Council representing the Member State holding the six-monthly Presidency of the Council.

Article 3

Agenda and preparation

1. In order to ensure the preparation provided for in Article 2(2), at least four weeks before each ordinary meeting of the European Council as referred to in Article 1(1), the President of the European Council, in close cooperation with the member of the European Council representing the Member State holding the six-monthly Presidency of the Council and with the President of the Commission, shall submit an annotated draft agenda to the General Affairs Council.

   Contributions to the proceedings of the European Council by other Council configurations shall be forwarded to the General Affairs Council at the latest two weeks before the meeting of the European Council.

   The President of the European Council, in close cooperation as referred to in the first subparagraph, shall prepare draft guidelines for the European Council conclusions and, as appropriate, draft conclusions and draft decisions of the European Council, which shall be discussed in the General Affairs Council.

([1]) This subparagraph reproduces the first sentence of Article 15(3) of the Treaty on European Union (hereinafter referred to as the 'TEU').
([2]) This subparagraph reproduces the final sentence of Article 15(3) of the TEU.
([3]) This paragraph reproduces Article 15(6)(b) of the TEU.
([4]) This paragraph reproduces the second sentence of the second subparagraph of Article 16(6) of the TEU.

A final meeting of the General Affairs Council shall be held within the five days preceding the meeting of the European Council. In the light of that final discussion, the President of the European Council shall draw up the provisional agenda.

2. Except for imperative and unforeseeable reasons linked, for example, to current international events, no other configuration of the Council or preparatory body may, between the session of the General Affairs Council at the end of which the provisional agenda for the European Council is drawn up and the European Council meeting, discuss any subject submitted to the European Council.

3. The European Council shall adopt its agenda at the beginning of its meeting.

As a rule, issues entered on the agenda should have been examined beforehand, in accordance with the provisions of this Article.

Article 4

Composition of the European Council, delegations and the conduct of proceedings

1. Each ordinary meeting of the European Council shall run for a maximum of two days, unless the European Council or the General Affairs Council, on the initiative of the President of the European Council, decides otherwise.

The member of the European Council representing the Member State holding the Presidency of the Council shall report to the European Council, in consultation with its President, on the work of the Council.

2. The President of the European Parliament may be invited to be heard by the European Council [1]. Such exchange of views shall be held at the start of the meeting of the European Council, unless the European Council unanimously decides otherwise.

Meetings in the margins of the European Council with representatives of third States or international organisations or other personalities may be held in exceptional circumstances only, and with the prior agreement of the European Council, acting unanimously, on the initiative of the President of the European Council.

3. Meetings of the European Council shall not be public.

4. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work [2].

When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission [3].

The total size of the delegations authorised to have access to the building where the meeting of the European Council is held shall be limited to 20 persons for each Member State and for the Commission, and to five for the High Representative of the Union for Foreign Affairs and Security Policy. That number shall not include technical personnel assigned to specific security or logistic support tasks. The names and functions of the members of the delegations shall be notified in advance to the General Secretariat of the Council.

The President shall be responsible for the application of these Rules of Procedure and for ensuring that discussions are conducted smoothly.

Article 5

Representation before the European Parliament

The European Council shall be represented before the European Parliament by the President of the European Council.

The President of the European Council shall present a report to the European Parliament after each of the meetings of the European Council [4].

The member of the European Council representing the Member State holding the Presidency of the Council shall present to the European Parliament the priorities of its Presidency and the results achieved during the six-month period.

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[1] This subparagraph reproduces Article 235(2) of the Treaty on the Functioning of the European Union (hereinafter referred to as the 'TFEU').
[2] This subparagraph reproduces Article 15(2) of the TEU.
[3] This subparagraph reproduces the second sentence of Article 15(3) of the TEU.
[4] This subparagraph reproduces Article 15(6)(d) of the TEU.

Article 6

Adoption of positions, decisions and quorum

1. Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus [1].

2. In those cases where, in accordance with the Treaties, the European Council adopts a decision and holds a vote, that vote shall take place on the initiative of its President.

   The President shall, furthermore, be required to open a voting procedure on the initiative of a member of the European Council, provided that a majority of the members of the European Council so decides.

3. The presence of two thirds of the members of the European Council is required to enable the European Council to vote. When the vote is taken, the President shall check that there is a quorum. The President of the European Council and the President of the Commission shall not be included in the calculation of the quorum.

4. Where a vote is taken, any member of the European Council may also act on behalf of not more than one other member [2].

   Where the European Council decides by vote, its President and the President of the Commission shall not take part in the vote [3].

5. Procedural decisions adopted by the European Council by virtue of these Rules of Procedure shall be adopted by a simple majority. [4]

Article 7

Written procedure

Decisions of the European Council on an urgent matter may be adopted by a written vote where the President of the European Council proposes to use that procedure. Written votes may be used where all members of the European Council having the right to vote agree to that procedure.

A summary of acts adopted by the written procedure shall be drawn up periodically by the General Secretariat of the Council.

Article 8

Minutes

Minutes of each meeting shall be drawn up; a draft of those minutes shall be prepared by the General Secretariat of the Council within 15 days. The draft shall be submitted to the European Council for approval, and then signed by the Secretary-General of the Council.

The minutes shall contain:

— a reference to the documents submitted to the European Council,

— a reference to the conclusions approved,

— the decisions taken,

— the statements made by the European Council and those whose entry has been requested by a member of the European Council,

Article 9

Deliberations and decisions on the basis of documents and drafts drawn up in the languages provided for by the language rules in force

1. Except as otherwise decided unanimously by the European Council on grounds of urgency, the European Council shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing languages.

2. Any member of the European Council may oppose discussion where the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he or she may specify.

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[1] This paragraph reproduces Article 15(4) of the TEU.
[2] This subparagraph reproduces the first subparagraph of Article 235(1) of the TFEU.
[3] This subparagraph reproduces the second sentence of the second subparagraph of Article 235(1) of the TFEU.
[4] This subparagraph reproduces the rule set out in Article 235(3) of the TFEU.

Article 10

Making public votes, explanations of votes and minutes and access to documents

1. In cases where, in accordance with the Treaties, the European Council adopts a decision, the European Council may decide, in accordance with the voting arrangement applicable for the adoption of that decision, to make public the results of votes, as well as the statements in its minutes and the items in those minutes relating to the adoption of that decision.

   Where the result of a vote is made public, the explanations of the vote provided when the vote was taken shall also be made public at the request of the member of the European Council concerned, with due regard for these Rules of Procedure, legal certainty and the interests of the European Council.

2. The provisions concerning public access to Council documents set out in Annex II to the Rules of Procedure of the Council shall apply *mutatis mutandis* to European Council documents.

Article 11

Professional secrecy and production of documents in legal proceedings

Without prejudice to the provisions on public access to documents, the deliberations of the European Council shall be covered by the obligation of professional secrecy, except insofar as the European Council decides otherwise.

The European Council may authorise the production for use in legal proceedings of a copy of or an extract from European Council documents which have not already been released to the public in accordance with Article 10.

Article 12

Decisions of the European Council

1. Decisions adopted by the European Council shall be signed by its President and by the Secretary-General of the Council. Where they do not specify to whom they are addressed, they shall be published in the *Official Journal of the European Union*. Where they specify to whom they are addressed, they shall be notified to those to whom they are addressed by the Secretary-General of the Council.

2. The provisions concerning the form of acts set out in Annex VI to the Rules of Procedure of the Council shall apply *mutatis mutandis* to decisions of the European Council.

Article 13

Secretariat, budget and security

1. The European Council and its President shall be assisted by the General Secretariat of the Council, under the authority of its Secretary-General.

2. The Secretary-General of the Council shall attend the meetings of the European Council. He or she shall take all the measures necessary for the organisation of proceedings.

3. The Secretary-General of the Council shall have full responsibility for administering the appropriations entered in Section II – European Council and Council – of the budget and shall take all measures necessary to ensure that they are properly managed. He or she shall implement the appropriations in question in accordance with the provisions of the Financial Regulation applicable to the budget of the Union.

4. The Council's security rules shall apply *mutatis mutandis* to the European Council.

Article 14

Correspondence addressed to the European Council

Correspondence to the European Council shall be sent to its President at the following address:

European Council
rue de la Loi 175
B-1048 Brussels

V *Acts adopted from 1 December 2009 under the Treaty on European Union, the Treaty on the Functioning of the European Union and the Euratom Treaty*

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