ISSN 1725-2555

Official Journal of the European Union

L 155

English edition

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Volume 53

22 June 2010

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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 3 June 2010

on the signing, on behalf of the European Union, and provisional application of the Understanding between the European Union and the Republic of Chile concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean

(2010/343/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) It is the objective of the Union to establish framework cooperation Agreements on fisheries with third Parties to ensure the conservation and sustainable management of species of common interest and the access of Union vessels to third Parties' ports for operations of transhipment and landings, and for logistical purposes.

(2) On 4 April 2008, the Council authorised the Commission to open negotiations with the Republic of Chile for the conservation of swordfish stocks in the South-Eastern Pacific Ocean. The negotiations were successfully concluded by initialling the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean agreed on 15-16 October 2008 in Brussels as modified by (i) the detailed Annex I to the Understanding as agreed during the bilateral technical meeting on 5-6 October 2009 in New York; (ii) the Note Verbale of Chile of 23 November 2009 designating the Chilean ports of Arica, Antofagasta and Punta Arenas for access by EU vessels fishing for swordfish on the high seas in the South Eastern Pacific Ocean, in relation to point (xi) of Annex I; and (iii) the agreement that the first meeting of the bilateral Technical and Scientific Committee would take place at the latest on 1 January 2011 (the 'Understanding').

(3) The Understanding should be signed.

(4) In view of the interest of Union vessels fishing for swordfish on the high seas in the South-Eastern Pacific to obtain access to designated Chilean ports without delay, the Understanding should be applied on a provisional basis pending the completion of the procedures for its conclusion. It is, therefore, in the Union's interest to approve the Agreement in the form of an Exchange of Letters between the European Union and the Republic of Chile on the provisional application of the Understanding,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Understanding between the European Union and the Republic of Chile concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean agreed on 15-16 October 2008 in Brussels as modified by (i) the detailed Annex I to the Understanding as agreed during the bilateral technical meeting on 5-6 October 2009 in New York; (ii) the Note Verbale of Chile of 23 November 2009 designating the Chilean ports of Arica, Antofagasta and Punta Arenas for access by EU vessels fishing for swordfish on the high seas in the South-Eastern Pacific Ocean, in relation to point (xi) of Annex I; and (iii) the agreement that the first meeting of the bilateral Technical and Scientific Committee would take place at the latest on 1 January 2011 ('the Understanding') is hereby approved on behalf of the Union, subject to its conclusion.

The text of the Understanding is attached to this Decision.

Article 2

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

Article 3

The Agreement in the form of an Exchange of Letters between the European Union and the Republic of Chile on the provisional application of the Understanding is hereby approved on behalf of the Union.

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

Article 4

The President of the Council is hereby authorised to designate the person(s) empowered to sign, on behalf of the Union, the Agreement in the form of an Exchange of Letters on the provisional application of the Understanding.

Article 5

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

Done at Luxembourg, 3 June 2010.

For the Council

The President

A. PÉREZ RUBALCABA

UNDERSTANDING

concerning the conservation of swordfish stocks in the South Eastern Pacific Ocean

1. The document hereby identified replaces the Provisional Arrangement of 25 January 2001 ('2001 Arrangement') and transforms the interim arrangement into a definitive commitment to cooperate for the long-term conservation and management of the swordfish stocks in the South Eastern Pacific.

2. The Understanding is intended to amicably settle the swordfish fishery disputes [1] currently existing between Chile and the European Community (now succeeded by the European Union, EU) in the International Tribunal for the Law of the Sea ('ITLOS') and in the World Trade Organization ('WTO').

3. The Parties hereby confirm for the record that the present Understanding shall provide the basic framework for the conservation of swordfish in the South Eastern Pacific Ocean, its management and cooperation thereof.

4. The EU/Chile Bilateral Scientific and Technical Committee ('BSTC') will continue to constitute the necessary point of contact in matters of common interest regarding conservation of swordfish and, in order to maximize the efforts on scientific/technical cooperation, shall have the following mandate:

(a) To serve as a forum for the exchange of information on the swordfish stocks and fishing activities of the EU and Chile and any other information required for conservation and management decisions.

(b) To periodically evaluate the state of stocks, monitor the fishing trends, and assess impacts on non-target species and the marine ecosystem.

(c) To review existing conservation measures and advice on possible new ones, including by-catch regulations.

(d) To identify research priorities in the context of the Work Programme and draw up any additional programmes, including protocols on data collection.

(e) To exchange information and promote the use of environmentally-safe and cost-effective gear.

(f) To exchange in advance of the BSTC meeting catch and effort data covering all segments of their respective fleets in the South Eastern Pacific Ocean.

(g) To consider further means of cooperation in the scientific, technical or administrative fields.

5. The BSTC shall be convened in extraordinary session (TIMING) in order to commence work on its mandate, taking into account the following objectives and principles agreed by the Parties

(a) Their respective swordfish fisheries shall be conducted at catch levels maintaining stocks at or near MSY, in a manner commensurate with the objective of ensuring the sustainability of these resources as well as safeguarding the marine ecosystem.

(b) The distribution, spatial structure and dynamics of the stocks shall be monitored by Chilean and EU fishing vessels whose scientific observations comply with agreed research parameters designed to develop robust assessments and subsequently generate the appropriate management responses.

(c) Data collection systems put in place should be reliable, expeditious and compatible with the requirements and scale of the swordfish fishery.

[1] ITLOS Case n. 7 and WTO DS 19.

(d) The Parties shall maintain their current level of swordfish fisheries, as expressed by either the present number of vessels or the historic maximum of their vessels operating in the South Eastern Pacific Ocean, in order to ensure the sustainability of the swordfish stock.

6. The Parties remain committed to further developing the linkage between this bilateral cooperation and the Multilateral Consultation sponsored by the EU and Chile.

7. The Multilateral Consultation currently in place should include all the relevant participants in the South Eastern Pacific Ocean swordfish fishery and invited observers from existing organizations with a legitimate interest in the swordfish fishery.

8. The EU and Chile remain committed to the effective promotion of multilateral cooperation for the conservation and management of these stocks in their habitat and ecosystem, and through their migratory range.

9. Parties shall give due consideration to actions taken at multilateral level, and seek to promote similar conservation and management initiatives in RFMOs of which they are member in order to ensure a sustainable development of the swordfish fishery.

10. In this regard, the Parties shall seek to promote the implementation by other Participants in the swordfish fisheries of the above mentioned principles and objectives notably, in relation to the maintenance of their current fishing levels.

11. In accordance with the abovementioned principles, and in the context of the Work Programme being developed by the BSTC, the Parties will define a general protocol for analyzing, processing and evaluating the information gathered by their fishing vessels. Such protocol should seek to identify the condition, in spatial and time frames, of the stock, probing into its composition and biological features, and exploring its habitats, in order to increase the knowledge of the Parties, considering also the potential impacts of the fishery on its ecosystem components, associated or dependent species and the requirements for mitigation of the environmental impacts and adverse effects on birds, turtles and sharks, as well as the food chains and the physical environment of the South Eastern Pacific Ocean.

12. The Parties declare that under the present Understanding, their fishing vessels will not be bound by specific conservation measures prescribing a minimum length for the harvested species.

13. Nevertheless, they shall apply a precautionary approach considering all biological features of the catches and, on the basis of the best available scientific advice, further strive to develop and apply alternative measures designed to ensure that fishing activities do not pose a risk of unacceptable impacts on sensitive habitats within the marine environment.

14. Parties confirm that their vessels are subject to the following obligations:

(a) Use an operational VMS at all times linked to the Flag State;

(b) Regularly provide data on the type of vessel, catch, fishing effort by area and periods, to be exchanged by the Parties in advance to BSTC meetings;

(c) Provide and exchange information on environmentally-safe and cost-effective fishing gear;

(d) Collect data required for the BSTC assessments of the dynamics and status of the swordfish fishery in the South Eastern Pacific Ocean, and other information relevant to conservation and management purposes.

15. Parties agree that EU vessels fishing for swordfish in accordance with the objectives contained in the present understanding concerning the current levels of fishing effort, catch levels maintaining stocks at or near MSY, commensurate with the objective of ensuring sustainability of these resources, as well as the provisions on monitoring and exchange of information, shall be granted access to designated Chilean ports.

16. The procedures for access for landing and transshipment in designated Chilean ports are contained in Annex I to the present Understanding.

17. The Parties will proceed to jointly notify the ITLOS that, as a consequence of having reached a settlement, they have agreed to discontinue the proceedings (ITLOS Case Nr. 7) and request the Tribunal to make an order recording the discontinuance and directing the Registrar to remove this case from the List of cases. Since the Parties have agreed to discontinue the ITLOS proceedings as a direct consequence of them having reached a settlement of the dispute, they shall also request that the Tribunal record this fact and indicate in, or annex to, the respective order of discontinuance, the terms of the settlement.

18. The Parties shall also inform the Director General of the WTO that the compulsory dispute settlement procedure instituted in ITLOS (Case Nr. 7) has been discontinued and communicate to him the terms of the settlement attained, expressing the decision of the Parties not to revive the dispute settlement procedure of the WTO Understanding on Dispute Settlement regarding case DS 193 concerning the application of pertinent GATT articles to transit, transshipment and commercial access to Chilean ports by EU vessels fishing for swordfish.

19. The Parties agree to apply to this Understanding the provisions on dispute avoidance and dispute settlement set out in Title VIII of the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, which entered into force on 1 February 2003.

20. This Understanding shall enter into force the first day of the first month following that in which the Parties have notified each other of the completion of the procedures necessary for that purpose.

21. Parties agree to provisionally apply point number 15 above upon signature and in any event not later than 31 December 2009.

22. Notifications shall be sent to the Secretary General of the Council of the European Union, who shall be the depositary of this Understanding.

23. From the date of its entry into force this Understanding shall replace the Provisional Arrangement that Parties have signed on 25 January 2001.

For the European Union *For the Republic of Chile*

ANNEX I

(i) For the purpose of the implementation of the Understanding, 45 days before the BSTC meetings referred to in paragraph 4 of the Understanding, the Parties shall provide each other with a list of vessels containing the following data:

1. name of the vessel;

2. call signal;

3. IMO registration number (if available);

4. name and details of the shipowner (nationality, address);

5. the vessel's flag state;

6. total length (m);

7. make and model of the automatic positioning system as well as its identification code and the name of the coastal station (LES) with which it works;

8. name and location of the contact person in the flag state and the European Commission.

(ii) The captain, or his representative, of a EU vessel, which wishes to enter a designated Chilean port, shall notify the competent Chilean authorities by means of the form A annexed herewith at least 72 hours in advance of the expected arrival in the port.

(iii) The competent Chilean authorities shall formally confirm by electronic or other means, within 24 hours, that access is granted and that the landing or transhipment operation can take place.

(iv) In accordance with paragraph 14 (a) each and every time EU vessels enter the Chilean EEZ to seek port access they will transmit without delay through their flag state monitoring centre (FMC) the satellite signal to the Centro de Monitoreo y Control de la Direccion General del Territorio Maritimo y Marina Mercante.

The frequency of the basic reports of the VMS system must be 60 minute intervals.

(v) At the first BSTC meeting, Chile has to provide the coordinates of its EEZ.

(vi) In case the Chilean competent authorities have clear grounds to believe that the information referred to above provided by the EU fishing vessel is not correct, the navigational track of the vessel shall be provided by the competent authorities of its flag state, upon request of the competent Chilean authorities. In this case, Chile will inform immediately the flag State and the European Commission with the view to consulting the appropriate authorities.

(vii) Inspectors designated by the Chilean competent authorities may inspect documents, logbook, fishing gear and catch on board during landing or transhipment operations. Such inspection shall be carried out in such a manner as not to unduly delay the landing or transhipment operations, which themselves should be carried out to the extent possible in the 24 hours following arrival in the port. Prior to an inspection, inspectors are required to present to the master of the vessel the appropriate document identifying the inspector as such.

(viii) The Chilean competent authorities shall ensure that the results of port inspections are always presented to the master of the vessel for review and signature and that the report is completed and signed by the inspector. The master of the inspected vessel shall be given the opportunity to add any comment to the report and, as appropriate, to contact the relevant authorities of the flag State, in particular when there are serious difficulties in understanding the contents of the report.

(ix) The Chilean competent authorities shall ensure that a copy of the report of inspection shall be provided to the master of the inspected vessel for retention on board the vessel and to the competent authorities of the flag state of the inspected vessel.

(x) The captains of the vessels shall be free to decide how their vessel's catches will be disposed of.

(xi) In accordance with paragraph 15 and 16, EU vessels will use the following designated ports: Arica, Antofagasta and Punta Arenas.

(xii) Only the following activities may be carried out in the authorised ports:

1. landing of swordfish stocks;
2. transhipment of swordfish stocks;
3. replenishing of the vessel;
4. repairs to the vessel.

The foregoing is without prejudice to the possibility for EU vessels to obtain access to other suitable Chilean ports, as advised by the Chilean authorities, solely for the repairs of vessels.

In relation to the replenishing of supplies, lubricants, fuel and material for packing, on-board processing and any other daily use on board, as well as changes of crew, the vessel may take on board only that which it requires for its own operation; the loading of materials and crew members intended for other fishing vessels is prohibited. These provisions do not apply in case of emergency or force majeure.

(xiii) The Chilean competent authorities will deny access to port to those EU vessels which do not comply with the foregoing. The access denial should be motivated and the reasons for denial officially communicated to the captain of the vessel, the flag state and the European Commission without delay. Such cases of denial of access shall be discussed by the Parties at the next BSTC meeting, and until such time the vessel will not have access to Chilean ports.

(xiv) At the request of either Party an extraordinary session of the BSTC shall be convened to discuss any matter related to the implementation of the Understanding.

FORM A

INFORMATION TO BE PROVIDED IN ADVANCE BY VESSELS REQUESTING PORT ENTRY

1. Intented port of call	
2. Estimated date and time of arrival	
3. Purpose(s)	
4. Name of the vessel	
5. Flag State	
6. Type of vessel	
7. International Radio Call Sign	
8. Vessel contact information	
9. Vessel owner(s)	
10. Certificate of registry ID	
11. IMO ship ID, if available	
12. External ID, if available	

13. Vessel dimensions	Length		Beam		Draft	
14. Vessel master name and nationality						

15. Total catch on board			
Species	Product form	Catch area	Quantity

16. Catch to be offloaded	
Species	Quantity

17. Catch to be transhipped in port	
Species	Quantity

18. Final Destination of Catches	
Chile	Other

ANNEX B

THE MISSION OF CHILE TO THE EUROPEAN UNION

No 177/2009

The Mission of Chile to the European Union presents its compliments to the European Commission's Directorate-General for Maritime Affairs and Fisheries and has the honour to refer to the Report agreed between the European Commission and Chile following the bilateral technical consultations held in New York on 5 and 6 October 2009 on swordfish in the South-Eastern Pacific.

Concerning point xi of Annex I to the Report, the Mission of Chile would request the Directorate-General for Maritime Affairs and Fisheries to amend the list of ports designated by Chile as described in the Report.

To that end, the Mission of Chile hereby informs the Directorate-General for Maritime Affairs and Fisheries that the newly designated ports are Arica, Antofagasta and Punta Arenas.

The Mission of Chile to the European Union would request the European Commission's Directorate-General for Maritime Affairs and Fisheries to give the above-mentioned matter its attention and assures it of its highest consideration.

Brussels, 23 November 2009

To the Directorate-General for Maritime Affairs and Fisheries
of the European Commission
Brussels

AGREEMENT

in the form of an Exchange of Letters between the European Union and the Republic of Chile on the provisional application of the understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean

A. *Letter from the European Union*

Sir/Madam,

I have the honour to refer to the negotiations that have taken place in Brussels on 15 and 16 October 2008 between the European Union and Chile which led to the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean (hereafter 'the Understanding'), as well as to the bilateral technical discussions in New York on 5 and 6 October 2009.

The European Union has started its internal procedures for the conclusion of the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 including the detailed Annex I agreed on 5-6 October 2009.

Pending the completion of these procedures, the European Union shall provisionally apply the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 and its Annex I agreed on 5-6 October 2009 as complemented by the Note Verbale of Chile of 23 November 2009.

The following documents and information form an integral part of this Agreement in the form of an Exchange of Letters:

(a) the Understanding agreed on 15-16 October 2008 in Brussels as modified by:

(b) the detailed Annex I to the Understanding as agreed during the bilateral technical meeting on 5-6 October 2009 in New York;

(c) the Note Verbale of Chile of 23 November 2009 designating the Chilean ports of Arica, Antofagasta and Punta Arenas for access by EU vessels fishing for swordfish on the high seas in the South Eastern Pacific Ocean, in relation to point (xi) of the Annex mentioned in (b) above;

(d) the first meeting of the Bilateral Technical and Scientific Committee will take place at the latest on 1 January 2011.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between Chile and the European Union to provisionally apply the Understanding in accordance with the provisions contained in the documents listed above.

This agreement will apply from the day following the day of your reply.

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

For the European Union
The President

B. *Letter from the Republic of Chile*

Sir/Madam,

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

'I have the honour to refer to the negotiations that have taken place in Brussels on 15 and 16 October 2008 between the European Union and Chile which led to the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean (hereafter "the Understanding"), as well as to the bilateral technical discussions in New York on 5 and 6 October 2009.

The European Union has started its internal procedures for the conclusion of the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 including the detailed Annex I agreed on 5-6 October 2009.

Pending the completion of these procedures, the European Union shall provisionally apply the Understanding concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean reached on 15-16 October 2008 and its Annex I agreed on 5-6 October 2009 as complemented by the Note Verbale of Chile of 23 November 2009.

The following documents and information form an integral part of this Agreement in the form of an Exchange of Letters:

(a) the Understanding agreed on 15-16 October 2008 in Brussels as modified by:

(b) the detailed Annex I to the Understanding as agreed during the bilateral technical meeting on 5-6 October 2009 in New York;

(c) the Note Verbale of Chile of 23 November 2009 designating the Chilean ports of Arica, Antofagasta and Punta Arenas for access by EU vessels fishing for swordfish on the high seas in the South Eastern Pacific Ocean, in relation to point (xi) of the Annex mentioned in (b) above;

(d) the first meeting of the Bilateral Technical and Scientific Committee will take place at the latest on 1 January 2011.

I should be obliged if you would acknowledge receipt of this letter and confirm that this letter and your reply constitute an Agreement between Chile and the European Union to provisionally apply the Understanding in accordance with the provisions contained in the documents listed above.

This agreement will apply from the day following the day of your reply.'.

I have the honour to confirm that your letter and this reply constitute an Agreement between Chile and the European Union.

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

For the Republic of Chile
The President

ANNEX

UNDERSTANDING CONCERNING THE CONSERVATION OF SWORDFISH STOCKS IN THE SOUTH EASTERN PACIFIC OCEAN

1. The document hereby identified replaces the Provisional Arrangement of 25 January 2001 ('2001 Arrangement') and transforms the interim arrangement into a definitive commitment to cooperate for the long-term conservation and management of the swordfish stocks in the South Eastern Pacific.

2. The Understanding is intended to amicably settle the swordfish fishery disputes ([1]) currently existing between Chile and the European Community (now succeeded by the European Union (EU) in the International Tribunal for the Law of the Sea ('ITLOS') and in the World Trade Organization ('WTO').

3. The Parties hereby confirm for the record that the present Understanding shall provide the basic framework for the conservation of swordfish in the South Eastern Pacific Ocean, its management and cooperation thereof.

4. The EU/Chile Bilateral Scientific and Technical Committee ('BSTC') will continue to constitute the necessary point of contact in matters of common interest regarding conservation of swordfish and, in order to maximize the efforts on scientific/technical cooperation, shall have the following mandate:

   (a) To serve as a forum for the exchange of information on the swordfish stocks and fishing activities of the EU and Chile and any other information required for conservation and management decisions.

   (b) To periodically evaluate the state of stocks, monitor the fishing trends, and assess impacts on non-target species and the marine ecosystem.

   (c) To review existing conservation measures and advice on possible new ones, including by-catch regulations.

   (d) To identify research priorities in the context of the Work Programme and draw up any additional programmes, including protocols on data collection.

   (e) To exchange information and promote the use of environmentally-safe and cost-effective gear.

   (f) To exchange in advance of the BSTC meeting catch and effort data covering all segments of their respective fleets in the South Eastern Pacific Ocean.

   (g) To consider further means of cooperation in the scientific, technical or administrative fields.

5. The BSTC shall be convened in extraordinary session (TIMING) in order to commence work on its mandate, taking into account the following objectives and principles agreed by the Parties:

   (a) Their respective swordfish fisheries shall be conducted at catch levels maintaining stocks at or near MSY, in a manner commensurate with the objective of ensuring the sustainability of these resources as well as safeguarding the marine ecosystem.

   (b) The distribution, spatial structure and dynamics of the stocks shall be monitored by Chilean and EU fishing vessels whose scientific observations comply with agreed research parameters designed to develop robust assessments and subsequently generate the appropriate management responses.

   (c) Data collection systems put in place should be reliable, expeditious and compatible with the requirements and scale of the swordfish fishery.

   (d) The Parties shall maintain their current level of swordfish fisheries, as expressed by either the present number of vessels or the historic maximum of their vessels operating in the South Eastern Pacific Ocean, in order to ensure the sustainability of the swordfish stock.

([1]) ITLOS Case n. 7 and WTO DS 19.

6. The Parties remain committed to further developing the linkage between this bilateral cooperation and the Multilateral Consultation sponsored by the EU and Chile.

7. The Multilateral Consultation currently in place should include all the relevant participants in the South Eastern Pacific Ocean swordfish fishery and invited observers from existing organizations with a legitimate interest in the swordfish fishery.

8. The EU and Chile remain committed to the effective promotion of multilateral cooperation for the conservation and management of these stocks in their habitat and ecosystem, and through their migratory range.

9. Parties shall give due consideration to actions taken at multilateral level, and seek to promote similar conservation and management initiatives in RFMOs of which they are member in order to ensure a sustainable development of the swordfish fishery.

10. In this regard, the Parties shall seek to promote the implementation by other Participants in the swordfish fisheries of the above mentioned principles and objectives notably, in relation to the maintenance of their current fishing levels.

11. In accordance with the above mentioned principles, and in the context of the Work Programme being developed by the BSTC, the Parties will define a general protocol for analyzing, processing and evaluating the information gathered by their fishing vessels. Such protocol should seek to identify the condition, in spatial and time frames, of the stock, probing into its composition and biological features, and exploring its habitats, in order to increase the knowledge of the Parties, considering also the potential impacts of the fishery on its ecosystem components, associated or dependent species and the requirements for mitigation of the environmental impacts and adverse effects on birds, turtles and sharks, as well as the food chains and the physical environment of the South Eastern Pacific Ocean.

12. The Parties declare that under the present Understanding, their fishing vessels will not be bound by specific conservation measures prescribing a minimum length for the harvested species.

13. Nevertheless, they shall apply a precautionary approach considering all biological features of the catches and, on the basis of the best available scientific advice, further strive to develop and apply alternative measures designed to ensure that fishing activities do not pose a risk of unacceptable impacts on sensitive habitats within the marine environment.

14. Parties confirm that their vessels are subject to the following obligations:

    (a) Use an operational VMS at all times linked to the Flag State;

    (b) Regularly provide data on the type of vessel, catch, fishing effort by area and periods, to be exchanged by the Parties in advance to BSTC meetings;

    (c) Provide and exchange information on environmentally-safe and cost-effective fishing gear;

    (d) Collect data required for the BSTC assessments of the dynamics and status of the swordfish fishery in the South Eastern Pacific Ocean, and other information relevant to conservation and management purposes.

15. Parties agree that EU vessels fishing for swordfish in accordance with the objectives contained in the present understanding concerning the current levels of fishing effort, catch levels maintaining stocks at or near MSY, commensurate with the objective of ensuring sustainability of these resources, as well as the provisions on monitoring and exchange of information, shall be granted access to designated Chilean ports.

16. The procedures for access for landing and transshipment in designated Chilean ports are contained in Annex I to the present Understanding.

17. The Parties will proceed to jointly notify the ITLOS that, as a consequence of having reached a settlement, they have agreed to discontinue the proceedings (ITLOS Case Nr. 7) and request the Tribunal to make an order recording the discontinuance and directing the Registrar to remove this case from the List of cases. Since the Parties have agreed to discontinue the ITLOS proceedings as a direct consequence of them having reached a settlement of the dispute, they shall also request that the Tribunal record this fact and indicate in, or annex to, the respective order of discontinuance, the terms of the settlement.

18. The Parties shall also inform the Director General of the WTO that the compulsory dispute settlement procedure instituted in ITLOS (Case N. 7) has been discontinued and communicate to him the terms of the settlement attained, expressing the decision of the Parties not to revive the dispute settlement procedure of the WTO Understanding on Dispute Settlement regarding case DS 193 concerning the application of pertinent GATT articles to transit, transshipment and commercial access to Chilean ports by EU vessels fishing for swordfish.

19. The Parties agree to apply to this Understanding the provisions on dispute avoidance and dispute settlement set out in Title VIII of the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, which entered into force on 1 February 2003.

20. This Understanding shall enter into force the first day of the first month following that in which the Parties have notified each other of the completion of the procedures necessary for that purpose.

21. Parties agree to provisionally apply point number 15 above upon signature and in any event not later than 31 December 2009.

22. Notifications shall be sent to the Secretary General of the Council of the European Union, who shall be the depositary of this Understanding.

23. From the date of its entry into force this Understanding shall replace the Provisional Arrangement that Parties have signed on 25 January 2001.

ANNEX I

(i) For the purpose of the implementation of the Understanding, 45 days before the BSTC meetings referred to in paragraph 4 of the Understanding, the Parties shall provide each other with a list of vessels containing the following data:

1. name of the vessel;
2. call signal;
3. IMO registration number (if available);
4. name and details of the shipowner (nationality, address);
5. the vessel's flag-State;
6. total length (m);
7. make and model of the automatic positioning system as well as its identification code and the name of the coastal station (LES) with which it works;
8. name and location of the contact person in the flag state and the European Commission.

(ii) The captain, or his representative, of an EU vessel, which wishes to enter a designated Chilean port, shall notify the competent Chilean authorities by means of the form A annexed herewith at least 72 hours in advance of the expected arrival in the port.

(iii) The competent Chilean authorities shall formally confirm by electronic or other means, within 24 hours, that access is granted and that the landing or transhipment operation can take place.

(iv) In accordance with paragraph 14 (a) each and every time EU vessels enter the Chilean EEZ to seek port access they will transmit without delay through their flag state monitoring centre (FMC) the satellite signal to the Centro de Monitoreo y Control de la Direccion General del Territorio Maritimo y Marina Mercante.

The frequency of the basic reports of the VMS system must be 60 minutes intervals.

(v) At the first BSTC meeting, Chile has to provide the coordinates of its EEZ.

(vi) In case the Chilean competent authorities have clear grounds to believe that the information referred to above provided by the EU fishing vessel is not correct, the navigational track of the vessel shall be provided by the competent authorities of its flag state, upon request of the competent Chilean authorities. In this case, Chile will inform immediately the flag State and the European Commission with the view to consulting the appropriate authorities.

(vii) Inspectors designated by the Chilean competent authorities may inspect documents, logbook, fishing gear and catch on board during landing or transhipment operations. Such inspection shall be carried out in such a manner as not to unduly delay the landing or transhipment operations, which themselves should be carried out to the extent possible in the 24 hours following arrival in the port. Prior to an inspection, inspectors are required to present to the master of the vessel the appropriate document identifying the inspector as such.

(viii) The Chilean competent authorities shall ensure that the results of port inspections are always presented to the master of the vessel for review and signature and that the report is completed and signed by the inspector. The master of the inspected vessel shall be given the opportunity to add any comment to the report and, as appropriate, to contact the relevant authorities of the flag State, in particular when there are serious difficulties in understanding the contents of the report.

(ix) The Chilean competent authorities shall ensure that a copy of the report of inspection shall be provided to the master of the inspected vessel for retention on board the vessel and to the competent authorities of the flag state of the inspected vessel.

(x) The captains of the vessels shall be free to decide how their vessel's catches will be disposed of.

(xi) In accordance with paragraph 15 and 16, EU vessels will use the following designated ports: Arica, Antofagasta and Punta Arenas.

(xii) Only the following activities may be carried out in the authorised ports:

1. landing of swordfish stocks;
2. transhipment of swordfish stocks;
3. replenishing of the vessel;
4. repairs to the vessel.

The foregoing is without prejudice to the possibility for EU vessels to obtain access to other suitable Chilean ports, as advised by the Chilean authorities, solely for the repairs of vessels.

In relation to the replenishing of supplies, lubricants, fuel and material for packing, on-board processing and any other daily use on board, as well as changes of crew, the vessel may take on board only that which it requires for its own operation; the loading of materials and crew members intended for other fishing vessels is prohibited. These provisions do not apply in case of emergency or force majeure.

(xiii) The Chilean competent authorities will deny access to port to those EU vessels which do not comply with the foregoing. The access denial should be motivated and the reasons for denial officially communicated to the captain of the vessel, the flag state and the European Commission without delay. Such cases of denial of access shall be discussed by the Parties at the next BSTC meeting, and until such time the vessel will not have access to Chilean ports.

(xiv) At the request of either Party an extraordinary session of the BSTC shall be convened to discuss any matter related to the implementation of the Understanding.

FORM A

INFORMATION TO BE PROVIDED IN ADVANCE BY VESSELS REQUESTING PORT ENTRY

<table>
<tr><td colspan="2">1. Intented port of call</td><td colspan="6"></td></tr>
<tr><td colspan="2">2. Estimated date and time of arrival</td><td colspan="6"></td></tr>
<tr><td colspan="2">3. Purpose(s)</td><td colspan="6"></td></tr>
<tr><td colspan="2">4. Name of the vessel</td><td colspan="6"></td></tr>
<tr><td colspan="2">5. Flag State</td><td colspan="6"></td></tr>
<tr><td colspan="2">6. Type of vessel</td><td colspan="6"></td></tr>
<tr><td colspan="2">7. International Radio Call Sign</td><td colspan="6"></td></tr>
<tr><td colspan="2">8. Vessel contact information</td><td colspan="6"></td></tr>
<tr><td colspan="2">9. Vessel owner(s)</td><td colspan="6"></td></tr>
<tr><td colspan="2">10. Certificate of registry ID</td><td colspan="6"></td></tr>
<tr><td colspan="2">11. IMO ship ID, if available</td><td colspan="6"></td></tr>
<tr><td colspan="2">12. External ID, if available</td><td colspan="6"></td></tr>
<tr><td>13. Vessel dimensions</td><td>Length</td><td></td><td>Beam</td><td colspan="2"></td><td>Draft</td><td></td></tr>
<tr><td>14. Vessel master name and nationality</td><td colspan="7"></td></tr>
<tr><td>15. Total catch on board</td><td></td><td colspan="3"></td><td colspan="3"></td></tr>
<tr><td>Species</td><td>Product form</td><td colspan="3">Catch area</td><td colspan="3">Quantity</td></tr>
<tr><td></td><td></td><td colspan="3"></td><td colspan="3"></td></tr>
<tr><td></td><td></td><td colspan="3"></td><td colspan="3"></td></tr>
<tr><td>16. Catch to be offloaded</td><td></td></tr>
<tr><td>Species</td><td>Quantity</td></tr>
<tr><td></td><td></td></tr>
<tr><td>17. Catch to be transhipped in port</td><td></td></tr>
<tr><td>Species</td><td>Quantity</td></tr>
<tr><td></td><td></td></tr>
<tr><td>18. Final Destination of Catches</td><td></td></tr>
<tr><td>Chile</td><td>Other</td></tr>
<tr><td></td><td></td></tr>
</table>

ANNEX B

THE MISSION OF CHILE TO THE EUROPEAN UNION

No 177/2009

The Mission of Chile to the European Union presents its compliments to the European Commission's Directorate-General for Maritime Affairs and Fisheries and has the honour to refer to the Report agreed between the European Commission and Chile following the bilateral technical consultations held in New York on 5 and 6 October 2009 on swordfish in the South-Eastern Pacific.

Concerning point xi of Annex I to the Report, the Mission of Chile would request the Directorate-General for Maritime Affairs and Fisheries to amend the list of ports designated by Chile as described in the Report.

To that end, the Mission of Chile hereby informs the Directorate-General for Maritime Affairs and Fisheries that the newly designated ports are Arica, Antofagasta and Punta Arenas.

The Mission of Chile to the European Union would request the European Commission's Directorate-General for Maritime Affairs and Fisheries to give the above-mentioned matter its attention and assures it of its highest consideration.

Brussels, 23 November 2009

To the Directorate-General for Maritime Affairs and Fisheries

of the European Commission

Brussels

REGULATIONS

COUNCIL REGULATION (EU) No 541/2010

of 3 June 2010

amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The second generation Schengen Information System (SIS II) was established by 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) [1] and by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System (SIS II) [2].

(2) The conditions, procedures and responsibilities applicable to the migration from SIS 1+ to SIS II are laid down in Council Regulation (EC) No 1104/2008 [3] and Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) [4]. However, those instruments will expire at the latest on 30 June 2010.

(3) The preconditions for migration from SIS 1+ to SIS II will not be met by 30 June 2010. In order for SIS II to become operational as required by Regulation (EC) No 1987/2006 and Decision 2007/533/JHA, Regulation (EC) No 1104/2008 and Decision 2008/839/JHA should therefore continue to apply until migration has been completed.

(4) The Commission and the Member States should continue to cooperate closely during all steps of the development and the migration in order to complete the process. In the Council conclusions on the SIS II of 26-27 February 2009 and 4-5 June 2009, an informal body consisting of the experts of the Member States and designated as the Global Programme Management Board, was established to enhance the cooperation and to provide direct Member States support to the central SIS II project. The positive result of the work of the group and the necessity to further enhance the cooperation and the transparency of the project justify the formal integration of the group into the SIS II management structure. A group of experts, called the Global Programme Management Board should therefore be formally established to complement the current organisational structure. In order to ensure efficiency as well as cost effectiveness the number of experts should be limited. This group of experts should be without prejudice to the responsibilities of the Commission and of the Member States.

(5) The Commission should remain responsible for the Central SIS II and its communication infrastructure. It is necessary to maintain and, where appropriate, further develop the Central SIS II and its communication infrastructure. Additional development of the Central SIS II should at all times include the correction of errors. The Commission should provide coordination and support for the joint activities.

(6) Regulation (EC) No 1987/2006 and Decision 2007/533/JHA provide that the best available technology, subject to a cost-benefit analysis, should be used for Central SIS II. The Annex to the Council Conclusions on the further direction of SIS II from 4-5 June 2009 laid down milestones which should be met in order to continue with the current SIS II project. In parallel, a study has been conducted concerning the elaboration of an alternative technical scenario for developing SIS II based on SIS 1+ evolution (SIS 1+ RE) as the contingency plan, in case the tests demonstrate non-compliance with the milestone requirements. Based on these parameters, the Council may decide to invite the Commission to switch to the alternative technical scenario.

[1] OJ L 381, 28.12.2006, p. 4.
[2] OJ L 205, 7.8.2007, p. 63.
[3] OJ L 299, 8.11.2008, p. 1.
[4] OJ L 299, 8.11.2008, p. 43.

(7) The description of the technical components of the migration architecture therefore should be adapted to allow for another technical solution, and in particular the SIS 1+ RE regarding the development of Central SIS II. SIS 1+ RE is a possible technical solution to develop Central SIS II and to achieve the objectives of the SIS II laid down in Regulation (EC) No 1987/2006 and Decision 2007/533/JHA.

(8) The SIS 1+ RE is characterised by uniqueness of means between SIS II development and SIS 1+ . The references in this Regulation to the technical architecture of SIS II and to the migration process should therefore, in case of implementation of an alternative technical scenario, be read as the references to SIS II based on another technical solution, as applied mutatis mutandis to the technical specificities of this solutions, in keeping with the objective to develop Central SIS II.

(9) As regards the financing of the development of the Central SIS II based on an alternative technical solution, it should be covered by the general budget of the Union while respecting the principle of sound financial management. In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1], the Commission may delegate budget implementation tasks to national public sector bodies. Following the political orientation and subject to the conditions laid down in Regulation (EC, Euratom) No 1605/2002, the Commission would be invited, in case of switchover to the alternative solution, to delegate the budget implementation tasks related to the development of the SIS II based on SIS 1+ RE to France.

(10) In any technical scenario, the result of migration at central level should be availability of the SIS 1+ database and new SIS II functionalities, including additional data categories, in the Central SIS II.

(11) The Member States should remain responsible for their national systems (N.SIS II). It is still necessary to maintain and, where appropriate, further develop the N.SIS II.

(12) France should remain responsible for technical support function (C.SIS).

(13) Since the objectives of this Regulation, namely setting up the interim migration architecture and migrating the data from SIS 1+ to SIS II, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

(14) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(15) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* [2]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(16) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* [3]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(17) This Regulation is without prejudice to the arrangements for the United Kingdom's and Ireland's partial participation in the Schengen *acquis* as determined by Decision 2000/365/EC and Decision 2002/192/EC respectively.

(18) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* [4] which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement [5].

[1] OJ L 248, 16.9.2002, p. 1.

[2] OJ L 131, 1.6.2000, p. 43.

[3] OJ L 64, 7.3.2002, p. 20.

[4] OJ L 176, 10.7.1999, p. 36.

[5] OJ L 176, 10.7.1999, p. 31.

(19) As regards Switzerland, this Regulation 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* [1], which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC [2].

(20) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed 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 G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC [3],

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1104/2008 is hereby amended as follows:

1. the following paragraph is added to Article 1:

   '3. The development of SIS II may be achieved by implementing an alternative technical scenario characterised by its own technical specifications.';

2. in Article 4 the introductory phrase is replaced by the following:

   'In order to ensure the migration from SIS 1+ to SIS II, the following components shall be made available to the extent necessary:';

3. Article 10(3) is replaced by the following:

   '3. To the extent necessary, the converter shall convert data in two directions between the C.SIS and Central SIS II and keep C.SIS and Central SIS II synchronised.';

4. Article 11(2) is replaced by the following:

   '2. The Member States participating in SIS 1+ shall migrate from N.SIS to N.SIS II using the interim migration architecture, with the support of France and of the Commission.';

5. the following Article is inserted:

   '*Article 17a*

   Global Programme Management Board

   1. Without prejudice to the respective responsibilities and activities of the Commission, the Committee referred to in Article 17, France and the Member States participating in SIS 1+, a group of technical experts, called the Global Programme Management Board (hereinafter the Board), is hereby set up. The Board shall be an advisory body for assistance to the central SIS II project and shall facilitate consistency between central and national SIS II projects. The Board shall have no decision-making power nor any mandate to represent the Commission or Member States.

   2. The Board shall be composed of a maximum of 10 members, meeting on a regular basis. A maximum of 8 experts and an equal number of alternates shall be designated by the Member States acting within the Council. A maximum of two experts and two alternates shall be designated by the Director-General of the responsible Directorate-General of the Commission from among the Commission officials.

   The meetings of the Board may be attended by other Member States' experts and Commission officials directly involved in the development of the SIS II projects, at the expense of their respective administration or institution.

   The Board may invite other experts to participate in the Board's meetings as defined in the terms of reference referred to in paragraph 5, at the expense of their respective administration, institution or company.

   3. Experts designated by the Member States acting as Presidency and incoming Presidency shall always be invited to participate in the Board's meetings.

   4. The Board's secretariat shall be ensured by the Commission.

   5. The Board shall draw up its own terms of reference which shall include in particular procedures on:

   — alternative chairmanship between the Commission and the Presidency,

   — meeting venues,

   — preparation of meetings,

   — admission of other experts,

   — communication plan ensuring full information to non-participating Member States.

[1] OJ L 53, 27.2.2008, p. 52.
[2] OJ L 53, 27.2.2008, p. 1.
[3] OJ L 83, 26.3.2008, p. 3.

The terms of reference shall take effect after a favourable opinion has been given by the Director-General of the responsible Directorate-General of the Commission and by Member States meeting within the framework of the Committee referred to in Article 17.

6. The Board shall regularly submit written reports about the progress of the project including advice which has been given, and its justification, to the Committee referred to in Article 17 or, as appropriate, to the relevant Council preparatory bodies.

7. Without prejudice to Article 15(2), the administrative costs and travel expenses arising from the activities of the Board shall be borne by the general budget of the Union, to the extent that they are not reimbursed from other sources. As regards travel expenses of the members in the Board designated by the Member States acting within the Council and experts invited pursuant to paragraph 3 of this Article which arise in connection with the work of the Board, the Commission's "Rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity" shall apply.';

6. in Article 19 the last sentence is replaced by the following:

'It shall expire on a date to be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006, and in any case no later than on 31 March 2013 or on 31 December 2013 in case of a switchover to an alternative technical scenario as referred to in Article 1(3).'.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty on the Functioning of the European Union.

Done at Luxembourg, 3 June 2010.

For the Council

The President

A. PÉREZ RUBALCABA

COUNCIL REGULATION (EU) No 542/2010

of 3 June 2010

amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The second generation Schengen Information System (SIS II) was established by 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) [1] and by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2].

(2) The conditions, procedures and responsibilities applicable to the migration from SIS 1+ to SIS II are laid down in Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) [3] and Decision 2008/839/JHA [4]. However, those instruments will expire at the latest on 30 June 2010.

(3) The preconditions for migration from SIS 1+ to SIS II will not be met by 30 June 2010. In order for SIS II to become operational as required by Regulation (EC) No 1987/2006 and Decision 2007/533/JHA, Regulation (EC) No 1104/2008 and Decision 2008/839/JHA should therefore continue to apply until migration has been completed.

(4) The Commission and the Member States should continue to cooperate closely during all steps of the development and the migration in order to complete the process. In the Council Conclusions on the SIS II of 26-27 February 2009 and 4-5 June 2009, an informal body consisting of the experts of the Member States and designated as the Global Programme Management Board, was established to enhance the cooperation and to provide direct Member States support to the central SIS II project. The positive result of the work of the group and the necessity to further enhance the cooperation and the transparency of the project justify the formal integration of the group into the SIS II management structure. A group of experts, called the Global Programme Management Board should therefore be formally established to complement the current organisational structure. In order to ensure efficiency as well as cost effectiveness the number of experts should be limited. This group of experts should be without prejudice to the responsibilities of the Commission and of the Member States.

(5) The Commission should remain responsible for the Central SIS II and its communication infrastructure. It is necessary to maintain and, where appropriate, further develop the Central SIS II and its communication infrastructure. Additional development of the Central SIS II should at all times include the correction of errors. The Commission should provide coordination and support for the joint activities.

(6) Regulation (EC) No 1987/2006 and Decision 2007/533/JHA provide that the best available technology, subject to a cost-benefit analysis, should be used for Central SIS II. The Annex to the Council Conclusions on the further direction of SIS II from 4-5 June 2009 laid down milestones which should be met in order to continue with the current SIS II project. In parallel, a study has been conducted concerning the elaboration of an alternative technical scenario for developing SIS II based on SIS 1+ evolution (SIS 1+ RE) as the contingency plan, in case the tests demonstrate non-compliance with the milestone requirements. Based on these parameters, the Council may decide to invite the Commission to switch to the alternative technical scenario.

(7) The description of the technical components of the migration architecture therefore should be adapted to allow for another technical solution, and in particular the SIS 1+ RE regarding the development of Central SIS II. SIS 1+ RE is a possible technical solution to develop Central SIS II and to achieve the objectives of the SIS II laid down in Regulation (EC) No 1987/2006 and Decision 2007/533/JHA.

(1) OJ L 381, 28.12.2006, p. 4.
(2) OJ L 205, 7.8.2007, p. 63.
(3) OJ L 299, 8.11.2008, p. 1.
(4) OJ L 299, 8.11.2008, p. 43.

(8) The SIS 1+ RE is characterised by uniqueness of means between SIS II development and SIS 1+. The references in this Regulation to the technical architecture of SIS II and to the migration process should therefore, in case of implementation of an alternative technical scenario, be read as the references to SIS II based on another technical solution, as applied *mutatis mutandis* to the technical specificities of this solution, in keeping with the objective to develop Central SIS II.

(9) As regards the financing of the development of the Central SIS II based on an alternative technical solution, it should be covered by the general budget of the Union while respecting the principle of sound financial management. In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1], the Commission may delegate budget implementation tasks to national public sector bodies. Following the political orientation and subject to the conditions laid down in Regulation (EC, Euratom) No 1605/2002, the Commission would be invited, in case of switchover to the alternative solution, to delegate the budget implementation tasks related to the development of the SIS II based on SIS 1+ RE to France.

(10) In any technical scenario, the result of migration at central level should be availability of the SIS 1+ database and new SIS II functionalities, including additional data categories, in the Central SIS II.

(11) The Member States should remain responsible for their national systems (N.SIS II). It is still necessary to maintain and, where appropriate, further develop the N.SIS II.

(12) France should remain responsible for technical support function (C.SIS).

(13) Since the objectives of this Regulation, namely setting up the interim migration architecture and migrating the data from SIS 1+ to SIS II, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

(14) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of 6 months after the Council has decided on this Regulation whether it will implement it in its national law.

(15) The United Kingdom is taking part in this Regulation, in accordance with Article 5(1) of the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 8(2) of 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* [2].

(16) Ireland is taking part in this Regulation in accordance with Article 5(1) of the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 6(2) of 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* [3].

(17) This Regulation is without prejudice to the arrangements for the United Kingdom's and Ireland's partial participation in the Schengen *acquis* as determined by the Council Decision 2000/365/EC and Decision 2002/192/EC respectively.

(18) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* [4], which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement [5].

[1] OJ L 248, 16.9.2002, p. 1.

[2] OJ L 131, 1.6.2000, p. 43.
[3] OJ L 64, 7.3.2002, p. 20.
[4] OJ L 176, 10.7.1999, p. 36.
[5] OJ L 176, 10.7.1999, p. 31.

(19) As regards Switzerland, this Regulation 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* [1] which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/149/JHA [2].

(20) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed 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 G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/262/JHA [3],

HAS ADOPTED THIS REGULATION:

Article 1

Decision 2008/839/JHA is hereby amended as follows:

1. the following paragraph is added to Article 1:

   '3. The development of SIS II may be achieved by implementing an alternative technical scenario characterised by its own technical specifications.';

2. in Article 4 the introductory phrase is replaced by the following:

   'In order to ensure the migration from SIS 1+ to SIS II, the following components shall be made available to the extent necessary:';

3. Article 10(3) is replaced by the following:

   '3. To the extent necessary, the converter shall convert data in two directions between the C.SIS and Central SIS II and keep C.SIS and Central SIS II synchronised.';

4. Article 11(2) is replaced by the following:

   '2. The Member States participating in SIS 1+ shall migrate from N.SIS to N.SIS II using the interim migration architecture, with the support of France and of the Commission.';

5. the following Article is inserted:

   '*Article 17a*

   Global Programme Management Board

   1. Without prejudice to the respective responsibilities and activities of the Commission, the Committee referred to in Article 17, France and the Member States participating in SIS 1+, a group of technical experts, called the Global Programme Management Board (hereinafter "the Board"), is hereby set up. The Board shall be an advisory body for assistance to the central SIS II project and shall facilitate consistency between central and national SIS II projects. The Board shall have no decision-making power nor any mandate to represent the Commission or Member States.

   2. The Board shall be composed of a maximum of 10 members, meeting on a regular basis. A maximum of 8 experts and an equal number of alternates shall be designated by the Member States acting within the Council. A maximum of two experts and two alternates shall be designated by the Director-General of the responsible Directorate-General of the Commission from among the Commission officials.

   The meetings of the Board may be attended by other Member States' experts and Commission officials directly involved in the development of the SIS II projects, at the expense of their respective administration or institution.

   The Board may invite other experts to participate in the Board's meetings as defined in the terms of reference referred to in paragraph 5, at the expense of their respective administration, institution or company.

   3. Experts designated by the Member States acting as Presidency and incoming Presidency shall always be invited to participate in the Board's meetings.

   4. The Board's secretariat shall be ensured by the Commission.

   5. The Board shall draw up its own terms of reference which shall include in particular procedures on:

   — alternative chairmanship between the Commission and the Presidency,

   — meeting venues,

   — preparation of meetings,

[1] OJ L 53, 27.2.2008, p. 52.
[2] OJ L 53, 27.2.2008, p. 50.
[3] OJ L 83, 26.3.2008, p. 5.

— admission of other experts,

— communication plan ensuring full information to non-participating Member States.

The terms of reference shall take effect after a favourable opinion has been given by the Director-General of the responsible Directorate-General of the Commission and by Member States meeting within the framework of the Committee referred to in Article 17.

6. The Board shall regularly submit written reports about the progress of the project including advice which has been given, and its justification, to the Committee referred to in Article 17 or, as appropriate, to the relevant Council preparatory bodies.

7. Without prejudice to Article 15(2), the administrative costs and travel expenses arising from the activities of the Board shall be borne by the general budget of the Union, to the extent that they are not reimbursed from other sources. As regards travel expenses of the members in the Board designated by the Member States acting within the Council and experts invited pursuant to paragraph 3 of this Article which arise in connection with the work of the Board, the Commission's "Rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity" shall apply.';

6. in Article 19, the last sentence is replaced by the following:

'It shall expire on a date to be fixed by the Council, acting in accordance with Article 71(2) of Decision 2007/533/JHA, and in any case no later than on 31 March 2013 or on 31 December 2013 in case of a switchover to an alternative technical scenario as referred to in Article 1(3).'.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty on the Functioning of the European Union.

Done at Luxembourg, 3 June 2010.

For the Council

The President

A. PÉREZ RUBALCABA

COMMISSION REGULATION (EU) No 543/2010

of 21 June 2010

entering a name in the register of protected designations of origin and protected geographical indications (Aceite Campo de Montiel (PDO))

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1], and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

(1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Spain's application to register the name 'Aceite Campo de Montiel' was published in the *Official Journal of the European Union* [2].

(2) As no statement of objection pursuant to Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

Article 2

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

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

Done at Brussels, 21 June 2010.

For the Commission

The President

José Manuel BARROSO

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[1] OJ L 93, 31.3.2006, p. 12.

[2] OJ C 162, 15.7.2009, p. 17.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Classe 1.5. Oils and fats (butter, margarine, oil, etc.)

SPAIN

Aceite Campo de Montiel (PDO)

COMMISSION REGULATION (EU) No 544/2010

of 21 June 2010

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 22 June 2010.

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

Done at Brussels, 21 June 2010.

For the Commission,
On behalf of the President,
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

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[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	IL	132,1
	MA	44,4
	MK	52,3
	TR	57,0
	ZZ	71,5
0707 00 05	MK	33,9
	TR	117,2
	ZZ	75,6
0709 90 70	TR	102,5
	ZZ	102,5
0805 50 10	AR	77,7
	BR	112,1
	TR	97,3
	US	83,2
	ZA	96,4
	ZZ	93,3
0808 10 80	AR	105,0
	BR	78,0
	CA	118,8
	CL	89,4
	CN	47,0
	NZ	125,0
	US	161,5
	UY	119,2
	ZA	95,6
	ZZ	104,4
0809 10 00	TR	260,6
	US	396,9
	ZZ	328,8
0809 20 95	SY	197,3
	TR	320,7
	US	701,2
	ZZ	406,4
0809 30	TR	149,8
	ZZ	149,8
0809 40 05	AU	185,7
	EG	219,5
	IL	235,4
	US	373,6
	ZZ	253,6

[1] Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code ‘ZZ’ stands for ‘of other origin’.

COMMISSION REGULATION (EU) No 545/2010

of 21 June 2010

amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 877/2009 for the 2009/10 marketing year

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 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ([2]), and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

(1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2009/10 marketing year are fixed by Commission Regulation (EC) No 877/2009 ([3]). These prices and duties have been last amended by Commission Regulation (EU) No 504/2010 ([4]).

(2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 877/2009 for the 2009/10, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 June 2010.

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

Done at Brussels, 21 June 2010.

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 178, 1.7.2006, p. 24.
([3]) OJ L 253, 25.9.2009, p. 3.
([4]) OJ L 147, 12.6.2010, p. 3.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 22 June 2010

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 (1)	39,65	0,00
1701 11 90 (1)	39,65	3,01
1701 12 10 (1)	39,65	0,00
1701 12 90 (1)	39,65	2,71
1701 91 00 (2)	42,37	4,76
1701 99 10 (2)	42,37	1,63
1701 99 90 (2)	42,37	1,63
1702 90 95 (3)	0,42	0,27

(1) For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.
(2) For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.
(3) Per 1 % sucrose content.

DECISIONS

POLITICAL AND SECURITY COMMITTEE DECISION BiH/16/2010

of 15 June 2010

on the appointment of the Head of the EU Command Element at Naples for the European Union military operation in Bosnia and Herzegovina

(2010/344/CFSP)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular the third subparagraph of Article 38 thereof,

Having regard to Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina [1], and in particular Article 6 thereof,

Whereas:

(1) By Exchange of Letters between the Secretary-General/High Representative and the NATO Secretary-General on 28 September 2004 and on 8 October 2004 respectively, the North Atlantic Council has agreed to make available the Chief of Staff of the Joint Force Command Headquarters Naples as Head of the EU Command Element at Naples.

(2) The EU Operation Commander has recommended to appoint Lieutenant General Leandro DE VICENTI, Chief of Staff of the Joint Force Command Headquarters at Naples, as Head of the EU Command Element at Naples for the European Union military operation in Bosnia and Herzegovina.

(3) The EU Military Committee has supported the recommendation.

(4) Pursuant to Article 6 of Joint Action 2004/570/CFSP, the Council authorised the Political and Security Committee to exercise the political and strategic direction of the EU military operation.

(5) In accordance with Article 5 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications.

(6) The Copenhagen European Council of 12 and 13 December 2002 adopted a Declaration stating that the ‘Berlin plus’ arrangements and the implementation thereof will apply only to those EU Member States which are also either NATO members or parties to the ‘Partnership for Peace’ and which have consequently concluded bilateral security agreements with NATO,

HAS ADOPTED THIS DECISION:

Article 1

Lieutenant General Leandro DE VICENTI is hereby appointed Head of the EU Command Element at Naples for the European Union military operation in Bosnia and Herzegovina.

Article 2

This Decision shall enter into force on 15 June 2010.

Done at Brussels, 15 June 2010.

For the Political and Security Committee

The Chairman

C. FERNÁNDEZ-ARIAS

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[1] OJ L 252, 28.7.2004, p. 10.

COMMISSION DECISION

of 8 June 2010

amending Decision 2007/589/EC as regards the inclusion of monitoring and reporting guidelines for greenhouse gas emissions from the capture, transport and geological storage of carbon dioxide

(notified under document C(2010) 3310)

(Text with EEA relevance)

(2010/345/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC [1], and in particular Articles 14(1) and 24(3) thereof,

Whereas:

(1) Directive 2003/87/EC establishes a scheme for greenhouse gas emission allowance trading within the Community (hereinafter 'the Community scheme'). Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community [2] amends Directive 2003/87/EC so as to include the capture, transport and geological storage of carbon dioxide (hereinafter 'CO_2') within the Community scheme from the year 2013 onwards.

(2) Pursuant to Article 14(1) of Directive 2003/87/EC, the Commission should adopt guidelines for monitoring and reporting of greenhouse gas emissions from activities covered by the Community scheme.

(3) Before 2013, CO_2 capture, transport and geological storage activities can be unilaterally included into the Community scheme by Member States pursuant to Article 24(1) of Directive 2003/87/EC.

(4) Article 24(3) of Directive 2003/87/EC provides the legal basis for the Commission to adopt guidelines for activities not yet covered by Annex I to the Directive.

(5) The Commission should adopt guidelines for monitoring and reporting of greenhouse gas emissions resulting from CO_2 capture, transport and geological storage activities with a view to the inclusion of these activities in the Community scheme from 2013 and their possible unilateral inclusion in the Community scheme before 2013.

(6) Commission Decision 2007/589/EC [3] should therefore be amended accordingly.

(7) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee referred to in Article 23 of Directive 2003/87/EC,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2007/589/EC is amended as follows:

1. Article 1 is replaced by the following:

'*Article 1*

The guidelines for the monitoring and reporting of greenhouse gas emissions from the activities listed in Annex I to Directive 2003/87/EC, and of activities included pursuant to Article 24(1) of that Directive, are set out in Annexes I to XIV and XVI to XVIII to this Decision. The guidelines for the monitoring and reporting of tonne-kilometre data from aviation activities for the purpose of an application pursuant to Article 3e or 3f of Directive 2003/87/EC are set out in Annex XV.

Those guidelines are based on the principles set out in Annex IV to that Directive.'

2. The Table of Annexes is amended as follows:

(a) the entry for Annex XII is replaced by the following:

'Annex XII: Guidelines for determination of emissions or amount of transfer of greenhouse gases by continuous measurement systems';

[1] OJ L 275, 25.10.2003, p. 32.
[2] OJ L 140, 5.6.2009, p. 63.
[3] OJ L 229, 31.8.2007, p. 1.

(b) the following titles of new Annexes XVI, XVII and XVIII are added:

‘Annex XVI: Activity-specific guidelines for determination of greenhouse gas emissions from CO_2 capture activities for the purpose of transport and geological storage in a storage site permitted under Directive 2009/31/EC of the European Parliament and of the Council (*).

Annex XVII: Activity-specific guidelines for determination of greenhouse gas emissions from the transport of CO_2 by pipeline for geological storage in a storage site permitted under Directive 2009/31/EC.

Annex XVIII: Activity-specific guidelines for the geological storage of CO_2 in a storage site permitted under Directive 2009/31/EC.

(*) OJ L 140, 5.6.2009, p. 114.’

3. Annex I is amended as set out in Part A of the Annex to this Decision.

4. Annex XII is replaced by the text set out in Part B of the Annex to this Decision.

5. Annex XVI is added as set out in Part C of the Annex to this Decision.

6. Annex XVII is added as set out in Part D of the Annex to this Decision.

7. Annex XVIII is added as set out in Part E of the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 8 June 2010.

For the Commission

Connie HEDEGAARD

Member of the Commission

ANNEX

A. Annex I is amended as follows:

1. In Section 1, the words 'Annexes II to XI and XIII-XV' are replaced by the words 'Annexes II to XI and Annexes XIII to XVIII':

2. Section 2 is amended as follows:

(a) In the introductory part, the words 'Annexes II to XV' are replaced by the words 'Annexes II to XVIII'.

(b) In paragraph 3, the following point (j) is added:

'(j) 'measurement point' means the emission source for which continuous emission measurement systems (CEMS) are used for emission measurement, or the cross-section of a pipeline system for which the CO_2 flow is determined using continuous measurement systems.'

(c) The following paragraph 7 is added:

'7. The following definitions shall apply in relation to greenhouse gas emissions from greenhouse gas capture, transport and geological storage activities:

(a) "geological storage of CO_2" means "geological storage of CO_2" within the meaning of Article 3(1) of Directive 2009/31/EC;

(b) "storage site" means "storage site" within the meaning of Article 3(3) of Directive 2009/31/EC;

(c) "storage complex" means "storage complex" within the meaning of Article 3(6) of Directive 2009/31/EC;

(d) "CO_2 transport" means the transport of CO_2 by pipelines for geological storage in a storage site permitted under Directive 2009/31/EC;

(e) "transport network" means "transport network" within the meaning of Article 3(22) of Directive 2009/31/EC;

(f) "CO_2 capture" means the activity of capturing from gas streams CO_2 which would otherwise be emitted, for the purposes of transport and geological storage in a storage site permitted under Directive 2009/31/EC;

(g) "capture installation" means an installation which carries out CO_2 capture;

(h) "fugitive emissions" means irregular or unintended emissions from sources which are not localised, or too diverse or too small to be monitored individually, such as emissions from otherwise intact seals, valves, intermediate compressor stations and intermediate storage facilities;

(i) "vented emissions" means emissions deliberately released from the installation by provision of a defined point of emission;

(j) "water column" means "water column" within the meaning of Article 3(2) of Directive 2009/31/EC;

(k) “enhanced hydrocarbon recovery” means the recovery of hydrocarbons in addition to those extracted by water injection or other means;

(l) “leakage” in the context of geological storage means “leakage” within the meaning of Article 3(5) of Directive 2009/31/EC.’.

3. Section 4 is amended as follows:

(a) in Section 4.1, the following new paragraph is added after the second paragraph:

‘Where leakages from a storage complex pursuant to Directive 2009/31/EC are identified and lead to emissions, or release of CO2 to the water column, they shall be included as emission sources for the respective installation and shall be monitored accordingly as required under the provisions of Annex XVIII. The leakage may be excluded as an emission source subject to approval by the competent authority, when corrective measures pursuant to Article 16 of Directive 2009/31/EC have been taken and emissions or release into the water column from that leakage can no longer be detected.’

(b) in Section 4.3, the following subparagraphs are added after the fourth paragraph:

‘(o) where applicable, the location of equipment for temperature and pressure measurement in a transport network;

(p) where applicable, procedures for preventing, detecting and quantification of leakage events from transport networks;

(q) in the case of transport networks, procedures effectively ensuring that CO_2 is transferred only to installations which have a valid greenhouse gas emission permit, or where any emitted CO_2 is effectively monitored and accounted for in accordance with section 5.7 of this Annex;

(r) where CO_2 is transferred according to section 5.7 of this Annex, an identification of the receiving and transferring installations. For installations holding a greenhouse gas emissions permit, this is the installation identification code as defined by the Regulation pursuant to Article 19 of Directive 2003/87/EC;

(s) where applicable, a description of continuous measurement systems used at the points of transfer of CO_2 between installations transferring CO_2 according to section 5.7 of this Annex;

(t) where applicable, quantification approaches for emissions or CO_2 release to the water column from potential leakages as well as the applied and possibly adapted quantification approaches for actual emissions or CO_2 release to the water column from leakages, as specified in Annex XVIII.’

(c) in Section 4.3, the sixth paragraph is replaced by the following:

‘A substantial change to the monitoring methodology as part of the monitoring plan shall be subject to the approval of the competent authority if it concerns:

— a change of the categorisation of the installation as laid down in Table 1,

— a change between the calculation-based or the measurement-based methodology used to determine emissions,

— an increase of the uncertainty of the activity data or other parameters (where applicable) which implies a different tier level,

— the application or adaption of a quantification approach for emissions from leakage at storage sites.',

4. Section 5 is amended as follows:

(a) in section 5.1, under the heading 'process emissions', in the last paragraph, the words 'Annexes II to XI' are replaced by the words 'Annexes II to XI and XVI, XVII and XVIII' in the whole paragraph;

(b) in section 5.2, first sentence, the words 'Annexes II to XI and Annexes XIV and XV' are replaced by the words 'Annexes II to XI and XIV to XVIII'.

5. Section 5.7 is replaced by the following:

'5.7 TRANSFERRED CO_2

Subject to approval by the competent authority, the operator may subtract from the calculated level of emissions of the installation any CO_2 which is not emitted from the installation, but transferred out of the installation:

— as pure substance, or directly used and bound in products or as feedstock, or

— to another installation holding a greenhouse gas emissions permit, unless other requirements as set out in Annexes XVII or XVIII apply,

provided the subtraction is mirrored by a respective reduction for the activity and installation, which the respective Member State reports in its national inventory submission to the Secretariat of the United Nations Framework Convention on Climate Change. The respective amounts of CO_2 shall be reported for each installation CO_2 has been transferred to or received from as a memo item in the annual emission report of the transferring as well as the receiving installation.

In the case of transfer to another installation, the receiving installation must add to its calculated level of emissions the received CO_2, unless other requirements as set out in Annexes XVII or XVIII apply.

Respective transferring as well as receiving installations shall be notified by Member States to the Commission pursuant to Article 21 of Directive 2003/87/EC. In case of transfer to an installation falling under that Directive, the transferring installation shall identify the receiving installation in its annual emission report by stating the receiving installation's installation identification code as defined by the Regulation pursuant to Article 19 of that Directive. The receiving installation shall identify the transferring installation through the same approach.

Potential cases of transferred CO_2 out of an installation include, inter alia:

— pure CO_2 used for the carbonation of beverages,

— pure CO_2 used as dry ice for cooling purposes,

— pure CO_2 used as fire extinguishing agent, refrigerant or as laboratory gas,

— pure CO_2 used for grains disinfestations,

— pure CO_2 used as solvent in the food or chemical industry,

— CO_2 used and bound in products or feedstocks in the chemical, pulp industry (e.g. for urea or precipitated carbonates),

— carbonates bound in spray-dried absorption product (SDAP) from semi-dry scrubbing of flue gases,

— CO_2 transferred to capture installations,

— CO_2 from capture installations transferred to transport networks,

— CO_2 from transport networks transferred to storage sites.

Unless other requirements in the activity specific Annexes apply, the mass of annually transferred CO_2 or carbonate shall be determined with a maximum uncertainty of less than 1,5 % either directly by using volume or mass flow meters, weighing or indirectly from the mass of the respective product (e.g. carbonates or urea) where relevant and if appropriate.

In case the amounts of transferred CO_2 are measured both at the transferring and at the receiving installation, the amounts of respectively transferred and received CO_2 shall be identical. If the deviation between measured values is in a range, which can be explained by the uncertainty of the measurement systems, the arithmetic average of both measured values shall be used in both the transferring and receiving installations' emission reports. The emission report shall include a statement that this value has been aligned with the value of the respectively transferring or receiving installation. The measured value shall be included as memo item.

In case the deviation between the measured values cannot be explained by the uncertainty range of the measurement systems, the operators of the installations involved shall align the measured values by applying conservative adjustments (i.e. avoiding under-estimation of emissions). This alignment shall be verified by the verifiers of the transferring and receiving installations, and be subject to approval by the competent authority.

In instances, in which part of the transferred CO_2 was generated from biomass, or whenever an installation is only partially covered by Directive 2003/87/EC, the operator shall subtract only the respective fraction of mass of transferred CO_2 which originates from fossil fuels and materials in activities covered by the Directive. Respective attribution methods shall be conservative and are subject to approval by the competent authority.

In case a measurement approach is applied at the transferring installation, the total amount of transferred/received CO_2 resulting from biomass use shall be reported as a memo-item by both the transferring and receiving installation. The receiving installation shall not be required to conduct its own measurements for this purpose, but report the amount of biomass CO_2 as obtained by the transferring installation.'

6. In Section 6.3, subsection (c), paragraph 3, the words 'Annexes II to XI' are replaced by the words 'Annexes II to XI and XVI, XVII and XVIII'.

7. In Section 7.1, paragraph 5, the words 'Annexes II to XI and Annexes XIV and XV' are replaced by the words 'Annexes II to XI and XIV to XVIII'.

8. Section 8 is be amended as follows:

   (a) in paragraph 5, subparagraph(6), the words 'Annexes I to XI' are replaced by the words 'Annexes I to XI and XVI, XVII and XVIII';

   (b) in paragraph 5, a new subparagraph is added at the end:

   '(10) where applicable, amounts of CO_2 transferred to or received from other installations, stating the installation's identification code as defined by the Regulation pursuant to Article 19 of Directive 2003/87/EC.';

(c) the following new paragraph 6 is added:

'The competent authority may allow operators of CO_2 storage sites after closure to hand in simplified emission reports containing at least the elements listed under subparagraphs (1) and (9), if the greenhouse gas emissions permit contains no emission sources.'

9. The following new paragraph shall be added at the end of Section 9:

'The following additional information shall be retained for CO_2 capture, transport and geological storage activities:

— where applicable, documentation of the amount of CO_2 injected into the storage complex by installations carrying out geological storage of CO_2,

— where applicable, representatively aggregated pressure and temperature data from a transport network,

— where applicable, a copy of the storage permit, including the approved monitoring plan, pursuant to Article 9 of Directive 2009/31/EC,

— where applicable, the reports submitted pursuant to Article 14 of Directive 2009/31/EC,

— where applicable, reports on the results of the inspections carried out pursuant to Article 15 of Directive 2009/31/EC,

— where applicable, documentation on corrective measures taken pursuant to Article 16 of Directive 2009/31/EC.'.

B. Annex XII is replaced by the following:

'ANNEX XII

Guidelines for determination of emissions or amount of transfer of greenhouse gases by continuous measurement systems

1. **BOUNDARIES AND COMPLETENESS**

The provisions of this Annex apply to emissions of greenhouse gases from all activities covered by Directive 2003/87/EC. Emissions may occur at several emission sources in an installation.

The provisions of this Annex apply furthermore to continuous measurement systems used for determination of CO_2 flows in pipelines, in particular when used for the transfer of CO_2 between installations such as for the capture, transport and geological storage of CO_2. For this purpose, the references to emissions in Sections 6 and 7.2 of Annex I shall be interpreted as references to the amount of CO_2 transferred in accordance with Section 5.7 of Annex I.

2. **DETERMINATION OF GREENHOUSE GAS EMISSIONS**

Tier 1

For each measurement point a total uncertainty of the overall emissions or CO_2 flow over the reporting period of less than ± 10 % shall be achieved.

Tier 2

For each measurement point a total uncertainty of the overall emissions or CO_2 flow over the reporting period of less than ± 7,5 % shall be achieved.

Tier 3

For each measurement point a total uncertainty of the overall emissions or CO_2 flow over the reporting period of less than ± 5 % shall be achieved.

Tier 4

For each measurement point a total uncertainty of the overall emissions or CO_2 flow over the reporting period of less than ± 2,5 % shall be achieved.

Overall approach

Total emissions of a greenhouse gas (GHG) from an emission source or the amount of CO_2 conducted through the measurement point over the reporting period shall be determined by using the formula below. In case several emission sources exist in one installation and cannot be measured as one, emissions from these emission sources shall be measured separately and summed up to the total emissions of the specific gas over the reporting period in the whole installation.

$$GHG_{-tot\ ann}\ [t] = \sum_{i=1}^{operating_hours_p.a.} \text{GHG-concentration}_i * \text{flue gas flow}_i$$

Determination of the parameters GHG-concentration and flue gas flow shall be carried out according to the provisions of Section 6 of Annex I. For measurement of transferred CO_2 in pipelines, Section 6 of Annex I shall apply as if the measurement point were an emission source, as appropriate. For such measurement points no corroborating calculation pursuant to section 6.3 subsection (c) shall be required.

GHG-concentration

The GHG-concentration in the flue gas is determined by continuous measurement at a representative point. The GHG-concentration can be measured by two approaches:

METHOD A

The concentration of GHG is measured directly.

METHOD B

For very high GHG concentrations such as in transport networks, the GHG concentration may be calculated using a mass balance, taking into account measured concentration values of all other components of the gas stream as laid down in the installation's monitoring-plan:

$$GHG\ concentration\ [\%] = 100\ \% - \sum_i Conc.\ of\ component_i\ [\%]$$

Flue gas flow

The dry flue gas flow can be determined using one of the following methods.

METHOD A

The flue gas flow Q_e is calculated by means of a mass balance approach, taking into account all significant parameters such as input material loads, input airflow, process efficiency, and on the output side the product output, the O_2 concentration, SO_2 and NO_x concentrations.

The specific calculation approach shall be approved by the competent authority as part of the evaluation of the monitoring plan and the monitoring methodology therein.

METHOD B

The flue gas flow Q_e is determined by continuous flow measurement at a representative point.'

C. The following Annex XVI is added:

'ANNEX XVI

Activity-specific guidelines for determination of greenhouse gas emissions from CO_2 capture activities for the purposes of transport and geological storage in a storage site permitted under Directive 2009/31/EC of the European Parliament and of the Council

1. **BOUNDARIES AND COMPLETENESS**

The activity-specific guidelines contained in this Annex apply to the monitoring of emissions from CO_2 capture activities.

CO_2 capture can be performed either by dedicated installations receiving CO_2 by transfer from other installations, or by installations carrying out the activities emitting the CO_2 to be captured under the same greenhouse gas emissions permit. All parts of the installation related to the purpose of CO_2 capture, intermediate storage, transfer to a CO_2 transport network or to a site for geological storage of CO_2 greenhouse gas emissions shall be included in the greenhouse gas emissions permit. In case the installation carries out other activities covered by Directive 2003/87/EC, the emissions of these activities shall be monitored in accordance with the respective Annexes of these Guidelines.

2. **EMISSIONS FROM CO_2 CAPTURE ACTIVITIES**

In CO_2 capture operations potential emission sources for CO_2 include:

— CO_2 transferred to the capture installation,

— combustion and other associated activities at the installation (capture-related), i.e., fuel and input material use.

3. **QUANTIFICATION OF TRANSFERRED AND EMITTED CO_2 AMOUNTS**

3.1. INSTALLATION LEVEL QUANTIFICATION

Emissions are calculated using a complete mass-balance, taking into account the potential CO_2 emissions from all emission relevant processes at the installation as well as the amount of CO_2 captured and transferred to the transport network.

The emissions of the installation shall be calculated using the following formula:

$$E_{capture\ installation} = T_{input} + E_{without\ capture} - T_{for\ storage}$$

With:

$E_{capture\ installation}$ = Total greenhouse gas emissions of the capture installation

T_{input} = Amount of CO_2 transferred to the capture installation, determined in accordance with Annex XII and Section 5.7 of Annex I; If the operator can demonstrate to the satisfaction of the competent authority that the total CO_2 emissions of the emitting installation are transferred to the capture installation, the competent authority may allow the operator to use the emissions of the emitting installation determined pursuant to Annexes I to XII instead of using CEMS.

$E_{without\ capture}$ = Emissions of the installation if the CO_2 were not captured, i.e. the sum of the emissions from all other activities at the installation, monitored in accordance with the respective Annexes;

$T_{for\ storage}$ = Amount of CO_2 transferred to a transport network or a storage site, determined in accordance with Annex XII and section 5.7 of Annex I.

In cases, in which CO_2 capture is carried out by the same installation as the one from which the captured CO_2 originates, T_{input} is zero.

In cases of stand-alone capture installations, $E_{without\ capture}$ represents the amount of emissions that occur from other sources than the CO_2 transferred to the installation for capture, such as combustion emissions from turbines, compressors, heaters. These emissions can be determined by calculation or measurement in accordance with the appropriate activity specific Annex.

In the case of stand-alone capture installations, the installation transferring CO_2 to the capture installation shall deduct the amount T_{input} from its own emissions.

3.2. DETERMINATION OF TRANSFERRED CO_2

The amount of CO_2 transferred from and to the capture installation shall be determined in accordance with Section 5.7 of Annex I by means of CEMS carried out in accordance with Annex XII. As a minimum, Tier 4 as defined in Annex XII shall be applied. Only if it is shown to the satisfaction of the competent authority that this tier approach is technically not feasible, may a next lower tier be used for the relevant emission source.'

D. The following Annex XVII is added:

'ANNEX XVII

Activity-specific guidelines for determination of greenhouse gas emissions from the transport of CO_2 by pipelines for geological storage in a storage site permitted under Directive 2009/31/EC

1. BOUNDARIES AND COMPLETENESS

The boundaries for monitoring and reporting of emissions from CO_2 transport by pipeline are laid down in the transport network's greenhouse gas emissions permit, including all installations functionally connected to the transport network, including booster stations and heaters. Each transport network has as a minimum one starting point and one ending point, each connected to other installations carrying out one or more of the activities capture, transport or geological storage of CO_2. Starting and ending points can include bifurcations of the transport network and national borders. Starting and ending points as well as the installations they are connecting to, shall be laid down in the greenhouse gas emissions permit.

2. QUANTIFICATION OF CO_2 EMISSIONS

During the transport of CO_2 by pipeline, potential emission sources for CO_2 emissions include:

— combustion and other processes at installations functionally connected to the transport network, e.g. booster stations,

— fugitive emissions from the transport network,

— vented emissions from the transport network,

— emissions from leakage incidents in the transport network.

A transport network using Method B below shall not add to its calculated level of emissions CO_2 received from another ETS installation, and shall not subtract from its calculated level of emissions any CO_2 which is transferred to another ETS installation.

2.1. QUANTIFICATION APPROACHES

Operators of transport networks may choose one of the following approaches:

METHOD A

The emissions of the transport network are determined using a mass balance according to the following formula:

$$Emissions\ [tCO_2] = E_{ownactivity} + \sum_i T_{IN,i} - \sum_j T_{OUT,j}$$

With:

Emissions = Total CO_2 emissions of the transport network [t CO_2];

$E_{own\ activity}$ = Emissions from the transport network's own activity (i.e. not stemming from CO_2 transported), like from fuel use in booster stations, monitored in accordance with the respective Annexes of these Guidelines;

$T_{IN,i}$ = Amount of CO_2 transferred to the transport network at entry point *i*, determined in accordance with Annex XII and Section 5.7 of Annex I;

$T_{OUT,j}$ = Amount of CO_2 transferred out of the transport network at exit point *j*, determined in accordance with Annex XII and Section 5.7 of Annex I.

METHOD B

Emissions shall be calculated taking into account the potential CO_2-emissions from all emission relevant processes at the installation as well as the amount of CO_2 captured and transferred to the transport facility, using the following formula:

$$Emissions\ [tCO_2] = CO_{2\ fugitive} + CO_{2\ vented} + CO_{2\ leakage\ events} + CO_{2\ installations}$$

With:

Emissions = Total CO_2 emissions of the transport network [tCO_2];

$CO_{2\ fugitive}$ = Amount of fugitive emissions [tCO_2] from CO_2 transported in the transport network, including from seals, valves, intermediate compressor stations and intermediate storage facilities;

$CO_{2\ vented}$ = Amount of vented emissions [tCO_2] from CO_2 transported in the transport network;

$CO_{2\ leakage\ events}$ = Amount of CO_2 [tCO_2] transported in the transport network, which is emitted as the result of failure of one or more components of the transport network;

$CO_{2\ installations}$ = Amount of CO_2 [tCO_2] being emitted from combustion or other processes functionally connected to the pipeline transport in the transport network, monitored in accordance with the respective Annexes of these Guidelines.

2.2. QUANTIFICATION REQUIREMENTS

In choosing either Method A or Method B, the operator has to demonstrate to the competent authority that the chosen methodology will lead to more reliable results with lower uncertainty of the overall emissions, using best available technology and knowledge at the time of application for the greenhouse gas emissions permit, without leading to unreasonable costs. If Method B is chosen the operator shall demonstrate to the satisfaction of the competent authority that the overall uncertainty for the annual level of greenhouse gas emissions for the operator's transport network does not exceed 7,5 %.

2.2.1. SPECIAL REQUIREMENTS FOR METHOD A

The amount of CO_2 transferred from and to the transport network shall be determined in accordance with Section 5.7 of Annex I by means of CEMS carried out in accordance with Annex XII. As a minimum, Tier 4 as defined in Annex XII shall be applied. Only if it is shown to the satisfaction of the competent authority that this tier approach is technically not feasible, may a next lower tier be used for the relevant emission source.

2.2.2. SPECIAL REQUIREMENTS FOR METHOD B

2.2.2.1. *Combustion emissions*

Potential combustion emissions from fuel use shall be monitored in accordance with Annex II.

2.2.2.2. *Fugitive emissions from the transport network*

Fugitive emissions include the emissions from the following types of equipment:

— seals,

— measurement devices,

— valves,

— intermediate compressor stations,

— intermediate storage facilities.

Average emission factors *EF* (expressed in g CO_2/unit time) per piece of equipment/occurrence where fugitive emissions can be expected shall be determined by the operator at the beginning of operation, and at the latest by the end of the first reporting year in which the transport network is in operation. These factors shall be reviewed by the operator at least every 5 years in the light of the best available techniques in this field.

Overall emissions shall be calculated by multiplying the number of pieces of equipment in each category by the emission factor and adding up the results for the single categories as shown in the equation below:

$$Fugitive\ Emissions\ [tCO_2] = (\sum_{Category} EF[gCO_2/occurrence] \times number\ of\ occurences)/1\ 000\ 000$$

The number of occurrences is the number of pieces of the given equipment per category, multiplied by the number of time units per year.

2.2.2.3. *Emissions from leakage events*

The operator of the transport network shall provide proof of the network integrity by using representative (spatial and time-related) temperature and pressure data. If the data indicates that a leakage has occurred, the operator shall calculate the amount of CO_2 leaked with a suitable methodology documented in the monitoring plan, based on industry best practice guidelines, e.g. by using the differences in temperature and pressure data compared to integrity related average pressure and temperature values.

2.2.2.4. *Vented emissions*

The operator shall provide in the monitoring plan an analysis regarding potential situations of venting emissions, including for maintenance or emergency reasons, and provide a suitable documented methodology to calculate the amount of CO_2 vented, based on industry best practice guidelines.

2.2.2.5. *Validation of calculation result for fugitive and leaked emissions*

Given that monitoring of CO_2 transferred to and from the transport network will in any case be carried out for commercial reasons, the operator of a transport network shall use Method A for validation of the results of Method B at least once annually. In this regard, for measurement of transferred CO_2 lower tiers defined in Annex XII may be used.'

E. The following Annex XVIII is added:

'ANNEX XVIII

Activity-specific guidelines for the geological storage of CO_2 in a storage site permitted under Directive 2009/31/EC

1. **BOUNDARIES**

Boundaries for monitoring and reporting of emissions from geological storage of CO_2 shall be site-specific and shall be based on the delimitation of the storage site and storage complex as specified in the permit pursuant Directive 2009/31/EC. All emission sources from the CO_2 injection facility shall be included in the greenhouse gas emissions permit. Where leakages from the storage complex are identified and lead to emissions or release of CO_2 to the water column, they shall be included as emission sources for the respective installation until corrective measures pursuant to Article 16 of Directive 2009/31/EC have been taken and emissions or release into the water column from that leakage can no longer be detected.

2. **DETERMINATION OF CO_2 EMISSIONS**

Potential emissions sources for CO_2 emissions from the geological storage of CO_2 include:

— fuel use at booster stations and other combustion activities such as on-site power plants,

— venting at injection or at enhanced hydrocarbon recovery operations,

— fugitive emissions at injection,

— breakthrough CO_2 from enhanced hydrocarbon recovery operations,

— leakage.

A storage site shall not add to its calculated level of emissions CO_2 received from another installation, and shall not subtract from its calculated level of emissions any CO_2 which is transferred to another installation or geologically stored in the storage site.

2.1. EMISSIONS FROM FUEL USE

Combustion emissions from above ground activities shall be determined in accordance with Annex II.

2.2. VENTED AND FUGITIVE EMISSIONS FROM INJECTION

Emissions from venting and fugitive emissions shall be determined as follows:

$$CO_2 \text{ emitted } [tCO_2] = V\ CO_2\ [tCO_2] + F\ CO_2\ [tCO_2]$$

With

V CO_2 = amount of CO_2 vented

F CO_2 = amount of CO_2 from fugitive emissions

V CO_2 shall be determined by using CEMS according to Annex XII of these Guidelines. If the application of CEMS would lead to unreasonable costs, the operator may include in the monitoring plan an appropriate methodology based on industry best practice, subject to approval by the competent authority.

F CO_2 shall be considered as one source, meaning that the uncertainty requirements of Annex XII and Section 6.2 of Annex I apply to the total value and not to the individual emission points. The operator shall provide in the monitoring plan an analysis regarding potential sources of fugitive emissions, and provide a suitable documented methodology to calculate or measure the amount of F CO_2, based on industry best practice guidelines. For the determination of F CO_2 data collected pursuant to Article 13 and Annex II 1.1 (e) – (h) of Directive 2009/31/EC for the injection facility can be used, where they comply with the requirements of these Guidelines.

2.3. VENTED AND FUGITIVE EMISSIONS FROM ENHANCED HYDROCARBON RECOVERY OPERATIONS

The combination of enhanced hydrocarbon recovery (EHR) with geological storage of CO_2 is likely to provide an additional source stream of emissions, namely the breakthrough of CO_2 with the produced hydrocarbons. Additional emission sources from EHR operations include:

— the oil-gas separation units and gas recycling plant, where fugitive emissions of CO_2 could occur,

— the flare stack, where emissions might occur due to the application of continuous positive purge systems and during depressurisation of the hydrocarbon production installation,

— the CO_2 purge system, to avoid that high concentrations of CO_2 extinguish the flare.

Any fugitive emissions occurring will usually be rerouted in a gas containment system, to the flare or CO_2 purge system. Any such fugitive emissions or CO_2 vented e.g. from the CO_2 purge system shall be determined in accordance to Section 2.2 of this Annex.

Emissions from the flare stack shall be determined in accordance with Annex II, taking into account potential inherent CO_2 in the flare gas.

3. LEAKAGE FROM THE STORAGE COMPLEX

Monitoring shall start in the case that any leakage results in emissions or release to the water column. Emissions resulting from a release of CO_2 into the water column shall be deemed to be equal to the amount released to the water column.

Monitoring of emissions or of release into the water column from a leakage shall continue until corrective measures pursuant to Article 16 of Directive 2009/31/EC have been taken and emissions or release into the water column can no longer be detected.

Emissions and release to the water column shall be quantified as follows:

$$CO_2\ emitted\ [tCO_2] = \sum_{T_{Start}}^{T_{End}} L\ CO_2\ [tCO_2/d]$$

With

$L\ CO_2$ = mass of CO_2 emitted or released per calendar day due to the leakage. For each calendar day for which leakage is monitored it shall be calculated as the average of the mass leaked per hour [tCO2/h] multiplied by 24. The mass leaked per hour shall be determined according to the provisions in the approved monitoring plan for the storage site and the leakage. For each calendar day prior to commencement of monitoring, the mass leaked per day shall be taken to equal the mass leaked per day for the first day of monitoring.

T_{start} = the latest of:

(a) the last date when no emissions or release to the water column from the source under consideration were reported;

(b) the date the CO_2 injection started;

(c) another date such that there is evidence demonstrating to the satisfaction of the competent authority that the emission or release to the water column cannot have started before that date.

T_{end} = the date by which corrective measures pursuant to Article 16 of Directive 2009/31/EC have been taken and emissions or release to the water column can no longer be detected.

Other methods for quantification of emissions or release into the water column from leakages can be applied if approved by the competent authority on the basis of providing a higher accuracy than the above approach.

The amount of emissions leaked from the storage complex shall be quantified for each of the leakage events with a maximum overall uncertainty over the reporting period of ± 7,5 %. In case the overall uncertainty of the applied quantification approach exceeds ± 7,5 %, an adjustment shall be applied, as follows:

$$CO_{2,\ Reported}\ [tCO_2] = CO_{2,\ Quantified}\ [tCO_2] \times (1 + (Uncertainty_{System}\ [\%]/100) - 0{,}075)$$

With

$CO_{2,\ Reported}$: Amount of CO_2 to be included into the annual emission report with regards to the leakage event in question;

$CO_{2,\ Quantified}$: Amount of CO_2 determined through the used quantification approach for the leakage event in question;

$Uncertainty_{System}$: The level of uncertainty which is associated to the quantification approach used for the leakage event in question, determined according to section 7 of Annex I to these guidelines.’

COMMISSION DECISION

of 18 June 2010

on protective measures with regard to equine infectious anaemia in Romania

(notified under document C(2010) 3767)

(Text with EEA relevance)

(2010/346/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ([1]), and in particular Article 10(4) thereof,

Whereas:

(1) Equine infectious anaemia ('EIA') is a viral disease affecting only animals of the family *Equidae*. The incubation period is normally one to three weeks, but may be as long as three months. Infected equidae remain infectious for life and can potentially transmit the infection to other equidae. Infection with EIA tends to become inapparent if death does not result from one of the acute clinical attacks during viraemia, and thus the likelihood of transmission is substantially increased. Local transmission occurs by the transfer of blood from an infected equine animal via interrupted feeding of blood-sucking horseflies and *in utero* to the foetus. The main means of the long distance spread of the disease is the movement of infected animals, their semen, ova and embryos, and the use of contaminated needles or infusion of blood products containing the virus.

(2) EIA is a compulsorily notifiable disease in accordance with Annex A to Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae ([2]). In addition, Council Directive 82/894/EEC of 21 December 1982 on the notification of animal diseases within the Community ([3]) provides that outbreaks of EIA are to be notified to the Commission and other Member States through the Animal Disease Notification System ('ADNS').

(3) Article 4(5) of Directive 90/426/EEC provides for restrictions concerning the movement of equidae from holdings where the presence of EIA has been confirmed until, following the slaughter of the infected animals, the remaining animals have undergone two Coggins tests with negative results.

(4) Unlike the animal health situation in other Member States, EIA is endemic in Romania and the immediate slaughter of infectious equidae is not implemented. For that reason, Commission Decision 2007/269/EC of 23 April 2007 on protective measures with regard to equine infectious anaemia in Romania ([4]) was adopted.

(5) However, recent cases of EIA in equidae for breeding and production dispatched from Romania to other Member States, and the recently published outcome of a veterinary inspection mission carried out by the Commission's services in 2009 in that Member State in accordance with Article 10 of Directive 90/426/EEC ([5]), indicate that Decision 2007/269/EC is poorly implemented, enforced and monitored.

(6) In view of trade in live equidae, their semen, ova and embryos, the disease situation in Romania presents an animal health risk for equidae in the Union. It is therefore appropriate to adopt protective measures laying down a specific regime for the movement of and trade in equidae and equine semen, ova and embryos, as well as certain equine blood products from Romania in order to safeguard the health and welfare of equidae in the Union.

(7) The prevalence of the disease is not equally distributed throughout Romania and between various categories of equidae in that Member State. This situation allows applying less stringent conditions for the movement of certain registered horses for competition and races and should allow, in future, defining disease free regions.

(8) In accordance with Article 7(2) of Directive 90/426/EEC, the Member State of destination may, on a general or restricted basis, grant derogation from some of the requirements of Article 4(5) for any animal bearing a special mark indicating that it is scheduled for slaughter, provided that the health certificate mentions such derogation. In the case of granting such derogation equidae for slaughter must be transported directly to the designated slaughterhouse and be slaughtered within five days of arrival at the slaughterhouse.

([1]) OJ L 224, 18.8.1990, p. 29.
([2]) OJ L 224, 18.8.1990, p. 42.
([3]) OJ L 378, 31.12.1982, p. 58.
([4]) OJ L 115, 3.5.2007, p. 18.
([5]) DG(SANCO) 2009-8256 – MR FINAL (http://ec.europa.eu/food/fvo/rep_details_en.cfm?rep_id=2341).

(9) Article 12 of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules [1] lays down the accreditation requirements for laboratories carrying out analysis of samples taken during official controls.

(10) The Annex to Commission Regulation (EC) No 180/2008 of 28 February 2008 concerning the Community reference laboratory for equine diseases other than African horse sickness [2] lays down the functions, tasks and procedures of the reference laboratory in the Union for equine diseases as regards collaboration with laboratories responsible for diagnosing infectious diseases of equidae in the Member States. Those functions include, amongst others, promoting the harmonisation of diagnosis and ensuring proficiency of testing within the Union by organising and operating periodic comparative trials and by periodic transmission of the results of such trials to the Commission, the Member States and national/central laboratories. The work programme agreed between the Commission and that laboratory provides that the first proficiency testing for EIA is to take place in 2010.

(11) In the absence of specific Union standards for testing for EIA, reference should be made to the relevant Chapter of the Manual of Diagnostic Tests and Vaccines for Terrestrial Animals 2009 of the World Organisation for Animal Health (OIE). That Chapter, which is currently Chapter 2.5.6, prescribes the agar gel immunodiffusion (AGID) for the detection of EIA in horses, which is an accurate and reliable test except in certain circumstances specified in the Manual. This Decision should therefore provide for two AGID tests for EIA with negative results to compensate for the limitations of that test.

(12) Commission Regulation (EC) No 504/2008 of 6 June 2008 implementing Council Directives 90/426/EEC and 90/427/EEC as regards methods for the identification of equidae [3] requires equidae to be identified by an identification document. To reinforce the link between the identification document and the animal, adult horses intended for transport from Romania to other Member States should be marked by injection of an electronic transponder.

(13) Article 14 of Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations [4] sets out the checks and other measures related to the journey log to be carried out by the competent authority before long journeys.

(14) The certification requirements for the movement and transport of equidae are laid down in Article 8 of Directive 90/426/EEC. In order to enhance the traceability of registered equidae from areas in Romania affected by EIA to other Member States, the attestation provided for in Annex B to Directive 90/426/EEC should be replaced by an animal health certification complying with Annex C to that Directive.

(15) The integrated computerised veterinary Trade Control and Expert System ('TRACES') introduced in accordance with Commission Decision 2004/292/EC of 30 March 2004 on the introduction of the Traces system [5] may be instrumental for the 'channelling' of equidae from Romania to slaughterhouses in other Member States.

(16) The movement of equidae other than equidae for slaughter from Romania to other Member States should not be considered completed until a test for EIA, carried out on a sample collected during post-arrival isolation at the place of destination, has confirmed the absence of that disease.

(17) As the affected sector is fully aware of the risks posed by the disease situation in Romania, it is appropriate to allow those involved in the movement of equidae from Romania to share responsibility and the cost incurred by the competent authorities in relation to such movements.

(18) Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC [6], as amended by Commission Regulation (EU) No 176/2010 [7], introduced test requirements for EIA also for donor mares from which ova or embryos are collected. However, those amendments are only to apply from 1 September 2010. Therefore, where ova and embryos are collected from mares kept in Romania, it is necessary to complement the animal health requirements laid down in Commission Decision 95/294/EC of 24 July 1995 determining the specimen animal health certificate for trade in ova and embryos of the equine species [8] with a test requirement for EIA.

(19) In addition, the animal health requirements in Union legislation for blood products derived from equidae are currently being reviewed. At present, Chapter V(A) of Annex VIII to Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption [9] sets out the requirements for serum of equidae.

[1] OJ L 165, 30.4.2004, p. 1.
[2] OJ L 56, 29.2.2008, p. 4.
[3] OJ L 149, 7.6.2008, p. 3.
[4] OJ L 3, 5.1.2005, p. 1.
[5] OJ L 94, 31.3.2004, p. 63.
[6] OJ L 268, 14.9.1992, p. 54.
[7] OJ L 52, 3.3.2010, p. 14.
[8] OJ L 182, 2.8.1995, p. 27.
[9] OJ L 273, 10.10.2002, p. 1.

(20) In the interests of clarity of Union legislation, Decision 2007/269/EC should be repealed and replaced by this Decision.

(21) It appears unnecessary to introduce transitional conditions as the measures provided for take due account of the recently adopted Romanian programme for the eradication of EIA in that country.

(22) 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

Protective measures applicable to equidae, semen, ova and embryos of animals of the equine species and blood products derived from equidae

1. Romania shall not dispatch the following commodities to other Member States:

(a) equidae from the regions listed in the Annex;

(b) semen of animals of the equine species;

(c) ova and embryos of animals of the equine species;

(d) blood products derived from equidae.

2. The prohibition laid down in paragraph 1(a) shall not apply to equidae from holdings situated outside Romania that either:

(a) transit through Romania on major routes and highways; or

(b) are transported through Romania directly and without any interruption to their journey to a slaughterhouse for immediate slaughter and are accompanied by an animal health certificate completed in accordance with the model set out in Annex C to Directive 90/426/EEC.

Article 2

Derogations for movements of equidae from the regions listed in the Annex to other Member States

1. By way of derogation from Article 1(1)(a), Romania may authorise the dispatch of consignments of equidae to other Member States, subject to compliance with the following conditions:

(a) the entire consignment of equidae must have been:

(i) isolated under official supervision on a holding approved by the competent authority as being free of equine infectious anaemia (‘EIA’) (‘approved holding’); and

(ii) kept at a minimum distance to any other equidae of a lesser health status of at least 200 m for a period of at least 90 days prior to the date of dispatch;

(b) all equidae comprising the consignment must have undergone an agar gel immunodiffusion test for EIA (‘the AGID test’) carried out with negative results on blood samples taken on two occasions 90 days apart; the second sample of which must have been collected within 10 days prior to the date of dispatch of the consignment from the approved holding; the AGID test must meet the criteria established by the relevant Chapter of the Manual of Diagnostic Tests and Vaccines for Terrestrial Animals 2009 of the World Organisation for Animal Health (OIE) (‘the Manual’);

(c) the transporter must document the arrangements made to ensure that the equidae comprising the consignment are dispatched from the approved holding directly to the place of destination without passing through a market or marshalling centre;

(d) in the case the consignment includes registered equidae or equidae for breeding and production, all other equidae present on the approved holding during the isolation period referred to in point (a)(i) must have undergone an AGID test carried out with negative result on blood samples taken either before they are removed from the holding during the isolation period or within 10 days prior to the date of dispatch of the consignment from the approved holding;

(e) all equidae comprising the consignment must be marked by implanting an electronic transponder and identified by means of the single identification document for equidae or passport provided for in Article 5(1) of Regulation (EC) No 504/2008 which must state:

(i) the number displayed when reading the implanted electronic transponder in point (5) of Part A of Section I of that document;

(ii) the AGID test provided for in points (b) and (d) of this paragraph and their results in Section VII of that document;

(f) the checks concerning the journey log carried out in accordance with Article 14(1)(a) of Regulation (EC) No 1/2005 must be satisfactory and must not require details to be sent to a control post situated in a Member State of transit in accordance with Article 14(1)(d) of that Regulation;

(g) the equidae comprising the consignment must be accompanied by a duly completed animal health certificate in accordance with the model set out in Annex C to Directive 90/426/EEC, which must indicate the place of destination and bear the following additional wording:

'Equidae dispatched in accordance with Commission Decision 2010/346/EU (*)

(*) OJ L 155, 22.6.2010, p. 48.'

2. By way of derogation from point 1(b), the first AGID test, to be carried out on samples taken at least 90 days before dispatch, may not be required under the following conditions:

(a) the Member State of destination has granted such derogation in application of the measures provided for in Article 7(2) of Directive 90/426/EEC, or

(b) the equidae are destined for direct transport to the slaughterhouse and have been assembled on the approved holding from holdings certified free of EIA in accordance with the national EIA control programme in force.

Article 3

Derogation from the movement of equidae from the regions listed in the Annex to other Member States as regards registered horses participating in certain competitions and events

By way of derogation from Article 2(1)(a), (b), (c), (d) and (f), Romania may authorise the dispatch to other Member States of consignments of registered horses for participation in competitions organised under the auspices of the World Equestrian Federation (FEI), or in major international horse race events, subject to compliance with the following conditions:

(a) the horses must have undergone an AGID test, carried out with negative results in accordance with the criteria established by the Manual, on a blood sample taken within 10 days prior to the date of dispatch from the approved holding;

(b) all equidae on the approved holding and within a perimeter of 200 m around the approved holding have undergone an AGID test carried out with negative results on a blood sample taken between 90 and 180 days before the date of intended movement;

(c) the conditions laid down in Article 2(1)(e) and (g).

Article 4

Restrictions in the event of positive results to the AGID test

In the event of a positive result to any of the AGID tests provided for in Article 2(1)(b) and (d) and Article 3(a) of this Decision, the entire approved holding shall be placed under a movement restriction until the measures provided for in the third indent of Article 4(5)(a) of Directive 90/426/EEC have been completed.

Article 5

Derogations for frozen semen, ova and embryos of the equine species and blood products derived from equidae

1. By way of derogation from Article 1(1)(b), Romania may authorise the dispatch to other Member States of frozen semen of equidae complying with the requirements of points 1.6(c), 1.7 and 1.8 of Chapter II (I) of Annex D to Directive 92/65/EEC.

2. By way of derogation from Article 1(1)(c), Romania may authorise the dispatch to other Member States of frozen embryos collected from donor mares which have undergone an AGID test carried out with negative result on blood samples taken 90 days apart; the second sample must have been taken between 30 and 45 days after the date of collection of the embryos.

3. Consignments of frozen semen or embryos referred to in paragraphs 1 and 2 shall be accompanied by an animal health certificate established for the consignment in question in accordance with Article 11(5) of Directive 92/65/EEC, which shall bear the additional wording:

'Semen/embryos (*delete what is not applicable*) of the equine species dispatched in accordance with Commission Decision 2010/346/EU (*).

(*) OJ L 155, 22.6.2010, p. 48.'

4. By way of derogation from Article 1(1)(d), Romania may authorise the dispatch to other Member States of serum of equidae complying with the requirements of Chapter V(A) of Annex VIII to Regulation (EC) No 1774/2002.

Article 6

Additional obligations on Romania

Romania shall ensure that:

(a) the name and geographical location of approved holdings and the name and professional capacity of the official veterinarian responsible for the approved holding and signing the animal health certificate referred to in Article 2(1)(g) and Article 5(3) are communicated to the Commission and the other Member States;

(b) the official laboratory carrying out the AGID tests provided for in Article 2(1)(b) and (d) and Article 3:

(i) complies with the requirements of Article 12 of Regulation (EC) No 882/2004;

(ii) undergoes by 31 December 2010 and each year thereafter, an annual proficiency testing in collaboration with the European Union Reference Laboratory for equine diseases other than African horse sickness;

(c) duplicate blood samples are stored in the official laboratory referred to in point (b) for each AGID test carried out within 10 days of the date of dispatch in accordance with Article 2(1)(b) and (d) and Article 3 for a period of at least 90 days, unless:

(i) the death of that animal has been notified in accordance with Article 19 of Regulation (EC) No 504/2008; or

(ii) a negative result was reported for the AGID test referred to in Article 7(1)(b) before the 90-day period elapsed;

(d) the movement is pre-notified to the place of destination through TRACES at least 36 hours in advance of the time of arrival.

Article 7

Obligations of Member States of the place of destination

1. Member States of the place destination shall ensure that where the movement of equidae referred to in Article 2(1)(b) is pre-notified in accordance with Article 6(d), the equidae are, upon their arrival at the place of destination, either:

(a) slaughtered within not more than 72 hours of the time of arrival at the slaughterhouse notified to the competent authorities through TRACES; 10 % of consignments arriving at the slaughterhouse in accordance with this Decision must be subject to post-arrival AGID testing; or

(b) isolated under official veterinary supervision on the holding of destination indicated in the animal health certificate referred to in Article 2(1)(g) for at least 30 days and at a distance of least 200 m away from any other equidae or under vector protected conditions, and are subjected to a AGID test with negative results carried out on a blood sample taken not earlier than 28 days following the date of commencement of the isolation period.

2. Without prejudice to Article 1(1)(b), Member States must ensure that during a period of 90 days following the date of arrival of equidae referred to in Article 2(1)(b) at the holding of destination referred to in paragraph 1(b) of this Article, equidae may only be dispatched from that holding to another Member State if:

(a) they have undergone an AGID test with negative results carried out on a blood sample taken within 10 days prior to the date of dispatch; and

(b) they are accompanied by a duly completed animal health certificate in accordance with the model set out in Annex C to Directive 90/426/EEC.

Article 8

Reporting obligations

Member States affected by trade in equidae and their semen, ova and embryos in accordance with this Decision shall regularly, but at least each 3 months, report to the Commission and the other Member States at the meetings of the Standing Committee on the Food Chain and Animal Health.

Article 9

Costs of administrative procedures

1. Romania shall take the necessary measures, including where necessary legal measures, to ensure that the costs of the additional administrative procedures, including any necessary laboratory testing or follow-up investigation, related to the movement of consignments of equidae, semen, ova and embryos and serum derived from equidae from that Member State in accordance with Articles 2, 3 and 5 are fully borne by the consignor of the equidae or their products.

2. Member States of the place of destination shall take the necessary measures, including where necessary legal measures, to ensure that the costs of the additional administrative procedures, including any necessary laboratory testing or follow-up investigation until the measures provided for in Article 7 are completed, related to the movement of the equidae from Romania in accordance with Articles 2 and 3 are fully borne by the consignee of the equidae.

Article 10

Repeal

Decision 2007/269/EC is repealed.

Article 11

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 18 June 2010.

For the Commission

John DALLI

Member of the Commission

ANNEX

Regions as referred to in Article 1(1)(a):

Member State	Region	Remark
Romania	Whole of territory	

COMMISSION DECISION

of 19 June 2010

amending Decision 2004/388/EC on an Intra-Community transfer of explosives document

(notified under document C(2010) 3666)

(Text with EEA relevance)

(2010/347/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 93/15/EEC of 5 April 1993 on the harmonization of the provisions relating to the placing on the market and supervision of explosives for civil uses [1], and in particular Article 13(5) thereof,

Whereas:

(1) The system for transferring explosives within the territory of the Union established by Directive 93/15/EEC provides for the approval of the different competent authorities responsible for the zones of origin, transit and destination of the explosives.

(2) A model document to be used for the transfer of explosives, comprising the information required for the purposes of Article 9(5) and (6) of Directive 93/15/EEC, has been established by Commission Decision 2004/388/EC of 15 April 2004 on an Intra-Community transfer of explosives document [2] in order to facilitate transfers of explosives between Member States while preserving the necessary security requirements for the transfer of these products.

(3) Decision 2004/388/EC should be adapted in order to take into account that an electronic system for transfer approvals has been developed and is available to all Member States.

(4) In particular, it should be possible for the competent authority of the Member State of origin to print out all necessary documents and issue the intra-Community transfer of explosives document to the supplier after it has verified that all competent authorities of the Member States concerned have given their approval to the transfer, as this will reduce the administrative burden for companies and Member States authorities.

(5) The evaluation study on the implementation of Directive 93/15/EEC, performed on behalf of the European Commission, concluded that the procedure for granting transfer approvals by the Member States needs to be shortened. Use of a common electronic system should be introduced to overcome this situation.

(6) In the 'Small Business Act' for Europe [3] and in the Third Strategic Review of Better Regulation in the European Union [4] the European Commission has committed to the objective of increasing predictability and helping business to better prepare for legislative changes. Specifically a system of common commencement dates to ensure that, where possible, the date of application of legislation affecting business corresponds to certain fixed dates during the year has been identified as a measure to achieve this objective. This should be taken into account when setting the date of application of this Decision.

(7) The measures provided for in this Decision are in accordance with the opinion of the Committee established pursuant to Article 13(1) of Directive 93/15/EEC,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2004/388/EC is amended as follows:

1. The following Article 3(a) is inserted:

'*Article 3a*

Where the Member State of origin, the Member State of the recipient and any transit Member States all use a common electronic system for the approval of the transfer of explosives within the Union, the procedure set out in the second to fifth subparagraphs shall apply.

(1) OJ L 121, 15.5.1993, p. 20.
(2) OJ L 120, 24.4.2004, p. 43.
(3) COM(2008) 394 final 25.6.2008.
(4) COM(2009) 15 final 28.1.2009.

The consignee shall submit the intra-Community transfer of explosives document in paper version or in an electronic version with sections 1 to 4 completed only to the competent authority of the recipient Member State for approval.

After giving its own approval, the recipient Member State shall send the approval to the Member State of origin using the common electronic system.

After giving its own approval, the competent authority of the Member State of origin shall seek the approval from the competent authorities of all transit Member States using the common electronic system.

After having received all approvals, the competent authority of the Member State of origin shall issue the intra-Community transfer of explosives document indicating the agreement of all Member States concerned to the supplier on securely identifiable paper and in the language(s) of the Member State of origin, the Member State(s) of transit (if applicable), the recipient Member State and in English.'

2. In the Annex, in point 2 of the Explanatory Notes, the following sentence is added at the end of the paragraph: 'This point does not apply in case the common electronic system described in Article 3a is used.'

Article 2

This Decision shall apply from 29 October 2010.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 19 June 2010.

For the Commission

Antonio TAJANI

Vice-President

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COUNCIL DECISION

of 17 November 2009

concerning the conclusion of the Agreement between the Government of the Russian Federation and the European Union on the protection of classified information

(2010/348/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 24 and 38 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

(1) At its meeting on 27 and 28 November 2003, the Council decided to authorise the Presidency, assisted by the Secretary-General/High Representative ('SG/HR'), to open negotiations in accordance with Articles 24 and 38 of the Treaty on European Union with certain third States in order for the European Union to conclude with each of them an Agreement on security procedures for the exchange of classified information.

(2) Following this authorisation to open negotiations the Presidency, assisted by the SG/HR, negotiated an Agreement with the Government of the Russian Federation on the protection of classified information.

(3) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the Government of the Russian Federation and the European Union on the protection of classified information is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the European Union [1].

Article 3

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

Article 4

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

Done at Brussels, 17 November 2009.

For the Council

The President

C. BILDT

[1] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT

between the Government of the Russian Federation and the European Union on the protection of classified information

THE GOVERNMENT OF THE RUSSIAN FEDERATION,

and

THE EUROPEAN UNION, hereafter 'the EU', represented by the Presidency of the Council of the European Union,

hereafter 'the Parties',

CONSIDERING THAT the EU and the Russian Federation agree on the need to develop cooperation between them on matters of common interest, especially in the sphere of security;

RECOGNISING THAT cooperation between the Parties may require access to classified information of the EU or the Russian Federation, as well as exchange of such information between the Parties;

CONSCIOUS THAT access to classified information as well as its exchange require that appropriate protection measures be taken;

HAVE AGREED AS FOLLOWS:

Article 1

This Agreement shall apply to the protection of classified information which is provided, exchanged or produced between the Parties in the course of their cooperation.

Article 2

For the purposes of this Agreement:

1. 'Classified information' shall mean any information and material protected in accordance with the laws and regulations of either Party, provided, exchanged or produced between the Parties in the course of their cooperation, the unauthorised disclosure of which could cause varying degrees of prejudice to the security interests of the Russian Federation or of the EU or one or more of its Member States, and which has been designated by a security classification.

2. 'Carriers of classified information' shall mean material, including physical fields containing classified information in the form of symbols, images, signals, technical solutions and processes.

3. 'Security classification' shall mean a designation indicating:

   — the degree of prejudice to the interests of the Russian Federation or of the EU or one or more of its Member States which may be caused in the event of unauthorised disclosure of classified information, and

   — the degree of protection therefore required in accordance with the laws or regulations of the Russian Federation or the EU.

4. 'Classification marking' shall mean the designation affixed on carriers of classified information and/or any accompanying documentation, indicating the security classification of the information contained therein.

5. 'Security clearance' shall mean an administrative decision taken in accordance with the laws or regulations of the Russian Federation or the EU certifying that an individual may be allowed access to classified information up to a specified level.

Article 3

1. For the purposes of this Agreement, 'EU' shall mean the Council of the European Union (hereafter: 'Council'), the Secretary-General/High Representative and the General Secretariat of the Council and the European Commission.

2. For the purposes of this Agreement, for the Russian Federation, the bodies authorised to implement this Agreement shall be federal governmental authorities of the Russian Federation.

Article 4

1. Classified information may be released, in accordance with paragraphs 2 to 5, by one Party, 'the providing Party', to the other Party, 'the receiving Party'.

2. Each Party shall decide on the release of classified information to the other Party on a case-by-case basis according to its own security interests and in accordance with its own laws or regulations. Nothing in this agreement shall be regarded as a basis for mandatory or generic release of classified information or certain categories of information between the Parties.

3. Each Party shall, in accordance with its laws or regulations:

(a) protect classified information provided, exchanged or produced between the Parties in the course of their cooperation;

(b) ensure that neither the security classification nor the classification marking nor markings restricting the distribution of information assigned by the providing Party to classified information provided or exchanged under this Agreement are changed without the prior written consent of that Party, and that classified information provided or exchanged under this Agreement is registered, safeguarded and protected according to the provisions set out in its own laws or regulations for information holding an equivalent security classification and classification marking in accordance with Article 6;

(c) use classified information provided or exchanged under this Agreement only for the purposes established by the providing Party;

(d) return or destroy carriers of classified information received from the other Party when required to do so in writing by the competent authority of the providing Party;

(e) not disclose classified information provided or exchanged under this Agreement to recipients other than those referred to in Article 3 without the prior written consent of the providing Party.

4. Classified information shall be forwarded via diplomatic channels, by courier service or by any other means agreed between the competent authorities referred to in Article 10. For the purposes of this Agreement:

(a) as regards the EU, all correspondence shall be sent to the Chief Registry Officer of the Council of the European Union. Correspondence shall be forwarded by the Chief Registry Officer of the Council to the Member States and to the European Commission, subject to paragraph 5;

(b) as regards the Russian Federation, all correspondence shall be addressed to the Permanent Mission of the Russian Federation to the European Union and European Atomic Energy Community.

5. The providing Party may, for operational reasons, address correspondence only to specific competent officials, organs or services of the receiving Party specifically designated as recipients, taking into account their competences and according to the need-to-know principle. Such correspondence shall be accessible only to the aforesaid officials, organs or services. As far as the European Union is concerned, this correspondence shall be transmitted through the Chief Registry Officer of the Council, or the Chief Registry Officer of the European Commission when such information is addressed to the European Commission.

Article 5

Each of the Parties shall respectively ensure that the Russian Federation and the European Union each have a security system and security measures in place based on the basic principles and minimum standards of security laid down in their respective laws or regulations, in order to ensure that an equivalent level of protection is applied to classified information subject to this Agreement.

Article 6

1. In order to establish an equivalent level of protection for classified information provided, exchanged or produced between the Russian Federation and the European Union in the course of their cooperation in accordance with their respective laws or regulations, the security classifications shall correspond as follows:

EU	RUSSIAN FEDERATION
CONFIDENTIEL UE	СЕКРЕТНО
SECRET UE	СОВЕРШЕННО СЕКРЕТНО

2. The Russian Federation restriction marking 'ДЛЯ СЛУЖЕБНОГО ПОЛЬЗОВАНИЯ' shall correspond to the EU security classification RESTREINT UE.

3. The cooperating entities of both Parties shall agree on the respective equivalent security classification to be given to any classified information produced in the course of their cooperation and on the declassification or downgrading of such information.

Article 7

1. Access to classified information will be granted only to persons for whom knowledge of the said information is necessary in order to perform their official duties, consistent with the purposes specified when the information is provided.

2. All persons who, in the conduct of their official duties require access, or whose duties or functions may afford access, to classified information of the level CONFIDENTIEL UE/СЕКРЕТНО or higher provided, exchanged or produced between the Parties in the course of their cooperation shall be appropriately security-cleared before they are granted access to such information.

3. Each Party shall ensure that security clearance procedures are conducted in accordance with its respective laws or regulations with a view to determining whether the circumstances and character of an individual are such that he or she may have access to classified information up to a specified level.

Article 8

The competent authorities referred to in Article 10 may exchange the relevant regulations governing the protection of classified information and, by mutual consent, visit each other to conduct reciprocal consultations on the basis of which a conclusion can be made regarding the effectiveness of the measures taken under this Agreement and the technical arrangement referred to in Article 10.

Article 9

The receiving Party shall affix its own corresponding classification marking as set out in Article 6, in addition to that already affixed by the providing Party, on carriers of classified information provided, exchanged or produced in the course of cooperation between the Parties, or as a result of translation, copying or duplication.

Article 10

1. In order to implement this Agreement and to ensure that the required conditions for protecting and safeguarding classified information have been established by the receiving Party, the authorities referred to in paragraphs 2 to 4 shall establish a technical arrangement as follows:

— they shall inform each other in writing on the technical measures (including practical measures for the handling, storage, reproduction, transmission and destruction of classified information) to protect and safeguard classified information provided, exchanged or produced between the Parties in the course of their cooperation, and

— shall confirm in writing that the technical measures ensure a mutually acceptable level of protection for classified information provided, exchanged or produced between the Parties in the course of their cooperation.

2. For the Russian Federation, the Federal Security Service of the Russian Federation shall coordinate the activities to implement this Agreement and be responsible for providing information on and confirming the technical measures for the protection and safeguarding of classified information provided to or exchanged with the Russian Federation under this Agreement.

3. For the Council, the Security Office of the General Secretariat of the Council, under the direction and on behalf of the Secretary-General of the Council, acting in the name of the Council and under its authority, shall coordinate the activities to implement this Agreement and be responsible for providing information on and confirming the technical measures for the protection and safeguarding of classified information provided to or exchanged with the Council or the General Secretariat of the Council under this Agreement.

4. For the European Commission, the European Commission Security Directorate, acting under the authority of the Member of the Commission responsible for security matters, shall coordinate the activities to implement this Agreement and be responsible for providing information on and confirming the technical measures for the protection of classified information provided or exchanged under this Agreement with the European Commission.

Article 11

1. The competent authority of either Party referred to in Article 10 shall immediately inform the competent authority of the other Party of any proven or suspected cases of unauthorised disclosure or loss of classified information provided by that Party, and shall conduct an investigation and shall report the results of this investigation to the other Party.

2. The competent authorities of the Parties referred to in Article 10 shall establish, on a case-by-case basis, a procedure with a view to determining, in accordance with the laws and regulations of either Party, proportionate corrective action or measures to be taken in the light of consequences or damage caused.

3. Each Party shall take all appropriate measures, in accordance with the applicable laws and regulations, in cases where an individual is responsible for compromising classified information. Measures taken in this context may result in legal action, including possible criminal proceedings, against the individual concerned in accordance with the applicable laws and regulations.

Article 12

Each Party shall bear the costs it incurs arising from the measures to protect classified information under this Agreement.

Article 13

This Agreement shall not preclude the Parties from concluding other Agreements relating to the provision or exchange of classified information subject to this Agreement provided that they do not conflict with the provisions of this Agreement.

Article 14

Any differences between the Parties arising out of the interpretation or application of this Agreement shall be dealt with by negotiation between them. During such negotiations, the Parties shall continue to carry out their obligations in accordance with this Agreement.

Article 15

1. This Agreement shall enter into force on the first day of the month following notification by the Parties of the completion of the internal procedures necessary for its entry into force.

2. Either Party may request consultations for consideration of possible amendments to this Agreement.

3. Any amendment to this Agreement shall be made in writing only and by common agreement of the Parties. It shall enter into force under the conditions provided for in paragraph 1.

Article 16

This Agreement may be denounced by either Party by written notice of denunciation given to the other Party. Such denunciation shall take effect six months after receipt of notification by the other Party. Notwithstanding such denunciation, obligations regarding the protection of all classified information provided or exchanged pursuant to the present Agreement in accordance with the provisions set forth herein shall continue to apply.

IN WITNESS WHEREOF the undersigned, respectively duly authorised, have signed this Agreement.

Done at Rostov-on-Don on the first day of June in the year two thousand and ten in two copies each in the Russian and English languages.

For the Government of the Russian Federation

For the European Union

IV *Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty*

2010/348/EC:

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