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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2252/2004**of 13 December 2004****on standards for security features and biometrics in passports and travel documents issued by Member States**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

travel document more secure and establish a more reliable link between the holder and the passport and the travel document as an important contribution to ensuring that it is protected against fraudulent use. The specifications of the International Civil Aviation Organisation (ICAO), and in particular those set out in Document 9303 on machine readable travel documents, should be taken into account.

(4) This Regulation is limited to the harmonisation of the security features including biometric identifiers for the passports and travel documents of the Member States. The designation of the authorities and bodies authorised to have access to the data contained in the storage medium of documents is a matter of national legislation, subject to any relevant provisions of Community law, European Union law or international agreements.

(1) The European Council of Thessaloniki, on 19 and 20 June 2003, confirmed that a coherent approach is needed in the European Union on biometric identifiers or biometric data for documents for third country nationals, European Union citizens' passports and information systems (VIS and SIS II).

(2) Minimum security standards for passports were introduced by a Resolution of the representatives of the Governments of the Member States, meeting within the Council, on 17 October 2000 ⁽³⁾. It is now appropriate to upgrade this Resolution by a Community measure in order to achieve enhanced harmonised security standards for passports and travel documents to protect against falsification. At the same time biometric identifiers should be integrated in the passport or travel document in order to establish a reliable link between the genuine holder and the document.

(3) The harmonisation of security features and the integration of biometric identifiers is an important step towards the use of new elements in the perspective of future developments at European level, which render the

(5) This Regulation should lay down only such specifications that are not secret. These specifications need to be supplemented by specifications which may remain secret in order to prevent the risk of counterfeiting and falsifications. Such additional technical specifications should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾.

(6) The Commission should be assisted by the Committee established by Article 6 of Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas ⁽⁵⁾.

(7) In order to ensure that the information referred to is not made available to more persons than necessary, it is also essential that each Member State should designate not more than one body having responsibility for producing passports and travel documents, with Member States remaining free to change the body, if need be. For security reasons, each Member State should communicate the name of the competent body to the Commission and the other Member States.

⁽¹⁾ OJ C 98, 23.4.2004, p. 39.

⁽²⁾ Opinion of 2.12.2004 (not yet published in the Official Journal).

⁽³⁾ OJ C 310, 28.10.2000, p. 1.

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁵⁾ OJ L 164, 14.7.1995, p. 1. Regulation as last amended by the 2003 Act of Accession.

- (8) With regard to the personal data to be processed in the context of passports and travel documents, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾ applies. It should be ensured that no further information shall be stored in the passport unless provided for in this Regulation, its annex or unless it is mentioned in the relevant travel document.
- (9) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of introducing common security standards and interoperable biometric identifiers to lay down rules for all Member States giving effect to the Convention implementing the Schengen Agreement of 14 June 1985⁽²⁾. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.
- (10) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark will, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law.
- (11) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*⁽³⁾. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (12) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*⁽⁴⁾.

Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

- (13) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*⁽⁵⁾ which fall within the area referred to in Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement⁽⁶⁾.
- (14) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*⁽⁷⁾, which fall in the area referred to in Article 1(B) of Decision 1999/437/EC read in conjunction with Article 4(1) of the Council Decisions of 25 October 2004 on the signing on behalf of the European Union, and on the signing on behalf of the European Community, and on the provisional application of certain provisions of that Agreement⁽⁸⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. Passports and travel documents issued by Member States shall comply with the minimum security standards set out in the Annex.
2. Passports and travel documents shall include a storage medium which shall contain a facial image. Member States shall also include fingerprints in interoperable formats. The data shall be secured and the storage medium shall have sufficient capacity and capability to guarantee the integrity, the authenticity and the confidentiality of the data.
3. This Regulation applies to passports and travel documents issued by Member States. It does not apply to identity cards issued by Member States to their nationals or to temporary passports and travel documents having a validity of 12 months or less.

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

⁽²⁾ OJ L 239, 22.9.2000, p. 19. Convention at last amended by Regulation (EC) No 871/2004 (OJ L 162, 30.4.2004, p. 29).

⁽³⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁴⁾ OJ L 64, 7.3.2002, p. 20.

⁽⁵⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁶⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁷⁾ Council document 13054/04 accessible on: <http://register.consilium.eu.int>

⁽⁸⁾ Council document 13464/04 and 13466/04 accessible on: <http://register.consilium.eu.int>

Article 2

Additional technical specifications for passports and travel documents relating to the following shall be established in accordance with the procedure referred to in Article 5(2):

- (a) additional security features and requirements including enhanced anti-forgery, counterfeiting and falsification standards;
- (b) technical specifications for the storage medium of the biometric features and their security, including prevention of unauthorised access;
- (c) requirements for quality and common standards for the facial image and the fingerprints.

Article 3

1. In accordance with the procedure referred to in Article 5(2) it may be decided that the specifications referred to in Article 2 shall be secret and not be published. In that case, they shall be made available only to the bodies designated by the Member States as responsible for printing and to persons duly authorised by a Member State or the Commission.

2. Each Member State shall designate one body having responsibility for printing passports and travel documents. It shall communicate the name of that body to the Commission and the other Member States. The same body may be designated by two or more Member States. Each Member State shall be entitled to change its designated body. It shall inform the Commission and the other Member States accordingly.

Article 4

1. Without prejudice to data protection rules, persons to whom a passport or travel document is issued shall have the right to verify the personal data contained in the passport or travel document and, where appropriate, to ask for rectification or erasure.

2. No information in machine-readable form shall be included in a passport or travel document unless provided for in this Regulation, or its Annex, or unless it is mentioned in the passport or travel document by the issuing Member State in accordance with its national legislation.

3. For the purpose of this Regulation, the biometric features in passports and travel documents shall only be used for verifying:

- (a) the authenticity of the document;
- (b) the identity of the holder by means of directly available comparable features when the passport or other travel documents are required to be produced by law.

Article 5

1. The Commission shall be assisted by the Committee set up by Article 6(2) of Regulation (EC) No 1683/95.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

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

3. The Committee shall adopt its rules of procedure.

Article 6

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

Member States shall apply this Regulation:

- (a) as regards the facial image: at the latest 18 months
- (b) as regards fingerprints: at the latest 36 months

following the adoption of the measures referred to in Article 2. However, the validity of passports and travel documents already issued shall not be affected.

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

Done at Brussels, 13 December 2004.

For the Council
The President
B. R. BOT

ANNEX

MINIMUM SECURITY STANDARDS OF PASSPORTS AND TRAVEL DOCUMENTS ISSUED BY THE MEMBER STATES**Introduction**

This Annex lays down the minimum level of security that the Member States' passports and travel documents are required to provide. The provisions in this Annex are concerned primarily with the biographical data page. The generic security features also apply to the other parts of passports and travel documents.

The biographical data page may consist of various basic materials. This Annex specifies the minimum level of security for the specific material that is used.

1. Material

The paper used for those sections of the passport or travel document giving personal particulars or other data shall meet the following minimum requirements:

- no optical brighteners,
- duotone watermarks,
- security reagents to guard against attempts at tampering by chemical erasure,
- coloured fibres (partly visible and partly fluorescent under UV light, or invisible and fluorescent in at least two colours),
- UV-fluorescent planchettes are recommended (mandatory for stickers),
- the use of security thread is recommended.

If the biographical data page is in sticker form, the watermark in the paper used for that page may be dispensed with. The watermark may also be dispensed with in the paper used for the inside of the passport or travel document covers. Security reagents are required on the inside covers only if data are entered there.

Stitching thread should be protected against substitution.

If a card for inserting personal data in the passport or travel document is made entirely of a synthetic substrate, it is not usually possible to incorporate the authentication marks used in passport or travel document paper. In the case of stickers and cards, the lack of marks in the materials shall be compensated for by measures in respect of security printing, use of an anti copying device, or an issuing technique according to sections 3, 4 and 5 over and above the following minimum standards.

2. Biographical data page

The passport or travel document shall contain a machine-readable biographical data page, which shall comply with Part 1 (machine-readable passports) of ICAO Document 9303 and the way they are issued shall comply with the specifications for machine-readable passports set out therein.

The portrait of the holder shall also appear on this page and shall not be affixed but integrated into the material of the biographical data page by the issuing techniques referred to in Section 5.

The biographical data shall be entered on the page following the title page in the passport or travel document. In any event, an inside cover page must no longer be used for biographical data.

The layout of the biographical data page shall be such that it is distinguishable from the other pages.

3. *Printing techniques*

The following printing techniques shall be used:

A. Background printing:

- two-tone guilloches or equivalent structures,
- rainbow colouring, where possible fluorescent,
- UV-fluorescent overprinting,
- effective anti-counterfeiting and anti-falsification motifs (especially on the biographical data page) with optional use of microprinting,
- reagent inks must be used on paper passport or travel document pages and stickers,
- if the paper of the passport or travel document is well protected against attempts at tampering, the use of reagent inks is optional.

B. Form printing

With integrated microprinting (unless already included in background printing).

C. Numbering

On all pages inside the passport or travel document a unique document number should be printed (where possible with a special style of figures or typeface and in UV-fluorescent ink), or perforated or, in passport cards, a unique document number should be integrated using the same technique as for the biographical data. It is recommended that in passport cards the unique document number is visible on both sides of the card. If a sticker is used for biographical data the unique document number should be printed using fluorescent ink, and a special style of figures or typeface is obligatory.

If stickers or non-laminated paper inside pages are used for biographical data, intaglio printing with latent image effect, microtext and ink with optically variable properties and a DOVID (diffractive optically variable image device) shall also be employed. Additional optically variable security devices shall also be used on passport cards made entirely of a synthetic substrate, at least through the use of a DOVID or equivalent measures.

4. *Protection against copying*

An optically variable (OVD) or equivalent device, which provides for the same level of identification and security as currently used in the uniform format for visas, shall be used on the biographical data page and shall take the form of diffractive structures which vary when viewed from different angles (DOVID) incorporated into the hot-sealed or an equivalent laminate (as thin as possible) or applied as an OVD overlay, or, on stickers or a non-laminated paper inside page, as metallised or partially de-metallised OVD (with intaglio overprinting) or equivalent devices.

The OVD devices should be integrated into the document as an element of a layered structure, effectively protecting against forgery and falsification. In documents made of paper, they should be integrated over as wide a surface as possible as an element of the hot-sealed or an equivalent laminate (as thin as possible) or applied as a security overlay, as described in section 5. In documents made of a synthetic substrate, they should be integrated in the card layer over as wide a surface as possible.

If a synthetic card is personalised by laser engraving, and an optically variable laser written device is incorporated therein, the diffractive OVD shall be applied at least in the form of a positioned metallised or transparent DOVID, to achieve enhanced protection against reproduction.

If a biographical data page is made of a synthetic substrate with paper core, the diffractive OVD shall be applied at least in the form of a positioned metallised or transparent DOVID, to achieve enhanced protection against reproduction.

5. Issuing technique

To ensure that passport or travel document data are properly secured against attempts at counterfeiting and falsification, biographical data including the holder's portrait, the holder's signature and main issue data shall be integrated into the basic material of the document. Conventional methods of attaching the photograph shall no longer be used.

The following issuing techniques may be used:

- laser printing,
- thermotransfer,
- ink-jet printing,
- photographic,
- laser-engraving that effectively penetrates into the card layers bearing the security characteristics.

To ensure that biographical and issue data are adequately protected against attempts at tampering, hot-seal or equivalent lamination (as thin as possible) with an anti-copying device is compulsory where laser printing, thermo-transfer or photographic techniques are used.

Travel documents shall be issued in machine-readable form. The layout of the biographical data page shall follow the specifications given in part 1 of ICAO Document 9303, and the issuing procedures shall meet the specifications it sets for machine-readable documents.

COMMISSION REGULATION (EC) No 2253/2004**of 23 December 2004****amending Regulation (EEC) No 2237/77 on the form of farm return to be used for the purpose of determining incomes of agricultural holdings**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation No 79/65/EEC of the Council of 15 June 1965 setting up a network for the collection of accountancy data on the incomes and business operation of agricultural holdings in the European Economic Community ⁽¹⁾, and in particular Article 7(3) thereof,

Whereas:

- (1) Commission Regulation (EEC) No 2237/77 ⁽²⁾ lays down the contents of the farm return to be used.
- (2) The data collected for the purposes of the farm return need to take into account the evolution of the common agricultural policy. Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 ⁽³⁾, changes profoundly the way in which subsidies are paid to the farmers in the Community. These changes have to be taken into account in the farm return, in order to be able to monitor correctly the development of agricultural incomes and provide sufficient basis for business analyses of the holdings.

- (3) The farm return has to be adapted due to the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.
- (4) Regulation (EEC) No 2237/77 should therefore be amended accordingly.
- (5) Taking into account that some of the changes will apply from the year 2004 onwards, it is appropriate to make the amendments of the farm return applicable with effect from the 2004 accounting year.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Community Committee for the Farm Accountancy Data Network,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EEC) No 2237/77 are amended in accordance with, respectively, Annexes I and II to this Regulation.

Article 2

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

It shall apply with effect from the 2004 accounting year, beginning during the period between 1 January and 1 July 2004.

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

Done at Brussels, 23 December 2004.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ 109, 23.6.1965, p. 1859/65. Regulation as last amended by Commission Regulation (EC) No 660/2004 (OJ L 104, 8.4.2004, p. 97).

⁽²⁾ OJ L 263, 17.10.1977, p. 1. Regulation as last amended by Regulation (EC) No 1837/2001 (OJ L 255, 24.9.2001 p. 1).

⁽³⁾ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 864/2004 (OJ L 161, 30.4.2004, p. 48).

ANNEX I

Annex I to Regulation (EEC) No 2237/77 is amended as follows:

1. In table A (GENERAL INFORMATION ON THE HOLDING), the lines concerning heading numbers 1 and 2 are replaced by the following:

Heading number and description	Serial number
1. Number of holding	
— Division	1
— Subdivision	2
— Serial number of holding	3
"Unused"	4-5
2. Information on computer records and accounting office	
— Number of 10-data groups	6
"Unused"	7-16
— Number of the accounting office (optional)	17'

2. Table M is replaced by the following:

'M. DIRECT PAYMENTS BASED ON AREA OR ANIMAL PRODUCTION — pursuant to Council Regulations (EC) No 1251/1999 (*), (EC) No 1254/1999 (**) AND (EC) No 1782/2003 (***) (headings 601 to 680 and 700 to 772)

Product or product combination (heading)			Number of basic units for payments	Total aid	Reference amount				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
xxx	Unused	Unused				Unused			

(*) OJ L 160, 26.6.1999, p. 1.

(**) OJ L 160, 26.6.1999, p. 21.

(***) OJ L 270, 21.10.2003, p. 1.'

ANNEX II

Annex II to Regulation (EEC) No 2237/77 is amended as follows:

1. point 107. is replaced by the following:

‘107. VAT system

The VAT system (serial number 400) to which the holding is subject should be shown for each holding by the code number in the following list:

	Serial number 400 Code
BELGIUM	
Régime normal obligatoire	1
Régime normal sur option	2
Régime agricole	3
CZECH REPUBLIC	
Registered	1
DENMARK	
Moms (= normal)	1
GERMANY	
Pauschalierender Betrieb	1
Optierender Betrieb	2
Getränke erzeugender Betrieb	3
Betrieb mit Kleinumsatz	4
ESTONIA	
Normal	1
Special	2
GREECE	
Normal system	1
Agricultural system	2
SPAIN	
Normal system	1
Simplified system	2
Agricultural system	3
FRANCE	
TVA sur option avec autorisation pour animaux vivants	2
Remboursement forfaitaire	3
IRELAND	
Agricultural	1
Registered (= normal)	2
ITALY	
Regime esonerato	1
Regime speciale agricolo	2
Regime normal	3

	Serial number 400 Code
CYPRUS	
Normal	1
Agricultural	2
VAT not applicable	3
LATVIA	
Normal	1
Agricultural	2
LITHUANIA	
Normal	1
VAT not applicable	2
LUXEMBOURG	
Régime normal obligatoire	1
Régime normal sur option	2
Régime forfaitaire de l'agriculture	3
HUNGARY	
Normal	1
Agricultural	2
MALTA	
Normal	1
NETHERLANDS	
Algemene regeling verplicht	1
Algemene regeling op aanvraag	2
Landbouwregeling	3
AUSTRIA	
Pauschalierender Betrieb	1
Optierender Betrieb	2
POLAND	
Normal	1
Agricultural	2
PORTUGAL	
Agricultural system	1
Normal system	2
SLOVENIA	
Normal	1
Agricultural	2
SLOVAKIA	
Registered	1
Exempt	2
FINLAND	
Normal system	1
SWEDEN	
Normal system	1
UNITED KINGDOM	
Exempt	1
Registered	2

Subdivision of the VAT system (Spain, France, Italy, Hungary and Poland only)

	Serial number 401
SPAIN	Enter VAT system code (those used for serial number 400) for the minority system where two systems are in force on the holding
FRANCE	
Sans TVA obligatoire sur activités connexés	0
Avec TVA obligatoire sur activités connexés	1
ITALY	
VAT system for farm tourism (agriturismo) as secondary activity	
Regime speciale agriturismo	1
Regime normale agriturismo	2
HUNGARY	Enter VAT system code (those used for serial number 400) for the minority system where two systems are in force on the holding
POLAND	Enter VAT system code (those used for serial number 400) for the minority system where two systems are in force on the holding'

2. point 113. is replaced by the following:

'113. Of which: details of the total in heading 112

1. Categories of livestock (headings 22 to 50) excluding cattle subsidies in codes 700 and 770 below.
2. Products (headings 120 to 313 and subheadings) excluding area payments in code 600 and payments in codes 670 and 680 below.
3. Specific codes indicated in the following list:
 - code 600 refers to the total of area payments, based on Regulations (EC) No 1251/1999 and (EC) No 1782/2003, including area payments for set-aside and energy crops. This total amount and the details are to be registered also in Table M,
 - code 670 refers to aid under the single payment scheme, based on Council Regulation (EC) No 1782/2003. This total amount and the details are to be registered also in Table M,
 - code 680 refers to aid under the single area payment scheme, based on Council Regulation (EC) No 1782/2003. This total amount is to be registered also in Table M,
 - code 700 refers to the total of direct payments in the common organisation of the market in beef and veal, based on Regulations (EC) No 1254/1999 and (EC) No 1782/2003. This total amount and the details are to be registered also in Table M,

- code 770 refers to the dairy premium and additional payments, based on Council Regulation (EC) No 1782/2003. This total amount and the details are to be registered also in Table M,
- code 800 refers to direct aids to agricultural production methods designed to protect the environment, maintain the countryside or improve animal welfare,
- code 810 refers to payments paid to farmers who are subject to restrictions on agricultural use in areas with environmental restrictions,
- code 820 refers to compensatory allowances in less-favoured areas,
- code 830 refers to support to help farmers to adapt to demanding standards based on Community legislation,
- code 835 refers to support for the costs of farm advisory services,
- code 840 refers to support for agricultural production methods designed to improve the quality of agricultural products,
- code 900 refers to support granted for the afforestation of agricultural land,
- code 910 refers to other support to forestry,
- code 951 refers to grants and subsidies to animal production not included in the codes presented above,
- code 952 refers to grants and subsidies to crops not included in the codes presented above,
- Code 953 refers to grants and subsidies to rural development not included in the codes presented above,
- code 955 refers to additional aid based on Council Regulation (EC) No 1782/2003,
- code 998 includes disaster payments, compensation from public authorities for loss of production or means of production. (For private insurance compensation Table F and heading 181 in table K are used),
- code 999 includes grants and subsidies of exceptional character (e.g. agri-monetary compensation) Taking into account their exceptional character, these payments are registered on cash basis,
- codes 1052 and 2052 refer to compensations for the cessation of milk production. Annual payments are to be registered under 1052, lump-sum payments under 2052,
- code 950 is to be used for general subsidies that cannot be allocated to any activity (= not under any of the above codes).;

3. in division K, the title and the first three subparagraphs are replaced by the following:

'K. PRODUCTION (excluding livestock)

Certain product headings are subdivided into subheadings. In such cases information for columns 4 to 10 should be given under both subheadings and the parent heading. In this case the aggregate of the subheadings is entered into the parent heading.

Separate entries should be made for crops grown on set-aside in conformity with the Council Regulations (EC) No 1251/1999 and (EC) No 1782/2003. Separate entries should be applied also if the same crop is cultivated both with irrigation and without irrigation.

Data for standing crops should be entered under the relevant heading with the exception of area, which should not be entered. The same applies for crops from land rented for less than one year on an occasional basis.;

4. point 146. is replaced by the following:

'146. Fallow land: land, not giving any harvest during the whole accounting year. Land set aside to comply with Council Regulations (EC) No 1251/1999 and (EC) No 1782/2003, and not cultivated, is also to be entered. Includes also set-aside with green cover. Set-aside land cropped with allowed non-food crop in conformity with Council Regulations (EC) No 1251/1999 and (EC) No 1782/2003 is to be entered under the relevant crop heading, with "type of crop" code 8 or 9.;

5. in the subdivision **COLUMNS IN TABLE K**, the text concerning column 2 (Type of crop) and column 3 (Missing data) are replaced by the following:

Type of crop (column 2)

The following are the types of crops and their corresponding codes:

Code 0: This code is to be used in the case of livestock products, processed products, stocks and by-products.

A. *Field-scale crops* (including fresh vegetables, melons and strawberries grown in the open in rotation with agricultural crops; excluding crops grown on land set aside according to Regulations (EC) No 1251/1999 or (EC) No 1782/2003).

Code 1: Non-irrigated main crops

Main crops comprise:

- single crops, i.e. crops which are the only ones grown on a given area during the accounting year,
- mixed crops: crops sown, cultivated and harvested together and producing a mixture as the final product,
- of the crops grown successively in the course of the accounting year on a given area, the crop which remains longest in the ground.

Code 2: Non-irrigated combined crops

Crops growing for some time together on the same land and each normally producing a distinct harvest in the course of the accounting year. The total area is divided between these crops in proportion to the area actually occupied by each.

Code 3: Non-irrigated follow-up crop (catch crop)

Crops grown in succession during the accounting year on a given area and not regarded as main crops.

Code 6: Irrigated main or combined crops

Code 7: Irrigated follow-up crops

A crop is regarded as being irrigated when water is normally supplied artificially.

These two types of crops are to be indicated if the information is available in the accounts.

B. *Market gardening and floricultural crops grown in the open*

Code 4: *Fresh vegetables, melons and strawberries grown in market gardens* in the open (see heading 137) and open-grown flowers and ornamental plants (see heading 140).

C. *Crops under shelter*

Code 5: *Fresh vegetables, melons and strawberries under shelter* (see heading 138), flowers and ornamental plants (annual or perennial) under shelter (see heading 141), permanent crops under shelter (see heading 156). If necessary, also headings 143, 285 and 157.

D. *Crops on land set aside in conformity with Council Regulations (EC) No 1251/1999 or (EC) No 1782/2003*

Code 8: Non-irrigated crops on land set aside

Code 9: Irrigated crops on land set aside

E. *Energy crops*

Code 10: Energy crops (Articles 88 to 92 of Council Regulation (EC) No 1782/2003).

Missing data (column 3)

Code 0: Code 0 is entered when no data are missing.

Code 1: Code 1 should be entered, when the area covered by a crop is not given (see column 4), for example in the case of sales of marketable crop products purchased as standing crops or coming from land rented for a period of less than one year on an occasional basis, and in the case of production obtained by processing purchased animal or crop products.

Code 2: Code 2 should be entered for the crops under contract, when because of the conditions of sale actual production cannot be stated (column 5).

Code 3: Code 3 should be entered, when because of the conditions of sale actual production cannot be stated and the crops are not under contract.

Code 4: Code 4 should be entered, when area and actual production are missing.

Code 8: Code 8 should be entered in the case of product code 146, where area is set-aside as a measure to comply with Council Regulation (EC) No 1251/99 or (EC) No 1782/03, and is not cultivated (possible green cover included).;

6. section L is replaced by the following:

L. QUOTAS AND OTHER RIGHTS

The quantity of owned quota should always be entered in column 9.

Enter also quotas originally acquired freely at current market values if they can be traded separately from land. The quotas which cannot be traded separately from associated land are only recorded in table G.

Some data entries are simultaneously included, individually or as components of aggregates, at other headings in tables F, G and/or K.

The following headings should be used:

401 Milk

402 Suckler cow premiums

404 Ewe and goat premiums

421 Sugar beet

422 Tobacco

423 Starch potatoes

441 Ammonia

442 Organic manure

470 Entitlements for payments under the single payment scheme (optional)

499 Other.

COLUMNS IN TABLE L**Quotas or other rights** (column 1)

Heading of the quota or right

Type of data (column 2)

Code 1: Asset related entries: purchases and sales

Code 2: Income related entries: leasing or renting of quotas

(column 3) **Unused**

Payments (column 4)

For code 1 in column 2:

Amount paid for purchase of quotas or other rights.

For code 2 in column 2:

Amount paid for leasing or rent of quotas or other rights. Also included in rent paid under heading 85 (Rent paid) in table F.

Receipts (column 5)

For code 1 in column 2:

Amount received for sale of quotas or other rights.

For code 2 in column 2:

Amount received for renting or leasing quotas or other rights. Also included under heading 181 (Other products and receipts) in table K.

Opening valuation (column 6)

For code 1 in column 2:

The value at opening valuation of the quantities at the holder's own disposal, whether originally acquired freely or purchased, should be recorded at current market values, if the quotas can be traded separately from associated land.

For code 2 in column 2:

Not applicable.

Depreciation (column 7)

Depreciation of quotas and other rights may be entered in this column. However any depreciation of quotas and other rights must not be applied in table G (position 340).

Closing valuation (column 8)

For code 1 in column 2:

The value at closing valuation of the quantities at the holder's own disposal, whether originally acquired freely or purchased, should be recorded at current market values if the quotas can be traded separately from associated land.

For code 2 in column 2:

Not applicable.

Quantity (column 9)

The units to be used are:

— headings 401, 421 to 442: quintals,

— headings 402 and 404: number of basics units of premia,

— heading 470: number of entitlements,

— heading 499 no entry.

Taxes, additional levy (column 10)

Enter only once, with column 2 = 2.

Heading 401: additional levy on milk due on the production for the accounting year, otherwise the amount paid. Enter "0" if there is quota but no payment.;

7. section M is replaced by the following:

'M. DIRECT PAYMENTS BASED ON AREA OR ANIMAL PRODUCTION — under Regulations (EC) No 1251/1999, (EC) No 1254/1999 and (EC) No 1782/2003 (headings 600 to 680 and 700 to 772) (*)

600. Area payments under Council Regulations (EC) No 1251/1999 and (EC) No 1782/2003.

The total of area payments is also to be entered in Table J, with code 600. It also includes area payments for set aside and aid for energy crops.

Details of heading 600

Headings 621 to 638 are to be entered for irrigated crops only when these are specially treated in the national regionalisation plan. In such a case, the areas and payments are to be excluded from headings 601 to 618. If irrigated areas are not separately treated in the national regionalisation plan, they are included under headings 601 to 618.

601. Area payments for non-irrigated land

Sum of headings 602 to 618

The various subheadings should be completed, at least, when the Member State has provided in its regionalisation plan for a different compensation scheme (as regards reference yields, amount of unit aid, total eligible area) in respect of different eligible crops.

602. Area payments for cereals

603. Area payments for oilseed crops

604. Area payments for protein crops

605. Area payments for silage cereals

606. Area payments for grain maize

607. Area payments for silage maize

608. Supplement to area payments for durum wheat in traditional production areas or special aid for durum wheat as described in Article 5(4) of Council Regulation (EC) No 1251/99 and in Council Regulation No (EC) 1782/2003.

609. Area payments for other arable crops

611. Area payments for grass silage

612. Area payments for flax grown for fibre

613. Area payments for hemp grown for fibre

614. Protein crop premium (if not included in 604)

618. Specific quality premium for durum wheat (if not included in 608)

621. Area payments for irrigated land

Sum of headings 622 to 638

The various subheadings should be completed, at least, when the Member State has provided in its regionalisation plan for a different compensation scheme (as regards reference yields, amount of unit aid, total eligible area) in respect of different eligible crops.

622. Area payments for irrigated cereals

623. Area payments for irrigated oilseed crops

624. Area payments for irrigated protein crops

625. Area payments for irrigated silage cereals

626. Area payments for irrigated grain maize

627. Area payments for irrigated silage maize

628. Supplement to area payments for irrigated durum wheat in traditional production areas or special aid as described for in Article 5(4) of Council Regulation (EC) No 1251/1999 and in Council Regulation (EC) No 1782/2003

629. Area payments for other irrigated arable crops

632. Area payments for irrigated flax grown for fibre

633. Area payments for irrigated hemp grown for fibre

634. Protein crop premium for irrigated protein crops (if not included in 624)

638. Specific quality premium for irrigated durum wheat (if not included in 628)

650. Area payments for set aside

655. Aid for energy crops

670. Single payment scheme pursuant to Council Regulation (EC) No 1782/2003

The total of aid in accordance with the single payment scheme is also to be entered in Table J, with code 670.

Details of heading 670 (optional)

671. Aid in accordance with the single payment scheme (except those under headings 672 to 674); includes also aid to grassland/permanent pasture, if not differentiated

672. Aid in accordance with the single payment scheme for grassland/permanent pasture

673. Payments in accordance with the single payment scheme for set-aside

674. Aid in accordance with the single payment scheme, based on special entitlements

680. Single area payment scheme pursuant to Council Regulation (EC) No 1782/2003

The total of aid in accordance with the single area payment scheme is also to be entered in Table J, with code 680.

700. Direct payments to beef production pursuant to Council Regulation (EC) No 1254/1999 and (EC) No 1782/2003

The total of direct payments to beef is also to be entered in Table J, with code 700.

The following table indicates headings for all types of direct payments to beef, according to Regulations (EC) No 1254/1999 and (EC) No 1782/2003, but delivery of some details concerning 'number of basic units' and 'total aid' is optional. Concerning additional payments created in Regulation (EC) No 1254/1999, it is important to avoid double recording. Therefore:

- top-up of suckler cow premium should be recorded under heading 764, only if it is not already entered under heading 731,
- top-up of slaughter premium should be recorded under heading 762, only if it is not already entered under heading 742,
- additional payments to male bovine animals should be recorded under heading 763, only if they are not already entered under headings 710 to 715.

	Headings	Number of basic units for payments	Total aid
700	Total beef payments (sum of headings 710, 720, 730, 740, 750 and 760)	—	Compulsory
710	Special premium (sum of headings 711 and 715)	Compulsory	Compulsory
711	Special premium for bulls	Compulsory	Compulsory
715	Special premium for steers	Compulsory	Compulsory
720	Deseasonalisation premium	Compulsory	Compulsory
730	Suckler cow premium (sum of headings 731 and 735)	—	Compulsory
731	Suckler cow premium for suckler cows and heifers, total (or sum of headings 732 and 733)	Compulsory	Compulsory
732	Suckler cow premium for suckler cows	Optional	Optional
733	Suckler cow premium for heifers	Optional	Optional
735	Suckler cow premium : additional national premium	Compulsory	Compulsory
740	Slaughter premium (sum of headings 741 and 742)	—	Compulsory
741	Slaughter premium: 1 to 7 months	Optional	Compulsory
742	Slaughter premium: 8 months and over	Compulsory	Compulsory
750	Extensification payment, total (or sum of headings 751 and 753)	Compulsory	Compulsory
751	Extensification premium for male bovines and suckler cows	Optional	Optional
753	Extensification premium for dairy cows	Optional	Optional
760	Additional payments (national envelope) (sum of headings 761 and 769)	—	Compulsory
761	Headage payments, total (or sum of headings 762, 763, 764, 765 and 766)	—	Compulsory
762	Top-up of slaughter premium for cattle of 8 months and over	Optional	Optional
763	Male bovine animals	Optional	Optional
764	Top-up of suckler cow premium	Optional	Optional
765	Dairy cows	Optional	Optional
766	Heifers	Optional	Optional
769	Area payments	Optional	Compulsory

770. Dairy premium, including additional payments pursuant to Regulation (EC) No 1782/2003

Heading		Number of basic units for payments	Total aid
770.	Dairy premium and additional payments	Compulsory	Compulsory
771.	Dairy premium	Optional	Optional
772.	Additional payments	Optional	Optional

COLUMNS IN TABLE M**Product or product combination** (column 1)(Columns 2 and 3) **Unused****Number of basic units for payments** (column 4).

For headings 600 to 655, 680 and 769, the area in ares should be indicated in respect of which aids are payable to the producer. For headings 710 to 766 the number of payments should be entered. For headings 670 to 674, the number of activated entitlements should be entered. For headings 770 to 772, the amount of individual reference quantity (in quintals) should be entered.

Total aid (column 5)

Total for aid received or for which entitlement is established during the accounting year.

Reference amount (column 6)

For headings 602 to 613, 622 to 633 and 650, the crop reference yield (in kilograms per hectare) used for calculating the premiums to be received should be indicated. Where these data are not available in the holding's accounts, they can be inserted by the liaison agencies, using regional data on the basis of the holding's location.

(Columns 7 to 10) **Unused.**

(*) When applicable, these codes can be used also for CNDPs in Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Poland and Slovakia.

COMMISSION REGULATION (EC) No 2254/2004**of 27 December 2004****amending Council Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs⁽¹⁾, and in particular the second indent of Article 13 thereof,

Whereas:

- (1) Harmonised rules for organic livestock production are still quite recent and with the current development of this sector there is still not a sufficient range of biodiversity of organically reared livestock available on the market. Hence, there is still a need to facilitate the development of the organic livestock production.
- (2) Commission Regulation (EC) No 2277/2003⁽²⁾, which amended Annexes I and II to Regulation (EEC) No 2092/91, extended the transitional period for bringing conventional animals into the organic farming system until 31 December 2004. However, this extension has proved not to be sufficient in particular in the case of poultry production, which comprises different stages where different specialised sectors are involved.
- (3) There is, therefore, still a need for reliance on non-organically reared animals. The provisions on the origin of the animals should be adapted accordingly.
- (4) Although it is already possible to reinforce the provisions on the origin of pullets for egg production, production

standards for these animals have not been harmonised yet. Until such standards are established, it is appropriate to permit bringing non-organically reared pullets for egg production of not more than 18 weeks into an organic livestock unit when organically reared pullets are not available, under certain conditions applying prior to bringing these animals into the organic farming system.

- (5) Annex I to Regulation (EEC) No 2092/91 should therefore be amended accordingly.
- (6) Considering the urgency of the measure due to the fact that certain provisions on the origin of animals expire on 31 December 2004, this Regulation should enter into force on the day after its publication in the *Official Journal of the European Union*.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 14 of Regulation (EEC) No 2092/91,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EEC) No 2092/91 is amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 2005.

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

Done at Brussels, 27 December 2004.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 198, 22.7.1991, p. 1. Regulation as last amended by Commission Regulation (EC) No 1481/2004 (OJ L 272, 20.8.2004, p.11).

⁽²⁾ OJ L 336, 23.12.2003, p. 68.

ANNEX

Annex I(B) to Regulation (EEC) No 2092/91 is amended as follows:

(a) The first and second indents of point 3.4. are replaced by the following:

‘— pullets for the production of eggs and poultry for meat production must be less than three days old.’

(b) The text of point 3.5. is replaced by the following:

‘3.5. This derogation must be authorised beforehand by the inspection authority or body.’

(c) The text of point 3.6. is replaced by the following:

‘3.6. By way of a third derogation, the renewal or reconstitution of the herd or flock shall be authorised by the control authority or body when organically reared animals are not available, and in the following cases:

(a) high mortality of animals caused by health or catastrophic circumstances;

(b) pullets for egg production and poultry for meat production less than three days old.

(c) piglets for breeding purposes, which must be reared according to the rules of this regulation as soon as they are weaned and must weigh less than 35 kg.

Case (c) is authorised for a transitional period expiring on 31 July 2006.’

(d) The text of point 3.7. is replaced by the following:

‘3.7. Notwithstanding the provisions laid down in points 3.4. and 3.6., non-organically reared pullets for egg production of not more than 18 weeks may be brought into an organic livestock unit when organically reared pullets are not available, subject to following conditions:

— prior authorisation of the competent authority, and

— from 31 December 2005, the provisions laid down in paragraphs 4 (Feed) and 5 (Disease prevention and veterinary treatment) of this Annex I shall apply to non-organically reared pullets intended to be brought into organic livestock units.’

COMMISSION REGULATION (EC) No 2255/2004**of 27 December 2004****on proof of completion of customs formalities for the import of sugar into third countries as provided for in Article 16 of Regulation (EC) No 800/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector⁽¹⁾, and in particular the second sentence of the second indent of the first subparagraph of Article 27(11) thereof,

Whereas:

- (1) Article 27(5) of Regulation (EC) No 1260/2001 provides that export refunds in the sugar sector may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.
- (2) Article 1 of Commission Regulation (EC) No 1327/2004 of 19 July 2004 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2004/05 marketing year⁽²⁾ provides for such differentiation by excluding certain destinations. Moreover, the bi-monthly or monthly setting, as the case may be, of export refunds for white sugar, raw sugar without further processing, syrups and other sugar sector products as provided for in Articles 28 and 30 of Regulation (EC) No 1260/2001 excludes certain destinations.
- (3) The first subparagraph of Article 27(11) of Regulation (EC) No 1260/2001 provides that the refund is to be paid upon proof that the products have been exported from the Community and, in the case of a differentiated refund, the products have reached the destination indicated on the licence or another destination for which a refund has been fixed.

(4) Article 16 of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products⁽³⁾ lists the various documents that may constitute proof of the completion of customs formalities in a third country where the refund rate is differentiated according to destination. Under that Article the Commission may decide, in certain specific cases to be determined, that the proof referred to in that Article may be deemed to be furnished by a specific document or in any other way.

(5) In the sugar sector, export operations are normally governed by contracts defined as fob on the London futures market. As a result, purchasers accept at that fob stage all the contractual obligations, including proof of completion of customs formalities, without being the direct beneficiaries of the refund to which that proof confers the right. Obtaining that proof for all quantities exported may entail considerable administrative difficulties in certain countries, which may substantially delay or prevent payment of the refund for all the quantities actually exported.

(6) In order to limit the impact on the equilibrium of the sugar market, Commission Regulation (EC) No 40/2004 of 9 January 2004 on proof of completion of customs formalities for the import of sugar into third countries, as provided for in Article 16 of Regulation (EC) No 800/1999⁽⁴⁾, defined the alternative proofs offering guarantees enabling the product to be deemed to have been imported into a third country.

(7) Since the administrative difficulties and their impact on the market still persist at the approach of the deadline of 31 December 2004, when Regulation (EC) No 40/2004 ceases to apply, the alternative proofs of destination should be defined again for exports effected as from 1 January 2005.

(8) This being a derogation, its period of application should be restricted.

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

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 246, 20.7.2004, p. 23. Regulation as amended by Regulation (EC) No 1685/2004 (OJ L 303, 30.9.2004, p. 21).

⁽³⁾ OJ L 102, 17.4.1999, p. 11. Regulation as last amended by Regulation (EC) No 671/2004 (OJ L 105, 14.4.2004, p. 5).

⁽⁴⁾ OJ L 6, 10.1.2004, p. 17. Regulation as amended by Regulation (EC) No 778/2004 (OJ L 123, 27.4.2004, p. 62).

HAS ADOPTED THIS REGULATION:

Article 1

1. In the case of exports effected in accordance with Article 27 of Regulation (EC) No 1260/2001 for which the exporter is unable to provide the proof referred to in Article 16(1) and (2) of Regulation (EC) No 800/1999, products shall, by derogation from that Article, be deemed to have been imported into a third country on presentation of the following three documents:

- (a) a copy of the transport document;
- (b) a declaration that the product has been unloaded, drawn up by an official authority of the third country in question, by the official authorities of a Member State established in the country of destination, or by an international supervisory agency approved under Articles 16a to 16f of Regulation (EC) No 800/1999, certifying that the product has left the unloading site or at least that, to the knowledge of the

authority or agency issuing the declaration, the product has not subsequently been reloaded with a view to being re-exported;

- (c) a bank document issued by approved intermediaries established in the Community certifying that payment corresponding to the export in question has been credited to the account of the exporter opened with them, or proof of payment.

2. For the purposes of applying Article 20 of Regulation (EC) No 800/1999, Member States shall take account of paragraph 1 of this Article.

Article 2

This Regulation shall enter into force on 1 January 2005.

It shall apply up to 31 December 2005.

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

Done at Brussels, 27 December 2004.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

COMMISSION REGULATION (EC) No 2256/2004

of 14 October 2004

amending Council Regulation (EC) No 747/2001 as regards Community tariff quotas for certain products originating in Egypt, in Malta and in Cyprus and as regards reference quantities for certain products originating in Malta and in Cyprus

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded⁽¹⁾, and in particular Article 57(2) thereof,

Having regard to Council Regulation (EC) No 747/2001 of 9 April 2001 providing for the management of Community tariff quotas and of reference quantities for products eligible for preferences by virtue of agreements with certain Mediterranean countries and repealing Regulations (EC) No 1981/94 and (EC) No 934/95⁽²⁾, and in particular Article 5(1)(b) thereof,

Whereas:

(1) By its Decision 2004/664/EC⁽³⁾ of 24 September 2004, the Council has given authorisation for the signature and has provided for the provisional application from 1 May 2004 of a Protocol to the Euro-Mediterranean Agreement between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union.

(2) This Protocol provides for a new tariff quota and for changes to the existing tariff quotas laid down in Regulation (EC) No 747/2001.

(3) To implement the new tariff quota and the changes to the existing tariff quotas, it is necessary to amend Regulation (EC) No 747/2001.

(4) For the year 2004 the volumes of the new tariff quota and the increases of the volumes of existing tariff quotas should be calculated as a pro rata of the basic volumes specified in the Protocol, taking into account the part of the period elapsed before 1 May 2004.

⁽¹⁾ OJ L 236, 23.9.2003, p. 33.

⁽²⁾ OJ L 109, 19.4.2001, p. 2. Regulation as last amended by Commission Regulation (EC) No 54/2004 (OJ L 7, 13.1.2004, p. 30).

⁽³⁾ OJ L 303, 30.9.2004, p. 28.

(5) In order to facilitate the management of certain existing tariff quotas provided for in Regulation (EC) No 747/2001, the quantities imported within the framework of those quotas should be taken into account for charging on the tariff quotas opened in accordance with Regulation (EC) No 747/2001, as amended by this Regulation.

(6) After the accession of Malta and Cyprus to the European Union, the tariff quotas and reference quantities for products originating in those Member States as provided for in Regulation (EC) No 747/2001 should lapse. The references to those quotas and reference quantities should therefore be deleted.

(7) Since the Protocol to the EU-Egypt Euro-Mediterranean Agreement applies on a provisional basis from 1 May 2004, this Regulation should apply from the same date and should enter into force as soon as possible.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 747/2001 is amended as follows:

1. Article 1 is replaced by the following:

*'Article 1***Tariff concessions within Community tariff quotas or within reference quantities**

When products originating in Algeria, Morocco, Tunisia, Egypt, Jordan, Syria, Lebanon, Israel, the West Bank and the Gaza Strip and Turkey, listed in Annexes I to IX, are put into free circulation in the Community, they shall be eligible for exemption or reduced rates of customs duties within the limits of the Community tariff quotas or in the framework of the reference quantities, during the periods and in accordance with the provisions set out in this Regulation.'

2. Article 3(2) is deleted.
3. Annex IV is amended as set out in the Annex to this Regulation.
4. Annexes X and XI are deleted.

Article 2

The quantities which, pursuant to Regulation (EC) No 747/2001, have been put into free circulation in the Community since the start of the quota periods that are still open on 1 May 2004 within the tariff quotas with order

numbers 09.1707, 09.1710, 09.1711, 09.1719, 09.1721 and 09.1772, are at the entry into force of this Regulation taken into account for charging on the respective tariff quotas laid down in Annex IV to Regulation (EC) No 747/2001, as amended by this Regulation.

Article 3

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

It shall apply from 1 May 2004.

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

Done at Brussels, 14 October 2004.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

ANNEX

The table in Annex IV is amended as follows:

(a) the following new row is inserted:

09.1779	ex 0701 90 50	New potatoes, fresh or chilled	from 1.5. to 30.6.2004	1 166,66	Exemption
			from 1.4. to 30.6.2005 and for each period thereafter from 1.4. to 30.6.	1 750	

(b) the rows for the tariff quotas with order numbers 09.1710, 09.1719, 09.1707, 09.1711, 09.1721, 09.1725 and 09.1772 are replaced, respectively, by the following:

09.1710	0703 10	Onions and shallots, fresh or chilled	from 1.2. to 15.6.2004 for each period thereafter from 1.1. to 15.6.	15 000 + 313,64 tonnes net weight increase from 1.5. to 15.6.2004 16 150 ⁽ⁱ⁾	Exemption
09.1719	0712	Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared	from 1.1. to 31.12.2004 for each period thereafter from 1.1. to 31.12.	16 000 + 366,67 tonnes net weight increase from 1.5. to 31.12.2004 16 550 ⁽ⁱⁱ⁾	Exemption
09.1707	0805 10	Oranges, fresh or dried	from 1.1. to 30.6.2004 from 1.7.2004 to 30.6.2005 from 1.7.2005 to 30.6.2006 and for each period thereafter from 1.7 to 30.6.	25 000 + 1 336,67 tonnes net weight increase from 1.5. to 30.6.2004 63 020 68 020	Exemption ⁽²⁾
09.1711	0805 10 10 0805 10 30 0805 10 50	of which: Sweet oranges, fresh	from 1.1. to 31.5.2004 from 1.12.2004 to 31.5.2005 and for each period thereafter from 1.12. to 31.5.	of which: 25 000 + 1 336,67 tonnes net weight increase from 1.5. to 31.5.2004 ⁽⁵⁾ 34 000 ⁽⁵⁾	Exemption ⁽⁶⁾

09.1721	0807 19 00	Other melons, fresh	from 1.1. to 31.5.2004 for each period thereafter from 15.10. to 31.5.	666,667 + 23,33 tonnes net weight increase from 1.5. to 31.5.2004 1 175 ⁽⁷⁾	Exemption
09.1725	0810 10 00	Strawberries, fresh	from 1.1. to 31.3.2004 from 1.10.2004 to 31.3.2005 from 1.10.2005 to 31.3.2006 and for each period thereafter from 1.10. to 31.3.	250 1 205 1 705	Exemption
09.1772	2009	Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	from 1.1. to 31.12.2004 for each period thereafter from 1.1. to 31.12.	1 000 + 33,33 tonnes net weight increase from 1.5. to 31.12.2004 1 050 ⁽ⁱⁱⁱ⁾	Exemption ⁽²⁾

- (i) From 1 January 2005, this quota volume shall be annually increased by 3 % of the volume of the previous year. The first increase shall take place on the volume of 16 150 tonnes net weight.
- (ii) From 1 January 2005, this quota volume shall be annually increased by 3 % of the volume of the previous year. The first increase shall take place on the volume of 16 550 tonnes net weight.
- (iii) From 1 January 2005, this quota volume shall be annually increased by 3 % of the volume of the previous year. The first increase shall take place on the volume of 1 050 tonnes net weight.
- (7) From 15 October 2004, this quota volume shall be increased annually by 3 % of the volume of the previous quota period. The first increase shall take place on the volume of 1 175 tonnes net weight.'

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 2 June 2004

on the signing and conclusion of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the accompanying Memorandum of Understanding

(2004/911/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 in conjunction with Article 300(2), first subparagraph (3), first subparagraph and (4) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas:

- (1) On 16 October 2001, the Council authorised the Commission to negotiate with the Swiss Confederation an appropriate agreement for securing the adoption by the Swiss Confederation of measures equivalent to those to be applied within the Community to ensure effective taxation of savings income in the form of interest payments.
- (2) The application of the provisions of Directive 2003/48/EC⁽²⁾ depends on the application by the Swiss Confederation of measures equivalent to those contained in that Directive, in accordance with an Agreement entered into by the Swiss Confederation with the Community.
- (3) The Community has decided to grant the request of the Swiss Confederation for the inclusion in the Agreement of measures equivalent to the regimes provided for in Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States⁽³⁾ and in Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States⁽⁴⁾ in their original versions.

- (4) The Agreement and the Memorandum of Understanding should be signed and approved on behalf of the Community.

- (5) It is necessary to provide for a simple and rapid procedure for possible adaptations of Annexes I and II to the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the accompanying Memorandum of Understanding are hereby approved on behalf of the European Community.

The texts of the Agreement and the accompanying Memorandum of Understanding are attached to this Decision.

Article 2

The Commission is hereby authorised to approve, on behalf of the Community, amendments to the Annexes to the Agreement which ensure that they correspond to the data relating to competent authorities resulting from the notifications referred to in Article 5(a) of Directive 2003/48/EC and to the data in the Annex thereto.

Article 3

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement, the accompanying Memorandum of Understanding and the Exchange of Letters referred to in Article 22(2) of the Agreement and in the Memorandum of Understanding on behalf of the Community.

⁽¹⁾ Opinion delivered on 30 March 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 157, 26.6.2003, p. 38.

⁽³⁾ OJ L 225, 20.8.1990, p. 6.

⁽⁴⁾ OJ L 157, 26.6.2003, p. 49.

Article 4

The President of the Council shall effect the notification provided for in Article 17(1) of the Agreement on behalf of the Community ⁽¹⁾.

Article 5

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

Done at Luxembourg, 2 June 2004.

For the Council
The President
C. McCREEVY

⁽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 European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments**

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

and

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

or as the 'Contracting Parties',

HAVE AGREED TO CONCLUDE THE FOLLOWING AGREEMENT:

*Article 1***Retention by Swiss paying agents**

1. Interest payments which are made to beneficial owners within the meaning of Article 4 who are residents of a Member State of the European Union, hereinafter referred to as 'Member State', by a paying agent established on the territory of Switzerland, shall, subject to paragraph 2 and Article 2 below, be subject to a retention from the amount of the interest payment. The rate of retention shall be 15 % during the first three years from the date of application of this Agreement, 20 % for the subsequent three years and 35 % thereafter.

2. Interest payments made on debt-claims issued by debtors who are residents of Switzerland or pertaining to permanent establishments of non-residents located in Switzerland shall be excluded from the retention. For the purposes of this Agreement, the term 'permanent establishment' shall have the meaning that it has under the relevant double taxation convention between Switzerland and the State of residence of the debtor. In the absence of such a convention, the term 'permanent establishment' means a fixed place of business through which the business of a debtor is wholly or partly carried on.

3. However, in case Switzerland reduces the rate of its anticipatory tax on Swiss source interest payments to individuals resident in Member States below 35 %, it shall levy a retention on such interest payments. The rate of such retention shall be the difference between the rate of retention provided for in paragraph 1 and the new rate of anticipatory tax. However, it shall not exceed the rate provided for in paragraph 1.

If Switzerland reduces the scope of application of its anticipatory tax law on interest payments to individuals resident in Member States, any interest payments thus excluded from

anticipatory tax shall become subject to retention at the rates provided for in paragraph 1.

4. Paragraph 2 shall not apply to interest paid by Swiss investment funds which at the time of the entry into force of this Agreement or at a later date are exempted from Swiss anticipatory tax on their payments to individuals who are residents of a Member State.

5. Switzerland shall take the necessary measures to ensure that the tasks required for the implementation of this Agreement are carried out by paying agents established within the territory of Switzerland and specifically provide for provisions on procedures and penalties.

*Article 2***Voluntary disclosure**

1. Switzerland shall provide for a procedure which allows the beneficial owner as defined in Article 4 to avoid the retention specified in Article 1 by expressly authorising his or her paying agent in Switzerland to report the interest payments to the competent authority of that State. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent.

2. The minimum amount of information to be reported by the paying agent in case of express authorisation by the beneficial owner shall consist of:

- (a) the identity and residence of the beneficial owner established in accordance with Article 5;
- (b) the name and address of the paying agent;
- (c) the account number of the beneficial owner or, where there is none, identification of the debt-claim giving rise to the interest; and

(d) the amount of the interest payment calculated in accordance with Article 3.

3. The Swiss competent authority shall communicate the information referred to in paragraph 2 to the competent authority of the Member State of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year in Switzerland, for all interest payments made during that year.

4. Where the beneficial owner opts for this voluntary disclosure procedure or otherwise declares his or her interest income obtained from a Swiss paying agent to the tax authorities in his or her Member State of residence, the interest income concerned shall be subject to taxation in that Member State at the same rates as those applied to similar income arising in that State.

Article 3

Basis of assessment for retention

1. The paying agent shall withhold the retention in accordance with Article 1(1) as follows:

(a) in the case of an interest payment within the meaning of Article 7(1)(a): on the gross amount of interest paid or credited;

(b) in the case of an interest payment within the meaning of Article 7(1)(b) or (d): on the amount of interest or revenue referred to in those subparagraphs;

(c) in the case of an interest payment within the meaning of Article 7(1)(c): on the amount of interest referred to in that subparagraph.

2. For the purposes of paragraph 1, the retention shall be deducted on a pro rata basis for the period during which the beneficial owner holds a debt-claim. If the paying agent is unable to determine the period on the basis of the information made available to him or her, the paying agent shall consider the beneficial owner to have been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of acquisition.

3. Taxes and retentions other than the retention provided for in this Agreement on the same payment of interest shall be credited against the amount of the retention calculated in accordance with this Article.

4. Paragraphs 1, 2 and 3 are without prejudice to Article 1(2).

Article 4

Definition of beneficial owner

1. For the purposes of this Agreement 'beneficial owner' shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual provides evidence that the interest payment was not received or secured for his or her own benefit. An individual is not deemed to be the beneficial owner when he or she:

(a) acts as a paying agent within the meaning of Article 6; or

(b) acts on behalf of a legal person, an investment fund or a comparable or equivalent body for common investments in securities; or

(c) acts on behalf of another individual who is the beneficial owner and who discloses to the paying agent his or her identity and State of residence.

2. Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, that agent shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, that agent shall treat the individual in question as the beneficial owner.

Article 5

Identity and residence of beneficial owners

In order to establish the identity and residence of the beneficial owner as defined in Article 4, the paying agent shall keep a record of the name, first name, address and residence details in accordance with the Swiss legal provisions against money laundering. For contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a State other than a Member State or Switzerland, residence shall be established by means of a tax residence certificate issued by the competent authority of the State in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered the State of residence.

*Article 6***Definition of paying agent**

For the purposes of this Agreement, 'paying agent' in Switzerland shall mean banks under Swiss banking law, securities dealers under the Federal Law on Stock Exchanges and Security Trading, natural and legal persons resident or established in Switzerland, partnerships and permanent establishments of foreign companies, which even occasionally, accept, hold, invest or transfer assets of third parties or merely pay interest or secure the payment of interest in the course of their business.

*Article 7***Definition of interest payment**

1. For the purposes of this Agreement 'interest payment' shall mean:

- (a) interest paid, or credited to an account, relating to debt-claims of every kind including interest paid on fiduciary deposits by Swiss paying agents for the benefit of beneficial owners as defined in Article 4, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, but excluding interest from loans between private individuals not acting in the course of their business. Penalty charges for late payment shall not be regarded as interest payments;
- (b) interest accrued or capitalised at the sale, refund or redemption of the debt-claims referred to in (a);
- (c) income deriving from interest payments either directly or through an entity referred to in Article 4(2) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, hereinafter referred to as the 'Directive', distributed by:
 - (i) undertakings for collective investment domiciled in a Member State,
 - (ii) entities domiciled in a Member State, which exercise the option under Article 4(3) of the Directive and which inform the paying agent of this fact,
 - (iii) undertakings for collective investment established outside the territory of the Contracting Parties,
 - (iv) Swiss investment funds which at the time of the entry into force of this Agreement or at a later date are exempted from Swiss anticipatory tax on their

payments to individuals who are residents of a Member State.

- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly via other undertakings for collective investment or entities referred to below more than 40 % of their assets in debt-claims as referred to in (a):
 - (i) undertakings for collective investment domiciled in a Member State,
 - (ii) entities domiciled in a Member State, which exercise the option under Article 4(3) of the Directive and which inform the paying agent of this fact,
 - (iii) undertakings for collective investment established outside the territory of the Contracting Parties,
 - (iv) Swiss investment funds which at the time of the entry into force of this Agreement or at a later date are exempted from Swiss anticipatory tax on their payments to individuals who are residents of a Member State.
2. As regards subparagraph 1(c), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
3. As regards subparagraph 1(d), when a paying agent has no information concerning the percentage of the assets invested in debt-claims or in shares or units as defined in that subparagraph, that percentage shall be considered to be above 40 %. Where that agent cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.
4. Income relating to undertakings or entities which have invested up to 15 % of their assets in debt-claims within the meaning of subparagraph 1(a) shall not be considered an interest payment in accordance with subparagraph 1(c) and (d).
5. The percentage referred to in subparagraph 1(d) and paragraph 3 shall, as from 1 January 2011, be 25 %.
6. The percentages referred to in subparagraph 1(d) and paragraph 4 shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and, failing such rules, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 8

Revenue sharing

1. Switzerland shall keep 25 % of the revenue generated by the retention under this Agreement and transfer 75 % of the revenue to the Member State of residence of the beneficial owner.

2. Such transfers shall take place for each year in one instalment per Member State at the latest within a period of six months following the end of the tax year in Switzerland.

Article 9

Elimination of double taxation

1. If interest received by a beneficial owner has been subject to retention by a paying agent in Switzerland, the Member State of residence for tax purposes of the beneficial owner shall grant him or her a tax credit equal to the amount of the retention. Where this amount exceeds the amount of tax due on the total amount of interest subject to retention in accordance with its national law, the Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.

2. If interest received by a beneficial owner has been subject to taxes and retentions other than as provided for in this Agreement and the Member State of residence for tax purposes grants a tax credit for such taxes and retentions in accordance with its national law or double taxation conventions, such other taxes and retentions shall be credited before the procedure in paragraph 1 is applied. The Member State of residence for tax purposes shall accept certificates issued by Swiss paying agents as proper evidence of the tax or retention on the understanding that the competent authority of the Member State of residence for tax purposes will be able to obtain from the Swiss competent authority verification of the information contained in the certificates issued by Swiss paying agents.

3. The Member State of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 1 and 2 by a refund of the retention referred to in Article 1.

Article 10

Exchange of information

1. The competent authorities of Switzerland and any Member State shall exchange information on conduct constituting tax fraud under the laws of the requested State, or the like for income covered by this Agreement. 'The like' includes only offences with the same level of wrongfulness as is the case for tax fraud under the laws of the requested State. In response to a duly justified request, the requested State shall provide information with respect to matters that the requesting State

is investigating, or may investigate, on an administrative, civil or criminal basis. Without prejudice to the scope of the exchange of information as defined in this paragraph, information shall be exchanged in accordance with the procedures laid down in the double taxation conventions between Switzerland and the Member States and shall be treated as confidential in the manner provided therein.

2. In determining whether information may be provided in response to a request, the requested State shall apply the statute of limitations applicable under the laws of the requesting State instead of the statute of limitations of the requested State.

3. The requested State shall provide information where the requesting State has a reasonable suspicion that the conduct would constitute tax fraud or the like. The requesting State's suspicion of tax fraud or the like may be based on:

- (a) Documents, whether authenticated or not, and including but not limited to business records, books of account, or bank account information;
- (b) Testimonial information from the taxpayer;
- (c) Information obtained from an informant or other third person that has been independently corroborated or otherwise is likely to be credible; or
- (d) Circumstantial evidence.

4. Switzerland shall enter into bilateral negotiations with each of the Member States in order to define individual categories of cases falling under 'the like' in accordance with the procedure of taxation applied by those States.

Article 11

Competent authorities

For the purposes of this Agreement the competent authorities shall mean those authorities listed in Annex I.

Article 12

Consultation

If any disagreement arises between the Swiss competent authority and one or more of the other competent authorities referred to in Article 11 as to the interpretation or application of this Agreement, they shall endeavour to resolve this by mutual agreement. They shall immediately notify the Commission of the European Communities and the competent authorities of the other Member States of the results of their consultations. In relation to issues of interpretation the Commission may take part in consultations at the request of any of the competent authorities.

Article 13

Review

1. The Contracting Parties shall consult each other at least every three years or at the request of either Contracting Party with a view to examining and – if deemed necessary by the Contracting Parties – improving the technical functioning of this Agreement and assessing international developments. The consultations shall be held within one month of the request or as soon as possible in urgent cases.

2. On the basis of such an assessment, the Contracting Parties may consult each other in order to examine whether changes to this Agreement are necessary taking into account international developments.

3. As soon as sufficient experience of the full implementation of Article 1(1) is available, the Contracting Parties shall consult each other in order to examine whether changes to this Agreement are necessary taking into account international developments.

4. For the purposes of the consultations referred to in paragraphs 1, 2 and 3, each Contracting Party shall inform the other Contracting Party of possible developments which could affect the proper functioning of this Agreement. This shall also include any relevant agreement between one of the Contracting Parties and a third State.

Article 14

Relationship to bilateral double taxation conventions

The provisions of the double taxation conventions between Switzerland and the Member States shall not prevent the levying of the retention for which this Agreement provides.

Article 15

Dividends, interest and royalty payments between companies

1. Without prejudice to the application of domestic or agreement-based provisions for the prevention of fraud or abuse in Switzerland and in Member States, dividends paid by subsidiary companies to parent companies shall not be subject to taxation in the source State where:

- the parent company has a direct minimum holding of 25 % of the capital of such a subsidiary for at least two years, and,
- one company is resident for tax purposes in a Member State and the other company is resident for tax purposes in Switzerland, and,
- under any double tax agreements with any third States neither company is resident for tax purposes in that third State, and,

- both companies are subject to corporation tax without being exempted and both adopt the form of a limited company⁽¹⁾.

However, Estonia may, for as long as it charges income tax on distributed profits without taxing undistributed profits, and at the latest until 31 December 2008, continue to apply that tax to profits distributed by Estonian subsidiary companies to their parent companies established in Switzerland.

2. Without prejudice to the application of domestic or agreement-based provisions for the prevention of fraud or abuse in Switzerland and in Member States, interest and royalty payments made between associated companies or their permanent establishments shall not be subject to taxation in the source State, where:

- such companies are affiliated by a direct minimum holding of 25 % for at least two years or are both held by a third company which has directly a minimum holding of 25 % both in the capital of the first company and in the capital of the second company for at least two years, and;
- where a company is resident for tax purposes or a permanent establishment is located in a Member State and the other company is resident for tax purposes or other permanent establishment situated in Switzerland, and;
- under any double tax agreements with any third States none of the companies is resident for tax purposes in that third State and none of the permanent establishments is situated in that third State, and;
- all companies are subject to corporation tax without being exempted in particular on interest and royalty payments and each adopts the form of a limited company⁽¹⁾.

However, where Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States provides for a transitional period as regards a given Member State, that State shall only ensure provision of the above arrangements on interest and royalty payments after the expiry of that period.

⁽¹⁾ With regard to Switzerland, the term 'limited company' covers:

- société anonyme/Aktiengesellschaft/società anonima;
- société à responsabilité limitée/Gesellschaft mit beschränkter Haftung/società a responsabilità limitata;
- société en commandite par actions/Kommanditaktiengesellschaft/società in accomandita per azioni.

3. Existing double taxation agreements between Switzerland and the Member States which provide for a more favourable taxation treatment of dividends, interest and royalty payments at the time of adoption of this Agreement shall remain unaffected.

Article 16

Transitional provisions for negotiable debt securities⁽¹⁾

1. From the date of application of this Agreement for as long as at least one Member State also applies similar provisions and until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities of the issuing State shall not be considered as debt-claims within the meaning of Article 7(1)(a), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002.

However, for as long as at least one Member State also applies similar provisions, the provisions of this Article shall continue to apply beyond 31 December 2010 in respect of such negotiable debt securities:

- which contain gross-up and early redemption clauses, and
- where the paying agent, as defined in Article 6, is established in Switzerland, and
- where that paying agent pays interest directly to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State.

If and when all Member States cease to apply similar provisions, the provisions of this Article shall continue to apply only in respect of those negotiable securities:

- which contain gross-up and early redemption clauses, and
- where the issuer's paying agent is established in Switzerland, and
- where that paying agent pays interest directly to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State.

⁽¹⁾ As in the Directive, these transitional provisions also apply to negotiable debt securities held through investment funds.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international Treaty (listed in Annex II to this Agreement), the entire issue of such a security, consisting of the original issue and any further issue shall be considered a debt-claim within the meaning of Article 7(1)(a).

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the fourth subparagraph, such further issue shall be considered a debt-claim within the meaning of Article 7(1)(a).

2. This Article does not prevent Switzerland and the Member States from continuing to levy a tax on revenues deriving from the negotiable debt securities referred to in paragraph 1 in accordance with their national law.

Article 17

Signing, entry into force and duration of validity

1. This Agreement requires ratification or approval by the Contracting Parties in accordance with their own procedures. The Contracting Parties shall notify each other of the completion of these procedures. The Agreement shall enter into force on the first day of the second month following the last notification.

2. Subject to the fulfilment of the constitutional requirements of Switzerland and the requirements of Community law concerning entering into international agreements, and without prejudice to Article 18, Switzerland and where applicable the Community shall effectively implement and apply this Agreement from 1 January 2005 and notify each other thereof.

3. This Agreement shall remain in force until terminated by a Contracting Party.

4. Either Contracting Party may terminate this Agreement by giving notice to the other. In such a case, the Agreement shall cease to have effect 12 months after the serving of notice.

Article 18

Application and suspension of application

1. The application of this Agreement shall be conditional on the adoption and implementation by the dependent or associated territories of the Member States mentioned in the report of the Council (Economic and Financial Affairs) to the European Council of Santa Maria da Feira of 19 and 20 June 2000, as well as by the United States of America, Andorra, Liechtenstein, Monaco and San Marino, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, with the exception of Article 15 of this Agreement, and providing for the same dates of implementation.

2. The Contracting Parties shall decide, by common accord, at least six months before the date referred to in Article 17(2), whether the condition set out in paragraph 1 will be met having regard to the dates of entry into force of the relevant measures in the third States and dependent or associated territories concerned. If the Contracting Parties do not decide that the condition will be met, they shall, by common accord, adopt a new date for the purposes of Article 17(2).

3. Notwithstanding paragraphs 1 and 2, Article 15 shall apply in respect of Spain with effect from the entry into force of a bilateral agreement between Spain and Switzerland on the exchange of information on request in administrative, civil or criminal cases of tax fraud, as defined in the laws of the requested State, or the like, with respect to items of income not subject to this Agreement but covered by a convention or an agreement between Spain and Switzerland on the elimination of double taxation on income and capital.

4. The application of this Agreement or parts thereof may be suspended by either Contracting Party with immediate effect through notification to the other should the Directive or part of the Directive cease to be applicable either temporarily or permanently in accordance with Community law or in the event that a Member State should suspend the application of its implementing legislation.

5. Either Contracting Party may suspend the application of this Agreement through notification to the other in the event that one of the third States or territories referred to in paragraph 1 should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of this Agreement shall resume as soon as the measures are reinstated.

Article 19

Claims and final settlement

1. Should this Agreement be terminated or its application be suspended either in full or in part, the claims of individuals in accordance with Article 9 shall remain unaffected.

2. Switzerland shall, in such case, establish a final account by the end of the period of applicability of this Agreement and make a final payment to the Member States.

Article 20

Territorial scope

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

Article 21

Annexes

1. The Annexes shall form an integral part of this Agreement.

2. The list of competent authorities in Annex I may be amended simply by notification of the other Contracting Party by Switzerland for the authority referred to in (a) therein and by the Community for the other authorities.

The list of related entities in Annex II may be amended by mutual agreement.

Article 22

Languages

1. This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each of these language versions being equally authentic.

2. The Maltese language version shall be authenticated by the Contracting Parties on the basis of an exchange of letters. It shall also be authentic, in the same way as for the languages referred to in paragraph 1.

EN FE DE LO CUAL, los plenipotenciarios abajo firmantes suscriben el presente Acuerdo.

NA DŮKAZ ČEHOŽ připojili níže podepsaní zplnomocnění zástupci k této smlouvě své podpisy.

TIL BEKRÆFTELSE HERAF har undertegnede befuldmægtigede underskrevet denne aftale.

ZU URKUND DESSEN haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Abkommen gesetzt.

SELLE KINNITUSEKS on täievolilised esindajad käesolevale lepingule alla kirjutanud.

ΣΕ ΠΙΣΤΩΣΗ ΤΩΝ ΑΝΩΤΕΡΩ, οι υπογράφωντες πληρεξούσιοι έδωσαν την υπογραφή τους κάτω από την παρούσα συμφωνία.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

EN FOI DE QUOI, les plénipotentiaires soussignés ont apposé leurs signatures au bas du présent accord.

IN FEDE DI CHE, i plenipotenziari sottoscritti hanno apposto la propria firma in calce al presente accordo.

TO APLIECINOT, attiecīgi pilnvarotas personas ir parakstījušas šo nolīgumu.

TAI PALIUDYDAMI, šį Susitarimą pasirašė toliau nurodyti įgaliotieji atstovai.

FENTIEK HITELÉÜL e megállapodást az alulírott meghatalmazottak alább kézjegyükkel látták el.

B'XIEHDA TA' DAN, il-Plenipotenzjari hawn taht iffirmati ffirmaw dan il-Ftehim.

TEN BLIJKE WAARVAN de ondergetekende gevolmachtigden hun handtekening onder deze overeenkomst hebben geplaatst.

W DOWÓD CZEGO, niżej podpisani pełnomocnicy złożyli swoje podpisy.

EM FÉ DO QUE, os plenipotenciários abaixo assinados apuserem as suas assinaturas no final do presente Acordo.

NA DÔKAZ ČOHO dolupodpisaní splnomocnení zástupcovia podpísali túto dohodu.

V POTRDITEV TEGA so spodaj podpisani pooblaščenici podpisali ta sporazum.

TÄMÄN VAKUUDEKSI allamainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän sopimuksen.

TILL BEVIS HÄRPÅ har undertecknade befullmäktigade undertecknat detta avtal.

Hecho en Luxemburgo, el veintiseis de octubre del dos mil cuatro.

V Lucemburku dne dvacátého šestého října dva tisíce čtyři.

Udfærdiget i Luxembourg den seksogtyvende oktober to tusind og fire.

Geschehen zu Luxemburg am sechszwanzigsten Oktober zweitausendundvier.

Kahe tuhande neljanda aasta oktoobrikuu kahekümme kuuendal päeval Luxembourgis.

Έγινε στο Λουξεμβούργο, στις είκοσι έξι Οκτωβρίου δύο χιλιάδες τέσσερα.

Done at Luxembourg on the twenty-sixth day of October in the year two thousand and four.

Fait à Luxembourg, le vingt-six octobre deux mille quatre.

Fatto a Lussemburgo, addì ventisei ottobre duemilaquattro.

Luksemburgā, divi tūkstoši ceturtdā gada divdesmit sestajā oktobrī.

Priimta du tūkstančiai ketvirtą metų spalio dvidešimt šeštą dieną Liuksemburge.

Kelt Luxembourgban, a kettőezer negyedik év október huszonhatodik napján.

Magħmula fil-Lussemburgu fis-sitta u għoxrin jum ta' Ottubru tas-sena elfejn u erbgha.

Gedaan te Luxemburg, de zesentwintigste oktober tweeduizendvier.

Sporządzono w Luksemburgu w dniu dwudziestym szóstym października roku dwutysięcznego czwartego.

Feito em Luxemburgo, em vinte e seis de Outubro de dois mil e quatro.

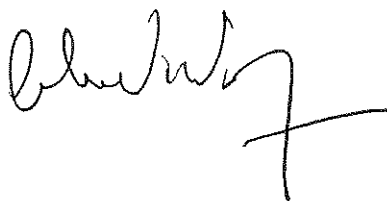
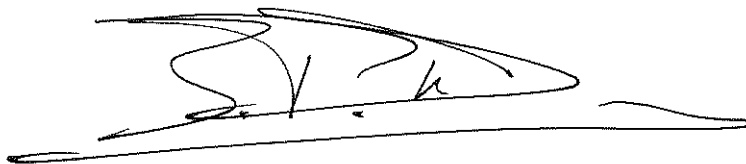
V Luxemburgu dvadsiateho šiesteho oktobra dvetisícčtyri.

V Luxembourg, dne šestindvajsetega oktobra leta dva tisoč štiri.

Tehty Luxemburgissa kahdentenäkymmenentenäkuudentena päivänä lokakuuta vuonna kaksituhattaneljä.

Som skedde i Luxemburg den tjugosjätte oktober tjugohundrafyra.

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



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



ANNEX I

LIST OF COMPETENT AUTHORITIES

The following are 'competent authorities' for the purposes of this Agreement:

- (a) in Switzerland, Le Directeur de l'Administration fédérale des contributions/Der Direktor der Eidgenössischen Steuerverwaltung/il direttore dell'Amministrazione federale delle contribuzioni or his proxy or agent,
- (b) in the Kingdom of Belgium: De Minister van Financiën/Le Ministre des Finances or an authorised representative,
- (c) in the Czech Republic: Ministr financí or an authorised representative,
- (d) in the Kingdom of Denmark: Skatteministeren or an authorised representative,
- (e) in the Federal Republic of Germany: Der Bundesminister der Finanzen or an authorised representative,
- (f) in Estonia: Rahandusminister or an authorised representative,
- (g) in the Hellenic Republic: Ο Υπουργός των Οικονομικών or an authorised representative,
- (h) in the Kingdom of Spain: El Ministro de Hacienda or an authorised representative,
- (i) in the French Republic: Le Ministre chargé du budget or an authorised representative,
- (j) in Ireland: The Revenue Commissioners or their authorised representative,
- (k) in the Italian Republic: Il Capo del Dipartimento per le Politiche Fiscali or an authorised representative,
- (l) in Cyprus: Υπουργός Οικονομικών or an authorised representative,
- (m) in Latvia: Finanšu ministrs or an authorised representative,
- (n) in Lithuania: Finansų ministras or an authorised representative,
- (o) in the Grand Duchy of Luxembourg: Le Ministre des Finances or an authorised representative; however for the purposes of Article 10 the competent authority shall be 'le Procureur Général d'État luxembourgeois',
- (p) in Hungary: A pénzügyminiszter or an authorised representative,
- (q) in Malta: Il-Ministru responsabbli għall-Finanzi or an authorised representative,
- (r) in the Kingdom of the Netherlands: De Minister van Financiën or an authorised representative,
- (s) in the Republic of Austria: Der Bundesminister für Finanzen or an authorised representative,
- (t) in Poland: Minister Finansów or an authorised representative,
- (u) in the Portuguese Republic: O Ministro das Finanças or an authorised representative,
- (v) in Slovenia: Minister za finance or an authorised representative,
- (w) in Slovakia: Minister financí or an authorised representative,
- (x) in the Republic of Finland: Valtiovarainministeriö/Finansministeriet or an authorised representative,
- (y) in the Kingdom of Sweden: Finansdepartementet or an authorised representative,
- (z) in the United Kingdom of Great Britain and Northern Ireland and in the European territories for whose external relations the United Kingdom is responsible: the Commissioners of Inland Revenue or their authorised representative and the competent authority in Gibraltar, which the United Kingdom will designate in accordance with the Agreed Arrangements relating to Gibraltar authorities in the context of EU and EC instruments and related treaties notified to the Member States and institutions of the European Union of 19 April 2000, a copy of which shall be notified to Switzerland by the Secretary General of the Council of the European Union, and which shall apply to this Agreement.

ANNEX II

LIST OF RELATED ENTITIES

For the purposes of Article 16 of this Agreement, the following entities will be considered to be a *'related entity acting as a public authority or whose role is recognised by an international treaty'*:

ENTITIES WITHIN THE EUROPEAN UNION:

Belgium

Vlaams Gewest (Flemish Region)
Région wallonne (Walloon Region)
Région bruxelloise/Brussels Gewest (Brussels Region)
Communauté française (French Community)
Vlaamse Gemeenschap (Flemish Community)
Deutschsprachige Gemeinschaft (German-speaking Community)

Spain

Xunta de Galicia (Regional Executive of Galicia)
Junta de Andalucía (Regional Executive of Andalusia)
Junta de Extremadura (Regional Executive of Extremadura)
Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha)
Junta de Castilla-León (Regional Executive of Castilla-León)
Gobierno Foral de Navarra (Regional Government of Navarra)
Govern de les Illes Balears (Government of the Balearic Islands)
Generalitat de Catalunya (Autonomous Government of Catalonia)
Generalitat de Valencia (Autonomous Government of Valencia)
Diputación General de Aragón (Regional Council of Aragón)
Gobierno de las Islas Canarias (Government of the Canary Islands)
Gobierno de Murcia (Government of Murcia)
Gobierno de Madrid (Government of Madrid)
Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
Diputación Foral de Alava (Regional Council of Alava)
Ayuntamiento de Madrid (City Council of Madrid)
Ayuntamiento de Barcelona (City Council of Barcelona)
Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
Cabildo Insular de Tenerife (Island Council of Tenerife)
Instituto de Crédito Oficial (Public Credit Institution)
Instituto Catalán de Finanzas (Finance Institution of Catalonia)
Instituto Valenciano de Finanzas (Finance Institution of Valencia)

Greece

Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation)
Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)
Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

France

La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)

L'Agence française de développement (AFD) (French Development Agency)

Réseau Ferré de France (RFF) (French Rail Network)

Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)

Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)

Charbonnages de France (CDF) (French Coal Board)

Entreprise minière et chimique (EMC) (Mining and Chemicals Company)

Italy

Regions

Provinces

Municipalities

Cassa Depositi e Prestiti (Deposits and Loans Fund)

Latvia

Pašvaldības (Local governments)

Poland

gminy (communes)

powiaty (districts)

województwa (provinces)

związki gmin (associations of communes)

związki powiatów (association of districts)

związki województw (association of provinces)

miasto stołeczne Warszawa (capital city of Warsaw)

Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)

Agencja Nieruchomości Rolnych (Agricultural Property Agency)

Portugal

Região Autónoma da Madeira (Autonomous Region of Madeira)

Região Autónoma dos Açores (Autonomous Region of Azores)

Municipalities

Slovakia

mestá a obce (municipalities)

Železnice Slovenskej republiky (Slovak Railway Company)

Štátny fond cestného hospodárstva (State Road Management Fund)

Slovenské elektrárne (Slovak Power Plants)

Vodohospodárska výstavba (Water Economy Building Company)

INTERNATIONAL ENTITIES:

European Bank for Reconstruction and Development

European Investment Bank

Asian Development Bank

African Development Bank

World Bank/IBRD/IMF

International Finance Corporation

Inter-American Development Bank

Council of Europe Social Development Fund

Euratom

European Community

Corporación Andina de Fomento (CAF) (Andean Development Corporation)

Eurofima

European Coal and Steel Community

Nordic Investment Bank

Caribbean Development Bank

The provisions of Article 16 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

ENTITIES IN THIRD STATES:

The entities that meet the following criteria:

1. The entity is clearly considered to be a public entity according to the national criteria.
 2. Such public entity is a non market producer which administers and finances a group of activities, principally providing non market goods and services, intended for the benefit of the community and which are effectively controlled by general government.
 3. Such public entity is a large and regular issuer of debt.
 4. The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross up clauses.
-

MEMORANDUM OF UNDERSTANDING

between the European Community, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, and the Swiss Confederation

THE EUROPEAN COMMUNITY,

THE KINGDOM OF BELGIUM,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

and

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

HAVE AGREED AS FOLLOWS:

1. INTRODUCTION

Switzerland and the Community are entering into an Agreement providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on the taxation of savings income in the form of interest payments (hereinafter referred to as the Directive). This Memorandum of Understanding complements that Agreement.

2. ADMINISTRATIVE ASSISTANCE IN CASES OF TAX FRAUD OR THE LIKE

As soon as the Agreement is signed, Switzerland and each Member State of the European Union will enter into bilateral negotiations with a view to:

- including in their respective double taxation conventions on income and capital provisions on administrative assistance in the form of exchange of information on request for all administrative, civil or criminal cases of tax fraud under the laws of the requested State or the like with respect to items of income not subject to the Agreement but covered by their respective conventions,
- defining individual categories of cases falling under 'the like' in accordance with the procedure of taxation applied by those States.

3. NEGOTIATIONS FOR SECURING EQUIVALENT MEASURES WITH OTHER THIRD STATES

During the transitional period provided for in the Directive, the Community will enter into discussions with other important financial centres with a view to promoting the adoption by those jurisdictions of measures equivalent to those to be applied by the Community.

4. DECLARATION OF INTENT

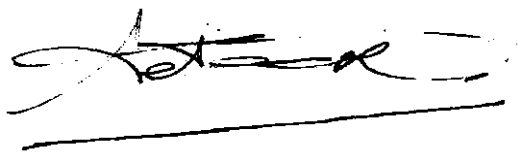
The signatories of this Memorandum of Understanding declare that they consider the Agreement referred to in point 1 and this Memorandum to provide an acceptable and balanced arrangement that can be considered as safeguarding the interests of the parties. They will therefore implement the agreed measures in good faith and will not act unilaterally to undermine this arrangement without due cause.

If any significant difference between the coverage of the Directive as adopted on 3 June 2003 and that of the Agreement should be discovered, in particular with regard to Article 1(2) and Article 6 of the Agreement, the Contracting Parties will immediately enter into consultations in accordance with Article 13(1) of the Agreement with a view to ensuring that the equivalent nature of the measures provided for in the Agreement is maintained.

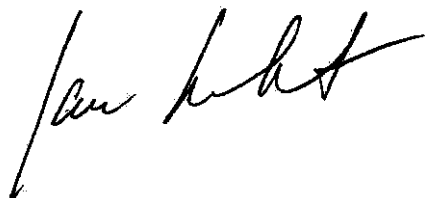
Signed at Luxembourg on 26 October 2004 in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each of these language versions being equally authentic.

The Maltese language version shall be authenticated by the signatories on the basis of an exchange of letters. It shall also be authentic, in the same way as for the languages referred to in the previous paragraph.

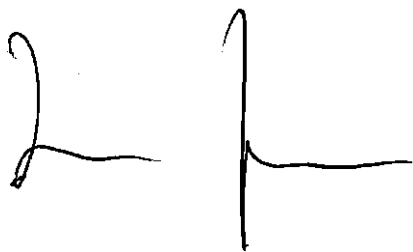
Pour le Royaume de Belgique
Voor het Koninkrijk België
Für das Königreich Belgien



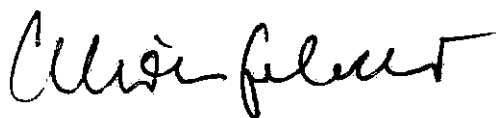
Za Českou republiku



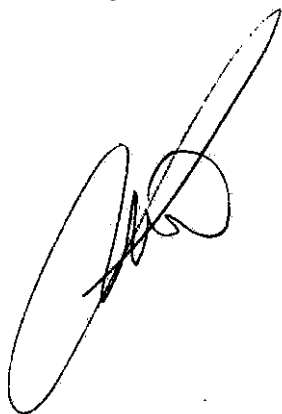
På Kongeriget Danmarks vegne



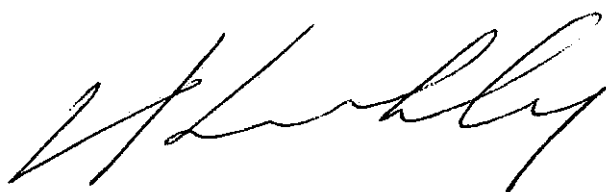
Für die Bundesrepublik Deutschland



Eesti Vabariigi nimel



Για την Ελληνική Δημοκρατία



Por el Reino de España

A stylized handwritten signature in black ink, featuring a large, sweeping 'S' shape followed by a horizontal line and a small 'ta' at the end.

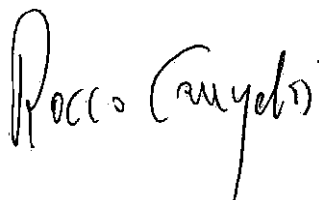
Pour la République française

A handwritten signature in black ink, consisting of a series of connected, wavy lines that form a continuous, undulating shape.

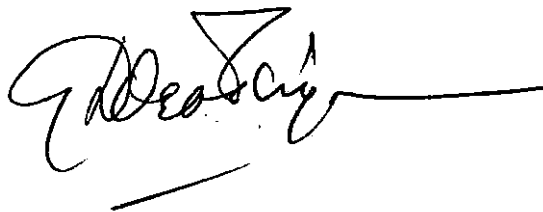
Thar cheann Na hÉireann
For Ireland

A handwritten signature in black ink, featuring a series of connected, wavy lines that form a continuous, undulating shape.

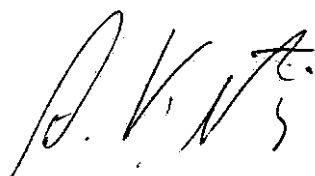
Per la Repubblica italiana

A handwritten signature in black ink, featuring a large, stylized 'R' followed by a series of connected, wavy lines that form a continuous, undulating shape.

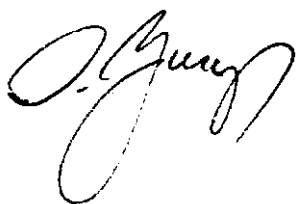
Για την Κυπριακή Δημοκρατία

A handwritten signature in black ink, featuring a large, stylized 'Γ' followed by a series of connected, wavy lines that form a continuous, undulating shape.

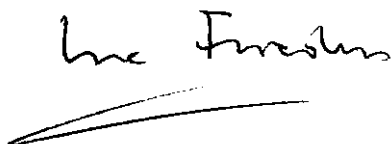
Latvijas Republikas vārdā

A handwritten signature in black ink, featuring a large, stylized 'P.' followed by a series of connected, wavy lines that form a continuous, undulating shape.

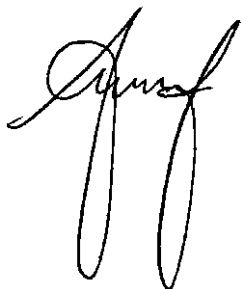
Lietuvos Respublikos vardu



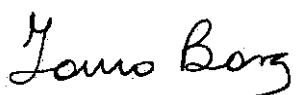
Pour le Grand-Duché de Luxembourg



A Magyar Köztársaság részéről



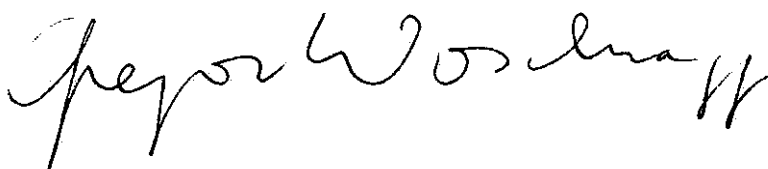
Għar-Repubblika ta' Malta



Voor het Koninkrijk der Nederlanden



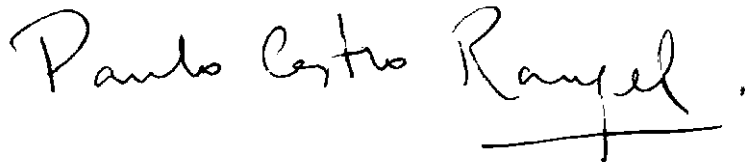
Für die Republik Österreich



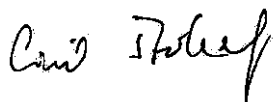
W imieniu Rzeczypospolitej Polskiej



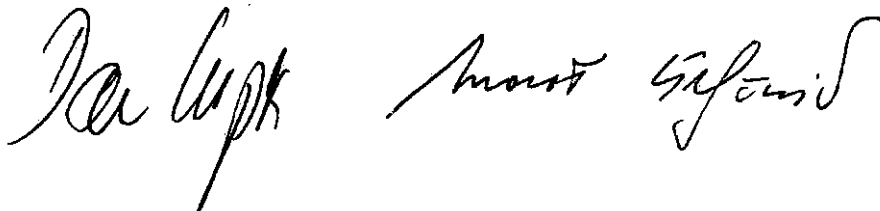
Pela República Portuguesa



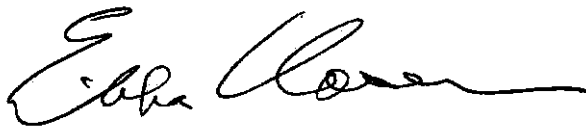
Za Republiko Slovenijo



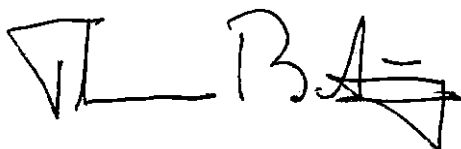
Za Slovenskú republiku



Suomen tasavallan puolesta
För Republiken Finland



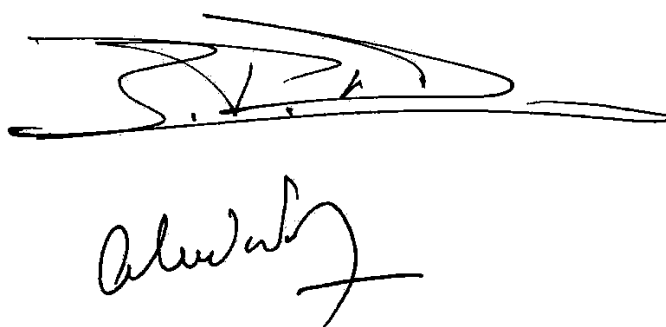
För Konungariket Sverige



For the United Kingdom of Great Britain and Northern Ireland



Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Za Európske spoločenstvo
za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar



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



COUNCIL DECISION

of 25 October 2004

on the conclusion of the Agreement in the form of an Exchange of Letters between the European Community and the Swiss Confederation on the date of application of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments

(2004/912/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 in conjunction with Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Article 17(2) of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments provides that, subject to the conditions set out therein, Switzerland and where applicable the Community shall effectively implement and apply this Agreement from 1 January 2005.
- (2) Pursuant to Article 18(1), the application of the Agreement is conditional on the adoption and implementation by certain dependent or associated territories of the Member States and by the United States of America, Andorra, Liechtenstein, Monaco and San Marino respectively of measures which conform with or are equivalent to those contained in the Directive or the Agreement. Under Article 18(2), if the Contracting Parties do not, at least six months prior to the date referred to in Article 17(2) (1 January 2005), decide that the condition will be met, they shall, by common accord, adopt a new date for the purposes of Article 17(2). No such decision was taken.
- (3) Not all the third countries in question will be in a position to implement the measures referred to in Article 18(1) by 1 January 2005. Moreover, it will only be possible for Switzerland to implement and apply this Agreement from 1 July 2005 and this on the condition that Swiss constitutional requirements will be met by that date. It appears that each of the third countries and dependent or associated territories referred to in Article

18(1) of the Agreement will also be able to meet the conditions set out in that paragraph by 1 July 2005.

- (4) The date of 1 July 2005 should therefore be adopted as the new date for the purposes of Article 17(2) of the Agreement, in accordance with Article 18(2) of the Agreement.
- (5) The Agreement in the form of an Exchange of Letters providing for a new date of application of the Agreement on taxation of savings income in the form of interest payments should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters between the European Community and the Swiss Confederation on the date of application of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments is hereby approved on behalf of the Community.

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

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement in order to bind the Community.

Done at Luxembourg, 25 October 2004.

For the Council
The President
R. VERDONK

AGREEMENT

in the form of an Exchange of Letters between the European Community and the Swiss Confederation on the date of application of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments

A. Letter from the European Community

Sir,

I have the honour to refer to the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments. The Agreement, which will be ratified or approved by the Contracting Parties in accordance with their own procedures, will be applied from a date determined in accordance with the procedure set out in Article 18(2) of the Agreement.

Article 18(2) provides that the Contracting Parties shall decide by common accord at least six months before the date referred to in Article 17(2) of the Agreement (1 January 2005) whether the condition set out in article 18(1) of the Agreement will be met and if they do not decide that the condition will be met shall adopt, by common accord, a new date for application of the Agreement.

Article 18(1) provides that the application of the Agreement will be conditional on the adoption and implementation by the dependent or associated territories of the Member States mentioned in the report of the Council (Economic and Financial Questions) to the European Council of Santa Maria da Feira of 19 and 20 June 2000, as well as by the United States of America, Andorra, Liechtenstein, Monaco and San Marino respectively of measures which conform with or are equivalent to those contained in the Directive or the Agreement, with the exception of Article 15 of the Agreement, and providing for the same dates of implementation.

On the basis of the negotiations that have taken place between the European Community and the Swiss Confederation I understand that it will in accordance with Article 17(2) of the Agreement only be possible for the Swiss Confederation to apply the Agreement from 1 July 2005 and this on the understanding that Swiss constitutional requirements will be met by that date.

I request your confirmation that the date of 1 July 2005 is acceptable to you as the new date for application of the Agreement as provided for in Article 18(2) of the Agreement and that the Swiss Government will do its utmost to ensure that this date will be respected. I also request you to confirm that on the basis of the information provided in the negotiations held on 21 June 2004, and without prejudice to the next paragraph the Swiss Confederation accepts that the conditions of Article 18(1) will be met.

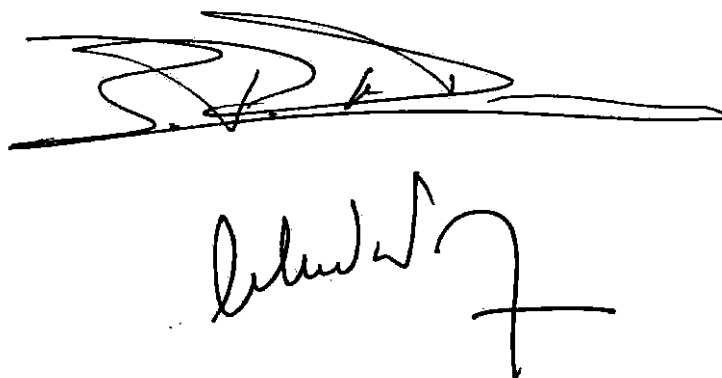
I accept that Switzerland is obliged to apply the provisions of the Agreement as from 1 July 2005 only if all EU Member States and each of the countries and territories mentioned in Article 18(1) of the Agreement apply the savings tax measures mentioned therein from that same date. The same condition shall also apply for each EU Member State.

Please accept, Sir, the assurance of our highest consideration,

Hecho en Luxemburgo, el
V Lucemburku dne
Udfærdiget i Luxembourg, den
Geschehen zu Luxemburg am
Luxembourg,
Έγινε στις Λουξεμβούργο, στις
Done at Luxembourg,
Fait à Luxembourg, le
Fatto a Lussemburgo, addì
Luksemburgā,
Priimta Liuksemburge,
Kelt Luxembourgban,
Magħmul fil-Lussemburgu,
Gedaan te Luxemburg,
Sporządzono w Luksemburgu, dnia
Feito em Luxemburgo,
V Luxemburgu
V Luxembourggu,
Tehty Luxemburgissa
Utfärdat i Luxemburg den

26 -10- 2004

Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Za Európske spoločenstvo
za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar



B. Letter from the Swiss Confederation

Sir,

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

'Sir,

I have the honour to refer to the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments. The Agreement, which will be ratified or approved by the Contracting Parties in accordance with their own procedures, will be applied from a date determined in accordance with the procedure set out in Article 18(2) of the Agreement.

Article 18(2) provides that the Contracting Parties shall decide by common accord at least six months before the date referred to in Article 17(2) of the Agreement (1 January 2005) whether the condition set out in article 18(1) of the Agreement will be met and if they do not decide that the condition will be met shall adopt, by common accord, a new date for application of the Agreement.

Article 18(1) provides that the application of the Agreement will be conditional on the adoption and implementation by the dependent or associated territories of the Member States mentioned in the report of the Council (Economic and Financial Questions) to the European Council of Santa Maria da Feira of 19 and 20 June 2000, as well as by the United States of America, Andorra, Liechtenstein, Monaco and San Marino respectively of measures which conform with or are equivalent to those contained in the Directive or the Agreement, with the exception of Article 15 of the Agreement, and providing for the same dates of implementation.

On the basis of the negotiations that have taken place between the European Community and the Swiss Confederation I understand that it will in accordance with Article 17(2) of the Agreement only be possible for the Swiss Confederation to apply the Agreement from 1 July 2005 and this on the understanding that Swiss constitutional requirements will be met by that date.

I request your confirmation that the date of 1 July 2005 is acceptable to you as the new date for application of the Agreement as provided for in Article 18(2) of the Agreement and that the Swiss Government will do its utmost to ensure that this date will be respected. I also request you to confirm that on the basis of the information provided in the negotiations held on 21 June 2004, and without prejudice to the next paragraph the Swiss Confederation accepts that the conditions of Article 18(1) will be met.

I accept that Switzerland is obliged to apply the provisions of the Agreement as from 1 July 2005 only if all EU Member States and each of the countries and territories mentioned in Article 18(1) of the Agreement apply the savings tax measures mentioned therein from that same date. The same condition shall also apply for each EU Member State.

Please accept, Sir, the assurance of our highest consideration,'

On the basis of the negotiations that have taken place between the European Community and the Swiss Confederation I am able to confirm the agreement of the Swiss Confederation to a new date of application of the aforementioned Agreement of 1 July 2005 on the condition that Swiss constitutional requirements will be met by that date. I confirm that the Swiss Government will do its utmost to ensure that this date will be respected.

I confirm that subject to technical verification by my services of the information provided in the negotiations held on 21 June 2004, which will be confirmed by me in advance of the signing of the Agreement on the basis of finalised versions of the appropriate agreements, the Swiss Confederation accepts that the conditions of Article 18(1) will be met without prejudice to the point made in the following paragraph.

I agree that Switzerland is obliged to apply the provisions of the Agreement as from 1 July 2005 only if all EU Member States and each of the countries and territories mentioned in Article 18(1) of the Agreement apply the savings tax measures mentioned therein from that same date. I accept that the same condition shall also apply for each EU Member State.

Please accept, Sir, the assurance of our highest consideration,

Geschehen zu Luxemburg am
Fait à Luxembourg, le
Fatto a Lussemburgo, addì
Hecho en Luxemburgo, el
V Lucemburku dne
Udfærdiget i Luxembourg, den
Luxembourg,
Έγινε στις Λουξεμβούργο, στις
Done at Luxembourg,
Luksemburgā,
Priimta Liuksemburge,
Kelt Luxembourgban,
Magħmul fil-Lussemburgu,
Gedaan te Luxemburg,
Sporządzono w Luksemburgu, dnia
Feito em Luxemburgo,
V Luxemburgu
V Luxembourggu,
Tehty Luxemburgissa
Utfärdat i Luxemburg den

26-10-2004

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



COMMISSION

COMMISSION RECOMMENDATION

of 14 December 2004

fostering an appropriate regime for the remuneration of directors of listed companies

(Text with EEA relevance)

(2004/913/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the second indent of Article 211 thereof,

Whereas:

- (1) In May 2003, the Commission adopted a Communication on 'Modernising Company Law and enhancing Corporate Governance in the European Union – A plan to move forward' ⁽¹⁾. Among a range of proposals to strengthen shareholders' rights and modernise the board of directors, it provides for an initiative aimed at encouraging an appropriate regulatory regime for directors' remuneration in the Member States.
- (2) The form, structure and level of directors' remuneration are matters falling within the competence of companies and their shareholders. This should facilitate the recruitment and retention of directors having the qualities required to run a company. However, remuneration is one of the key areas where executive directors may have a conflict of interest and where due account should be taken of the interests of shareholders. Remuneration systems should therefore be subjected to appropriate governance controls, based on adequate information rights. In this respect, it is important to respect fully the diversity of corporate governance systems within the Community, which reflect different Member States' views about the roles of corporations and of bodies responsible for the determination of policy on the remuneration of directors, and the remuneration of individual directors.
- (3) The disclosure of accurate and timely information by the issuers of securities builds sustained investor confidence and constitutes an important tool for promoting sound corporate governance throughout the Community. To that end, it is important that listed companies display appropriate transparency in dealings with investors, so as to enable them to express their views.
- (4) When implementing this Recommendation, Member States should consider the specificities of collective investment undertakings of the corporate type and should prevent the various types of collective investment undertaking from being subjected, unnecessarily, to unequal treatment. As regards collective investment undertakings as defined in Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ⁽²⁾, that Directive already provides for a set of specific governance mechanisms. However, in order to prevent the unnecessarily unequal treatment of those collective investment undertakings of the corporate type not subject to harmonisation at Community level, Member States should take into account whether and to what extent these non-harmonised collective investment undertakings are subject to equivalent governance mechanisms.
- (5) Shareholders should be provided with a clear and comprehensive overview of the company's remuneration policy. Such disclosure would enable shareholders to assess a company's approach to remuneration and strengthen a company's accountability to shareholders. It should include elements related to compensation. This should not, however, oblige the company to disclose any information of a commercially sensitive nature which could be detrimental to the company's strategic position.
- (6) Adequate transparency should also be ensured in the policy regarding directors' contracts. This should include the disclosure of information on issues such as notice periods and termination payments under such contracts which are directly linked to directors' remuneration.
- (7) In order to give shareholders an effective chance to express their views and an opportunity to debate the remuneration policy on the basis of a comprehensive disclosure, without having to initiate the process of tabling a shareholders' resolution, the remuneration policy should be an explicit item on the agenda of the annual general meeting.

⁽¹⁾ COM(2003) 284 final.

⁽²⁾ OJ L 375, 31.12.1985 p. 3. Directive as last amended by Directive 2004/39/EC of the European Parliament and of the Council (OJ L 145, 30.4.2004, p. 1).

- (8) In order to increase accountability, the remuneration policy should be submitted to the annual general meeting for a vote. The vote at that meeting could be advisory, so that the rights of the relevant bodies responsible for directors' remuneration would not be altered. An advisory vote would not entail any obligation either to amend directors' contractual entitlements or to amend the remuneration policy.
- (9) Shareholders should also be provided with the information on the basis of which they can hold individual directors accountable for the remuneration they earn or have earned. Disclosure of the remuneration of individual directors of the company, executive and non-executive or supervisory directors, in the preceding financial year is therefore important to help them appreciate the remuneration in the light of the overall performance of the company.
- (10) Variable remuneration schemes under which directors are remunerated in shares, share options or any other right to acquire shares or to be remunerated on the basis of share price movements, and any substantial change in such schemes, should be subject to the prior approval of the annual general meeting. The approval should relate to the scheme of remuneration and the rules applied to establish the individual remuneration under the scheme but not to the individual remuneration of directors under the scheme.
- (11) In view of the importance attached to the question of remuneration of directors it is appropriate to monitor the implementation of this Recommendation and in case of insufficient implementation to consider further measures,

HEREBY RECOMMENDS:

Section I

Scope and definitions

1. *Scope*
 - 1.1. Member States should take all appropriate measures to ensure that listed companies having their registered office in their territory have regard to this Recommendation. They should however duly consider the specific features of collective investment undertakings of the corporate type under the scope of Directive 85/611/EEC. Member States should also consider the specific features of collective investment undertakings of the corporate type which are not subject to that Directive and whose sole purpose is the investment of money raised from

investors in a diversified range of assets and which do not seek to take legal or managerial control over any of the issuers of its underlying investments.

- 1.2. Member States should also take all appropriate measures to ensure that listed companies which are not incorporated in one of the Member States but which have their primary listing on a regulated market established in their territory have regard to the provisions of this Recommendation.
- 1.3. Member States should ensure that this Recommendation applies to the remuneration of the chief executive officers in circumstances where they are not members of the administrative, managerial and supervisory bodies of a listed company.

2. *Definitions for the purposes of this recommendation*

- 2.1. 'Director', means any member of the administrative, managerial or supervisory bodies of a listed company.
- 2.2. 'Listed company', means a company whose securities are admitted to trading on a regulated market within the meaning of Directive 2004/39/EC in one or more Member States.

Section II

Remuneration policy

3. *Disclosure of the policy on directors' remuneration*
 - 3.1. Each listed company should disclose a statement of the remuneration policy of the company (the remuneration statement). It should be part of an independent remuneration report and/or be included in the annual accounts and annual report or in the notes to the annual accounts of the company. The remuneration statement should also be posted on the listed company's website.
 - 3.2. The remuneration statement should mainly focus on the company's policy on directors' remuneration for the following financial year and, if appropriate, the subsequent years. It should also contain an overview of the manner in which the remuneration policy has been implemented in the previous financial year. Particular emphasis should be laid on any significant changes in the listed company's remuneration policy as compared to the previous financial year.

3.3. The remuneration statement should set out at least the following information:

- (a) explanation of the relative importance of the variable and non-variable components of directors' remuneration;
- (b) sufficient information on the performance criteria on which any entitlement to share options, shares or variable components of remuneration is based;
- (c) sufficient information on the linkage between remuneration and performance;
- (d) the main parameters and rationale for any annual bonus scheme and any other non-cash benefits;
- (e) a description of the main characteristics of supplementary pension or early retirement schemes for directors.

The disclosure of that information in the remuneration statement should nevertheless not entail the disclosure of information of a commercially sensitive nature.

3.4. The remuneration statement should also summarise and explain the listed company's policy with regard to the terms of the contracts of executive directors. This should include, *inter alia*, information on the duration of contracts with executive directors, the applicable notice periods and details of provisions for termination payments and other payments linked to early termination under contracts for executive directors.

3.5. Information concerning the preparatory and decision-making process used for determining the listed company's remuneration policy for directors should also be disclosed. This should include information, if applicable, about the mandate and composition of a remuneration committee, the names of external consultants whose services have been used in determination of the remuneration policy, and the role of the shareholders' annual general meeting

4. Shareholders' vote

4.1. Without prejudice to the role and organisation of the relevant bodies responsible for setting directors' remunerations, the remuneration policy and any significant

change to the remuneration policy should be an explicit item on the agenda of the annual general meeting.

4.2. Without prejudice to the role and organisation of the relevant bodies responsible for setting directors' remunerations, the remuneration statement should be submitted to the annual general meeting of shareholders for a vote. The vote may be either mandatory or advisory.

Member States may, however, provide that such a vote will be held only if shareholders representing at least 25 % of the total number of votes held by shareholders present or represented at the annual general meeting request it. This should nevertheless be without prejudice to the right for shareholders to table a resolution in accordance with national provisions.

4.3. The listed company should inform shareholders entitled to receive notice of the meeting of the intention to table a resolution approving the remuneration statement at the annual general meeting.

Section III

Remuneration of individual directors

5. Disclosure of the remuneration of individual directors

5.1. The total remuneration and other benefits granted to individual directors over the relevant financial year should be disclosed in detail in the annual accounts or in the notes to the annual accounts or, where applicable, in the remuneration report.

5.2. The annual accounts or the notes to the annual accounts or, where applicable, the remuneration report should show at least the information listed in points 5.3. to 5.6. for each person who has served as a director of the listed company at any time during the relevant financial year.

5.3. As regards the remuneration and/or emoluments, the following information should be presented:

- (a) the total amount of salary paid or due to the director for the services performed under the relevant financial year, including where appropriate the attendance fees fixed by the annual general shareholders meeting;
- (b) the remuneration and advantages received from any undertaking belonging to the same group;
- (c) remuneration paid in the form of profit sharing and/or bonus payments and the reasons why such bonus payments and/or profit sharing were granted;
- (d) where such payment is legally allowed, any significant additional remuneration paid to directors for special services outside the scope of the usual functions of a director;
- (e) the compensation paid to or receivable by each former executive director in connection with the termination of his activities during that financial year;
- (f) total estimated value of non-cash benefits considered as remuneration, other than the items covered in points (a) to (e).

5.4. As regards shares and/or rights to acquire share options and/or all other share-incentive schemes, the following information should be presented:

- (a) the number of share options offered or shares granted by the company during the relevant financial year and their conditions of application;
- (b) the number of share options exercised during the relevant financial year and, for each of them, the number of shares involved and the exercise price or the value of the interest in the share incentive scheme at the end of the financial year;
- (c) the number of share options unexercised at the end of the financial year; their exercise price, the exercise date and the main conditions for the exercise of the rights;

(d) any change in the terms and conditions of existing share options occurring during the financial year.

5.5. As regards supplementary pension schemes, the following information should be presented:

- (a) when the pension scheme is a defined-benefit scheme, changes in the director's accrued benefits under that scheme during the relevant financial year;
- (b) when the scheme is a defined-contribution scheme, details of the contributions paid or payable by the listed company in respect of that director during the relevant financial year.

5.6. If it is permissible under national law or under the Articles of Association of the listed company to make such payments, amounts should be shown which the company, or any subsidiary or company included in the company's consolidated annual accounts, has paid by way of loans, advance payments and guarantees to each person who has served as a director at any time during the relevant financial year, including the amount outstanding and the interest rate.

Section IV

Share-based remuneration

6. *Shareholders' approval*

6.1. Schemes under which directors are remunerated in shares, share options or any other right to acquire shares or to be remunerated on the basis of share price movements should be subject to the prior approval of shareholders by way of a resolution at the annual general meeting prior to their adoption. The approval should relate to the scheme in itself and not to the grant of such share-based benefits under that scheme to individual directors.

6.2. Approval by the annual general meeting should be obtained for the following:

- (a) grant of share-based schemes, including share options, to directors;

- (b) the determination of their maximum number and the main conditions of the granting process;
- (c) the term within which options can be exercised;
- (d) the conditions for any subsequent change in the exercise price of the options, if this is appropriate and legally permissible;
- (e) any other long term incentive schemes for which directors are eligible and which is not offered under similar terms to all other employees.

concerning the resolution should be made available to shareholders.

The notice should contain the full text of the share-based remuneration schemes or a description of their principal terms, and the names of the participants in the schemes. It should also set out the relationship of the schemes with the overall directors' remuneration policy.

The draft resolution should clearly refer either to the scheme itself or to the summary of its principal terms.

- 6.3. The annual general meeting should also set the deadline within which the body responsible for directors' remuneration may award these types of compensation to individual directors.
- 6.4. Any substantial change in the terms and conditions of the schemes should also be subject to the approval of shareholders by way of a resolution at the annual general meeting prior to their adoption. In those cases, shareholders should be informed of the full terms of the proposed changes and should be given an explanation of the effect of the proposed changes.
- 6.5. If such arrangement is permissible under national law or under the Articles of Association of the listed company, any discounted option arrangement under which any rights are granted to subscribe to shares at a price lower than the market value of the share on the date when the price is determined, or the average of the market values over a number of days preceding the date when the exercise price is determined, should also receive the approval of shareholders.
- 6.6. Points 6.1. to 6.4. should not apply to schemes in which participation is offered on similar terms to employees of the listed company or any of its subsidiary undertaking whose employees are eligible to participate in the scheme and which has been approved by the annual general meeting.

- 7.2. Information should also be made available to shareholders about how the company intends to provide for the shares needed to meet its obligations under incentive schemes. In particular it should be clearly stated whether the company intends to purchase the necessary shares in the market, whether it holds them in treasury, or whether it will issue new shares.

- 7.3. This information should also provide an overview of the costs of the scheme to the company in view of the intended application.

- 7.4. Such information should be posted on the listed company's website.

8. *Final Provisions*

- 8.1. Member States are invited to take the necessary measures to promote the application of this Recommendation by 30 June 2006 and are invited to notify the Commission of measures taken in accordance with this Recommendation in order to allow the Commission to monitor closely the situation and, on this basis, to assess the need for further measures.

- 8.2. This Recommendation is addressed to the Member States.

Done at Brussels, 14 December 2004.

For the Commission
Charlie McCREEVY
Member of the Commission

Section V

Information and final provisions

7. *Information*

- 7.1. Prior to the annual general meeting where a draft resolution is tabled in accordance with point 6.1. and in accordance with national law and/or the Articles of Association of the listed company, an information notice

COMMISSION DECISION

of 16 December 2004

amending Decision 2003/858/EC as regards imports of live fish of aquaculture origin and products thereof for further processing or immediate human consumption

(notified under document number C(2004) 4560)

(Text with EEA relevance)

(2004/914/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products⁽¹⁾, and in particular Article 20(1) and Article 21(2) thereof,

Whereas:

(1) Commission Decision 2003/858/EC of 21 November 2003 laying down the animal health conditions and certification requirements for imports of live fish, their eggs and gametes intended for farming, and live fish of aquaculture origin and products thereof intended for human consumption⁽²⁾, sets out the specific animal health conditions for imports of live fish and certain products of aquaculture origin into the Community from third countries.

(2) The definition of 'farming' in Decision 2003/858/EC has led to different interpretations concerning the scope of the Decision. For the sake of clarity, this definition should therefore be made more precise.

(3) The requirements laid down in Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products⁽³⁾, apply also to live fish imported for the purpose of human consumption. For the sake of clarity, Article 4 of Decision 2003/858/EC should be amended accordingly.

(4) The import requirements for fish products to be further processed in Decision 2003/858/EC should apply only to species susceptible to diseases referred to in List II of Annex A to Directive 91/67/EEC or diseases that are

considered exotic to the Community. Experience has shown that these requirements are not clearly described by the wording of Article 5(2), and therefore that article should be amended for the sake of clarification.

(5) Commission Regulation (EC) No 282/2004 of 18 February 2004 introducing a document for the declaration of, and veterinary checks on, animals from third countries entering the Community⁽⁴⁾, has replaced Decision 92/527/EEC⁽⁵⁾. Where live fish are destined for farming or restocking purposes, the control procedure in Article 8 of Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC⁽⁶⁾, should be used and the common veterinary entry document in Regulation (EC) No 282/2004 completed accordingly by the official veterinarian.

(6) Commission Regulation (EC) No 136/2004 of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries⁽⁷⁾ has replaced Decision 93/13/EEC⁽⁸⁾. Where certain products of aquaculture origin are destined for further processing in the Community, the control procedure in Article 8 of Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries⁽⁹⁾ should be used and the common veterinary entry document in Regulation (EC) No 136/2004 completed accordingly by the official veterinarian.

⁽¹⁾ OJ L 46, 19.2.1991, p. 1. Directive as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽²⁾ OJ L 324, 11.12.2003, p. 37. Decision as last amended by Decision 2004/454/EC (OJ L 156, 30.4.2004, p. 33).

⁽³⁾ OJ L 268, 24.9.1991, p. 15. Directive as last amended by Regulation (EC) No 806/2003.

⁽⁴⁾ OJ L 49, 19.2.2004, p. 11. Regulation as amended by Regulation (EC) No 585/2004 (OJ L 91, 30.3.2004, p. 17).

⁽⁵⁾ OJ L 332, 18.11.1992, p. 22.

⁽⁶⁾ OJ L 268, 24.9.1991, p. 56. Directive as last amended by the Act concerning the conditions of accession (OJ L 236, 23.9.2003, p. 381).

⁽⁷⁾ OJ L 21, 28.1.2004, p. 11.

⁽⁸⁾ OJ L 9, 15.1.1993, p. 33.

⁽⁹⁾ OJ L 24, 30.1.1998, p. 9. Directive as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 165, 30.4.2004, p. 1).

- (7) The certification procedures laid down in Article 7 of Decision 2003/858/EC should be amended accordingly, and its Annex VI deleted.
- (8) It is necessary, for the sake of simplification and clarification, to harmonise statements on the model certificates laid down in the Annexes to Decision 2003/858/EC, with those on the model certificates laid down pursuant to Directive 91/493/EEC. Annexes II, III, IV and V to Decision 2003/858/EC should be amended accordingly.
- (9) 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

Decision 2003/858/EC is amended as follows.

1. Article 2(2)(g) is replaced by:

‘(g) “farming” means the keeping of aquatic animals on a farm.’

2. Article 4 is replaced by the following:

‘Article 4

Conditions related to importation of live fish of aquaculture origin for human consumption

Member States shall authorise the importation into their territory of live fish of aquaculture origin intended for immediate human consumption or for further processing before human consumption, only if:

- (a) the fish originate in third countries authorised under Article 11 of Directive 91/493/EEC, and comply with the public health certification requirements laid down under that Directive; and
- (b) the consignment complies with the conditions laid down in Article 3(1); or
- (c) the fish is sent directly to an approved import centre to be slaughtered and eviscerated.’

3. Article 5(2) is replaced by:

‘2. Member States shall ensure that the processing of fish products of aquaculture origin from species susceptible to EHN, ISA, VHS and IHN takes place in approved import centres unless:

- (a) the fish have been eviscerated before dispatch to the European Community; or
- (b) the place of origin in the third country has a health status as regards EHN, ISA, VHS and IHN, equivalent to the place where they are to be processed.’

4. Article 6 is replaced by the following:

‘Article 6

Conditions related to importation of fish products of aquaculture origin for immediate human consumption

Member States shall authorise the importation into their territory of fish products of aquaculture origin intended for immediate human consumption only if:

- (a) the fish originate in third countries and establishments authorised under Article 11 of Directive 91/493/EEC, and comply with the public health certification requirements laid down under that Directive; and
- (b) the consignment consists of fish products suitable for retail sale to restaurants or directly to the consumer without further processing; and labelled in accordance with the provisions of Directive 91/493/EEC; and
- (c) the consignment complies with the guarantees laid down in the animal health certificate drawn up in conformity with the model in Annex V, taking into account the explanatory notes in Annex III.’

5. Article 7 is replaced by the following:

‘Article 7

Control procedures

1. Live fish, their eggs and gametes imported for the purpose of farming, and live fish of aquaculture origin imported for the purposes of restocking of put and take fisheries shall be subject to veterinary checks at the border inspection post in the Member State of arrival according to Article 8 of Directive 91/496/EEC, and the common veterinary entry document provided for in Regulation (EC) No 282/2004 shall be completed accordingly.

2. Live fish of aquaculture origin and products thereof imported for immediate human consumption or for further processing before human consumption, shall be subject to veterinary checks at the border inspection post in the Member State of arrival according to Article 8 of Directive 97/78/EC, and the common veterinary entry document provided for in Regulation (EC) No 136/2004 shall be completed accordingly.
6. Article 8 is replaced by the following:
3. Members States shall ensure that transport water from imported consignments does not lead to contamination of natural waters within their territory.'
7. Annex II is replaced by Annex I to this Decision.
8. Annex III is replaced by Annex II to this Decision.
9. Annex IV is replaced by Annex III to this Decision.
10. Annex V is replaced by Annex IV to this Decision.
11. Annex VI is deleted.

'Article 8

Preventing contamination of natural waters

1. Member States shall ensure that imported live fish of aquaculture origin intended for human consumption are not released into natural waters within their territory.
2. Member States shall ensure that imported products of aquaculture origin intended for human consumption do not contaminate any natural waters within their territory.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 16 December 2004.

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX I

‘ANNEX II

Model animal health certificate for the importation of⁽¹⁾ [live fish, eggs and gametes for farming]⁽¹⁾ [live fish of aquaculture origin for the purpose of⁽¹⁾ [human consumption]⁽¹⁾ [restocking of put and take fisheries]] into the European Community (EC)

Reference code No ORIGINAL

Reference code No of
public health certificate (where appropriate)

Note for the importer: This certificate is only for veterinary purposes and has — in its original — to accompany the consignment until it reaches the border inspection post.

Where the live fish, eggs or gametes are intended for farming or restocking of put and take fisheries in the Community, the consignment should be subjected to veterinary controls according to Council Directive 91/496/EEC, at a border inspection post approved for live animals.

Where the live fish are intended human consumption in the Community, the consignment should be subjected to veterinary controls according to Council Directive 97/78/EC, at a border inspection post approved for animal products. In the last case, this certificate must be attached to the certificate issued pursuant to Council Directive 91/493/EEC.

<p>1. Exporting country and authorities involved</p> <p>1.1. Exporting country:</p> <p>1.2. Competent authority:</p> <p>1.3. Competent issuing authority:</p>	<p>3. Destination of the consignment</p> <p>3.1. Member State:</p> <p>(¹)3.2. Zone or part (³) of the Member State:]</p> <p>(¹)3.3. Farm, name:]</p> <p>3.4. Address:</p> <p>3.5. Name, address and phone number of the consignee:</p>
<p>2. Place of origin of the consignment</p> <p>2.1. Code of territory of origin (²):</p> <p>(¹)2.2. Farm of origin, name:]</p> <p>(¹)2.3. Address or location of farm:]</p> <p>2.4. Name, address and phone number of the consignor:</p>	<p>4. Means of transport and consignment identification (⁴)</p> <p>4.1. Means of transport: (¹) [Lorry] (¹) [Rail-wagon] (¹) [Ship] (¹) [Aircraft]</p> <p>4.2. (¹) [Registration number(s)] (¹) [Ship name] (¹) [Flight number]:</p> <p>4.3. Consignment identification details:</p>

5. Description of the consignment				
<input type="checkbox"/> Farmed stocks <input type="checkbox"/> Wild stocks <input type="checkbox"/> Live fish <input type="checkbox"/> Gametes <input type="checkbox"/> Fertilised eggs <input type="checkbox"/> Unfertilised eggs <input type="checkbox"/> Larvae/fry				
Fish species		Total weight of fish (kg)	(1)[Volume of eggs] (1)[Volume of gametes]	Age of live fish
Scientific name:	Common name:	(1)[Number of fish]		
				<input type="checkbox"/> >24 months <input type="checkbox"/> 12-24 months <input type="checkbox"/> 0-11 months <input type="checkbox"/> unknown

6. Animal health attestation for importation of (1) [(1)[live fish] (1)[and] (1)[eggs] (1)[and] (1)[gametes] for farming] (1)[live fish of aquaculture origin intended for (1)[human consumption] (1)[for farming or restocking of put and take fisheries]]

I, the undersigned official inspector, hereby certify that the (1)[live fish] (1)[and] (1)[eggs] (1)[and] (1)[gametes], referred to at point 5 of this certificate fulfils the following requirements:

6.1. either:

(5)[They originate from the territory (2) with the code: (2) in which all farms rearing or keeping live fish, their eggs or gametes, of any species considered as susceptible (6) to the following diseases: infectious salmon anaemia (ISA), epizootic haematopoietic necrosis (EHN), viral haemorrhagic septicaemia (VHS), and infectious haematopoietic necrosis (IHN):

- are officially registered by the competent authority,
- keep an updated record of live fish, eggs and gametes entering and leaving the farm and all information relating to their delivery and dispatch, their number or weight, their size, their source, their suppliers and observed mortality (7),
- have to notify as soon as possible to the competent authority any suspicion of the following diseases: ISA, EHN, VHS and IHN, and any clinical signs giving reason to suspect the presence of a disease capable of causing significant impact on the fish stock,
- are subject to appropriate disease control measures as necessary at least equivalent to those required in Council Directives 91/67/EEC and 93/53/EEC including prohibition as regards vaccination against ISA, and as regards sampling and testing also Commission Decisions 2001/183/EC and 2003/466/EC; in cases where sampling and testing methods are not established in the Community legislation, the methods are those laid down in the relevant chapters of the OIE (8) *Manual of Diagnostic Tests for Aquatic Animals*, fourth edition, 2003,
- have had no disease, that has caused significant impact to the stock during the last six months prior to dispatch, and during the last two years, no cases of the diseases ISA and EHN,
- have, during the last two years prior to dispatch, not introduced live fish, eggs or gametes with a lower health status,
- there are, on the day of loading, no clinical signs of disease and there is no suspicion of the presence of any of the following diseases: ISA, EHN, VHS and IHN.]

or

(5)[They originate from the territory (2) with the code: (2) which:

- is a designated farm, or a farm that is not connected with a watercourse, or with coastal or estuarial waters, and that does not contain fish of the species considered as susceptible (6) to the diseases: infectious salmon anaemia (ISA), epizootic haematopoietic necrosis (EHN), viral haemorrhagic septicaemia (VHS), and infectious haematopoietic necrosis (IHN),
- keep an updated record of live fish, eggs and gametes entering and leaving the farm and all information relating to their delivery and dispatch, their number or weight, their size, their source, their suppliers and observed mortality (7).]

or

(9)[They originate from the territory (2) with the code: (2) in which:

- there are no farms rearing or keeping live fish, their eggs or gametes, of any species considered as susceptible (6) to the following diseases: infectious salmon anaemia (ISA), epizootic haematopoietic necrosis (EHN), viral haemorrhagic septicaemia (VHS), and infectious haematopoietic necrosis (IHN), and such species are not present in the natural waters,
- there has been no disease that has caused significant impact on the stock during the last six months prior to dispatch.]

6.2. They:

- have not, since the time of collection, been in contact with live fish, eggs or gametes of a lower health status than referred to in point 6.1. of this certificate,
- are not intended for destruction or slaughter for the eradication of the following diseases: ISA, VHS, IHN, EHN, spring viraemia of carp (SVC), infectious pancreatic necrosis (IPN), bacterial kidney disease (BKD, *Renibacterium salmoninarum*), furunculosis (*Aeromonas salmonicida*), enteric redmouth disease (ERM, *Yersinia ruckeri*), *Gyrodactylus salaris*, or due to diseases caused by any other pathogen,
- are not subject to any prohibitions for animal health reasons,
- showed no clinical signs of disease on the day of loading,
- ⁽¹⁰⁾[were subject to a visual check of a randomly selected representative part of the consignment, including each part having a different origin, and no fish species other than those specified in point 5 of this certificate were detected], and
- ⁽¹¹⁾[have been disinfected in accordance with OIE ⁽⁸⁾ *International Aquatic Animal Health Code*, edition 2003, Appendix 5.2.1.].

⁽¹²⁾ 7. **Specific animal health requirements as regards VHS, IHN, SVC, IPN, BKD and *Gyrodactylus salaris***

⁽¹³⁾ 7.1. I, the undersigned official inspector, hereby certify that the ⁽¹⁾[live fish] ⁽¹⁾[and] ⁽¹⁾[eggs] ⁽¹⁾[and] ⁽¹⁾[gametes], referred to at point 5 of this certificate, originate from a territory ⁽²⁾ that, in addition to the guarantees given in point 6 of this certificate, is approved by the competent authority as having an equivalent health status to those farms and zones within the Community, with approved status as regards ⁽¹⁾[VHS] ⁽¹⁾[and] ⁽¹⁾[IHN], as they:

Either

⁽¹⁾[either] ⁽¹⁾[originate from a coastal zone in which all farms are under the supervision of the competent authority, and the fish]

or ⁽¹⁾ [originate from a continental zone in which all farms are under the supervision of the competent authority, and the fish]

or ⁽¹⁾ [originate from a designated farm which is under the supervision of the competent authority, and the fish]

or ⁽¹⁾ [originate from a farm which is under the supervision of the competent authority, and where the water is supplied by means of a system which ensures the complete inactivation of ⁽¹⁾[VHS] ⁽¹⁾[and] ⁽¹⁾[IHN], and the fish]

or ⁽¹⁾ [originate from a coastal zone in which there are no farms, and the wild fish:]

or ⁽¹⁾ [originate from a continental zone in which there are no farms, and the wild fish:]

- have been subject to health inspections, carried out at intervals adapted to the development of ⁽¹⁾[VHS] ⁽¹⁾[and] ⁽¹⁾[IHN] and samples are taken and examined for these pathogens with a negative result by an officially authorised laboratory and the sampling and testing methods are at least equivalent to those laid down in Directives 91/67/EEC, 93/53/EEC and Decision 2001/183/EC as the following surveillance scheme has been used:

⁽¹⁴⁾[‘EC Model A’ — at least four years documented freedom, including a two-year surveillance program] ⁽¹⁴⁾[‘EC Model B’ — at least six years documented freedom, including a two-year surveillance program with reduced sample size] ⁽¹⁵⁾[‘EC Special provisions’ — new farms] ⁽¹⁵⁾[‘EC Special provisions’ — farms which recommence their activities] ⁽¹⁾[‘OIE’ — methods as described in the OIE ⁽⁸⁾ *Manual of Diagnostic Tests for Aquatic Animals*, fourth edition, 2003, Chapters: 1.1.4. (General) and ⁽¹⁾[2.1.5. (VHS)] ⁽¹⁾[and] ⁽¹⁾[2.1.2. (IHN)]]],

- since at least two years have been free of clinical and other signs of ⁽¹⁾[VHS] ⁽¹⁾[and] ⁽¹⁾[IHN],
- originate from a territory ⁽²⁾ where all necessary measures ⁽¹⁶⁾ are taken to prevent the introduction of diseases.]

Or

- ⁽¹⁾ [originate from a farm that is not connected with a watercourse, or with coastal or estuarial waters and does not contain any fish of the species considered as susceptible ⁽⁶⁾ to ⁽¹⁾[VHS] ⁽¹⁾[and] ⁽¹⁾[IHN].]

Or

- ⁽¹⁾ [originate from a farm that is connected with a watercourse, or with coastal or estuarial waters but where the competent authority has recognised that neither the farm, nor the watercourse, or coastal or estuarial waters contain any fish of the species considered as susceptible ⁽⁶⁾ to ⁽¹⁾[VHS] ⁽¹⁾[and] ⁽¹⁾[IHN].].

(¹⁷) [7.2. I, the undersigned official inspector, hereby certify that the (¹) [live fish] (¹) [and] (¹) [eggs] (¹) [and] (¹) [gametes], referred to at point 5 of this certificate, which is considered susceptible (⁶) to (¹) [spring viraemia of carp] (¹) [and] (¹) [infectious pancreatic necrosis] (¹) [and] (¹) [bacterial kidney disease], originate from a territory (²)

- where (¹) [SVC] (¹) [and] (¹) [IPN] (¹) [and] (¹) [BKD] is notifiable to the competent authority, and reports of suspicion of infections must be immediately investigated by the official services,
- in which all introduction of species susceptible (⁶) to (¹) [SVC] (¹) [and] (¹) [IPN] (¹) [and] (¹) [BKD] has come from a zone or farm having the same health status with respect to (¹) [SVC] (¹) [and] (¹) [IPN] (¹) [and] (¹) [BKD],
- (¹⁸) [in which the fish has not been vaccinated against (¹) [SVC] (¹) [and] (¹) [IPN] (¹) [and] (¹) [BKD]],
- where all farms raising species susceptible (⁶) to (¹) [SVC] (¹) [and] (¹) [IPN] (¹) [and] (¹) [BKD] are under the supervision of the competent authority,
- where all necessary measures (¹⁶) are taken to prevent the introduction of diseases,
- that, in addition to the guarantees given in point 6 of this certificate, is approved by the competent authority as having an equivalent health status to zones within the Community, having additional guarantees with regard to (¹) [SVC] (¹) [and] (¹) [IPN] (¹) [and] (¹) [BKD] as they:

either (¹) [originate from the following territory (²):], which is considered free from (¹) [SVC] (¹) [and] (¹) [IPN] (¹) [and] (¹) [BKD] in accordance with Annex I to Decision 2003/858/EC.]

or (¹) [originate from the following farm:], which at the time of the year (¹) [SVC] (¹) [and] (¹) [IPN] (¹) [and] (¹) [BKD] is expected to manifest itself, have been submitted for at least two years to inspections by the competent authorities, with sampling at least equivalent to those sampling programmes laid down by Decision 2001/183/EC (¹⁴) or surveillance methods as described in the OIE (⁸) *Manual of diagnostic tests for aquatic animals*, Chapter 1.1.4. and the relevant disease chapters, and as laboratory tests have been carried out in accordance with the relevant chapters in the most current edition of the OIE (⁸) *Manual of diagnostic tests for aquatic animals*, with all tests giving negative results.]

or (¹⁹) [originate from the following continental farm:], where (¹) [SVC] (¹) [and] (¹) [IPN] (¹) [and] (¹) [BKD] have occurred within in the previous two years, but where the whole fish population has been withdrawn, and all ponds, tanks or other installations and equipment disinfected under the supervision of the competent authority, and where restocking has taken place with fish from a source certified free by the competent authority after sampling at least equivalent to those sampling programmes laid down in Decision 2001/183/EC (¹²) (¹³) or surveillance methods as described in the OIE (⁸) *Manual of diagnostic tests for aquatic animals*, Chapter 1.1.4. and the relevant disease chapters and as laboratory tests have been carried out in accordance with the relevant chapters in the most current edition of the OIE *Manual of diagnostic tests for aquatic animals*, with all tests giving negative results.].

(²⁰) [7.3. I, the undersigned official inspector, hereby certify that the (¹) [live fish] (¹) [and] (¹) [eggs] (¹) [and] (¹) [gametes] referred to at point 5 of this certificate, which is considered susceptible (⁶) to *Gyrodactylus salaris*, originate from a territory (²)

- where *G. salaris* is notifiable to the competent authority, and reports of suspicion of infections must be immediately investigated by the official services,
- in which all introduction of species susceptible (⁶) to *G. salaris* has come from a zone or farm declared free from *G. salaris*,
- where all farms raising species susceptible (⁶) to *G. salaris* are under the supervision of the competent authority,
- where all necessary measures (¹⁶) are taken to prevent the introduction of diseases,
- that, in addition to the guarantees given in point 6 of this certificate, is approved by the competent authority as having an equivalent health status to those zones within the Community, having additional guarantees with regard to *Gyrodactylus salaris*, as they:

either ⁽¹⁾[originate from the following territory ⁽²⁾:, which is considered free from *Gyrodactylus salaris* in accordance with Annex I to Decision 2003/858/EC.]

or ⁽¹⁾[originate from the following continental farm:, which at the time of the year *Gyrodactylus salaris* is expected to manifest itself, has been submitted for at least two years to inspections by the competent authorities, with sample size at least equivalent to those sampling programmes laid down in Decision 2001/183/EC ⁽¹⁴⁾ and sampling and laboratory tests have been carried out in accordance with the relevant chapters in the most current edition of the OIE ⁽⁶⁾ *Manual of diagnostic tests for aquatic animals*, with all tests giving negative results; and the farm is either situated in a part ⁽²¹⁾ of a water catchment area declared free ⁽²²⁾ from *Gyrodactylus salaris*, or situated in a water catchment area declared free ⁽²²⁾ from *G. salaris* and all other water catchment areas draining into the same estuary are declared free ⁽²²⁾ ⁽²³⁾ from *G. salaris*, and]

or ⁽¹⁾[originate from the following coastal farm:, which is situated in an coastal zone with a salinity below 25 parts per thousand, and where all water catchment areas draining into the estuary are declared free ⁽²²⁾ ⁽²³⁾ of *G. salaris*, and]

or ⁽¹⁾[originate from the following coastal farm:, which is situated in a coastal zone where the seawater has a salinity of more than 25 parts per thousand and no live fish of the susceptible species ⁽⁶⁾ have been introduced during the previous 14 days, and]

or ⁽¹¹⁾[originate from the following farm:, where the eggs have been disinfected according to the OIE *International Aquatic Animal Health Code*, sixth edition, 2003, Appendix 5.2.1., ensuring the elimination *G. salaris*.]

8. Transport requirements

Furthermore, they:

- are placed under conditions that do not alter their health status, and
- have been placed in ⁽¹⁾[sealed watertight containers or boxes suitable for the purpose, which are new or have been cleaned and disinfected beforehand using an authorised disinfectant and which bear on the exterior a legible label] ⁽¹⁾[a well boat where the well and its pipe and pump systems were free of fish, cleaned and disinfected using an authorised disinfectant, and inspected before loading, carrying a manifest] with the relevant ⁽²⁴⁾ information referred to in points 1, 2 and 3 of this certificate and with the following statement:

either

o[⁽¹⁾Live fish] ⁽¹⁾[and] ⁽¹⁾[Eggs] ⁽¹⁾[and] ⁽¹⁾[Gametes] intended for farming in European Community zones and farms except those with a Community approved programme or status, and additional guarantees with regard to: viral haemorrhagic septicaemia (VHS), infectious haematopoietic necrosis (IHN), spring viraemia of carp (SVC), infectious pancreatic necrosis (IPN), bacterial kidney disease (BKD) and *Gyrodactylus salaris*.]

or

[⁽¹⁾Live fish of aquaculture origin intended for ⁽¹⁾[restocking of put-and take fisheries] ⁽¹⁾[human consumption] in European Community zones and farms except those with a Community approved programme or status, additional guarantees or protective measures with regard to: viral haemorrhagic septicaemia (VHS), infectious haematopoietic necrosis (IHN), spring viraemia of carp (SVC), infectious pancreatic necrosis (IPN), bacterial kidney disease (BKD) and *Gyrodactylus salaris*.]

or

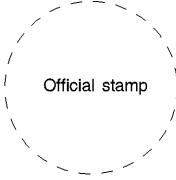
[⁽¹⁾Live fish] ⁽¹⁾[and] ⁽¹⁾[Eggs] ⁽¹⁾[and] ⁽¹⁾[Gametes] intended for farming in European Community zones and farms including those with a Community approved programme or status, additional guarantees or protective measures with regard to: ⁽¹⁾[viral haemorrhagic septicaemia (VHS)] ⁽¹⁾[and] ⁽¹⁾[infectious haematopoietic necrosis (IHN)] ⁽¹⁾[and] ⁽¹⁾[spring viraemia of carp] ⁽¹⁾[and] ⁽¹⁾[infectious pancreatic necrosis] ⁽¹⁾[and] ⁽¹⁾[bacterial kidney disease] ⁽¹⁾[and] ⁽¹⁾[*Gyrodactylus salaris*].]

or

[⁽¹⁾Live fish of aquaculture origin intended for ⁽¹⁾[restocking of put and take fisheries] ⁽¹⁾[human consumption] in European Community zones and farms including those with a Community approved programme or status, additional guarantees or protective measures with regard to: ⁽¹⁾[viral haemorrhagic septicaemia (VHS)] ⁽¹⁾[and] ⁽¹⁾[infectious haematopoietic necrosis (IHN)] ⁽¹⁾[and] ⁽¹⁾[spring viraemia of carp] ⁽¹⁾[and] ⁽¹⁾[infectious pancreatic necrosis] ⁽¹⁾[and] ⁽¹⁾[bacterial kidney disease] ⁽¹⁾[and] ⁽¹⁾[*Gyrodactylus salaris*].]

or

[⁽¹⁾Live fish of aquaculture origin intended for further processing in approved import centres before human consumption].

Done at <div style="text-align: center;">(Place)</div>	on <div style="text-align: center;">(Date)</div>
 <div style="text-align: center;">(Signature of official inspector)</div> <div style="text-align: center;">(Name in capital letters, qualifications and title)</div>

Indicative notes

(¹) Retain as appropriate.

(²) Territory (a whole country, or a zone or a farm) and code of territory as appearing in Annex I to Commission Decision 2003/858/EC.

(³) Specify as applicable: zone, farm, or in case of live fish for human consumption, establishment. If the zone is specified under point 3.2., then the name of the farm, or in case of live fish for human consumption, establishment, must be specified under point 3.3.

(⁴) The registration number(s) of rail-wagon or lorry and the name of the ship should be given as appropriate. If known, the flight number of the aircraft shall be specified.

In case of transport in containers or boxes, the total number, their registration and seal numbers, if present, shall be indicated under point 4.3.

(⁵) Retain where the third country keep species susceptible to EHN, ISA, VHS and/or IHN in fish farms, or if any of such species are present in the natural waters of the country.

(⁶) Known susceptible species, see table below.

Disease	Susceptible host species (*)
ISA	Atlantic salmon (<i>Salmo salar</i>), rainbow trout (<i>Oncorhynchus mykiss</i>), brown trout (<i>Salmo trutta</i>)
EHN	Redfin perch (<i>Perca fluviatilis</i>), rainbow trout (<i>Oncorhynchus mykiss</i>), Macquarie perch (<i>Macquaria australasica</i>), silver perch (<i>Bidyanus bidyanus</i>), mountain galaxias (<i>Galaxias olidus</i>), sheatfish (<i>Silurus glanis</i>), catfish (<i>Ictalurus melas</i>) and mosquito fish (<i>Gambusia affinis</i>) and other species belonging to the family Poeciliidae
VHS	Fish belonging to the family Salmonidae, grayling (<i>Thymallus thymallus</i>), white fish (<i>Coregonus</i> spp.), pike (<i>Esox lucius</i>), turbot (<i>Scophthalmus maximus</i>), herring and sprat (<i>Clupea</i> spp.), Pacific salmon (<i>Oncorhynchus</i> spp.), Atlantic cod (<i>Gadus morhua</i>), Pacific cod (<i>G. macrocephalus</i>), haddock (<i>G. aeglefinus</i>) and rockling (<i>Onos mustelus</i>)
IHN	Fish belonging to the family Salmonidae, pike (<i>Esox lucius</i>)
SVC	Common carp and koi carp (<i>Cyprinus carpio</i>), grass carp (<i>Ctenopharyngodon idellus</i>), silver carp (<i>Hypophthalmichthys molitrix</i>), bighead carp (<i>Aristichthys nobilis</i>), crucian carp (<i>Carassius carassius</i>), goldfish (<i>Carassius auratus</i>), tench (<i>Tinca tinca</i>) and sheatfish (<i>Silurus glanis</i>)
IPN	Rainbow trout (<i>Oncorhynchus mykiss</i>), brook trout (<i>Salvelinus fontinalis</i>), brown trout (<i>Salmo trutta</i>), Atlantic salmon (<i>Salmo salar</i>), and several Pacific salmon species (<i>Oncorhynchus</i> spp.)
BKD	Fish belonging to the family Salmonidae
<i>Gyrodactylus salaris</i>	Atlantic salmon (<i>Salmo salar</i>), rainbow trout (<i>Oncorhynchus mykiss</i>), Arctic char (<i>Salvelinus alpinus</i>), North American brook trout (<i>S. fontinalis</i>), grayling (<i>Thymallus thymallus</i>), North American lake trout (<i>Salvelinus namaycush</i>) and brown trout (<i>Salmo trutta</i>); other species of fish on sites where any of the above species are present shall also be considered as susceptible species

(*) And any other species referred to in the most recent edition of the OIE International Aquatic Animal Health Code and/or the OIE *Manual of diagnostic tests for aquatic animals* as being susceptible for the pathogen/disease in question.

- (7) As applicable.
- (8) World Organisation for Animal Health.
- (9) Retain where the third country do not keep species susceptible to EHN, ISA, VHS and/or IHN in fish farms, and in addition any such species are not present in the natural waters of the country.
- (10) Only applicable for live fish; retain as appropriate.
- (11) Applicable to eggs only; retain as appropriate.
- (12) As laid down in Directive 91/67/EEC, specific animal health requirements are needed in the case of exports to farms or zones within the EC with a Community approved programme, status, or additional guarantees with regard to one or more of the diseases referred to in Lists II and III of Annex A to Directive 91/67/EEC.
- (13) Specific requirements needed in the case of exports to farms or zones within the EC with a Community approved programme or status for viral haemorrhagic septicaemia (VHS) and/or infectious haematopoietic necrosis (IHN) respectively.
- (14) 'Model A or B' as laid down in Decision 2001/183/EC, as well as the requirements in Directives 91/67/EEC and 93/53/EEC, retain as appropriate.
- (15) In accordance with Directives 91/67/EEC and 93/53/EEC, and Decision 2001/183/EC; new farms which commence activity with fish, eggs and gametes that have an equivalent health status according to the central competent authority of the exporting country to those farms and zones approved in the EC with regard to VHS and/or IHN respectively, and otherwise meet the requirements in Annex C, I.A, 6(a) to Directive 91/67/EEC; or farms which recommence their activities after officially supervised cleaning and disinfection and 15 days of fallowing, and which introduce only fish, eggs and gametes that have an equivalent health status according to the central competent authority of the exporting country to those farms and zones approved in the EC with regard to VHS and/or IHN respectively and otherwise meet the requirements in Annex C, I.A, 6(b) to Directive 91/67/EEC. Retain as appropriate.
- (16) Not applicable to coastal or continental zones with no farms. High bio-security level must be maintained. Fish from non-approved farms or zones must not be introduced into approved farms and zones. Ponds with susceptible species should be covered or be located at a safe distance from non-approved farms. Uncontrolled public access should be prevented. The site must not be used for angling purposes unless under conditions authorised and supervised by the local competent authority.
- (17) Specific additional requirements needed in the case of exports to Member States or parts of Member States within the EC with Community approved free status or control and eradication programmes (additional guarantees) as regards spring viraemia of carp (SVC), infectious pancreatic necrosis (IPN), and/or bacterial kidney disease (BKD), according to Commission Decision 2004/453/EC.
- (18) Applicable to species susceptible to SVC, IPN and/or BKD only, introduced into areas with additional guarantees for SVC, IPN and/or BKD. Retain as applicable.
- (19) Applicable only to continental farms where epizootiological investigations have shown that the disease has not spread to other farms or into the wild. Retain as applicable.
- (20) Specific additional requirements needed in the case of exports to Member States or parts of Member States within the EC with Community approved free status (additional guarantees) as regards *Gyrodactylus salaris* according to Decision 2004/453/EC.
- (21) According to Annex B, I.A to Directive 91/67/EEC a part of a water catchment area can only be declared free from a disease if it consists of the upper part of the catchment area from its sources of the waterways to a natural or artificial barrier preventing fish migrating from downstream of that barrier.
- (22) According to the requirements in Chapter I.B of Annex I to Decision 2004/453/EC.
- (23) When declaring continental zones free of *Gyrodactylus salaris*, it must be taken into account that the disease may spread by migrating fish between different continental zones if the salinity between them is low or intermediate (below 25 ppt). Hence one individual continental zone can not be declared free if another continental zone draining into the same coastal zone is infected or has unknown status, unless they are separated by seawater with salinity above 25 ppt.
- (24) Country and territory of origin (code) and of destination; name and telephone number of the consignor and consignee. In case of a transport with well boat, the transport route from the place of loading to the place of destination should be given.

ANNEX II

'ANNEX III

EXPLANATORY NOTES

- (a) The certificates shall be produced by the competent authorities of the exporting country, based on the appropriate model appearing in Annex II, IV or V to this Decision taking into account the destination and use of the fish or products after the arrival in the European Community (EC).
- (b) Considering the status of the place of destination as regards viral haemorrhagic septicaemia (VHS), infectious haematopoietic necrosis (IHN), spring viraemia of carp (SVC), bacterial kidney disease (BKD), infectious pancreatic necrosis (IPN) and *Gyrodactylus salaris* (*G. salaris*) in the EC Member State, the appropriate specific additional requirements shall be incorporated and completed in the certificate.
- (c) The original of each certificate shall consist of a single page, double-sided, or, where more than one page is required, it shall be in such a form that all pages form part of an integrated whole and are indivisible.
- It shall, on the right hand side of the top of each page, be marked as 'original' and bear a specific code number issued by the competent authority. All pages of the certificate shall be numbered - (page number) of (total number of pages).
- (d) The original of the certificate and the labels referred to in the model certificate shall be drawn up in at least one official language of the EC Member State in which the inspection at the border post shall be carried out and of the EC Member State of destination. However, these Member States may allow other languages, if necessary, accompanied by an official translation.
- (e) The certificate issued for live fish, their eggs and gametes must be completed on the day of loading of the consignment for exportation to the EC. The original of the certificate must be completed with an official stamp and signed by an official inspector designated by the competent authority. In doing so, the competent authority of the exporting country shall ensure that the principles of certification equivalent to those laid down in Council Directive 96/93/EC are followed.
- The stamp, unless embossed, and the signature shall be in a colour different to that of the printing.
- (f) If for reasons of identification of the items of the consignment, additional pages are attached to the certificate, these pages shall be considered as forming part of the original and be signed and stamped by the certifying official inspector on each page.
- (g) The original of the certificate must accompany the consignment until it reaches the EC border inspection post.
- (h) The certificate issued for live fish, their eggs and gametes shall be valid for 10 days from the date of issue. In the case of transport by ship, the time of validity is prolonged by the time of journey at sea.
- (i) The live fish, their eggs and gametes shall not be transported together with other fish, eggs or gametes that, either are not destined to EC, or are of a lower health status. Furthermore, they must not be transported under any other conditions that alter their health status.
- (j) The possible presence of pathogens in the water is relevant for considering the health status of live fish, eggs and gametes. The certifying officer should therefore consider the following:
- the 'Place of origin' should be the localisation of the farm where the fish, eggs or gametes was reared reaching their commercial size relevant for the consignment covered by this certificate.'

ANNEX III

'ANNEX IV

Model animal health certificate for the importation of fish products of aquaculture origin into the European Community (EC) for further processing before human consumption

Reference code No

ORIGINAL

Reference code No of
public health certificate*Note for the importer:*

This certificate shall accompany slaughtered fish of aquaculture origin, which is intended for further processing operations affecting the anatomical wholeness of the fish in the Community before their placing on the market for human consumption.

Processing of fish products of aquaculture origin of species susceptible to EHN, ISA, VHS and IHN must take place in approved import centres unless eviscerated before dispatch, or the place of origin has a health status at least equivalent to the place where they are to be processed.

This certificate is only for veterinary purposes and has — in its original — to accompany the consignment until it reaches the border inspection post. This certificate must be attached to the certificate issued pursuant to Council Directive 91/493/EEC.

Animal health attestation for importation into the European Community of fish products of aquaculture origin for further processing before human consumption**1. General requirements**

I, the undersigned official inspector, hereby certify that the fish products of aquaculture origin referred to in the public health certificate to which this certificate is attached originate from fish which showed no clinical signs of disease at the time of [collection]⁽¹⁾ [slaughter]⁽¹⁾ [loading]⁽¹⁾, and

⁽²⁾ [Specific requirements for species susceptible⁽³⁾ to EHN and/or ISA

either

⁽³⁾ [originate from fish harvested from a farm or a zone which is approved by the central competent authority as being free from infectious salmon anaemia (ISA) or epizootic haematopoietic necrosis (EHN).]

or

⁽³⁾ [have been slaughtered and eviscerated.]]

⁽⁴⁾ [Specific requirements for species susceptible to VHS and/or IHN

either

⁽¹⁾ [originate from a designated farm.]

or

⁽¹⁾ [originate from fish harvested from a farm or a zone which is approved by the central competent authority as having an equivalent health status to those farms and zones with Community approved programmes or status as regards [VHS]⁽¹⁾ [and]⁽¹⁾ [IHN]⁽¹⁾.]

or

⁽¹⁾ [have been slaughtered and eviscerated.]]

2. Transport and labelling requirements

I, the undersigned official inspector, hereby certify that the fish products of aquaculture origin referred to in the public health certificate to which this certificate is attached

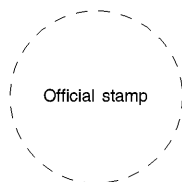
- are transported under conditions that does not alter the animal health status of the products,
- have been packed and identified in accordance with the provisions laid down pursuant to Directive 91/493/EC, with the following statement included:

'[Un-eviscerated fish]⁽¹⁾ [and]⁽¹⁾ [Eviscerated fish or fish products]⁽¹⁾ of aquaculture origin intended for export to the European Community [including to Community approved zones as regards [VHS]⁽¹⁾ [and]⁽¹⁾ [IHN]⁽¹⁾], for further processing [in approved import centres]⁽¹⁾ before human consumption.'

General statement

I, the undersigned official inspector, hereby certify that I am aware of the provisions of Council Directives 91/67/EEC and 93/53/EEC and Commission Decision 2003/858/EC.

Done at , on
(Place) (Date)



.....
(Signature of official inspector)

.....
(Name in capital letters, qualifications and title)

Indicative notes

⁽¹⁾ Retain as appropriate.

⁽²⁾ If the products originate from farms or zones not declared free from EHN and ISA according to the relevant OIE Guidelines, the fish should be eviscerated in the third country establishment before dispatch, or be processed in an approved import centre in the Community, regardless of destination in the EU. Applicable only to species susceptible (see indicative note 3) to EHN or ISA. Retain as appropriate.

⁽³⁾ Known susceptible species, see table below.

Disease	Susceptible host species (*)
ISA	Atlantic salmon (<i>Salmo salar</i>), rainbow trout (<i>Oncorhynchus mykiss</i>), brown trout (<i>Salmo trutta</i>)
EHN	Redfin perch (<i>Perca fluviatilis</i>), rainbow trout (<i>Oncorhynchus mykiss</i>), Macquarie perch (<i>Macquaria australasica</i>), silver perch (<i>Bidyanus bidyanus</i>), mountain galaxias (<i>Galaxias olidus</i>), sheatfish (<i>Silurus glanis</i>), catfish (<i>Ictalurus melas</i>) and mosquito fish (<i>Gambusia affinis</i>) and other species belonging to the family Poeciliidae
VHS	Fish belonging to the family Salmonidae, grayling (<i>Thymallus thymallus</i>), white fish (<i>Coregonus</i> spp.), pike (<i>Esox lucius</i>), turbot (<i>Scophthalmus maximus</i>), herring and sprat (<i>Clupea</i> spp.), Pacific salmon (<i>Oncorhynchus</i> spp.), Atlantic cod (<i>Gadus morhua</i>), Pacific cod (<i>G. macrocephalus</i>), haddock (<i>G. aeglefinus</i>) and rockling (<i>Onos mustelus</i>)
IHN	FFish belonging to the family Salmonidae, pike (<i>Esox lucius</i>)

(*) And any other species referred to in the most recent edition of the OIE *International Aquatic Animal Health Code* as being susceptible for the pathogen/disease in question.

⁽⁴⁾ Specific requirements needed in the case the country and place of destination (Member State or part of Member State) referred to in the public health certificate to which this certificate should be attached has Community approved programme or status for viral haemorrhagic septicaemia (VHS) and/or infectious haematopoietic necrosis (IHN) respectively. Only applicable to species susceptible to VHS and/or IHN. If none of the three options can be fulfilled, the place of destination must either be an approved import centre or a Member State or part thereof without Community approved status or programme as regards VHS and/or IHN. Retain as applicable.

ANNEX IV

'ANNEX V

Animal health certificate for the importation of fish products of aquaculture origin into the European Community (EC) for immediate human consumption

Reference code No

ORIGINAL

Reference code No of
public health certificate*Note for the importer:*

This certificate shall accompany slaughtered fish of aquaculture origin, which is not intended for further processing operations affecting the anatomical wholeness of the fish in the Community before their placing on the market for human consumption.

This certificate is only for veterinary purposes and has — in its original — to accompany the consignment until it reaches the border inspection post. The certificate must be attached to the certificate issued pursuant to Council Directive 91/493/EEC.

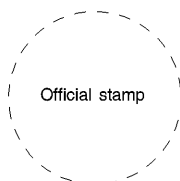
1. Animal health attestation for importation into the European Community of fish products of aquaculture origin for immediate human consumption

I, the undersigned official inspector, hereby certify that the fish products of aquaculture origin referred to in the public health certificate to which this certificate is attached, originate from fish which showed no clinical signs of disease at the time of [collection] ⁽¹⁾ [slaughter] ⁽¹⁾ [loading] ⁽¹⁾.

General statement

I, the undersigned official inspector, hereby certify that I am aware of the provisions of Council Directives 91/67/EEC and 93/53/EEC and Commission Decision 2003/858/EC.

Done at, on
(Place) (Date)



Official stamp

.....
(Signature of official inspector)

.....
(Name in capital letters, qualifications and title)

Indicative notes

⁽¹⁾ Retain as appropriate.

COMMISSION DECISION

of 27 December 2004

amending Decision 2001/497/EC as regards the introduction of an alternative set of standard contractual clauses for the transfer of personal data to third countries

(notified under document number C(2004) 5271)

(Text with EEA relevance)

(2004/915/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

standard contractual clauses laid down in Decision 2001/497/EC while making use of different mechanisms.

Having regard to the Treaty establishing the European Community,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾, and in particular Article 26(4) thereof,

Whereas:

(1) In order to facilitate data flows from the Community, it is desirable for data controllers to be able to perform data transfers globally under a single set of data protection rules. In the absence of global data protection standards, standard contractual clauses provide an important tool allowing the transfer of personal data from all Member States under a common set of rules. Commission Decision 2001/497/EC of 15 June 2001 on standard contractual clauses for the transfer of personal data to third countries under Directive 95/46/EC⁽²⁾ therefore lays down a model set of standard contractual clauses which ensures adequate safeguards for the transfer of data to third countries.

(2) Much experience has been gained since the adoption of that Decision. In addition, a coalition of business associations⁽³⁾ has submitted a set of alternative standard contractual clauses designed to provide a level of data protection equivalent to that provided for by the set of

(3) Since the use of standard contractual clauses for international data transfers is voluntary as standard contractual clauses are only one of several possibilities under Directive 95/46/EC, for lawfully transferring personal data to a third country, data exporters in the Community and data importers in third countries should be free to choose any of the sets of standard contractual clauses, or to choose some other legal basis for data transfer. As each set as a whole forms a model, data exporters should not, however, be allowed to amend these sets or totally or partially merge them in any manner.

(4) The standard contract clauses submitted by the business associations aim at increasing the use of contractual clauses among operators by mechanisms such as more flexible auditing requirements and more detailed rules on the right of access.

(5) Moreover, as an alternative to the system of joint and several liability provided for in Decision 2001/497/EC, the set now submitted contains a liability regime based on due diligence obligations where the data exporter and the data importer would be liable vis-à-vis the data subjects for their respective breach of their contractual obligations; the data exporter is also liable for not using reasonable efforts to determine that the data importer is able to satisfy its legal obligations under the clauses (*culpa in eligendo*) and the data subject can take action against the data exporter in this respect. The enforcement of clause I(b) of the new set of standard contractual clauses is of particular importance in this regard, in particular in connection with the possibility for the data exporter to carry out audits on the data importers' premises or to request evidence of sufficient financial resources to fulfil its responsibilities.

⁽¹⁾ OJ L 281, 23.11.95, p. 31. Directive as amended by Regulation (EC) No 1883/2003 (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 181, 4.7.2001, p. 19.

⁽³⁾ The International Chamber of Commerce (ICC), Japan Business Council in Europe (JBCE), European Information and Communications Technology Association (EICTA), EU Committee of the American Chamber of Commerce in Belgium (Amcham), Confederation of British Industry (CBI), International Communication Round Table (ICRT) and the Federation of European Direct Marketing Associations (FEDMA).

- (6) As regards the exercise of third party beneficiary rights by the data subjects, greater involvement of the data exporter in the resolution of data subjects' complaints is provided for, with the data exporter being obliged to make contact with the data importer and, if necessary, enforce the contract within the normal period of one month. If the data exporter refused to enforce the contract and the breach by the data importer still continues, the data subject may then enforce the clauses against the data importer and eventually sue him in a Member State. This acceptance of jurisdiction and the agreement to comply with a decision of a competent court or data protection authority does not prejudice any procedural rights of data importers established in third countries, such as rights of appeal.
- (7) In order, however, to prevent abuses with this additional flexibility, it is appropriate to provide that data protection authorities can more easily prohibit or suspend data transfers based on the new set of standard contractual clauses in those cases where the data exporter refuses to take appropriate steps to enforce contractual obligations against the data importer or the latter refuses to cooperate in good faith with competent supervisory data protection authorities.
- (8) The use of standard contractual clauses will be made without prejudice to the application of national provisions adopted pursuant to Directive 95/46/EC or to Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)⁽¹⁾, in particular as far as the sending of commercial communications for the purposes of direct marketing is concerned.
- (9) On that basis, the safeguards contained in the submitted standard contractual clauses can be considered as adequate within the meaning of Article 26(2) of Directive 95/46/EC.
- (10) The Working Party on the Protection of Individuals with regard to the Processing of Personal Data established under Article 29 of Directive 95/46/EC has delivered an opinion⁽²⁾ on the level of protection provided under the submitted standard contractual clauses which has been taken into account.
- (11) In order to assess the operation of the amendments to Decision 2001/497/EC, it is appropriate that the Commission evaluates them three years after their notification to the Member States
- (12) Decision 2001/497/EC should be amended accordingly.
- (13) The measures provided for in this Decision are in accordance with the opinion of the Committee established under Article 31 of Directive 95/46/EC,
- HAS ADOPTED THIS DECISION:
- Article 1*
- Decision 2001/497/EC is amended as follows:
1. In Article 1 the following paragraph is added:

'Data controllers may choose either of the sets I or II in the Annex. However, they may not amend the clauses nor combine individual clauses or the sets.'
 2. In Article 4 paragraphs 2 and 3 are replaced by the following:

'2. For the purposes of paragraph 1, where the data controller adduces adequate safeguards on the basis of the standard contractual clauses contained in set II in the Annex, the competent data protection authorities are entitled to exercise their existing powers to prohibit or suspend data flows in either of the following cases:

 - (a) refusal of the data importer to cooperate in good faith with the data protection authorities, or to comply with their clear obligations under the contract;
 - (b) refusal of the data exporter to take appropriate steps to enforce the contract against the data importer within the normal period of one month after notice by the competent data protection authority to the data exporter.

⁽¹⁾ OJ L 201, 31.7.2002, p. 37.

⁽²⁾ Opinion No 8/2003, available at: <http://europa.eu.int/comm/privacy>

For the purposes of the first subparagraph, refusal in bad faith or refusal to enforce the contract by the data importer shall not include cases in which cooperation or enforcement would conflict with mandatory requirements of the national legislation applicable to the data importer which do not go beyond what is necessary in a democratic society on the basis of one of the interests listed in Article 13(1) of Directive 95/46/EC, in particular sanctions as laid down in international and/or national instruments, tax-reporting requirements or anti-money-laundering reporting requirements.

For the purposes of point (a) of the first subparagraph cooperation may include, in particular, the submission of the data importer's data processing facilities for audit or the obligation to abide by the advice of the data protection supervisory authority in the Community.

3. The prohibition or suspension pursuant to paragraphs 1 and 2 shall be lifted as soon as the reasons for the prohibition or suspension no longer exist.

4. When Member States adopt measures pursuant to paragraphs 1, 2 and 3, they shall without delay inform the Commission which will forward the information to the other Member States.'.

3. In Article 5 the first sentence is replaced by the following:

'The Commission shall evaluate the operation of this Decision on the basis of available information three years after its notification and the notification of any amendment thereto to the Member States.'

4. The Annex is amended as follows:

1. After the title the term 'SET I' is inserted.

2. The text set out in the Annex to this Decision is added.

Article 2

This Decision shall apply from 1 April 2005.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 27 December 2004.

For the Commission

Charlie McCREEVY

Member of the Commission

ANNEX

'SET II

Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)*Data transfer agreement*

between

_____ (name)

_____ (address and country of establishment)

hereinafter "data exporter")

and

_____ (name)

_____ (address and country of establishment)

hereinafter "data importer"

each a "party"; together "the parties".

Definitions

For the purposes of the clauses:

- (a) "personal data", "special categories of data/sensitive data", "process/processing", "controller", "processor", "data subject" and "supervisory authority/authority" shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby "the authority" shall mean the competent data protection authority in the territory in which the data exporter is established);
- (b) "the data exporter" shall mean the controller who transfers the personal data;
- (c) "the data importer" shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country's system ensuring adequate protection;
- (d) "clauses" shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

I. Obligations of the data exporter

The data exporter warrants and undertakes that:

- (a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- (b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- (c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.

- (d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- (e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

II. Obligations of the data importer

The data importer warrants and undertakes that:

- (a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- (b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- (c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- (d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- (e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).
- (f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- (g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.

(h) It will process the personal data, at its option, in accordance with:

- (i) the data protection laws of the country in which the data exporter is established, or
- (ii) the relevant provisions⁽¹⁾ of any Commission decision pursuant to Article 25(6) of Directive 95/46/EC, where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data⁽²⁾, or
- (iii) the data processing principles set forth in Annex A.

Data importer to indicate which option it selects: _____

Initials of data importer: _____;

(i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and

- (i) the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
- (ii) the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
- (iii) data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
- (iv) with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

III. Liability and third party rights

- (a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- (b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

⁽¹⁾ "Relevant provisions" means those provisions of any authorisation or decision except for the enforcement provisions of any authorisation or decision (which shall be governed by these clauses).

⁽²⁾ However, the provisions of Annex A.5 concerning rights of access, rectification, deletion and objection must be applied when this option is chosen and take precedence over any comparable provisions of the Commission Decision selected.

IV. Law applicable to the clauses

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

V. Resolution of disputes with data subjects or the authority

- (a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- (b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- (c) Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

VI. Termination

- (a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- (b) In the event that:
 - (i) the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
 - (ii) compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
 - (iii) the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
 - (iv) a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
 - (v) a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- (c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- (d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

VII. Variation of these clauses

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

VIII. Description of the Transfer

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

Dated: _____

FOR DATA IMPORTER

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FOR DATA EXPORTER

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ANNEX A

DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to "opt-out" from having his data used for such purposes.
8. Automated decisions: For purposes hereof "automated decision" shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
 - (a) (i) such decisions are made by the data importer in entering into or performing a contract with the data subject, and
 - (ii) (the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties.or
- (b) where otherwise provided by the law of the data exporter.

ANNEX B

DESCRIPTION OF THE TRANSFER

*(To be completed by the parties)***Data subjects**

The personal data transferred concern the following categories of data subjects:

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Purposes of the transfer(s)

The transfer is made for the following purposes:

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Categories of data

The personal data transferred concern the following categories of data:

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Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

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Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:

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Data protection registration information of data exporter (where applicable)

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Additional useful information (storage limits and other relevant information)

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Contact points for data protection enquiries**Data importer****Data exporter**

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ILLUSTRATIVE COMMERCIAL CLAUSES (OPTIONAL)*Indemnification between the data exporter and data importer:*

"The parties will indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of these clauses. Indemnification hereunder is contingent upon (a) the party(ies) to be indemnified (the "indemnified party(ies)") promptly notifying the other party(ies) (the "indemnifying party(ies)") of a claim, (b) the indemnifying party(ies) having sole control of the defence and settlement of any such claim, and (c) the indemnified party(ies) providing reasonable cooperation and assistance to the indemnifying party(ies) in defence of such claim."

Dispute resolution between the data exporter and data importer (the parties may of course substitute any other alternative dispute resolution or jurisdictional clause):

"In the event of a dispute between the data importer and the data exporter concerning any alleged breach of any provision of these clauses, such dispute shall be finally settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The place of arbitration shall be []. The number of arbitrators shall be []."

Allocation of costs:

"Each party shall perform its obligations under these clauses at its own cost."

Extra termination clause:

"In the event of termination of these clauses, the data importer must return all personal data and all copies of the personal data subject to these clauses to the data exporter forthwith or, at the data exporter's choice, will destroy all copies of the same and certify to the data exporter that it has done so, unless the data importer is prevented by its national law or local regulator from destroying or returning all or part of such data, in which event the data will be kept confidential and will not be actively processed for any purpose. The data importer agrees that, if so requested by the data exporter, it will allow the data exporter, or an inspection agent selected by the data exporter and not reasonably objected to by the data importer, access to its establishment to verify that this has been done, with reasonable notice and during business hours."

EUROPEAN CENTRAL BANK

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 16 December 2004

amending Guideline ECB/2004/13 on the Eurosystem's provision of reserve management services in euro to non-European Union central banks, countries outside the European Union and international organisations

(ECB/2004/20)

(2004/916/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

HAS ADOPTED THIS GUIDELINE:

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and in particular Article 12(1), Article 14(3) and Article 23 thereof,

Article 1

Guideline ECB/2004/13 is amended as follows:

Whereas:

1. The title is replaced by the following:

- (1) The customers to whom Eurosystem reserve management services can be provided under Guideline ECB/2004/13⁽¹⁾ are non-European Union (non-EU) countries, non-EU central banks or monetary authorities, and international organisations.

‘Guideline of the European Central Bank of 1 July 2004 on the Eurosystem's provision of reserve management services in euro to central banks and countries located outside the euro area and to international organisations (ECB/2004/13)’.

2. Article 1 is amended as follows:

- (2) In view of recent developments and after further assessment, the Governing Council considers it useful to broaden the definition of customer also to include the Member States that have not adopted the euro and their national central banks (NCBs). Guideline ECB/2004/13 should therefore be amended accordingly.

(a) the first indent is replaced by the following:

- (3) In accordance with Article 12(1) and Article 14(3) of the Statute, ECB guidelines form an integral part of Community law,

“all types of banking transactions” shall include the provision of Eurosystem reserve management services to central banks and countries located outside the euro area and to international organisations in connection with the management of the reserves of such central banks, countries and international organisations;’

⁽¹⁾ Guideline 2004/546/EC of the European Central Bank (OJ L 241, 13.7.2004, p. 68).

(b) the fourth indent is replaced by the following:

“customer” shall mean any country (including any public authority or government agency), any central bank or monetary authority located outside the euro area, or any international organisation to which Eurosystem reserve management services are provided by a Eurosystem member;”

(c) the last indent is deleted.

Article 2

Entry into force

This Guideline shall enter into force on 22 December 2004.

Article 3

Addressees

This Guideline is addressed to the NCBs of the Member States that have adopted the euro.

Done at Frankfurt am Main, 16 December 2004.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 1974/2004 of 29 October 2004 amending Regulation (EC) No 795/2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers

(Official Journal of the European Union L 345 of 20 November 2004)

On page 91, Article 2, second line:

for: 'It shall apply from 1 January 2005 except Article 1(21) which shall apply from 31 October 2004',

read: 'It shall apply from 1 January 2005 except Article 1(22) which shall apply from 31 October 2004'.

Procès-verbal of rectification to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000

(Official Journal of the European Communities L 317 of 15 December 2000)

This rectification was given effect to by a procès-verbal of rectification which was signed in Brussels on 28 July 2004 with the Council and the Secretariat of the ACP States as co-depositaries.

On page 278, in Annex VI: 'LIST OF LDLICS', Article 5:

Article 5 is replaced as follows:

'Article 5

List of island ACP States:

Antigua and Barbuda	Micronesia
Bahamas	Nauru
Barbados	Niue
Cape Verde	Palau
Comoros	Papua New Guinea
Cook Islands	Saint Kitts and Nevis
Dominica	Saint Lucia
Dominican Republic	Saint Vincent and the Grenadines
Fiji	Samoa
Grenada	São Tomé and Príncipe
Haiti	Seychelles
Jamaica	Solomon Islands
Kiribati	Tonga
Madagascar	Trinidad and Tobago
Marshall Islands	Tuvalu
Mauritius	Vanuatu'
