

# Official Journal

## of the European Union

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### Legislation

#### Contents

#### I Acts whose publication is obligatory

.....

#### II Acts whose publication is not obligatory

##### Council

2005/213/EC

- ★ **Council Decision of 24 January 2005 on the conclusion of the Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out, for the period from 1 July 2004 to 30 June 2007, the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire** ..... 1

Agreement in the form of an exchange of letters concerning the provisional application of the protocol setting out, for the period from 1 July 2004 to 30 June 2007, the fishing opportunities and financial contribution provided for in the agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire ..... 3

#### Acts adopted pursuant to Title VI of the Treaty on European Union

- ★ **Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties** ..... 16

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 24 January 2005

**on the conclusion of the Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out, for the period from 1 July 2004 to 30 June 2007, the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire**

(2005/213/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37, in conjunction with the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Under the terms of the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire<sup>(1)</sup>, before the expiry of the Protocol to the Agreement the contracting parties are to negotiate in order to agree the content of the Protocol for the following period and any changes or additions to be made to the Annex.

(2) The two parties negotiated, between 9 and 13 November 2003 in Abidjan, a new Protocol setting out the fishing opportunities and financial contribution. This Protocol for the period from 1 July 2004 to 30 June 2007 was initialled on 3 March 2004 in Brussels.

(3) Under the Protocol, Community fishermen enjoy fishing opportunities in waters under the sovereignty or jurisdiction of Côte d'Ivoire from 1 July 2004 to 30 June 2007.

(4) The new Protocol must be applied at the earliest opportunity if fishing activities by Community vessels are not to be interrupted. To that end, the two parties initialled an Agreement in the form of an Exchange of Letters providing for the provisional application of the initialled Protocol from the day following that on which the Protocol in force expired.

(5) The method of allocating the fishing opportunities among the Member States should be defined on the basis of the traditional allocation of fishing opportunities under the Fisheries Agreement.

(6) The Agreement in the form of an Exchange of Letters should be approved, subject to its definitive conclusion by the Council,

HAS DECIDED AS FOLLOWS:

*Article 1*

The Agreement in the form of an Exchange of Letters concerning the provisional application of the Protocol setting out, for the period from 1 July 2004 to 30 June 2007, the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire is hereby approved on behalf of the Community.

The texts of the Agreement in the form of an Exchange of Letters and of the Protocol are attached to this Decision.

<sup>(1)</sup> OJ L 379, 31.12.1990, p. 3. Agreement as last amended by the Protocol setting out, for the period 1 July 2000 to 30 July 2003, the fishing opportunities and financial contribution provided for in the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire (OJ L 102, 12.4.2001, p. 3).

*Article 2*

1. The fishing opportunities set out in the Protocol shall be allocated among the Member States as follows:

(a) demersal species:

Spain: 1 300 GT (*gross tonnage*) per month, averaged over the year;

(b) tuna fishing vessels:

(i) tuna seiners

— France: 17 vessels

— Spain: 17 vessels

(ii) surface longliners

— Spain: 6 vessels

— Portugal: 5 vessels

(iii) pole-and-line tuna vessels

— France: 3 vessels.

2. If licence applications from these Member States do not exhaust the fishing opportunities set out in the Protocol, the Commission may consider licence applications from any other Member State.

*Article 3*

Member States which have vessels fishing under the present Agreement shall notify to the Commission the quantities of each stock taken in the Côte d'Ivoire fishing zone, in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches by Community fishing vessels in third country waters and on the high seas <sup>(1)</sup>.

*Article 4*

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the Community.

Done at Brussels, 24 January 2005.

*For the Council*

*The President*

F. BODEN

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<sup>(1)</sup> OJ L 73, 15.3.2001, p. 8.

**AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS**

**concerning the provisional application of the protocol setting out, for the period from 1 July 2004 to 30 June 2007, the fishing opportunities and financial contribution provided for in the agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire**

*A. Letter from the Government of Côte d'Ivoire*

Sir,

With reference to the Protocol initialled on 3 March 2004 in Brussels setting out the fishing opportunities and financial contribution for the period from 1 July 2004 to 30 June 2007, I have the honour to inform you that the Government of Côte d'Ivoire is prepared to apply the Protocol provisionally, with effect from 1 July 2004, pending its entry into force in accordance with Article 10 of the said Protocol, provided that the European Community is disposed to do likewise.

Accordingly, the first instalment of the financial contribution specified in Article 3 of the Protocol is to be paid by 31 December 2004.

I should be obliged if you would confirm the European Community's agreement to such provisional application.

I should be obliged if you would acknowledge receipt of this letter.

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

*For the Government of Côte d'Ivoire*

*B. Letter from the European Community*

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

'With reference to the Protocol initialled on 3 March 2004 in Brussels setting out the fishing opportunities and financial contribution for the period from 1 July 2004 to 30 June 2007, I have the honour to inform you that the Government of Côte d'Ivoire is prepared to apply the Protocol provisionally, with effect from 1 July 2004, pending its entry into force in accordance with Article 10 of the said Protocol, provided that the European Community is disposed to do likewise.

Accordingly, the first instalment of the financial contribution specified in Article 3 of the Protocol is to be paid by 31 December 2004.

I should be obliged if you would confirm the European Community's agreement to such provisional application.'

I have the honour to confirm the European Community's agreement to such provisional application.

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

*On behalf of the Council of the European Union*

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## PROTOCOL

**setting out, for the period from 1 July 2004 to 30 June 2007, the fishing opportunities and financial contribution provided for in the agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire**

## Article 1

1. From 1 July 2004, and for a period of three years, fishing opportunities pursuant to Article 2 of the Agreement shall be as follows:

- (a) freezer trawlers designed to fish demersal species, taking deepwater crustaceans, cephalopods and demersal fish: an annual average of 1 300 GT <sup>(1)</sup> (gross tonnage) per month;
- (b) pole-and-line tuna vessels: 3 vessels;
- (c) surface longliners: 11 vessels;
- (d) tuna seiners: 34 vessels.

2. Under Article 4(1) of the Agreement, vessels flying the flag of a Member State of the European Community may fish in the Côte d'Ivoire fishing zone only if they are in possession of a fishing licence issued under this Protocol in accordance with the arrangements described in the Annex.

## Article 2

The fishing opportunities referred to in Article 1 may be increased by mutual agreement at the request of the Community if they do not thereby compromise the rational exploitation of the resources of Côte d'Ivoire.

In this case the financial contribution referred to in Article 3(1) shall be increased proportionately and *pro rata temporis*.

## Article 3

1. The financial contribution for the fishing opportunities laid down in Article 1 and the support for the sectoral fisheries policy laid down in Article 4 shall be EUR 1 065 000 per year.

2. The financial contribution for tuna fishing shall cover a catch of 9 000 tonnes a year in Côte d'Ivoire waters. If the tuna caught by Community vessels in the Côte d'Ivoire fishing zone

exceeds this weight, the amount referred to above shall be proportionately increased. However, the total amount of the financial contribution paid by the Community shall not be more than twice the amount indicated in paragraph 1.

3. The annual financial contribution shall be payable by 31 December each year of the Protocol at the latest. The Côte d'Ivoire Government shall have full discretion regarding the use to which this financial contribution is put, in line with the specifications in Article 4.

## Article 4

1. The two parties shall agree on the objectives to be achieved regarding the sustainable management of Côte d'Ivoire fish stocks. The financial contribution provided for in Article 3(1) shall be earmarked for financing measures aimed at achieving these objectives, as laid down in the Côte d'Ivoire Government's multiannual sectoral programme, by way of indication, and in accordance with the following breakdown:

- (a) scientific programmes, including a scientific trawl survey carried out by an oceanographic vessel and designed to promote better understanding of fishery and biological resources in the Côte d'Ivoire fishing zone: EUR 200 000;
- (b) support for fisheries monitoring, inspection and surveillance, including the introduction of a satellite-based vessel monitoring system (VMS) before the end of the second year of validity of this Protocol: EUR 280 000;
- (c) improved fisheries statistics: EUR 100 000;
- (d) aid for the Ministère de la Production Animale et des Ressources Halieutiques of Côte d'Ivoire ('Ministry') responsible for fisheries for drawing up fisheries development policies and strategies: EUR 485 000.

2. During the first year of validity of this Protocol, the measures defined under Article 4(1), and the annual amounts allocated to them, shall be decided by the Ministry in accordance with the multiannual sectoral programme. This programme, which is to be submitted to the Delegation of the European Commission in Côte d'Ivoire not later than 1 October 2004, must be approved by the joint committee provided for in Article 10 of the Agreement.

<sup>(1)</sup> As defined by Council Regulation (EC) No 2371/2002 of 20 December 2002 (OJ L 358, 31.12.2002, p. 59).

From the second year of validity of the Protocol onwards the Ministry is to submit to the Delegation of the European Commission in Côte d'Ivoire, not later than 1 October 2005 and 1 October 2006, a detailed report on the implementation of the programme and of the results achieved.

The measures provided for in Article 4(1) or the related amounts may be amended by mutual agreement between both parties.

Following approval, by the joint committee, of the multiannual sectoral programme for the first year of validity of the Protocol, and of the implementation report for the following two years, the annual amounts shall be paid not later than 31 December each year into the bank account communicated by the Ministry and approved by the European Commission.

The joint committee shall meet not later than four months after the anniversary date of the Protocol, i.e. not later than 1 November of each year of validity of the Protocol.

The European Commission may ask the Ministry for any additional information which may be considered necessary.

#### *Article 5*

If the Community fails to make the payments provided for under Articles 3 and 4, the obligations of Côte d'Ivoire resulting from the Fisheries Agreement may be suspended.

#### *Article 6*

Where severe circumstances not attributable to natural phenomena prevent the exercise of fishing activities in the Côte d'Ivoire fishing zone, the European Community may suspend payment of the financial contribution following prior consultations between the two parties.

Payment of the financial contribution shall be resumed as soon as normality is restored and after consultations between the two parties confirm that the situation is likely to permit a return to fishing activities.

The validity of the licences granted to Community vessels under Article 4 of the Agreement shall be extended by a period equal to the period during which fishing activities were suspended.

#### *Article 7*

The Annex to the Agreement between the European Economic Community and the Republic of Côte d'Ivoire on fishing off the

coast of Côte d'Ivoire shall be replaced by the Annex to this Protocol.

#### *Article 8*

The European Commission and the Côte d'Ivoire authorities shall take all the necessary measures to assess the state of fisheries resources.

A joint scientific committee shall be set up for that purpose. This committee shall meet regularly, at least once each year, and shall be made up of scientists selected by mutual agreement by both parties.

On the basis of the conclusions of the scientific committee and in the light of the best available scientific advice, the two parties shall hold consultations in the joint committee provided for in Article 10 of the Agreement with a view to adapting, by mutual agreement, the fishing opportunities and conditions where necessary.

#### *Article 9*

The ILO Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by European Community vessels. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.

Local seamen's employment contracts, a copy of which shall be given to the signatories, shall be drawn up between the vessel-owners' representative(s) and the seamen and/or their trade unions or their representatives in consultation with the responsible local authorities. These contracts shall guarantee the seamen the social security cover applicable to them, including life assurance and sickness and accident insurance. The wage conditions granted to local seamen/fishermen shall not be lower than those applied to crews from the State signing the fisheries agreement and shall under no circumstances be below ILO standards.

Where the employer is a local company, the employment contract shall specify the names of the vessel-owner and the flag State.

Furthermore, vessel-owners shall guarantee living and working conditions similar to those enjoyed by the European Community seamen to the local seamen who are recruited.

#### *Article 10*

This Protocol shall enter into force on the date of its signing.

It shall apply from 1 July 2004.

## ANNEX

**CONDITIONS FOR THE EXERCISE OF FISHING ACTIVITIES BY COMMUNITY VESSELS IN THE CÔTE D'IVOIRE FISHING ZONE****A. Licence applications and issuing formalities**

The relevant Community authorities shall present to the Ministère de la Production Animale et des Ressources Halieutiques of Côte d'Ivoire (the Ministry), via the Delegation of the European Commission in Côte d'Ivoire, an application for each vessel wishing to fish under the Agreement.

Applications shall be made on the form provided for that purpose by Côte d'Ivoire, a specimen of which is attached (Appendix 1).

Each licence application shall be accompanied by proof of payment of the fee for the period of the licence's validity.

The fees shall include all national and local charges except for port taxes and service charges.

The Ministry shall communicate, before the entry into force of the Agreement, all information concerning the bank accounts to be used for the payment of the fee.

Licences shall be issued for a specific vessel and shall not be transferable.

However, in the case of *force majeure* and at the request of the European Commission, a vessel's licence shall be replaced by a new licence for another vessel with characteristics similar to those of the first vessel. The owner of the first vessel shall return the cancelled licence to the Ministry via the Delegation of the European Commission in Côte d'Ivoire.

The new licence shall indicate:

- the date of issue,
- the fact that it invalidates and replaces the licence of the previous vessel.

No fee as laid down in Article 4(2) of the Agreement shall be due for any unexpired period of validity.

1. Licences shall be transmitted by the Ministry to the Delegation of the European Commission in Côte d'Ivoire within 30 days of receipt of the application.
2. The original of the licence must be held on board at all times and be presented at any time on request of the competent Côte d'Ivoire authorities.

However, for pole-and-line tuna vessels, tuna seiners and surface longliners, the Ministry shall, upon receipt of notification from the European Commission that advance payment has been made, enter the vessel concerned in the list of vessels with authorisation to fish sent to the Côte d'Ivoire control authorities. Pending receipt of the original of the licence, a copy of the licence that has been drawn up may be issued by fax to be held on board the vessel.

3. Trawlers authorised under Article 2 of the Agreement must notify the Ministry of any changes to the characteristics of a vessel as entered on the licence when issued and as listed in Appendix 1.
4. Any increase in gross tonnage (GT) of a trawler shall require a new licence application.

**B. Provisions applicable to pole-and-line tuna vessels, tuna seiners and surface longliners**

1. Licences shall be valid for one year. They shall be renewable.
2. The fee shall be EUR 25 per tonne of fish caught within the Côte d'Ivoire exclusive economic zone (EEZ).

3. Licences shall be issued following payment of a lump sum of EUR 375 per year for each pole-and-line tuna vessel, EUR 2 750 per year for each tuna seiner and EUR 1 000 per year for each surface longliner.
4. The final statement of the fees due for the fishing year shall be drawn up by the European Commission at the end of each calendar year on the basis of the catch declarations made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data, such as the Institut de Recherche pour le Développement (IRD), the Instituto Español de Oceanografía (IEO) and the Instituto Português de Investigação Marítima (IPIMAR) on the one hand and the Centre de Recherches Océanologiques de Côte d'Ivoire on the other. The statement shall be forwarded simultaneously to the Côte d'Ivoire fishing authorities and the shipowners. Any additional payments due shall be made by the shipowners to the Côte d'Ivoire fishing authorities no later than 30 days after notification of the final statement.

However, if the amount of the final statement is lower than the above advance, the resulting balance shall not be reimbursable to the shipowner.

5. Part of the fees paid within the context of this Article shall be assigned to supporting fisheries development.

The Côte d'Ivoire authorities shall communicate, before the entry into force of the Agreement, all details of the bank account to be used for the payment of the fees.

#### C. Provisions applicable to freezer trawlers

1. In the case of freezer trawlers, licences shall be valid for three, six or 12 months. They shall be renewable.
2. The annual fee shall be EUR 100 per GT per vessel.

Fees for licences for periods of less than one year shall be paid on a pro rata basis. Six-month and three-month licences shall be subject to a surcharge of 3 % and 5 % respectively.

#### D. Catch declarations

1. Vessels authorised to fish in the Côte d'Ivoire fishing zone under this Agreement shall send their catch declarations to the fishing authorities with a copy to the Delegation of the European Commission in Côte d'Ivoire, as follows:
  - (a) trawlers shall notify their catches using the form given in Appendix 2. These declarations shall be monthly and must be communicated at least once every three months;
  - (b) for pole-and-line tuna vessels, tuna seiners and surface longliners a fishing log shall be kept, in accordance with the model in Appendix 3 in the case of surface longliners and Appendix 4 in the case of seiners and pole-and-line vessels for each fishing period spent in the Côte d'Ivoire fishing zone. It shall be filled in even when no catches are made.

The form shall either be collected in port by the relevant departments of the Centre de Recherches Océanologiques de Côte d'Ivoire or sent to the same department within 45 days of the end of the fishing trip spent in the Côte d'Ivoire fishing zone.

Copies shall be sent to the Ministry and to the scientific institutes referred to in paragraph 4 of section B.

Forms must be completed legibly and be signed by the master of the vessel. Moreover, the master must enter the words 'Outside Côte d'Ivoire EEZ' in the abovementioned fishing log in respect of periods during which the vessels are not in Côte d'Ivoire waters.

2. If these provisions are not complied with, the Côte d'Ivoire authorities reserve the right to suspend the licence of the offending vessel until the required formality has been fulfilled. In this case, the Delegation of the European Commission in Côte d'Ivoire shall be informed without delay.

**E. Landing of catches**

Tuna vessels and surface longliners landing their catches in a Côte d'Ivoire port shall, wherever possible, make their by-catches available to Côte d'Ivoire dealers at local market prices in accordance with the principles of free competition.

In addition, Community tuna vessels shall contribute towards supplying Côte d'Ivoire's tuna-canning factories at a price fixed by mutual agreement between Community shipowners and Côte d'Ivoire dealers on the basis of current prices on the international market. Payment shall be made in convertible currency. The landing schedule must be drawn up by mutual agreement between the Community shipowners and Côte d'Ivoire dealers.

**F. Fishing zones**

1. To protect spawning grounds and local small-scale fishing activities, Community vessels with licences may not carry out fishing activities as laid down in Article 2 of the Agreement in the following zones:
  - up to 12 nautical miles from the coast in the case of pole-and-line tuna vessels and surface longliners,
  - up to 6 nautical miles from the coast in the case of freezer trawlers.
2. However, pole-and-line tuna vessels using live bait shall be authorised to fish for bait in the prohibited zone defined above to obtain bait strictly within the limits of their own requirements.

**G. Entering and leaving the zone**

All vessels shall notify their position and the catch held on board direct to the Ministry, preferably by fax ((225) 21 35 04 09) or, for vessels not equipped with a fax, by radio or e-mail (dphcotedivoire@aviso.ci), within three hours of entering or leaving the Côte d'Ivoire fishing zone and every three days while fishing in Côte d'Ivoire waters.

Vessels shall be informed of the relevant fax number and radio frequency when the fishing licence is issued.

The Ministry and shipowners shall keep a copy of fax communications or a recording of radio communications until both parties have agreed to the final statement of fees due referred to in section B.

A vessel found to be fishing without having informed the Ministry shall be regarded as a vessel without a licence and liable to the penalties provided for in national legislation.

**H. Mesh sizes**

The minimum mesh size authorised (mesh fully extended) shall be:

- (a) 40 mm for freezer trawlers taking deepwater crustaceans;
- (b) 70 mm for freezer trawlers taking cephalopods;
- (c) 60 mm for freezer trawlers taking fish;
- (d) in the case of tuna, the international standards recommended by ICCAT shall apply.

**I. Signing-on of seamen**

Owners of vessels which have been granted licences as provided by the Agreement shall contribute to the practical vocational training of Côte d'Ivoire nationals, on the following terms and subject to the following limits:

1. Each trawler owner shall undertake to employ:
  - one seaman for vessels under 460 GT;
  - two seamen for vessels between 460 and 550 GT;
  - three seamen for vessels over 550 GT.

The owners of tuna vessels and surface longliners shall employ Côte d'Ivoire seamen, subject to the following conditions and limits:

- for the fleet of tuna seiners, four Côte d'Ivoire seamen shall be signed on during the fishing season in the Côte d'Ivoire fishing zone. Each pole-and-line vessel may not be required to take on more than one seaman;
- for the fleet of tuna seiners, 30 Côte d'Ivoire seamen shall be signed on;
- for the fleet of surface longliners, four Côte d'Ivoire seamen shall be signed on during the tuna fishing period in the Côte d'Ivoire fishing zone. Each surface longliner may not be required to take on more than one seaman.

The above limits shall not preclude the signing-on of additional Côte d'Ivoire seamen at the request of the shipowners.

The Côte d'Ivoire seamen shall be chosen by the shipowners from among professional seamen recognised by the Ministry.

2. The wages of these seamen shall be fixed, before licences are issued, by mutual agreement between the shipowners or their representatives and the Côte d'Ivoire Ministry responsible for fisheries. The wages shall be borne by the shipowners and must include the social contributions to which each seaman is subject (including life assurance and accident and sickness insurance).
3. If the seamen are not signed on, the owners of trawlers, pole-and-line tuna vessels, tuna seiners and surface longliners shall be obliged to pay a lump sum equivalent to the wages of seamen not signed on, based on the number of days spent in the Côte d'Ivoire fishing zone.

This sum will be used for the training of seamen in Côte d'Ivoire and is to be paid into the account specified by the Ministry.
4. Any vessel may be required to take on board a trainee student on a proposal from the Ministry responsible for fisheries, subject to the agreement of the vessel's master. Trainees shall be accorded the same conditions on board as those enjoyed by crewmen at the same level, as far as possible. Côte d'Ivoire shall cover the subsistence expenses for each trainee.

#### J. Scientific observers

At the request of the Ministry, vessels fishing in the Côte d'Ivoire EEZ shall take a scientific observer on board. These observers shall be treated as officers. This applies equally, as far as possible, to the quarters assigned to the observer. The time spent on board by observers shall be fixed by the Ministry, but, as a general rule, it should not exceed the time required to carry out their duties. Once on board, observers shall:

- observe the fishing activities of vessels;
- verify the position of vessels when engaged in fishing operations;
- perform biological sampling in the context of scientific programmes;
- note the fishing gear used;
- verify the catch data for the Côte d'Ivoire zone recorded in the logbook.

While on board, observers shall:

- take all appropriate steps to ensure that the conditions under which they are taken on board and their presence on board do not interrupt or hamper fishing activities;
- respect the material and equipment on board and the confidentiality of all documents belonging to the vessel;
- draw up an activity report to be transmitted to the Ministry and send a copy to the Delegation of the European Commission.

The conditions governing the taking on board of observers shall be agreed between the shipowner or its agent and the Ministry. Owners of trawlers shall pay the Ministry, together with the licence fee, the sum of EUR 3 per GT per year *pro rata temporis* for each vessel fishing in Côte d'Ivoire waters. This sum shall be paid into the account specified by the Ministry. Owners of tuna seiners, pole-and-line tuna vessels and surface longliners shall pay the Côte d'Ivoire Government EUR 10 per day spent on board for each observer taken on board. Shipowners who are unable to take observers aboard and put them off at a Côte d'Ivoire port agreed by mutual agreement with Ministry shall bear the cost of taking the observers aboard and putting them ashore.

If the observer is not present at the time and place agreed and during the twelve hours following the time agreed, shipowners shall be automatically absolved of their obligation to take the observer on board.

The salary and social contributions of each observer shall be borne by the Côte d'Ivoire.

#### K. Inspection and monitoring

At the request of the Côte d'Ivoire authorities, Community vessels operating within the Agreement shall permit and facilitate the boarding and fulfilment of the tasks of Côte d'Ivoire officials responsible for the inspection and monitoring of fishing activities.

These officials shall not remain on board any longer than the time required to carry out their duties.

#### L. Boarding of vessels

1. The Delegation of the European Commission in Côte d'Ivoire shall be notified within three working days of any boarding within the Côte d'Ivoire EEZ of a fishing vessel flying the flag of a Member State of the Community and operating under this Protocol. The Delegation shall at the same time receive a brief report of the circumstances and reasons leading to the boarding.
  2. Before any measures regarding the master or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the presumed infringement, a consultation meeting shall be held, within one working day from the receipt of the abovementioned information, between the Delegation of the European Commission in Côte d'Ivoire, the Ministry and the other control authorities, possibly attended by a representative of the Member State concerned. At the meeting, the parties shall exchange any relevant documentation or information helping to clarify the circumstances of the established facts. The shipowner or his representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.
  3. Before any judicial procedure, an attempt shall be made to resolve the presumed infringement through a compromise procedure. This procedure shall end no later than three working days after informing the Delegation of the European Commission.
  4. If the case is not settled by means of compromise, and the master is consequently brought before a competent Côte d'Ivoire judicial body, a reasonable bank security shall be fixed by the competent authority within two working days following the conclusion of the compromise procedure, pending the judicial decision. The bank security shall be released by the competent authority once the master of the vessel concerned has been discharged by the judicial decision.
  5. The vessel and its crew shall be released either:
    - at the end of the consultation meeting, if the established facts permit, or
    - on receipt of payment of a fine (compromise procedure), or
    - once a bank security is deposited (judicial proceedings).
  6. If one of the parties considers that there is a problem or dispute in the application of the above procedure, it may request urgent consultations between the parties to this Protocol.
-

## Appendix 1

MINISTÈRE DE LA  
PRODUCTION ANIMALE ET DES  
RESSOURCES HALIEUTIQUES  
BP V 84 Abidjan  
(République de Côte d'Ivoire)

RÉPUBLIQUE DE CÔTE D'IVOIRE  
UNION-DISCIPLINE-TRAVAIL

## APPLICATION FOR A FISHING LICENCE

## SECTION A

1. Name of shipowner: .....
2. Nationality of shipowner: .....
3. Business address of shipowner: .....
- .....
- .....

## SECTION B

*(to be completed for each vessel)*

1. Period of validity: .....
2. Name of vessel: .....
3. Year of construction: .....
4. Flag of origin: .....
5. Current flag: .....
6. Date on which current flag was acquired: .....
7. Year of purchase: .....
8. Home port and registration number: .....
9. Areas of operation: .....
10. Type of fishing: .....
11. Gross tonnage (GT): .....
12. Net tonnage (NT): .....
13. Radio call sign: .....
14. Length overall (metres): .....
15. Stem (metres): .....
16. Depth (metres): .....
17. Hull construction material: .....
18. Engine power: .....
19. Speed (knots): .....
20. Cabins: .....
21. Capacity of fuel tanks (m<sup>3</sup>): .....
22. Capacity of fish holds (m<sup>3</sup>): .....
23. Freezing capacity in tonnes/24 hours and system used: .....
24. Colour of hull: .....
25. Colour of superstructures: .....
26. Crew numbers: .....

## 27. On-board communication equipment:

| Type | Make | Model | Power (Watt) | Year of construction | Frequencies |              |
|------|------|-------|--------------|----------------------|-------------|--------------|
|      |      |       |              |                      | Reception   | Transmission |
|      |      |       |              |                      |             |              |
|      |      |       |              |                      |             |              |
|      |      |       |              |                      |             |              |
|      |      |       |              |                      |             |              |
|      |      |       |              |                      |             |              |
|      |      |       |              |                      |             |              |

## 28. Navigating and sounding equipment

| Type | Make | Model |
|------|------|-------|
|      |      |       |
|      |      |       |
|      |      |       |
|      |      |       |
|      |      |       |
|      |      |       |
|      |      |       |

29. Auxiliary boats used (for each vessel): .....

29.1. Gross tonnage (GT): .....

29.2. Length overall (metres): .....

29.3. Stem (metres): .....

29.4. Depth (metres): .....

29.5. Hull construction material: .....

29.6. Engine power: .....

29.7. Speed (knots): .....

30. Auxiliary aerial equipment used to detect fish (even if not installed on board): .....

31. Home port: .....

32. Name of captain: .....

33. Address: .....

34. Nationality of captain: .....

*Attach:*

- three colour photocopies showing the vessel (side view), auxiliary fishing boats and auxiliary aerial equipment used to detect fish;
- an illustration and detailed description of the fishing gear used;
- a document proving that the representative of the shipowner is empowered to sign this application.

.....  
 (Date of application)

.....  
 (Signature of representative of shipowner)

\_\_\_\_\_

Appendix 2

**FREEZER TRAWLERS**  
(DEMERSAL SPECIES)

|                    |  |
|--------------------|--|
| Vessel name        |  |
| Nationality (flag) |  |

|                   |  |
|-------------------|--|
| Engine power      |  |
| Gross tonnage (t) |  |

|                 |       |
|-----------------|-------|
| Month           | Year: |
| Fishing method  |       |
| Port of landing |       |

| Dates | Fishing area |          | Number of catches | Number of fishing hours | Species of fish |  |  |  |  |  |  | Totals |
|-------|--------------|----------|-------------------|-------------------------|-----------------|--|--|--|--|--|--|--------|
|       | Longitude    | Latitude |                   |                         |                 |  |  |  |  |  |  |        |
| 1)    |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 2)    |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 3)    |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 4)    |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 5)    |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 6)    |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 7)    |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 8)    |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 9)    |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 10)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 11)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 12)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 13)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 14)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 15)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 16)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 17)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 18)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 19)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 20)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 21)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 22)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 23)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 24)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 25)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 26)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 27)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 28)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 29)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 30)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| 31)   |              |          |                   |                         |                 |  |  |  |  |  |  |        |
| TOTAL |              |          |                   |                         |                 |  |  |  |  |  |  |        |



## Appendix 4

## TUNA SEINERS, POLE-AND-LINE TUNA VESSELS

NAME OF VESSEL

SKIPPER

Sheet No

PORT OF DEPARTURE .....

DATE ..... TIME .....

LOG.....

PORT OF ARRIVAL .....

DATE ..... TIME .....

LOG .....

[illegible]

(Acts adopted pursuant to Title VI of the Treaty on European Union)

**COUNCIL FRAMEWORK DECISION 2005/214/JHA**

**of 24 February 2005**

**on the application of the principle of mutual recognition to financial penalties**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(a) and 34(2)(b) thereof,

Having regard to the initiative of the United Kingdom of Great Britain and Northern Ireland, the French Republic and the Kingdom of Sweden <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas:

- (1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
- (2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities for the purpose of facilitating the enforcement of such penalties in a Member State other than the State in which the penalties are imposed.
- (3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters <sup>(3)</sup>, giving priority to the adoption of an instrument applying the principle of mutual recognition to financial penalties (measure 18).
- (4) This Framework Decision should also cover financial penalties imposed in respect of road traffic offences.
- (5) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union <sup>(4)</sup>, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to execute a decision

when there are reasons to believe, on the basis of objective elements, that the financial penalty has the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

- (6) This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media,

HAS ADOPTED THIS FRAMEWORK DECISION:

*Article 1*

**Definitions**

For the purposes of this Framework Decision:

- (a) 'decision' shall mean a final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:
  - (i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;
  - (ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
  - (iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;
  - (iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);

<sup>(1)</sup> OJ C 278, 2.10.2001, p. 4.

<sup>(2)</sup> OJ C 271 E, 7.11.2002, p. 423.

<sup>(3)</sup> OJ C 12, 15.1.2001, p. 10.

<sup>(4)</sup> OJ C 364, 18.12.2000, p. 1.

- (b) 'financial penalty' shall mean the obligation to pay:
- (i) a sum of money on conviction of an offence imposed in a decision;
  - (ii) compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction;
  - (iii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;
  - (iv) a sum of money to a public fund or a victim support organisation, imposed in the same decision.
- A financial penalty shall not include:
- orders for the confiscation of instrumentalities or proceeds of crime,
  - orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup>;
- (c) 'issuing State' shall mean the Member State in which a decision within the meaning of this Framework Decision was delivered;
- (d) 'executing State' shall mean the Member State to which a decision has been transmitted for the purpose of enforcement.

#### Article 2

##### Determination of the competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent according to this Framework Decision, when that Member State is the issuing State or the executing State.
2. Notwithstanding Article 4, each Member State may designate, if it is necessary as a result of the organisation of its internal system, one or more central authorities responsible for the administrative transmission and reception of the decisions and to assist the competent authorities.

<sup>(1)</sup> OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 2245/2004 (OJ L 381, 28.12.2004, p. 10).

3. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

#### Article 3

##### Fundamental rights

This Framework Decision shall not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

#### Article 4

##### Transmission of decisions and recourse to the central authority

1. A decision, together with a certificate as provided for in this Article, may be transmitted to the competent authorities of a Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat.
2. The certificate, the standard form for which is given in the Annex, must be signed, and its contents certified as accurate, by the competent authority in the issuing State.
3. The decision or a certified copy of it, together with the certificate, shall be transmitted by the competent authority in the issuing State directly to the competent authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish its authenticity. The original of the decision, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.
4. The issuing State shall only transmit a decision to one executing State at any one time.
5. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network <sup>(2)</sup> in order to obtain the information from the executing State.
6. When an authority in the executing State which receives a decision has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, *ex officio*, transmit the decision to the competent authority and shall inform the competent authority in the issuing State accordingly.

<sup>(2)</sup> Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

7. The United Kingdom and Ireland, respectively, may state in a declaration that the decision together with the certificate must be sent via its central authority or authorities specified by it in the declaration. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 3. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them. Any declaration shall be deposited with the General Secretariat of the Council and notified to the Commission.

#### Article 5

##### Scope

1. The following offences, if they are punishable in the issuing State and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition and enforcement of decisions:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage,
- conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods,
- smuggling of goods,
- infringements of intellectual property rights,
- threats and acts of violence against persons, including violence during sport events,
- criminal damage,
- theft,
- offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

2. The Council may decide to add other categories of offences to the lists in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the EU Treaty.

The Council shall consider, in the light of the report submitted to it pursuant to Article 20(5), whether the list should be extended or amended. The Council shall consider the issue further at a later stage on the basis of a report on the practical application of the Framework Decision established by the Commission within 5 years after the date mentioned in Article 20(1).

3. For offences other than those covered by paragraph 1, the executing State may make the recognition and execution of a decision subject to the condition that the decision is related to conduct which would constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

#### Article 6

### Recognition and execution of decisions

The competent authorities in the executing State shall recognise a decision which has been transmitted in accordance with Article 4 without any further formality being required and shall forthwith take all the necessary measures for its execution, unless the competent authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7.

#### Article 7

### Grounds for non-recognition and non-execution

1. The competent authorities in the executing State may refuse to recognise and execute the decision if the certificate provided for in Article 4 is not produced, is incomplete or manifestly does not correspond to the decision.

2. The competent authority in the executing State may also refuse to recognise and execute the decision if it is established that:

- (a) decision against the sentenced person in respect of the same acts has been delivered in the executing State or in any State other than the issuing or the executing State, and, in the latter case, that decision has been executed;
- (b) in one of the cases referred to in Article 5(3), the decision relates to acts which would not constitute an offence under the law of the executing State;

(c) the execution of the decision is statute-barred according to the law of the executing State and the decision relates to acts which fall within the jurisdiction of that State under its own law.

(d) the decision relates to acts which:

- (i) are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such, or
- (ii) have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory;

(e) there is immunity under the law of the executing State, which makes it impossible to execute the decision;

(f) the decision has been imposed on a natural person who under the law of the executing State due to his or her age could not yet have been held criminally liable for the acts in respect of which the decision was passed;

(g) according to the certificate provided for in Article 4, the person concerned

- (i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy, or

(ii) did not appear personally, unless the certificate states:

— that the person was informed personally, or via a representative, competent according to national law, of the proceedings in accordance with the law of the issuing State, or

— that the person has indicated that he or she does not contest the case;

(h) the financial penalty is below EUR 70 or the equivalent to that amount.

3. In cases referred to in paragraphs 1 and 2(c) and (g), before deciding not to recognise and to execute a decision, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.

*Article 8***Determination of the amount to be paid**

1. Where it is established that the decision is related to acts which were not carried out within the territory of the issuing State, the executing State may decide to reduce the amount of the penalty enforced to the maximum amount provided for acts of the same kind under the national law of the executing State, when the acts fall within the jurisdiction of that State.

2. The competent authority of the executing State shall, if necessary, convert the penalty into the currency of the executing State at the rate of exchange obtaining at the time when the penalty was imposed.

*Article 9***Law governing enforcement**

1. Without prejudice to paragraph 3 of this Article, and to Article 10, the enforcement of the decision shall be governed by the law of the executing State in the same way as a financial penalty of the executing State. The authorities of the executing State alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for termination of enforcement.

2. In the case where the sentenced person is able to furnish proof of a payment, totally or in part, in any State, the competent authority of the executing State shall consult the competent authority of the Issuing State in the way provided for in Article 7(3). Any part of the penalty recovered in whatever manner in any State shall be deducted in full from the amount, which is to be enforced in the executing State.

3. A financial penalty imposed on a legal person shall be enforced even if the executing State does not recognise the principle of criminal liability of legal persons.

*Article 10***Imprisonment or other alternative sanction by way of substitution for non-recovery of the financial penalty**

Where it is not possible to enforce a decision, either totally or in part, alternative sanctions, including custodial sanctions, may be applied by the executing State if its laws so provide in such cases and the issuing State has allowed for the application of such alternative sanctions in the certificate referred to in Article 4. The severity of the alternative sanction shall be determined in accordance with the law of the executing State, but shall not exceed any maximum level stated in the certificate transmitted by the issuing State.

*Article 11***Amnesty, pardon, review of sentence**

1. Amnesty and pardon may be granted by the issuing State and also by the executing State.

2. Without prejudice to the Article 10, only the issuing State may determine any application for review of the decision.

*Article 12***Termination of enforcement**

1. The competent authority of the issuing State shall forthwith inform the competent authority of the executing State of any decision or measure as a result of which the decision ceases to be enforceable or is withdrawn from the executing State for any other reason.

2. The executing State shall terminate enforcement of the decision as soon as it is informed by the competent authority of the issuing State of that decision or measure.

*Article 13***Accrual of monies obtained from enforcement of decisions**

Monies obtained from the enforcement of decisions shall accrue to the executing State unless otherwise agreed between the issuing and the executing State, in particular in the cases referred to in Article 1(b)(ii).

*Article 14***Information from the executing State**

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves a written record:

- (a) of the transmission of the decision to the competent authority, according to Article 4(6);
- (b) of any decision not to recognise and execute a decision, according to Articles 7 or 20(3), together with the reasons for the decision;
- (c) of the total or partial non-execution of the decision for the reasons referred to in Article 8, Article 9(1) and (2), and Article 11(1);

- (d) of the execution of the decision as soon as the execution has been completed;
- (e) of the application of alternative sanction, according to Article 10.

#### Article 15

### Consequences of transmission of a decision

1. Subject to paragraph 2, the issuing State may not proceed with the execution of a decision transmitted pursuant to Article 4.
2. The right of execution of the decision shall revert to the issuing State:
  - (a) upon it being informed by the executing State of the total or partial non-execution or the non-recognition or the non-enforcement of the decision in the case of Article 7, with the exception of Article 7(2)(a), in the case of Article 11(1), and in the case of Article 20(3); or
  - (b) when the executing State has been informed by the issuing State that the decision has been withdrawn from the executing State pursuant to Article 12.
3. If, after transmission of a decision in accordance with Article 4, an authority of the issuing State receives any sum of money which the sentenced person has paid voluntarily in respect of the decision, that authority shall inform the competent authority in the executing State without delay. Article 9(2) shall apply.

#### Article 16

### Languages

1. The certificate, the standard form for which is given in the Annex, must be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the Union.
2. The execution of the decision may be suspended for the time necessary to obtain its translation at the expense of the executing State.

#### Article 17

### Costs

Member States shall not claim from each other the refund of costs resulting from application of this Framework Decision.

#### Article 18

### Relationship with other agreements and arrangements

This Framework Decision shall not preclude the application of bilateral or multilateral agreements or arrangements between Member States in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be exceeded and help to simplify or facilitate further the procedures for the enforcement of financial penalties.

#### Article 19

### Territorial application

This Framework Decision shall apply to Gibraltar.

#### Article 20

### Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 22 March 2007.
2. Each Member State may for a period of up to five years from the date of entry into force of this Framework Decision limit its application to:

- (a) decisions mentioned in Article 1 (a)(i) and (iv); and/or
- (b) with regard to legal persons, decisions related to conduct for which a European instrument provides for the application of the principle of liability of legal persons.

Any Member State that wants to make use of this paragraph, shall notify a declaration to that effect to the Secretary General of the Council upon the adoption of this Framework Decision. The declaration shall be published in the *Official Journal of the European Union*.

3. Each Member State may, where the certificate referred to in Article 4 gives rise to an issue that fundamental rights or fundamental legal principles as enshrined in Article 6 of the Treaty may have been infringed, oppose the recognition and the execution of decisions. The procedure referred to in Article 7(3) shall apply.

4. Any Member State may apply the principle of reciprocity in relation to any Member State making use of paragraph 2.

5. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established on the basis of this information by the Commission, the Council shall, no later than 22 March 2008, assess the extent to which Member States have complied with this Framework Decision.

6. The General Secretariat of the Council shall notify the Member States and the Commission of the declarations made pursuant to Articles 4(7) and 16.

7. Without prejudice to Article 35(7) of the Treaty, a Member State which has experienced repeated difficulties or lack of activity by another Member State in the mutual recognition and execution of decisions, which have not been solved through bilateral consultations, may inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

8. Any Member State which during a calendar year has applied paragraph 3, shall in the beginning of the following calendar year inform the Council and the Commission of cases in which the grounds referred to in that provision for non-recognition or non-execution of a decision have been applied.

9. Within seven years after the entry into force of this Framework Decision, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate. The Council shall on the basis of the report review this Article with a view to considering whether paragraph 3 shall be retained or replaced by a more specific provision.

#### *Article 21*

#### **Entry into force**

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

Done at Brussels, 24 February 2005.

*For the Council*

*The President*

N. SCHMIT

## ANNEX

## CERTIFICATE

**referred to in Article 4 of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties**

(a)

\* Issuing State: .....

\* Executing State: .....

(b) The authority which issued the decision imposing the financial penalty:

Official name: .....

Address: .....

.....

File reference (...) .....

Tel. No: (country code) (area/city code) .....

Fax No (country code) (area/city code) .....

E-mail (when available) .....

Languages in which it is possible to communicate with the issuing authority .....

.....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. No., fax No., and, when available, E-mail) .....

.....

.....

- (c) The authority competent for the enforcement of the decision imposing the financial penalty in the issuing State (if the authority is different from the authority under point (b)):

Official name: .....

.....

Address: .....

.....

Tel. No: (country code) (area/city code) .....

Fax No (country code) (area/city code) .....

E-mail (when available) .....

Languages in which it is possible to communicate with the authority competent for the enforcement .....

.....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. No., fax No., and, when available, E-mail): .....

.....

.....

- (d) Where a central authority has been made responsible for the administrative transmission of decisions imposing financial penalties in the issuing State:

Name of the central authority: .....

.....

Contact person, if applicable (title/grade and name): .....

.....

Address: .....

.....

File reference .....

Tel. No: (country code) (area/city code) .....

Fax No: (country code) (area/city code) .....

E-mail (when available): .....

(e) The authority or authorities which may be contacted (in the case where point (c) and/or (d) has been filled):

☐ Authority mentioned under point (b)

Can be contacted for questions concerning: .....

☐ Authority mentioned under point (c)

Can be contacted for questions concerning: .....

☐ Authority mentioned under point (d)

Can be contacted for questions concerning: .....

(f) Information regarding the natural or legal person on which the financial penalty has been imposed:

1. In case of a natural person

Name: .....

Forename(s): .....

Maiden name, where applicable: .....

Aliases, where applicable: .....

Sex: .....

Nationality: .....

Identity number or social security number (when available): .....

Date of birth: .....

Place of birth: .....

Last known address: .....

.....

Language(s) which the person understands (if known): .....

.....

(a) If the decision is transmitted to the executing State because the person against whom the decision has been passed is normally resident, add the following information:

Normal residence in the executing State: .....

.....

.....

(b) If the decision is transmitted to the executing State because the person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the person: .....

Location of the property of the person: .....

- (c) If the decision is transmitted to the executing State because the person against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the person: .....

Location of the source(s) of income of the person: .....

2. In case of a legal person:

Name: .....

Form of legal person: .....

Registration number (if available) <sup>(1)</sup>: .....

Registered seat (if available) <sup>(1)</sup>: .....

Address of the legal person: .....

- (a) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the legal person: .....

Location of the property of the legal person: .....

.....

- (b) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the legal person: .....

Location of the source(s) of income of the legal person: .....

.....

- (g) The decision imposing a financial penalty:

1. The nature of the decision imposing the financial penalty (tick the relevant box):

- ☐ (i) Decision of a court of the issuing State in respect of a criminal offence under the law of the issuing State
- ☐ (ii) Decision of an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.
- ☐ (iii) Decision of an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.
- ☐ (iv) Decision of a court having jurisdiction in particular in criminal matters regarding a decision as referred to in point iii.

The decision was made on (date) .....

<sup>(1)</sup> Where a decision is transmitted to the executing State because the legal person against whom the decision has been passed has its registered seat in that State, Registration number and Registered seat must be completed.

The decision became final on (date) .....

Reference number of the decision (if available): .....

The financial penalty constitutes an obligation to pay (tick the relevant box(es) and indicate the amount(s) with indication of currency):

- ☐ (i) A sum of money on conviction of an offence imposed in a decision.

Amount: .....

- ☐ (ii) Compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in its exercise of its criminal jurisdiction.

Amount: .....

- ☐ (iii) A sum of money in respect of the costs of court or administrative proceedings leading to the decision.

Amount: .....

- ☐ (iv) A sum of money to a public fund or a victim support organisation, imposed in the same decision.

Amount: .....

The total amount of the financial penalty with indication of currency: .....

.....

2. A summary of facts and a description of the circumstances in which the offence(s) has(have) been committed, including time and place: .....

.....

.....

.....

.....

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the decision was made: .....

.....

.....

.....

3. To the extent that the offence(s) identified under point 2 above constitute(s) one or more of the following offences, confirm that by ticking the relevant box(es):

- ☐ participation in a criminal organisation;

- ☐ terrorism;

- ☐ trafficking in human beings;

- ☐ sexual exploitation of children and child pornography;

- ☐ illicit trafficking in narcotic drugs and psychotropic substances;

- ☐ illicit trafficking in weapons, munitions and explosives;

- ☐ corruption;
- ☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting currency, including of the euro;
- ☐ computer-related crime;
- ☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- ☐ facilitation of unauthorised entry and residence;
- ☐ murder, grievous bodily injury;
- ☐ illicit trade in human organs and tissue;
- ☐ kidnapping, illegal restraint and hostage-taking;
- ☐ racism and xenophobia;
- ☐ organised or armed robbery;
- ☐ illicit trafficking in cultural goods, including antiques and works of art;
- ☐ swindling;
- ☐ racketeering and extortion;
- ☐ counterfeiting and piracy of products;
- ☐ forgery of administrative documents and trafficking therein;
- ☐ forgery of means of payment;
- ☐ illicit trafficking in hormonal substances and other growth promoters;
- ☐ illicit trafficking in nuclear or radioactive materials;
- ☐ trafficking in stolen vehicles;
- ☐ rape;
- ☐ arson;
- ☐ crimes within the jurisdiction of the International Criminal Court;
- ☐ unlawful seizure of aircraft/ships;
- ☐ sabotage;
- ☐ conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;
- ☐ smuggling of goods;
- ☐ infringements of intellectual property rights;
- ☐ threats and acts of violence against persons, including violence during sport events;
- ☐ criminal damage;

- ☐ theft;
- ☐ offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

If this box is ticked, indicate the exact provisions of the instrument adopted on the basis of the EC Treaty or the EU Treaty that the offence relates to: .....

.....

.....

4. To the extent that the offence(s) identified under point 2 above are not covered by point 3, give a full description of the offence(s) concerned: .....

.....

.....

.....

(h) Status of the decision imposing the financial penalty

1. Confirm that (tick the boxes):

- ☐ (a) the decision is a final decision
- ☐ (b) to the knowledge of the authority issuing the Certificate, a decision against the same person in respect of the same acts has not been delivered in the executing State and that no such decision delivered in any State other than the issuing State or the executing State has been executed.

2. Indicate if the case been subject to a written procedure:

- ☐ (a) No, it has not.
- ☐ (b) Yes, it has. It is confirmed that the person concerned was, in accordance with the law of the issuing State, informed personally or via a representative competent according to national law of his right to contest the case and of time limits of such a legal remedy

3. Indicate if the person concerned appeared personally in the proceedings:

- ☐ (a) Yes, he or she did.
- ☐ (b) No, he or she did not. It is confirmed:
- ☐ that the person was informed personally, or via a representative competent according to national law, of the proceedings in accordance with the law of the issuing State,
- or
- ☐ that the person has indicated that he or she does not contest the case

4. Partial payment of the penalty

If any part of the penalty has already been paid to the issuing State, or, to the knowledge of the authority issuing the Certificate, to any other State, indicate the amount which has been paid:

.....

## (i) Alternative sanctions, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative sanctions in case it is not possible to enforce the decision imposing a penalty, either totally or in part:

☐ yes

☐ no

2. If yes, state which sanctions may be applied (nature of the sanctions, maximum level of the sanctions):

☐ Custody. Maximum period: .....

☐ Community service (or equivalent). Maximum period .....

☐ Other sanctions. Description: .....

.....

## (j) Other circumstances relevant to the case (optional information): .....

.....

.....

## (k) The text of the decision imposing the financial penalty is attached to the certificate.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate: .....

.....

Name: .....

Post held (title/grade): .....

Date: .....

Official stamp (if available)