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Contents

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

REGULATIONS

Commission Regulation (EC) No 1076/2008 of 3 November 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

★ **Commission Regulation (EC) No 1077/2008 of 3 November 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and repealing Regulation (EC) No 1566/2007** 3

★ **Commission Regulation (EC) No 1078/2008 of 3 November 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States for the collection and management of the basic fisheries data** ... 24

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

DECISIONS

Commission

2008/830/EC:

★ **Commission Decision of 30 April 2008 on State aid C 21/07 (ex N 578/06) which Hungary is planning to implement in favour of IBIDEN Hungary Gyártó Kft. (notified under document number C(2008) 1342) ⁽¹⁾** 34

⁽¹⁾ Text with EEA relevance

(Continued overleaf)

2008/831/EC:

- ★ **Commission Decision of 31 October 2008 setting a new deadline for the submission of dossiers for certain substances to be examined under the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC** (*notified under document number C(2008) 6266*) ⁽¹⁾..... 50

2008/832/EC:

- ★ **Commission Decision of 3 November 2008 concerning the non-inclusion of bromuconazole in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance** (*notified under document number C(2008) 6290*) ⁽¹⁾ 53

Note to the reader (see page 3 of the cover)



⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 1076/2008

of 3 November 2008

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 4 November 2008.

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

Done at Brussels, 3 November 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	36,3
	MK	43,0
	TR	81,0
	ZZ	53,4
0707 00 05	JO	168,2
	MA	26,4
	TR	143,3
	ZZ	112,6
0709 90 70	MA	39,5
	TR	127,4
	ZZ	83,5
0805 50 10	AR	82,2
	MA	81,6
	TR	93,5
	ZA	91,9
	ZZ	87,3
0806 10 10	BR	232,0
	TR	127,8
	US	242,1
	ZA	218,0
	ZZ	205,0
0808 10 80	CA	96,3
	CL	64,4
	CN	66,8
	MK	37,6
	NZ	82,2
	US	112,0
	ZA	91,2
0808 20 50	ZZ	78,6
	CN	55,9
	US	208,3
	ZZ	132,1

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

COMMISSION REGULATION (EC) No 1077/2008**of 3 November 2008****laying down detailed rules for the implementation of Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and repealing Regulation (EC) No 1566/2007**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1966/2006 of 21 December 2006 on electronic recording and reporting of fishing activities and on means of remote sensing ⁽¹⁾, and in particular Article 5 thereof,

Whereas:

- (1) Article 22(1)(c) of Council Regulation (EC) No 2371/2002 ⁽²⁾ provides that activities within the scope of the Common Fisheries Policy are prohibited unless a master, without undue delay records and reports information on fishing activities, including landings and transshipments and that copies of the records shall be made available to the authorities.
- (2) In accordance with Council Regulation (EC) No 1966/2006 the obligation to electronically record and transmit logbook, landing declaration and transshipment data applies to masters of Community fishing vessels exceeding 24 m length overall within 24 months of entry into force of the implementing rules and to masters of Community fishing vessels exceeding 15 m length overall within 42 months of entry into force of the implementing rules.
- (3) Daily reporting of fishing activities creates the potential to enhance significantly the efficiency and effectiveness of monitoring, control and surveillance operations both at sea and on land.
- (4) Article 6 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the Common Fisheries Policy ⁽³⁾ provides that masters of Community fishing vessels shall keep a logbook of their operations.
- (5) Article 8 of Council Regulation (EEC) No 2847/93 provides that the master of each Community fishing vessel having an overall length equal to or more than 10 m or his representative, shall after each fishing trip

and within 48 hours of landing submit a declaration to the competent authorities of the Member States where the landing takes place.

- (6) Article 9 of Council Regulation (EEC) No 2847/93 provides that auction centres or other bodies or persons authorised by Member States which are responsible for the first marketing of fishery products shall, upon first sale, submit a sales note to the competent authorities in whose territory the first marketing takes place.
- (7) Article 9 of Council Regulation (EEC) No 2847/93 also provides that where the first marketing of fisheries products does not take place in the Member State where the products have been landed, the Member State responsible for monitoring the first marketing shall ensure that a copy of the sales note is submitted to the authorities responsible for monitoring the landing of the products as soon as possible.
- (8) Article 19 of Council Regulation (EEC) No 2847/93 requires Member States to create computerised databases and to establish a validation system comprising in particular cross-checks and verification of data.
- (9) Article 19b and 19e of Council Regulation (EEC) No 2847/93 require masters of Community fishing vessels to make effort reports and to record them in their logbook.
- (10) Article 5 of Council Regulation (EC) No 2347/2002 ⁽⁴⁾ requires the master of a Community fishing vessel holding a deep-sea fishing permit to record in a logbook or in a form provided by the flag Member State information concerning fishing gear characteristics and fishing operations.
- (11) Council Regulation (EC) No 768/2005 ⁽⁵⁾ establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy provides for the operation of joint deployment plans.

⁽¹⁾ OJ L 409, 30.12.2006, p. 1. Corrected by OJ L 36, 8.2.2007, p. 3.

⁽²⁾ OJ L 358, 31.12.2002, p. 59.

⁽³⁾ OJ L 261, 20.10.1993, p. 1.

⁽⁴⁾ OJ L 351, 28.12.2002, p. 6.

⁽⁵⁾ OJ L 128, 21.5.2005, p. 1.

(12) Commission Regulation (EC) No 1566/2007⁽¹⁾ laid down detailed rules for the implementation of Council Regulation (EC) No 1966/2006 as regards electronic recording and reporting of fishing activities.

(13) It is necessary, at present, to further detail and clarify some provisions contained in Regulation (EC) No 1566/2007.

To that end it is appropriate to repeal Regulation (EC) No 1566/2007 and to replace it by a new Regulation.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation shall apply to:
 - (a) Community fishing vessels exceeding 24 metres length overall, as from 1 January 2010;
 - (b) Community fishing vessels exceeding 15 metres length overall, as from 1 July 2011;
 - (c) registered buyers, registered auctions or other entities or persons authorised by Member States that are responsible for the first sale of fisheries products with an annual financial turnover in first sales of fishery products in excess of EUR 400 000, as from 1 January 2009.
2. Notwithstanding paragraph 1(a), this Regulation shall apply as from a date earlier than 1 January 2010 to Community fishing vessels flying the flag of a given Member State and exceeding 24 metres length overall, if it is so provided by that State.
3. Notwithstanding paragraph 1(b), this Regulation shall apply as from a date earlier than 1 July 2011 to Community fishing vessels flying the flag of a given Member State and exceeding 15 metres length overall, if it is so provided by that State.
4. Notwithstanding the dates laid down in paragraphs 1(a) and 1(b), a Member State may decide to apply this Regulation

to vessels of 15 metres or less flying its flag prior to those dates in accordance with Article 3(2) of Council Regulation (EC) No 1966/2006.

5. Member States may conclude bilateral agreements on the use of electronic reporting systems on vessels flying their flags within the waters under their sovereignty or jurisdiction on condition that the vessels comply with all rules laid down in this Regulation.

6. This Regulation shall apply to Community fishing vessels regardless of the waters in which they carry out fishing operations or of the ports in which they land.

7. This Regulation shall not apply to Community fishing vessels used exclusively for exploitation of aquaculture.

Article 2

List of operators and vessels

1. Each Member State shall establish a list of registered buyers, registered auctions or other entities or persons that it has authorised and that are responsible for the first sale of fishery products with an annual financial turnover of fishery products in excess of EUR 400 000. The first reference year shall be 2007 and the list shall be updated on 1 January of the current year (year *n*) on the basis of the annual financial turnover of fishery products in excess of EUR 400 000 in year *n*-2. That list shall be published on an official web site of the Member State.
2. Each Member State shall establish and periodically update lists of Community fishing vessels flying its flag to which the provisions of this Regulation apply in accordance with Article 1(2), (3), (4) and (5). The lists shall be published on an official web site of the Member State and shall be in the format to be decided in consultations between the Member States and the Commission.

Article 3

Definitions

For the purpose of this Regulation the following definitions shall apply:

1. 'fishing operation' means all activities in connection with searching for fish, the shooting, setting and hauling of a fishing gear and the removal of any catch from the gear;
2. 'joint deployment plan' means a plan setting out operational arrangements for the deployment of available means of control and inspection.

⁽¹⁾ OJ L 340, 22.12.2007, p. 46.

CHAPTER II

ELECTRONIC TRANSMISSION*Article 4***Information to be transmitted by masters of vessels or their representatives**

1. Masters of Community fishing vessels shall transmit logbook and transshipment data by electronic means to the competent authorities of the flag Member State.

2. Masters of Community fishing vessels or their representatives shall transmit landing declaration data by electronic means to the competent authorities of the flag State.

3. When a Community fishing vessel lands its catch in a Member State other than the flag Member State, the competent authorities of the flag Member States shall immediately upon receipt forward the landing declaration data by electronic means to the competent authorities of the Member State where the catch was landed.

4. Masters of Community fishing vessels shall, where required under Community rules, transmit by electronic means to the competent authority of the flag Member State prior notification of entry into port at the time that it is required to be transmitted.

5. When a vessel intends to enter a port in a Member State other than the flag Member State, the competent authorities of the flag Member State shall immediately upon receipt forward the prior notification referred to in paragraph 4 by electronic means to the competent authorities of the coastal Member State.

*Article 5***Information to be transmitted by entities or persons responsible for first sale or take-over**

1. Registered buyers, registered auctions or other entities or persons authorised by Member States, that are responsible for the first sale of fishery products shall transmit information required to be recorded in a sales note by electronic means to the competent authorities of the Member State in whose territory the first marketing takes place.

2. When the first marketing takes place in a Member State other than the flag Member State, the competent authorities of the Member State where the first marketing takes place shall ensure that a copy of the sales notes data is submitted by electronic means to the competent authorities of the flag Member State on receipt of relevant information.

3. Where the first marketing of fisheries products does not take place in the Member State where the products have been landed, the Member State where the first marketing takes place shall ensure that a copy of the sales note data is submitted by electronic means immediately on receipt of relevant information, to the following authorities:

- (a) the competent authorities of the Member State where the fishery products have been landed; and
- (b) the competent authorities of the flag Member State of the vessel that landed the fishery products.

4. The holder of the take-over declaration shall transmit by electronic means the information required to be recorded in a take-over declaration to the competent authorities of the Member State in whose territory the take-over physically takes place.

*Article 6***Frequency of transmission**

1. The master shall transmit the electronic logbook information to the competent authorities of the flag Member State at least on a daily basis not later than 24.00 hours even when there are no catches. He shall also send such data:

- (a) at the request of the competent authority of the flag Member State;
- (b) immediately after the last fishing operation has been completed;
- (c) before entering into port;
- (d) at the time of any inspection at sea;
- (e) at the time of events defined in Community legislation or by the flag State.

2. The master may transmit corrections to the electronic logbook and transshipment declarations up to the last transmission made at the end of the fishing operations and before entering into port. Corrections shall be easily identifiable. All original electronic logbook data and corrections to those data shall be stored by the competent authorities of the flag Member State.

3. The master or his representatives shall transmit the landing declaration by electronic means immediately after the landing declaration has been established.

4. The master of the donor vessel and the receiving vessel shall transmit transshipment data by electronic means immediately after the transshipment.

5. The master shall keep a copy of the information referred to in paragraph 1 on board the fishing vessel for the duration of each absence from port and until the landing declaration has been submitted.

6. When a fishing vessel is in port, does not carry fish on board and the master has submitted the landing declaration, transmission in accordance with paragraph 1 of this Article may be suspended subject to prior notification to the Fisheries Monitoring Centre of the flag Member State. Transmission shall be resumed when the vessel leaves the port. Prior notification is not required for vessels equipped with and transmitting data via VMS (Vessel Monitoring System).

Article 7

Format for transmission of data from a vessel to the competent authority of its flag State

Each Member State shall determine the format for the transmission of data from vessels flying its flag to its competent authorities.

Article 8

Return messages

Member States shall ensure that return messages are issued to vessels flying their flag for each transmission of logbook, transshipment and landing data. The return message shall contain an acknowledgement of receipt.

CHAPTER III

EXEMPTIONS

Article 9

Exemptions

1. A Member State may exempt masters of vessels flying its flag from the obligations referred to in Article 4(1) and from the obligation to have means of electronic data transmission on board as referred to in Article 1(1) and (2) of Regulation (EC) No 1966/2006 are absent from port for 24 hours or less within the waters under its sovereignty or jurisdiction on condition that they do not land their catch outside the territory of the flag Member State.

2. Masters of Community fishing vessels that electronically record and report data on their fishing activities shall be exempt from the obligation to complete paper logbook, landing and transshipment declarations.

3. Masters of Community vessels, or their representatives, that land their catch in a Member State other than the flag Member State shall be exempt from the requirement to submit a paper landing declaration to the coastal Member State.

4. Member States may conclude bilateral agreements on the use of electronic reporting systems on vessels flying their flags within the waters under their sovereignty or jurisdiction. The vessels falling within the scope of such agreements shall be exempt from completing a paper logbook within those waters.

5. Masters of Community vessels that record in their electronic logbooks the fishing effort information required under Article 19b of Regulation (EEC) No 2847/93 shall be exempt from the obligation to transmit effort reports by telex, by VMS, by fax, by telephone or by radio.

CHAPTER IV

FUNCTIONING OF ELECTRONIC RECORDING AND REPORTING SYSTEMS

Article 10

Provisions in the event of technical failure or non-functioning of electronic recording and reporting systems

1. In the event of a technical failure or non-functioning of the electronic recording and reporting system the master or the owner of the vessel or their representative shall communicate logbook, landing declaration and transshipment data to the competent authorities of the flag Member State in a way established by the flag Member State on a daily basis and no later than 24.00 hours even when there are no catches. Data shall also be sent:

- (a) at the request of the competent authority of the flag State;
- (b) immediately after the last fishing operation has been completed;
- (c) before entering into port;
- (d) at the time of any inspection at sea;
- (e) at the time of events defined in Community legislation or by the flag State.

2. The competent authorities of the flag Member State shall update the electronic logbook immediately on receipt of the data referred to in paragraph 1.

3. A Community fishing vessel shall not leave a port, following a technical failure or non-functioning of its electronic recording and reporting system before it is functioning to the satisfaction of the competent authorities of the flag Member State or before it is otherwise authorised to leave by the competent authorities of the flag Member State. The flag Member State shall immediately notify the coastal Member State when it has authorised a vessel flying its flag to leave a port in the coastal Member State.

*Article 11***Non-receipt of data**

1. When the competent authorities of a flag Member State have not received data transmissions in accordance with Article 4(1) and (2) they shall notify the master or the owner of the vessel or their representative thereof as soon as possible. If, in respect of a particular vessel, this situation occurs more than three times within a period of one year, the flag Member State shall ensure that the electronic reporting system in question is checked. The Member State concerned shall investigate the matter in order to determine why data have not been received.

2. When the competent authorities of a flag Member State have not received data transmissions in accordance with Article 4(1) and (2) and the last position received through the Vessel Monitoring System was from within the waters of a coastal Member State they shall notify the competent authorities of that coastal Member State thereof as soon as possible.

3. The master or the owner of the vessel or their representative shall send all data for which a notification was received in accordance with paragraph 1 to the competent authorities of the flag Member State immediately on receipt of the notification.

*Article 12***Data access failure**

1. When the competent authorities of a coastal Member State observe a vessel flying the flag of another Member State in their waters and cannot access logbook or transshipment data in accordance with Article 15 they shall request the competent authorities of the flag Member State to ensure access.

2. If the access referred to in paragraph 1 is not ensured within four hours of the request, the coastal Member State shall notify the flag Member State. On receipt of the notification the flag Member State shall immediately send the data to the coastal Member State by any available electronic means.

3. If the coastal Member State does not receive the data referred to in paragraph 2, the master or owner of the vessel or their representative shall send the data and a copy of the return message referred to in Article 8 to the competent authorities of the coastal Member State on request and by any available electronic means.

4. If the master or owner of the vessel or their representative can not provide the competent authorities of the coastal Member State with a copy of the return message referred to in Article 8, fishing activities in the waters of the coastal

Member State by the vessel concerned shall be prohibited until the master or his representative can provide a copy of the return message or information referred to in Article 6(1) to the said authorities.

*Article 13***Data on the functioning of the electronic reporting system**

1. Member States shall maintain databases on the functioning of their electronic reporting system. They shall contain at least the following information:

- (a) the list of fishing vessels flying their flag whose electronic reporting systems have experienced technical failure or have failed to function;
- (b) the number of electronic logbook transmissions received per day and the average number of transmissions received per vessel, broken down by flag Member State;
- (c) the number of landing declaration, transshipment declaration, takeover declaration and sales note transmissions received, broken down by flag State.

2. Summaries of information on the functioning of Member States' electronic reporting systems shall be sent to the Commission at its request in a format and at time intervals to be decided in consultation between Member States and the Commission.

CHAPTER V

DATA EXCHANGE AND ACCESS*Article 14***Format for exchange of information between Member States**

1. Information shall be exchanged between Member States using the format defined in the Annex from which extensible mark-up language (XML) is derived.

2. Corrections to the information referred to in paragraph 1 shall be clearly identified.

3. When a Member State receives electronic information from another Member State it shall ensure that a return message is issued to the competent authorities of that Member State. The return message shall contain an acknowledgement of receipt.

4. Data elements in the Annex that are mandatory for masters to record in their logbook according to Community rules shall also be mandatory in exchanges between Member States.

*Article 15***Access to data**

1. A flag Member State shall ensure that a coastal Member State has on-line access in real time to electronic logbook and landing declaration data of vessels flying its flag when conducting fishing operations in the waters under the sovereignty or jurisdiction or entering a port of the coastal Member State.
2. The data referred to in paragraph 1 shall at least cover the data from the last departure from port to the time when the landing is completed. Data from fishing operations for the previous 12 months shall be made available on request.
3. The master of a Community fishing vessel shall have secure access to his own electronic logbook information stored in the database of the flag Member State on a 24-hour, seven-days-a-week basis.
4. A coastal Member State shall grant on-line access to its logbook database to a fishery patrol vessel of another Member State in the context of a joint deployment plan.

*Article 16***Exchange of data between Member States**

1. Access to the data referred to in Article 15, paragraph 1 shall be by secure Internet connection on a 24-hour, seven-days-a-week basis.
2. Member States shall exchange the relevant technical information to ensure mutual access to electronic logbooks.
3. Member States shall:
 - (a) ensure that data received according to this Regulation are safely stored in computerised databases and take all

necessary measures to ensure that they are treated as confidential;

- (b) take all necessary technical measures to protect such data against any accidental or illicit destruction, accidental loss, deterioration, distribution or unauthorised consultation.

*Article 17***Single authority**

1. In each Member State, a single authority shall be responsible for transmitting, receiving, managing and processing all data covered by this Regulation.
2. Member States shall exchange lists and contact details of the authorities referred to in paragraph 1 and shall inform the Commission thereof.
3. Any changes in the information referred to in paragraphs 1 and 2 shall be communicated to the Commission and other Member States without delay.

CHAPTER VI

FINAL PROVISIONS*Article 18***Repeal**

1. Regulation (EC) No 1566/2007 is hereby repealed.
2. References to the repealed Regulation shall be construed as references to this Regulation.

*Article 19***Entry into force**

This Regulation shall enter into force on 1 January 2008.

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

Done at Brussels, 3 November 2008.

For the Commission

Joe BORG

Member of the Commission

ANNEX ⁽¹⁾

ELECTRONIC INFORMATION EXCHANGE FORMAT

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
1	ERS message			
2	Start of message	ERS	Tag indicating start of the ERS message	C
3	Address	AD	Destination for the message (ISO alpha-3 country code)	C
4	From	FR	Country transmitting the data (ISO alpha-3 country code)	C
5	Message (record) number	RN	Serial number of the message (format CCC99999999)	C
6	Message (record) date	RD	Date of transmission of the message (YYYY-MM-DD)	C
7	Message (record) time	RT	Time of retransmission of the message (HH:MM in UTC)	C
8	Message type	TM	Type of message (Logbook: type = LOG, Acknowledgment: type = RET, Correction: type = COR or sales notes: type = SAL)	C
9	Test message	TS	Presence indicates message is a test message	CIF TEST
10				
11	When message type is RET (TM=RET)		RET is an Acknowledgement message	
12	The following attributes need to be specified		The message acknowledges the good or bad reception of the message identified by RN	
13	Sent message number	RN	Serial number of the message being acknowledged by the recipient FMC (CCC99999999)	C
14	Return status	RS	Indicates the status of the received message/report. The code list will be placed at the EC website with a location to be specified	C
15	Reason for Rejection (if any)	RE	Free text giving an explanation for the rejection	O
16				
17	When message is of type COR (TM=COR)		COR is a Correction message	
18	The following attributes need to be specified		The message is correcting a previous message, the information contained inside the message fully replaces the previous message, identified by RN	
19	Original message number	RN	Message number of the message being corrected (format CCC99999999)	C
20	Reason for correction	RE	Code list to be found at http://ec.europa.eu/fisheries/cfp/control_enforcement_en.htm	O

⁽¹⁾ The present Annex replaces in full the Annex to the Regulation (EC) No 1566/2007 laying down detailed rules for the implementation of Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing.

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
21				
22	When message type: LOG (TM=LOG)		LOG is a Logbook declaration	
23	The following attributes need to be specified		The LOG contains one or more of the following declarations DEP, FAR, TRA, COE, COX, ENT, EXI, CRO, TRZ, (INS), DIS, PRN, EOF, RTP, LAN	
24	Start of log record	LOG	Tag indicating start of the logbook record	C
25	Vessel's Community fleet register (CFR) number	IR	With format AAXXXXXXXXXX where A is an uppercase letter being the country of first registration within the EU and X being a letter or a number	C
26	Vessel's main identification	RC	International radio call sign	CIF CFR not up to date
27	Vessel's external identification	XR	Side (hull) registration number of the vessel	O
28	Name of vessel	NA	Name of the vessel	O
29	Name of the master	MA	Name of the master (any change during trip to be sent in next LOG transmission)	C
30	Master address	MD	Address of master (any change during trip to be sent in next LOG transmission)	C
31	Country of registration	FS	Flag State of vessel registration. ISO alpha-3 country code	C
32				
33	DEP: declaration element		Required on every departure from port, to be sent in next message	
34	Start of departure declaration	DEP	Tag indicating start of the departure from port declaration	C
35	Date	DA	Date of departure (YYYY-MM-DD)	C
36	Time	TI	Time of departure (HH:MM in UTC)	C
37	Port name	PO	Port code (ISO alpha-2 country code + 3-letter port code). Port code list (CCPPP) to be found at the EC website with a location to be specified	C
38	Anticipated activity	AA	Code list to be found on the EC website with a location to be specified	CIF effort reporting required for intended activity
39	Gear type	GE	Letter code according to FAO's 'International Standard Statistical Classification of the Fishing Gear'	CIF fishing activity intended
40	Catch on board sub-declaration (list of species SPE sub-declarations)	SPE	(See details of sub-elements and attributes of SPE)	CIF catch on board the vessel
41				

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
42	FAR: fishing activity declaration		Required by midnight on each day at sea or in response to request from the Flag State	
43	Start of fishing activity report declaration	FAR	Tag indicating start of a fishing activity report declaration	C
44	Last report marker	LR	Marker that indicates that this is the last FAR report that will be sent (LR=1)	CIF last message
45	Inspection marker	IS	Marker that indicates this fishing activity report was received following an inspection carried out onboard the vessel. (IS=1)	CIF inspection occurred
46	Date	DA	Date for which fishing activities being reported whilst vessel at sea (YYYY-MM-DD)	C
47	Time	TI	Start time of fishing activity (HH:MM in UTC)	O
48	Relevant area sub-declaration	RAS	Specified if no catch was made (for effort purposes). List of codes for fishing and effort/conservation areas will be placed at the EC website with a location to be specified. (See details of sub-elements and attributes of RAS).	CIF
49	Fishing operations	FO	Number of fishing operations	O
50	Fishing time	DU	Duration of fishing activity in minutes — defined as fishing time equals the number of hours spent at sea, minus the time spent in transit to, between and returning from the fishing grounds, dodging, inactive or waiting for repair	CIF required (**)
51	Gear sub-declaration	GEA	(See details of sub-elements and attributes of GEA)	CIF any undertaken
52	Gear loss sub-declaration	GLS	(See details of sub-elements and attributes of GLS)	CIF required by the rules (**)
53	Catch sub-declaration (list of species SPE sub-declarations)	SPE	(See details of sub-elements and attributes of SPE)	CIF any fish caught
54				
55	RLC: relocation declaration		Used when catch (all or parts thereof) is transferred or moved from shared fishing gear to a vessel or from a vessel's hold or its fishing gear to a keep net, container or cage (outside the vessel) in which the live catch is kept until landing	
56	Start of relocation declaration	RLC	Tag indicating start of a relocation declaration	C
57	Date	DA	Date of catch relocation whilst vessel at sea (YYYY-MM-DD)	CIF
58	Time	TI	Time of relocation (HH:MM in UTC)	CIF
59	Receiving vessel CFR number	IR	With format AAXXXXXXXXXX where A is an uppercase letter being the country of first registration within the EU and X being a letter or a number	CIF joint fishing operation and EU vessel
60	Receiving vessel radio call sign	TT	International radio call sign of the receiving vessel	CIF joint fishing operation

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
61	Flag State of receiving vessel	TC	Flag State of vessel taking the catch (ISO alpha-3-country code)	CIF joint fishing operation
62	Other partner vessel(s) CFR numbers	RF	With format AAAXXXXXXXXXX where A is an uppercase letter being the country of first registration within the EU and X being a letter or a number	CIF joint fishing operation and partner is EU vessel
63	Other partner vessel(s) radio call signs	TF	International radio call sign of the partner vessel(s)	CIF joint fishing operation and other partners
64	Flag State(s) of other partner vessel(s)	FC	Flag State of the partner vessel(s) (ISO alpha-3 country code)	CIF joint fishing operation and other partners
65	Relocated to	RT	3-letter code for relocation destination (Keep net: KNE, cage: CGE, etc.) Codes will be placed on the EC website with a location to be specified	CIF
66	POS sub-declaration	POS	Location of transfer (<i>see details of sub-elements and attributes of POS</i>)	CIF
67	Catch sub-declaration (list of species SPE sub-declarations)	SPE	Amount of fish relocated (<i>see details of sub-elements and attributes of SPE</i>)	CIF
68				
69	TRA: transhipment declaration		For every transhipment of catch, declaration required from both donor and recipient	
70	Start of transhipment declaration	TRA	Tag indicating start of a transhipment declaration	C
71	Date	DA	Start of TRA (YYYY-MM-DD)	C
72	Time	TI	Start of TRA (HH:MM in UTC)	C
73	Relevant area sub-declaration	RAS	The geographical area in which the transhipment took place. The list of codes for fishing and effort/conservation areas will be placed on the EC website with a location to be specified. (<i>See details of sub-elements and attributes of RAS</i>).	CIF took place at sea
74	Port name	PO	Port code (ISO alpha-2 country code + 3-letter port code). Port code list (CCPPP) to be found at the EC website with a location to be specified	CIF took place in port
75	Receiving vessel's CFR number	IR	With format AAAXXXXXXXXXX where A is an uppercase letter being the country of registration within the EU and X being a letter or a number	CIF fishing vessel
76	Transhipment: receiving vessel	TT	If donor vessel — International radio call sign of the receiving vessel	C
77	Transhipment: Flag State of receiving vessel	TC	If donor vessel — Flag State of vessel receiving the transhipment (ISO alpha-3 country code)	C

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
78	Donor vessel's CFR number	RF	With format AAAXXXXXXXXXX where A is an uppercase letter being the country of first registration within the EU and X being a letter or a number	CIF community vessel
79	Transhipment: (donor) vessel	TF	If receiving vessel — International radio call sign of the donor vessel	C
80	Transhipment: Flag State of donor vessel	FC	If receiving vessel — Flag State of the donor vessel (ISO alpha-3 country code)	C
81	POS sub-declaration	POS	(See details of sub-elements and attributes of POS)	CIF required (**) (NEAFC or NAFO waters)
82	Catch transhipped (list of species SPE sub-declarations)	SPE	(See details of sub-elements and attributes of SPE)	C
83				
84	COE: entry in zone declaration		If fishing in stock recovery area or Western Waters	
85	Start of Effort declaration: Entry in zone	COE	Tag indicating start of an declaration on entry into the effort zone	C
86	Date	DA	Date of entry(YYYY-MM-DD)	C
87	Time	TI	Time of entry(HH:MM in UTC)	C
88	Target specie(s)	TS	Species to be targeted whilst in zone (Demersal, Pelagic, Scallops, Crabs). Full list to be found at the EC website with a location to be specified	C
89	Relevant area sub-declaration	RAS	Geographical location of the vessel. The list of codes for fishing and effort/conservation areas will be placed at the EC website with a location to be specified. (See details of sub-elements and attributes of RAS).	C
90	Catch on board sub-declaration (list of species SPE sub-declarations)	SPE	(See details of sub-elements and attributes of SPE)	O
91	COX: exit from zone declaration		If fishing in stock recovery area or Western Waters	
92	Start of effort declaration: Exit out of zone	COX	Tag indicating start of a declaration on exit of the effort zone	C
93	Date	DA	Date of exit (YYYY-MM-DD)	C
94	Time	TI	Time of exit (HH:MM in UTC)	C

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
95	Target specie(s)	TS	Species to be targeted whilst in zone (Demersal, Pelagic, Scallops, Crabs). Full list to be found at the EC website with a location to be specified	CIF not conducting other fishing activities
96	Relevant area sub-declaration	RAS	Geographical location of the vessel. The list of codes for fishing and effort/conservation areas will be placed at the EC website with a location to be specified. (See details of sub-elements and attributes of RAS).	CIF not conducting other fishing activities
97	Position sub-declaration	POS	Position of exit (see details of sub-elements and attributes of POS)	C
98	Catch taken sub-declaration	SPE	Catch taken whilst in zone (see details of sub-elements and attributes of SPE)	O
99				
100	CRO: crossing of zone declaration		If crossing stock recovery or Western Water zones	
101	Start of effort declaration: crossing of a zone	CRO	Tag indicating start of a declaration on crossing the effort zone (no fishing operation). Only DA TI POS needs to be specified in COE and COX declarations	C
102	Entry in zone declaration	COE	(See details of sub-elements and attributes of COE)	C
103	Exit from zone declaration	COX	(See details of sub-elements and attributes of COX)	C
104				
105	TRZ: trans-zonal fishing declaration		If carrying out trans-zonal fishing	
106	Start of Effort declaration: trans-zonal fishing	TRZ	Tag indicating start of a declaration on trans-zonal fishing	C
107	Entry declaration	COE	First entry (see details of sub-elements and attributes of COE)	C
108	Exit declaration	COX	Last exit (see details of sub-elements and attributes of COX)	C
109				
110	INS: inspection declaration		To be provided by the authorities, but not the master	
111	Start of inspection declaration	INS	Tag indicating start of an inspection sub-declaration	O
112	Country of inspection	IC	ISO alpha-3 country code	O
113	Assigned inspector	IA	For each state to provide a 4-digit number identifying their inspector	O
114	Date	DA	Date of inspection (YYYY-MM-DD)	O
115	Time	TI	Time of inspection (HH:MM in UTC)	O
116	Position sub-declaration	POS	Position of inspection (see details of sub-elements and attributes of POS)	O

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
117				
118	DIS: discard declaration			CIF required (**) (NEAFC, NAFO)
119	Start of discard declaration	DIS	Tag containing details of fish discarded	C
120	Date	DA	Date of discard (YYYY-MM-DD)	C
121	Time	TI	Time of discard (HH:MM in UTC)	C
122	Position sub-declaration	POS	Position when discarded (<i>see details of sub-elements and attributes of POS</i>)	C
123	Discarded fish sub-declaration	SPE	Discarded fish (<i>see details of sub-elements and attributes of SPE</i>)	C
124				
125	PRN: prior notification of return declaration		To be transmitted prior to return to port or if required by Community rules	CIF required (**) (NEAFC, NAFO)
126	Start of prior notification	PRN	Tag indicating start of a prior notification declaration	C
127	Predicted date	PD	Intended date of arrival/crossing (YYYY-MM-DD)	C
128	Predicted time	PT	Intended time of arrival/crossing (HH:MM in UTC)	C
129	Port name	PO	Port code (2-letter country code (ISO alpha-2 country code) + 3-letter port code). Port code list (CCPPP) to be found at the EC website with a location to be specified	C
130	Relevant area sub-declaration	RAS	Fishing area to be used for prior notification of cod. List of codes for fishing and effort/conservation areas will be placed at the EC website with a location to be specified. (<i>See details of sub-elements and attributes of RAS</i>).	CIF in the Baltic Sea
131	Predicted landing date	DA	Intended date of landing (YYYY-MM-DD) in the Baltic	CIF in the Baltic Sea
132	Predicted landing time	TI	Intended time of landing (HH:MM in UTC) in the Baltic	CIF in the Baltic Sea
133	Catch on board sub-declarations (list of species SPE sub-declarations)	SPE	Catch on board (if pelagic need ICES zone). (<i>See details of the sub-declaration SPE</i>)	C
134	Position sub-declaration	POS	Position for entering/leaving area/zone. (<i>See details of sub-elements and attributes of POS</i>).	CIF
135				
136	EOF: end of fishing declaration		To be transmitted immediately after last fishing operation and before returning to port and landing fish	
137	Start of Sign off of catch declaration	EOF	Tag indicating completion of fishing operations prior to return to port	C
138	Date	DA	Date signed off (YYYY-MM-DD)	C

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
139	Time	TI	Time signed off (HH:MM in UTC)	C
140				
141	RTP: return to port declaration		To be transmitted on entry into port, after any PRN declaration and before landing any fish	
142	Start of return to port declaration	RTP	Tag indicating the return to the harbour at the end of the fishing trip	C
143	Date	DA	Date of return (YYYY-MM-DD)	C
144	Time	TI	Time of return (HH:MM in UTC)	C
145	Port name	PO	Port code (ISO alpha-2 country code + 3-letter port code) list (CCPPP) to be found at the EC website with a location to be specified	C
146	Reason for return	RE	Reason for returning to port (e.g. sheltering, taking on stores, landing.) The list of reason codes will be placed at the EC website with a location to be specified	CIF
147				
148	LAN: landing declaration		To be transmitted after landing of catch	
149	Start of landing declaration	LAN	Tag indicating start of a landing declaration	C
150	Date	DA	(YYYY-MM-DD – date of landing	C
151	Time	TI	HH:MM in UTC – time of landing	C
152	Sender type	TS	3 letter code (MAS: master, REP: his representative, AGE: agent)	C
153	Port name	PO	Port code (2-letter country code (ISO alpha-2 country code) + 3-letter port code). Port code list (CCPPP) to be found at the EC website with a location to be specified	C
154	Catch landed sub-declaration (list of SPE with PRO sub-declarations)	SPE	Species, fishing areas, landed weights, related gears and presentations (<i>see details of sub-elements and attributes of SPE</i>)	C
155				
156	POS: position sub-declaration			
157	Start of position sub-declaration	POS	Tag containing coordinates of the geographical position	C
158	Latitude (decimal)	LT	Latitude expressed in accordance with the WGS84 format used for VMS	C
159	Longitude (decimal)	LG	Longitude expressed in accordance with the WGS84 format used for VMS	C
160				

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
161	GEA: gear deployment sub-declaration			
162	Start of gear deployment sub-declaration	GEA	Tag containing coordinates of the geographical position	C
163	Gear type	GE	Gear code according to FAO's 'International Standard Statistical Classification of the Fishing Gear'	C
164	Mesh size	ME	Size of mesh (in millimetres)	CIF gear has mesh subject to size requirement
165	Gear capacity	GC	Gear size and number	CIF required for type of gear deployed
166	Fishing operations	FO	Number of fishing operations (hauls) per 24 hour period	CIF if vessel licensed to fish deep sea stocks
167	Fishing time	DU	Number of hours the gear was deployed	CIF if vessel licensed to fish deep sea stocks
168	Gear shot sub-declaration	GES	Gear shot sub-declaration (<i>see details of sub-elements and attributes of GES</i>)	CIF required (**) (vessel uses static or fixed gear)
169	Gear retrieved sub-declaration	GER	Gear retrieved sub-declaration (<i>see details of sub-elements and attributes of GER</i>)	CIF required (**) (vessel uses static or fixed gear)
170	Gillnet deployment sub-declaration	GIL	Gillnet deployment sub-declaration (<i>see details of sub-elements and attributes of GIL</i>)	CIF vessel has permits for ICES Zones IIIa, IVa, IVb, Vb, VIa, VIb, VIIb, c, j, k and XII
171	Fishing depths	FD	A distance from water surface to the lowest part of the fishing gear (in metres). Applies to vessels using towed gear, long lines and fixed nets	CIF deep sea fishing and in Norwegian waters
172	Average number of hooks used on long lines	NH	The average number of hooks used on the long lines	CIF deep sea fishing and in Norwegian waters
173	The average length of the nets	GL	The average length of nets when using fixed nets (in metres)	CIF deep sea fishing and in Norwegian waters
174	The average height of the nets	GD	The average height of nets when using fixed nets (in metres)	CIF deep sea fishing and in Norwegian waters
175				

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
176	GES: gear shot sub-declaration			CIF required by the rules (**)
177	Start of position sub-declaration	GES	Tag containing gear shot info	C
178	Date	DA	Date gear shot (YYYY-MM-DD)	C
179	Time	TI	Time gear shot (HH:MM in UTC)	C
180	POS sub-declaration	POS	Position where gear shot (<i>see details of sub-elements and attributes of POS</i>)	C
181				
182	GER: gear retrieved sub-declaration			CIF required by the rules (**)
183	Start of Position sub-declaration	GER	Tag containing gear retrieved info	C
184	Date	DA	Date gear retrieved (YYYY-MM-DD)	C
185	Time	TI	Time gear retrieved (HH:MM in UTC)	C
186	POS sub-declaration	POS	Position where gear retrieved (<i>see details of sub-elements and attributes of POS</i>)	C
187	GIL Gillnet deployment sub-declaration			CIF vessel has permits for ICES Zones IIIa, IVa, IVb, Vb, VIa, VIb, VIIb, c, j, k and XII
188	Start of gillnet sub-declaration	GIL	Tag starting gillnet deployment	
189	Nominal length of one net	NL	Information required to be recorded during each fishing trip (in metres)	C
190	Number of nets	NN	Number of nets in a fleet	C
191	Number of fleets	FL	Number of fleets deployed	C
192	POS sub-declaration	POS	Position of each fleet deployment (<i>see details of sub-elements and attributes of POS</i>)	C
193	Depth of each fleet deployed	FD	Depth for each fleet deployed (a distance from water surface to the lowest part of the fishing gear)	C
194	Soak time of each fleet deployed	ST	Soak time for each fleet deployed	C
195				
196	GLS: gear loss sub-declaration		Loss of fixed gear	CIF required by the rules (**)
197	Start of GLS sub-declaration	GLS	Data on fixed gear lost	

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
198	Date gear lost	DA	Date gear lost (YYYY-MM-DD)	C
199	Number of units	NN	Number of gears lost	CIF
200	POS sub-declaration	POS	Last known position of gear (<i>see details of sub-elements and attributes of POS</i>)	CIF
201				
202	RAS: Relevant area sub-declaration	RAS	Relevant area depending on the relevant reporting requirement – at least one field should be filled in. List of codes will be placed at the EC website with a location to be specified.	CIF
203	FAO area	FA	FAO area (e.g. 27)	CIF
204	FAO (ICES) sub-area	SA	FAO (ICES) sub-area (e.g. 3)	CIF
205	FAO (ICES) division	ID	FAO (ICES) division (e.g. d)	CIF
206	FAO (ICES) sub-division	SD	FAO (ICES) sub-division (e.g. 24) (Meaning together with the above 27.3.d.24)	CIF
207	Economic zone	EZ	Economic zone	CIF
208	Ices statistical rectangle	SR	ICES statistical rectangle (e.g. 49E6)	CIF
209	Fishing effort zone	FE	List of codes will be placed at the EC website with a location to be specified.	CIF
210	Position sub-declaration	POS	(<i>See details of sub-elements and attributes of POS</i>).	CIF
211				
212	SPE: species sub-declaration		Aggregate quantity by species	
213	Start of SPE sub-declaration	SPE	Details of fish caught by species	C
214	Species name	SN	Name of the species (FAO alpha-3 code)	C
215	Weight of fish	WT	Depending on context this item to be either 1. Total weight of fish (in kilograms) in catch period 2. Total weight of fish (in kilograms) on board (aggregate) or 3. Total weight of fish (in kilograms) landed	CIF species not counted
216	Number of fish	NF	Number of fish (when catch have to be registered in numbers of fish i.e. salmon, tuna)	CIF
217	Quantity held in nets	NQ	Estimate of quantity held in nets i.e. not in hold	O
218	Number held in nets	NB	Estimate of number of fish held in nets i.e. not in hold	O
219	Relevant area sub-declaration	RAS	The geographical area in which the majority of the catch was taken. List of codes will be placed at the EC website with a location to be specified. (<i>See details of sub-elements and attributes of RAS</i>).	C

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
220	Gear type	GE	Letter code according to FAO's 'International Standard Statistical Classification of the Fishing Gear'	CIF landing declaration for certain species and catch areas only
221	Processing sub-declaration	PRO	<i>(See details of sub-elements and attributes of PRO)</i>	CIF for landing (trans-shipment) declaration
222				
223	PRO: processing sub-declaration		Processing/presentation for each specie landed	
224	Start of Processing sub-declaration	PRO	Tag containing fish processing details	C
225	Fish freshness category	FF	Fish freshness category (A, B, E)	C
226	State of preservation	PS	Letter code for the state of the fish e.g. live, frozen, salted. List of codes will be placed at the EC website with a location to be specified	C
227	Presentation of fish	PR	Letter code for the product presentation (reflects manner of processing): use codes found at the EC website with a location to be specified	C
228	Processing's type of packaging	TY	3-letter code (CRT=cartons, BOX=boxes, BGS=bags, BLC=blocks)	CIF (LAN or TRA)
229	Number of packing units	NN	Number of packing units: cartoons, boxes, bags, containers, blocks etc	CIF (for LAN or TRA)
230	Av weight per unit of packing	AW	Product weight (kg)	CIF (for LAN or TRA)
231	Conversion factor	CF	A numerical factor that is applied to convert fish processed weight into fish live weight	O
232				
233	When message type is SAL (TM=SAL)		SAL is a Sales message	
234	The following attributes need to be specified		A sale message may be either a sales note line or a take-over line	
235	Start of sales record	SAL	Tag indicating start of sales record	C
236	Vessel's Community fleet register number	IR	With format AAXXXXXXXXXX where A is an uppercase letter being the country of first registration within the EU and X being a letter or a number	C
237	Vessel's call sign	RC	International radio call sign	CIF CFR not up to date
238	Vessel's external identification	XR	Side (hull) number of registration of the vessel that landed the fish	O
239	Country of registration	FS	ISO alpha-3 country code	C

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
240	Name of vessel	NA	Name of the vessel that landed the fish	O
241	SLI declaration	SLI	<i>(See details of sub-elements and attributes of SLI)</i>	CIF sale
242	TLI declaration	TLI	<i>(See details of sub-elements and attributes of TLI)</i>	CIF take-over
243				
244	SLI: sales line declaration			
245	Start of sales line declaration	SLI	Tag containing details of a consignment sale	C
246	Date	DA	Date of the sale (YYYY-MM-DD).	C
247	Sale country	SC	Country where the sale took place (ISO alpha-3 country code)	C
248	Sale location	SL	Port code list (CCPPP) to be found at the EC website with a location to be specified	C
249	Name of seller	NS	Name of auction centre, other body or person selling the fish	C
250	Name of buyer	NB	Name of body or person buying the fish	C
251	Sales contract reference number	CN	Sales contract reference number	C
252	Source document sub-declaration	SRC	<i>(See details of sub-declaration and attributes of SRC)</i>	C
253	Consignment sold sub-declaration	CSS	<i>(See details of sub-declaration and attributes of CSS)</i>	C
254				
255	SRC sub-declaration		Flag State authorities shall track back the source document based on the vessel's logbook and landing data	
256	Start of source document sub-declaration	SRC	Tag containing details of the source document for the consignment sold	C
257	Date of landing	DL	Date of landing (YYYY-MM-DD).	C
258	Country and port name	PO	Country and port name for place of landing. Country port code list (CCPPP) to be found at the EC website with a location to be specified	C
259				
260	CSS sub-declaration			
261	Start of consignment sold sub-declaration	CSS	Tag containing details of the item sold	C
262	Species name	SN	Name of the species sold (FAO alpha-3 code)	C
263	Weight of fish sold	WT	Weight of fish sold (in kilograms)	C

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
264	Number of fish sold	NF	Number of fish (when catch have to be registered in numbers of fish i.e. salmon, tuna)	CIF
265	Fish price	FP	Price per kg	C
266	Currency of sale	CR	Currency of price of sale. List of currency symbols/codes will be placed at the EC website with a location to be specified	C
267	Fish size category	SF	Size of fish (1-8; one size or kg, g, cm, mm or number of fish per kg as appropriate)	CIF
268	Product destination (purpose)	PP	Codes for human consumption, carry-over, industrial purposes	CIF
269	Relevant area sub-declaration	RAS	List of codes for fishing and effort/conservation areas will be placed at the EC website with a location to be specified. (See details of sub-elements and attributes of RAS).	C
270	PRO processing sub-declaration	PRO	(See details of sub-elements and attributes of PRO)	C
271	Withdrawn	WD	Withdrawn through a producers' organisation (Y=yes, N=no, T – temporarily)	C
272	P.O. Use code	OP	List of codes will be placed at the EC website with a location to be specified	O
273	State of preservation	PS	Letter code for the state of the fish e.g. live, frozen, salted. List of codes will be placed at the EC website with a location to be specified.	CIF when temporarily withdrawn
274				
275	TLI: take-over declaration			
276	Start of TLI declaration	TLI	Tag for details of take-over event	C
277	Date	DA	Date of the take-over (YYYY-MM-DD).	C
278	Take-over country	SC	Country where the take-over took place (ISO alpha-3 country code)	C
279	Take-over location	SL	Port code or place name (if not in port) where the take-over took place – list to be found at the EC website with a location to be specified http://ec.europa.eu/fisheries/cfp/control_enforcement_en.htm	C
280	Name of take-over organisation	NT	Name of the organisation that took-over the fish	C
281	Take-over contract reference number	CN	Take-over contract reference number	O
282	SRC sub-declaration	SRC	(See details of sub-elements and attributes of SRC)	C
283	Consignment taken over sub-declaration	CST	(See details of sub-elements and attributes of CST)	C
284				

No	Element or attribute name	Code	Description and content	Compulsory (C)/Compulsory if (CIF) (*)/Optional (O) (**)
285	CST sub-declaration			
286	Start of line for each consignment taken over	CST	Tag containing detail line for each species taken over	C
287	Species name	SN	Name of the species sold (FAO alpha-3 code)	C
288	Weight of fish taken over	WT	Weight of fish taken over (in kilograms)	C
289	Number of fish taken over	NF	Number of fish (when catch have to be registered in numbers of fish i.e. salmon, tuna)	CIF
290	Fish size category	SF	Size of fish (1-8; one size or kg, g, cm, mm or number of fish per kg as appropriate)	C
291	Relevant area sub-declaration	RAS	List of codes for fishing and effort/conservation areas will be placed at the EC website with a location to be specified. (<i>See details of sub-elements and attributes of RAS</i>).	O
292	PRO processing sub-declaration	PRO	(<i>See details of sub-elements and attributes of PRO</i>)	C

Notes:

(*) Compulsory if required by the Community rules, international or bilateral agreements.

(**) When CIF does not apply then attribute is optional.

1. Character set definitions are available at <http://europa.eu.int/idabc/en/chapter/556> used for ERS should be: Western character set (UTF-8).

2. All Codes (or appropriate references) will be listed on the EC Fisheries website with a location to be specified:

http://ec.europa.eu/fisheries/cfp/control_enforcement_en.htm (including codes for corrections, ports, fishing areas, intentions on leaving port, reasons for returning to port, type of fishing/target species, codes on entering conservation/effort zones and other codes or references).

3. All 3 character codes are XML elements (3-character code), all 2-character codes are XML attributes.

4. The XML sample files and the reference XSD definition of the above Annex will be placed on the EC website with a location to be specified.

5. All the weights in the table are expressed in kilograms and, if needed with up to two decimals of precision.

COMMISSION REGULATION (EC) No 1078/2008**of 3 November 2008****laying down detailed rules for the implementation of Council Regulation (EC) No 861/2006 as regards the expenditure incurred by Member States for the collection and management of the basic fisheries data**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

in the area of data collection. It is also appropriate that the non-compliance with such rules and procedures entails the exclusion of expenditures.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea ⁽¹⁾, and in particular Article 31 thereof,

Whereas:

(1) Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy ⁽²⁾ establishes a basis for scientific analyses of fisheries and for providing the formulation of sound scientific advice for the implementation of the Common Fisheries Policy.

(2) The Commission is to adopt a multi-annual Community programme pursuant to Council Regulation (EC) No 199/2008 based on which the Member States should establish multi-annual national programmes for the collection, management and use of data.

(3) Article 9 of Regulation (EC) No 861/2006 provides, amongst other actions, for Community financial contribution for measures in the area of basic data collection. Moreover, Article 24 of that Regulation requires the Commission to decide each year on the annual Community contribution to those measures.

(4) In view of the principle of sound financial management, it is necessary to lay down the rules and procedures to be complied with by Member States in order to benefit from Community financial assistance for expenditure incurred

(5) The annual Community contribution should be based on annual budget forecasts which should be evaluated taking into account the national programmes established by the Member States.

(6) With a view to ensure that Community funds are allocated efficiently, the annual budget forecast should be consistent with the activities foreseen in the national programme.

(7) With a view to simplifying procedures, it is necessary to establish the rules and the format for the submission by Member States of the annual budgetary forecast in relation to the execution of the national programmes. Only costs directly related to the implementation of the national programmes, which are properly justified and actually incurred by the Member States, should be considered eligible. In this respect, it is also relevant to clarify the role and obligations of partners and sub-contractors in the implementation of the national programmes.

(8) With regard to the possibility to amend the technical aspects of the multi-annual programmes as provided for in Article 5(2) of Council Regulation (EC) No 199/2008, it is appropriate to establish the rules under which the Member States may amend adequately the funds necessary for the proper implementation of the national programmes. Member States should be allowed to reallocate funds between different cost categories if this is considered of a benefit for the implementation of the national programme.

(9) Rules should be established in order to ensure that the claims for reimbursement of expenditure are in line with the Commission Decision approving the annual Community contribution. Those rules should include the procedure for submission and approval of such claims. Where appropriate, claims which do not comply with those rules should be de-committed.

⁽¹⁾ OJ L 160, 14.6.2006, p. 1.

⁽²⁾ OJ L 60, 5.3.2008, p. 1.

- (10) It is appropriate that payments are made in two instalments, thus allowing Member States to benefit already from the Community financial contribution during the period of implementation of the programme.
- (11) In view of ensuring correct use of Community funds, the Commission and the Court of Audit should be in a position to verify the compliance with the provisions provided in this Regulation and should, for that purpose, be provided with any information relevant for carrying out the audits and financial corrections as referred to in Article 28 of Regulation (EC) No 861/2006.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation establishes detailed rules for the implementation of Regulation (EC) No 861/2006 as regards the Community financial contribution for expenditure incurred by Member States for the collection and management of the basic fisheries data.

Article 2

Submission of the annual budget forecast

1. Member States wishing to receive a financial contribution from the Community for the implementation of their multi-annual programme, as referred to in Article 4 of Regulation (EC) No 199/2008, hereinafter 'the national programme', shall submit to the Commission by 31 March of the year prior to the period of the implementation of that programme:

- (a) an annual budget forecast for the first year of implementation of the national programme; and
- (b) indicative annual budget forecasts for each of the following years of implementation of the national programme.

2. Member States shall submit definitive annual budget forecasts for each of the years of implementation of their national programme, following the first, where they differ from the indicative budget forecasts already submitted. Definitive annual budget forecasts shall be submitted by 31 October prior to the year of implementation concerned.

3. For the first national programme covering the period 2009-2010, the annual budget forecasts shall be submitted by 15 October 2008.

Article 3

Content of the annual budget forecast

1. The annual budget forecast shall contain the planned annual expenditure that a Member State expects to incur for the implementation of its national programme.

2. The annual budget forecast shall be presented:

- (a) by category of expenditure as referred to in Annex I to this Regulation;
- (b) by module as defined in the Commission Decision establishing the multi-annual Community programme on collection, management and use of data for the fisheries and aquaculture sectors; and
- (c) where relevant, by region as defined in Article 1(a) of Commission Regulation (EC) No 665/2008 ⁽¹⁾.

3. Member States shall submit the annual budget forecast by electronic means and using the financial forms established and communicated to them by the Commission.

Article 4

Evaluation of the annual budget forecast

1. The Commission shall evaluate the annual budget forecasts by taking into account the national programmes approved in accordance to Article 6(3) of Regulation (EC) No 199/2008.

⁽¹⁾ OJ L 186, 15.7.2008, p. 3.

2. For the purpose of evaluating the annual budget forecast, the Commission may request a Member State to provide further clarification on the expenditure concerned. The Member State shall provide that clarification within 15 calendar days from the Commission's request.

3. If the Member State fails to communicate sufficient clarification within the deadline referred to in paragraph 2, the Commission may exclude as appropriate the concerned expenditure from the respective annual budget forecast to be approved.

Article 5

Community financial contribution

The Commission shall approve the annual budget forecast and shall decide on the annual Community financial contribution to each national programme in accordance with the procedure laid down in Article 24 of Regulation (EC) No 861/2006 and on the basis of the outcome of the evaluation of the annual budget forecasts as referred to in Article 4.

Article 6

Amendments to the approved annual budget forecast

1. Member States shall be authorised to transfer the amounts set out in the annual budget forecast approved in accordance with Article 5 between modules and cost categories within the same region only, provided that:

(a) the amounts transferred do not exceed EUR 50 000 or 10 % of the approved total budget for the region where the amount of that budget is less than EUR 500 000;

(b) they inform the Commission upon the occurrence of the need for transfer.

2. Any other amendments of the annual budget forecast approved in accordance with Article 5 shall be duly justified and shall be approved by the Commission before the expenditure is incurred.

Article 7

Eligible expenditure

1. In order to be eligible for Community financial contribution, expenditure shall:

(a) be actually incurred by the Member State;

(b) concern an action foreseen in the national programme;

(c) be indicated in the annual budget forecast;

(d) fall in one of the categories listed in Annex I;

(e) concern an action executed in compliance with the conditions laid down in Regulation (EC) No 199/2008 and its implementing provisions;

(f) be identifiable and verifiable, in particular being recorded in the accounting records of the Member State and their partners;

(g) be determined according to the applicable accounting standards and comply with the requirements of national legislation;

(h) be reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency;

(i) be incurred during the implementation period of the action as foreseen in the national programme.

2. Eligible expenditure shall be related to:

(a) the following data collection activities:

— collection of data on the sampling sites as referred to in Article 10 of Regulation (EC) No 199/2008 from direct sampling or interviews and queries,

— at-sea-monitoring of commercial and recreational fisheries as referred to in Article 11 of Regulation (EC) No 199/2008,

— research surveys at sea as referred to in Article 12 of Regulation (EC) No 199/2008;

(b) the following data management activities, as provided for in the multi-annual Community programme referred to in Article 3 of Regulation (EC) No 199/2008:

- database and web site development,
 - data input (storage),
 - data quality control and validation,
 - data processing from primary data into detailed or aggregated data,
 - transformation process of the primary socioeconomic data into metadata;
- (c) the following data use activities as provided for in the multi-annual Community programme referred to in Article 3 of Regulation (EC) No 199/2008:
- production of sets of data and their uses to support scientific analysis as a basis for advice to fisheries management,
 - biological parameter estimates (age, weight, sex, maturity and fecundity),
 - preparation of sets of data for stock assessments, bio-economic modelling and corresponding scientific analysis.
- (h) entertainment expenses, other than those regarded by the Commission as strictly necessary for carrying out the national programme;
 - (i) expenditure on luxuries and publicity;
 - (j) all expenditure on other programmes/projects financed by a third party;
 - (k) all expenditure on protecting the results of the work carried out under the national programme;
 - (l) any recoverable types of levy (including VAT);
 - (m) resources made available to the Member State free of charge;
 - (n) value of contributions in kind;
 - (o) unnecessary or ill-considered expenses.

Article 8

Non-eligible expenditure

The following expenditure shall not be eligible for Community financial contribution:

- (a) profit margins, provisions and bad debts;
- (b) interest owed and bank charges;
- (c) average labour costs;
- (d) indirect costs such as: buildings and sites, administration, support staff, office supplies, infrastructure, running and maintenance costs, such as telecommunication costs, goods and services;
- (e) equipment which is not used for data collection and management purposes, such as scanners, printers, mobile phones, walkie-talkies, videos and cameras;
- (f) purchase of vehicles;
- (g) distribution, marketing and advertising costs of promoting products and commercial activities;

Article 9

Implementation of programmes

1. Member States may be assisted by partners for the implementation of the national programme. The partners shall be organisations expressly identified in the national programme to assist the Member States to implement the whole or a significant part of the national programme. The partners shall be directly involved in the technical implementation of one or more tasks of the national programme and shall be subject to the same obligations as the Member States in relation to the implementation of the national programmes.
2. The partners shall not act, in the context of the programme, as subcontractors to the Member State or other partners.
3. For a fixed duration, specific tasks of the national programme may be carried out by subcontractors, who shall not be considered as partners. Subcontractors shall be natural or legal persons providing services to the Member States and/or partners. Any recourse to subcontracting while the action is under way, if not provided for in the initial programme proposal, shall be subject to prior written authorisation by the Commission.

*Article 10***Submission of claims for reimbursement**

1. Member States shall submit to the Commission claims for reimbursement of expenditure incurred for the implementation of the national programmes by 31 May of each year following the calendar year concerned. Those claims shall be comprised of:

- (a) a letter stating the total amount claimed for reimbursement, which shall clearly indicate the items listed in Annex II;
- (b) a financial report, presented by category of expenditure, module and, where relevant, by region as indicated in the financial forms referred to in Article 3(3). The financial report shall be presented in the format established and communicated to Member States by the Commission;
- (c) a statement of expenditure as defined in the Annex III; and
- (d) the relevant supporting documents as indicated in the Annex I.

2. The claims for reimbursement shall be submitted to the Commission by electronic means.

3. When submitting claims for reimbursement, Member States shall take all appropriate steps to verify and certify that:

- (a) the actions conducted and the statement of expenditure incurred under the Decision referred to in Article 5 correspond to the national programme as approved by the Commission;
- (b) the claim for reimbursement complies with the conditions set out in Articles 7 and 8;
- (c) the expenditure has been incurred in compliance with the conditions laid down in Regulation (EC) No 861/2006, this Regulation, the Decision referred to in Article 5 and with Community legislation on the award of public contracts.

*Article 11***Evaluation of the claims for reimbursement**

1. The Commission shall evaluate the claims for reimbursement on their compliance with this Regulation.

2. For the purpose of evaluating the claim for reimbursement, the Commission may request a Member State to provide further clarification. The Member State shall provide that clarification within 15 calendar days from the Commission's request.

*Article 12***Exclusion from reimbursement**

If the Member States fails to communicate sufficient clarification within the deadline referred to in Article 11(2) and the Commission considers that the claim for reimbursement does not comply with the conditions laid down in this Regulation, it shall request the Member State to submit its observations within 15 calendar days. If the examination confirms the non-compliance, the Commission shall refuse to reimburse all or part of the expenditure concerned by the non-compliance and, where appropriate, request reimbursement of undue payments or de-commit the outstanding amounts.

*Article 13***Approval of the claims for reimbursement**

The Commission shall approve the claims for reimbursement on the basis of the outcome of the procedure laid down in Articles 11 and 12.

*Article 14***Payments**

1. The Community financial contribution granted to a Member State in accordance with Article 8 in respect of each year of implementation of the national programme shall be paid in two instalments as follows:

- (a) a pre-financing payment equivalent to 50 % of the Community contribution. That payment shall be made after the notification to the Member State of the Decision referred to in Article 5 and the receipt of a letter requesting the pre-financing payment and clearly stating the items listed in Annex II;
- (b) an annual balance payment based on the claim of reimbursement referred to in Article 10. That payment shall be made within 45 days of approval, by the Commission, of the claim for reimbursement referred to in Article 12.

2. Penalty reductions as referred to in Article 8 of Regulation (EC) No 199/2008 shall be executed on the annual balance payment as referred to in paragraph 1(b).

3. Additional cost claims and supporting documents shall not be accepted after the execution of the balance payment.

Article 15

Currency

1. The annual budget forecasts and the claims for reimbursement shall be expressed in euro.

2. For the first year of implementation of the national programme, Member States not participating in the third stage of Economic and Monetary Union shall apply the exchange rate published in the C series of the *Official Journal of the European Union* on 1 March of the year prior to the period of the implementation of that programme. For the first national programme covering the period 2009-2010, that date shall be 1 October 2008.

3. For each of the years of implementation of the national programme following the first, Member States not participating in the third stage of Economic and Monetary Union shall apply the exchange rate published in the C series of the *Official Journal of the European Union* on 1 October of the year prior to the year of implementation concerned.

4. The Member States not participating in the third stage of the Economic and Monetary Union shall specify the exchange rate used in the annual budget forecast and the claim for reimbursement.

Article 16

Audits and financial corrections

Member States shall provide the Commission and the Court of Auditors with any information those institutions may request for the audits and financial corrections referred to in Article 28 of Regulation (EC) No 861/2006.

Article 17

Entry into force

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

It shall apply to expenditure incurred as of 1 January 2009.

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

Done at Brussels, 3 November 2008.

For the Commission

Joe BORG

Member of the Commission

ANNEX I

Eligibility of expenditure incurred for the implementation of national programmes

The eligible expenditure categories shall include all or some of the following:

(a) Staff costs:

- expenditure on staff for the time actually devoted to the national programme by scientific or technical staff only,
- staff costs shall be established in relation to the working time actually devoted to the national programme and shall be calculated by reference to actual labour costs (wages, social costs, social security and pension contributions), but excluding any other costs,
- calculation of the hourly/daily rates shall be done on the basis of 210 productive days per year,
- time devoted by staff to the programme must appear in full in the records (time sheets) and be certified at least once each month by the responsible person. The time sheets shall be made available to the Commission on request.

(b) Travel expenses:

- travel expenses shall be established in accordance with the internal rules of the Member State or partners. For travel outside the Community, prior agreement of the Commission shall be required if not specified in the national programme.

(c) Durable goods:

- durable goods must have an expected life not shorter than the duration of the work under the programme. They are included in the inventory of durable goods or are regarded as assets in accordance with the accounting methods, rules and principles of the Member State or partners concerned,
- for the purpose of calculating the eligible expenditure, durable goods will be considered to have a probable life of 36 months in the case of computer equipment of a value not exceeding EUR 25 000, and 60 months in the case of other goods. The eligible amount will depend on the expected life of the goods in relation to the duration of the programme, on condition that the period used to calculate this amount starts on the actual date of commencement of the programme, or the date of purchase of the goods where this occurs after the date of commencement, and ends on the date of completion of the programme. Account should be taken also of the use made of the goods during that period,
- as an exception, durable equipment may have been purchased or leased with an option to buy within six months before the commencement day of the national programme,
- applicable public procurement rules shall also apply in case of purchase of durable goods,
- expenditure related to durable goods shall be justified with certified invoices, confirming the delivery date, and must be submitted to the Commission together with the statement of expenditure.

(d) Consumable materials and supplies including computing costs:

- consumable materials and supplies expenditure are consumable raw materials for the purchase, production, repair or use of any goods or equipment which have a probable life shorter than the duration of the work under the programme. They are not included in the inventory of durable goods of the Member State or partners concerned, or are not regarded as assets in accordance with the accounting principles, rules and methods of the Member State or partners concerned,
- their description must be detailed enough to allow decision on their eligibility,
- eligible computing costs concern the establishment and supply to Member States of software for the management and interrogation of databases.

(e) Vessel costs:

- for research surveys at sea referred to in Article 12 of Regulation (EC) No 199/2008, including those conducted from chartered vessels, only rental costs and other operating costs shall be eligible. A certified copy of the invoice must be submitted to the Commission together with the statement of expenditure,
- when a vessel is the property of the Member State or the partner, a detailed breakdown showing how the operating costs charged have been calculated shall be submitted to the Commission together with the statement of expenditure.

(f) Subcontracting costs/external assistance:

- subcontracting/external assistance concerns standard and non-innovative services provided to the Member State and/or the partners who are unable to provide these services themselves. These costs shall not represent more than 20 % of the approved overall annual budget. The prior written approval of the Commission is required where the cumulative amount of the subcontracts in the national programme exceeds the above-specified limit,
- subcontracts must be awarded by a Member State/partner in accordance with the applicable rules on public tendering and in conformity with Community Directives on public procurement procedures,
- all invoices by subcontractors shall include a clear reference to the national programme and module (i.e. number and title or short title). All invoices shall be sufficiently detailed as to allow identification of single items covered by the service delivered (i.e. clear description and cost of each item),
- the Member States and partners must ensure that each subcontract shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over the subcontractor who has received Community funds,
- countries outside the Community may, if their contribution is considered necessary for carrying out Community programmes, participate as subcontractors in a national programme with the prior written approval of the Commission,
- a certified copy of the contract with the subcontractor and subsequent proves of payment must be submitted to the Commission together with the statement of expenditure.

(g) Other specific costs:

- Any other additional or unforeseen expenditure not falling within one of the above categories can be charged to the programme only with the prior agreement of the Commission unless they are already foreseen in the annual budget forecast.

(h) Support for scientific advice:

- daily allowances and travel costs are eligible for the duration of the meetings referred to in Article 10(2) of Regulation (EC) No 665/2008 in accordance with rule established in Article 10(3) of Regulation (EC) No 665/2008,
 - a certified copy of the supporting travel documents must be submitted to the Commission together with the statement of expenditure.
-

*ANNEX II***Content of the letter stating the amount claimed for reimbursement or demanded as pre-financing payment**

The letter stating the amount claimed for reimbursement or demanded as pre-financing payment shall clearly indicate:

1. the Commission Decision to which it refers (relevant Article and Annex);
 2. the reference to the national programme;
 3. the amount claimed from the Commission expressed in Euro, VAT excluded;
 4. the type of claim (pre-finance, balance payment);
 5. the bank account to which the transfer should be made.
-

ANNEX III

STATEMENT OF EXPENDITURE

(to be sent to unit MARE.C4 through official channels)

PUBLIC EXPENDITURE INCURRED IN CARRYING OUT THE NATIONAL PROGRAMME FOR DATA COLLECTION

Commission Decision of/No

National reference (if any)

CERTIFICATE

I, the undersigned representing the authority responsible for the relevant financial and control procedures, hereby certify, after verification, that all eligible expenditure included in the attached documents, representing the total cost, was paid in 200... and amounts to: EUR (exact amount to two decimal places) concerning the national data collection programme 200... and corresponding to the European Commission contribution of 50 %;

An instalment of EUR has already been received in respect of the above programme.

I also certify that the statement of expenditure is accurate and the application for payment takes account of any recoveries made.

The operations were carried out in accordance with the objectives laid down in the decision and with the provisions of Council Regulation (EC) No 199/2008 as well as Council Regulation (EC) No 861/2006, in particular as regards:

- compliance with Community law and instruments adopted under it, in particular the rules on competition and the award of public contracts,
- application of management and control procedures to the financial assistance, in particular to verify the delivery of the products and services co-financed and the reality of expenditure claimed and to prevent, detect and correct irregularities, pursue fraud, and recover unduly paid amounts.

The tables attached comprise the expenditure incurred. Certified copies of invoices for durable goods and vessel costs are annexed. Originals of all supporting documents and invoices will continue to be available for a minimum period of three years following payment of the balance by the Commission.

Date: .../.../...

Name capitals, stamp, position and
signature of competent authority

List of enclosures:

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 30 April 2008

on State aid C 21/07 (ex N 578/06) which Hungary is planning to implement in favour of IBIDEN Hungary Gyártó Kft.

(notified under document number C(2008) 1342)

(Only the Hungarian text is authentic)

(Text with EEA relevance)

(2008/830/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Multisectoral Framework on regional aid for large investments projects 2002 ⁽²⁾ (hereafter: MSF 2002).

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

(2) The Commission requested additional information by letters of 13 October 2006 (D/58881) and 13 March 2007 (D/51161).

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

(3) By letters registered at the Commission on 14 November 2006 (A/39085), 3 January 2007 (A/30004), 15 January 2007 (A/30441) and 27 March 2007 (A/32641) the Hungarian authorities asked the Commission to extend the deadline for providing additional information, which the Commission accepted.

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

(4) The Hungarian authorities submitted additional information by letters registered at the Commission on 31 January 2007 (A/30990) and 15 May 2007 (A/34072).

Whereas:

(5) On 11 December 2006 and on 25 April 2007, meetings were held between the Hungarian authorities and the Commission services where also representatives of IBIDEN Hungary Gyártó Kft. were present.

1. PROCEDURE

(1) By electronic notification dated 30 August 2006, registered the same day at the Commission, the Hungarian authorities notified a case of application of existing regional aid schemes in favour of an initial investment project by IBIDEN Hungary Gyártó Kft. The notification was made pursuant to the individual notification requirement laid down in paragraph 24 of the

⁽²⁾ Communication from the Commission — Multisectoral framework on regional aid for large investment projects (OJ C 70, 19.3.2002, p. 8) as modified by the Commission communication on the modification of the Multisectoral Framework on regional aid for large investment projects (2002) with regard to the establishment of a list of sectors facing structural problems and on a proposal of appropriate measures pursuant to Article 88 paragraph 1 of the EC Treaty, concerning the motor vehicle sector and the synthetic fibres sector (OJ C 263, 1.11.2003, p. 3).

⁽¹⁾ OJ C 224, 25.9.2007, p. 2.

- (6) By letter dated 10 July 2007, the Commission informed Hungary that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.
- (7) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments on the aid measure.
- (8) The Commission received four comments from interested parties:
- (a) by letter dated 25 October 2007, registered at the Commission on the same day (A/38842);
 - (b) by letter dated 22 November 2007, registered at the Commission on 24 November 2007 (A/39732);
 - (c) by letter dated 23 November 2007, registered at the Commission on the same day (A/39711);
 - (d) by letter dated 26 November 2007, registered at the Commission on 27 November 2007 (A/39740).
- (9) By letter dated 4 December 2007 (D/54826), the Commission forwarded the observations received to Hungary which was given the opportunity to react.
- (10) The opinion from Hungary to the comments of interested parties was received by letter dated 4 January 2008, registered at the Commission on the same day (A/151).

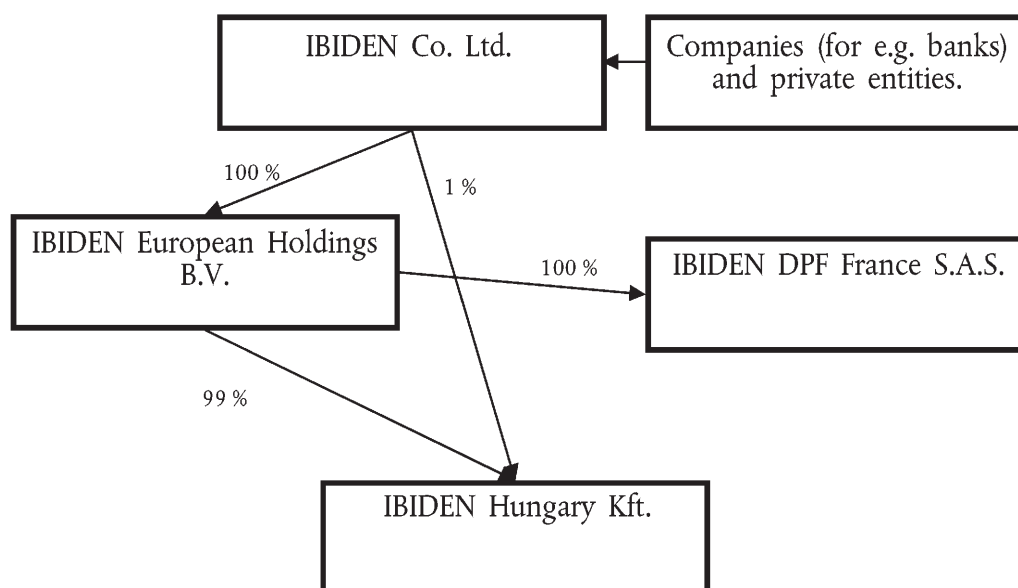
2. DETAILED DESCRIPTION OF THE AID

2.1. Objective of the measure

- (11) The Hungarian authorities intend to promote regional development by providing regional investment aid to IBIDEN Hungary Gyártó Kft. for the setting up of a new manufacturing plant for the production of ceramic substrates for Diesel Particulate Filters in the Dunavarsány Industrial Park, in the region of Central Hungary (Pest County), which is an assisted area in accordance with Article 87(3)(a) of the EC Treaty with an aid intensity ceiling of 40 % Net Grant Equivalent (NGE) for the period 2004-2006 ⁽⁴⁾.

2.2. The beneficiary

- (12) The aid beneficiary is 'IBIDEN Hungary Gyártó Kft.' (hereinafter: IBIDEN HU). The aided project aims to set up the second production plant within IBIDEN's ceramics division of ceramic substrates for Diesel Particulate Filters in the European Union, besides IBIDEN DPF France S.A.S. in France (set up in 2001).
- (13) IBIDEN HU was established on 5 May 2004 by IBIDEN European Holdings B.V. (The Netherlands) and IBIDEN Co., Ltd. (Japan). IBIDEN European Holdings B.V. is 100 % owned by IBIDEN Co., Ltd., which in turn is a joint-stock company with many proprietors: companies (e.g. banks) and private entities. IBIDEN HU is 99 % owned by IBIDEN European Holdings B.V. and 1 % by IBIDEN Co., Ltd. IBIDEN DPF France S.A.S. has been owned by IBIDEN European Holdings B.V. by 100 % since the end of 2005.



⁽³⁾ Cf. footnote 1.

⁽⁴⁾ Commission letter of 9 July 2004, C(2004) 2773/5 concerning HU 12/2003 — Regional aid map of Hungary for the period from 1 May 2004 until 31 December 2006.

- (14) The parent company IBIDEN Co., Ltd. is a multinational company that was established in 1912, as a company generating electric power, and has its headquarters in Gifu, Japan. Its operations can be divided into five segments whose shares in the 2005 annual sales turnover were the following: 50 % for the electronics division, 22 % for the ceramics division, 16 % for the housing materials division, 4 % for the construction materials division and 8 % for other small divisions (such as oil products, information services, synthetic resin, agriculture, livestock and fishery processing departments). According to the Annual Report of 2006 ⁽⁵⁾, the IBIDEN Group consists of 47 subsidiaries and one affiliated company, which is not active in the ceramic sector. In 2006 consolidated net sales were Yen 319,0 billion, operating income was Yen 43,6 billion, and net income was Yen 27,2 billion. In the same year, the group counted 10 115 employees in its business representations and factories all over the world.
- (17) The Hungarian authorities indicate that the two phases of the investment by IBIDEN HU in the Dunavarsány Industrial Park have to be considered as a single investment project within the meaning of paragraph 49 of the MSF 2002: the two investment phases concern the same production site, the same company, the same product and they were started within a period of three years.
- (18) According to the information provided by the Hungarian authorities on the two investment phases, the production of ceramic substrates for Diesel Particulate Filters will take place in two newly built buildings of 24 000 m² and 30 900 m² respectively in the Dunavarsány Industrial Park. By 2007, four production lines will be installed in building I and five lines will be installed in building II.
- (19) By 2007 the project will create a total of 1 100 new direct jobs in Dunavarsány.
- (20) The Hungarian authorities confirm that no other products than those concerned by the investment project will be produced at the aided facility for five years after the completion of the investment.
- (21) In addition, the Hungarian authorities confirm that the beneficiary accepted to maintain the investment at the site for a minimum period of five years after the completion of the investment.
- (16) By letter dated 1 April 2005 the Hungarian authorities, in line with paragraph 36 of the MSF 2002 ⁽⁶⁾, informed the Commission about the State aid granted to IBIDEN HU for the first phase of the investment project.

2.3. Investment project

2.3.1. The new investment project of IBIDEN HU in Dunavarsány

2.3.2. Timing of IBIDEN HU investment project in Dunavarsány

- (22) The works on the investment project have already started in October 2004. Production linked to the project started in August 2005 in building I and in May 2006 in building II. Full capacity linked to the project was expected to be reached in April 2007. Table I provides further details on the timing of the project:

Table I

Timing of the investment project

	Start of project	Start of production	End of project	Full production capacity
Phase I	6.10.2004	1.8.2005	1.1.2006	1.5.2006 (1,2 million units annually)
Phase II	20.6.2005	3.5.2006	31.3.2007	1.4.2007 (a further 1,2 million units annually)

⁽⁵⁾ Financial year ended 31 March 2006.

⁽⁶⁾ In order to ensure transparency and effective monitoring on regional aid to large investment projects, paragraph 36 of the MSF 2002 provides for a special 'transparency mechanism'. Under the transparency mechanism Member States must provide information in a standard format whenever aid is granted under the MSF 2002 for non-notifiable projects with eligible costs exceeding EUR 50 million.

2.4. Costs of the investment project

- (23) The total eligible investment costs of the project are HUF 47 570 933 882 (EUR 190,83 million) in nominal value. In present value this amount is HUF 41 953 072 670 (EUR 168,30 million) ⁽⁷⁾. Table II provides a breakdown of the total eligible costs by year and category.

Table II

Eligible investment costs (Phases I and II) nominal value in million HUF

	2004		2005		2006		2007		Total
Land	[...] (*)		[...]		[...]		[...]		[...]
Infrastructure	[...]		[...]		[...]		[...]		[...]
Buildings	[...]		[...]		[...]		[...]		[...]
Utility	[...]		[...]		[...]		[...]		[...]
Machinery	[...]		[...]		[...]		[...]		[...]
Eligible Investment	[...]		[...]		[...]		[...]		47 571
	Phase I	Phase II	Phase I	Phase II	Phase I	Phase II	Phase I	Phase II	
	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	

(*) Covered by the obligation of professional secrecy.

2.5. Financing of the project

- (24) The Hungarian authorities confirmed that the own contribution by the beneficiary exceeds 25 % of the eligible costs, which is free of any public support.

on Detailed Rules of Certain Aid Schemes of the Ministry'.

- (b) The Ministry of Finance will grant a tax allowance based on the scheme 'Development Tax Benefit' ⁽⁹⁾. This scheme was established by 'Act LXXXI of 1996 on Corporate Tax and Dividend Tax' and by 'Government Decree 275/2003 (XII.24.) on the Development Tax Benefit'.

2.6. Legal basis

- (25) The financial support to IBIDEN HU is granted on the basis of the following two legal basis:

- (a) The Ministry of Economy and Transport will give a grant on the basis of the scheme 'HU 1/2003 — Earmarked Scheme for Investment Promotion' ⁽⁸⁾. This scheme has as its legal basis 'Decree 1/2001 (I.5.) of the Minister of Economy on the Earmarked Scheme for Entrepreneurship' and 'Decree 19/2004 (II. 27.) of the Minister of Economy and Transport

2.7. Aid amount and aid intensity

- (26) The total nominal aid amount is HUF 15 591 223 750 (EUR 62,55 million), which corresponds to HUF 9 793 809 933 (EUR 39,29 million) in present value. On the basis of the eligible costs indicated in paragraph 23 above, this corresponds to an aid intensity of 22,44 % in net grant equivalent (NGE) ⁽¹⁰⁾.

⁽⁷⁾ Calculated, in accordance with the rules of the underlying aid scheme, on the basis of an exchange rate of 249,28 HUF/EUR (applicable on 31 August 2004) and a reference rate of 8,59 %.

⁽⁸⁾ HU 1/2003 'Earmarked Scheme for Investment Promotion' was submitted under the interim procedure and accepted by the Commission as existing aid within the meaning of Annex IV, Chapter 3, paragraph (1)(c) (under Article 22) of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary Malta, Poland, Slovenia and Slovakia to the European Union.

⁽⁹⁾ HU 3/2004 'Development Tax Benefit Scheme' was submitted under the interim procedure and accepted by the Commission as existing aid within the meaning of Annex IV, Chapter 3, paragraph (1)(c) (under Article 22) of the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary Malta, Poland, Slovenia and Slovakia to the European Union. The amendment of the scheme was notified to the Commission (case number N 504/2004) and approved by the Commission on 23 December 2004 (ref. C(2004) 5652).

⁽¹⁰⁾ In this decision, the net grant equivalent (NGE) is calculated on the basis of the standard corporate tax rate applicable in Hungary (16 %).

- (27) The aid is being provided in the form of the following two aid instruments. First, the Ministry of Economy and Transport is making a grant with a total amount in nominal value of HUF 3 592 000 000 (EUR 14,41 million) dispersed over the years of 2005 till 2007. Second, the Ministry of Finance is providing a corporate tax allowance⁽¹¹⁾ estimated at HUF 11 999 223 750 (EUR 48,14 million) in nominal value disbursed over the years 2007 until 2016. The grant in present value amounts to HUF 3 118 450 763 (EUR 12,51 million) and the tax allowance in present value is HUF 6 675 359 170 (EUR 26,78 million).
- (28) The Hungarian authorities specified that aid in the amount of HUF 7 411 828 735 (EUR 29,73 million) in present value (HUF 11 745 422 640 or EUR 47,12 million in nominal value) had already been granted to IBIDEN HU on the basis of the existing regional aid schemes⁽¹²⁾ up to the individual notification threshold established in paragraph 24 of the MSF 2002. For the first phase of the investment project the Ministry of Finance granted aid on 25 February 2005 in the amount of HUF 4 832 595 058 (EUR 19,39 million) in present value (HUF 8 773 422 640 or EUR 35,20 million in nominal value) and the Ministry of Economy and Transport granted aid on 3 March 2005 in the amount of HUF 1 875 354 000 (EUR 7,52 million) in present value (HUF 2 142 000 000 or EUR 8,60 million in nominal value). For the second phase of the investment the Ministry of Economy and Transport granted aid in the amount of HUF 703 879 677 (EUR 2,82 million) in present value (HUF 830 000 000 or EUR 3,33 million in nominal value) on 22 December 2006.
- (29) Thus, according to the Hungarian authorities, the aid amount, which is subject to the notification, is the difference between the total amount of aid and the support already granted, i.e. HUF 2 381 981 198 (EUR 9,56 million) in present value (in nominal value this amount is HUF 3 845 801 110 or EUR 15,43 million).
- (30) Regarding the remaining aid amount to be granted for the second phase of the investment, the Hungarian authorities have suspended the decision-making process until the decision of the European Commission. Thus, the authorisation of the notified aid is subject to Commission approval.
- (31) The Hungarian authorities confirm that the aid for the project cannot be cumulated with aid received for the same eligible costs from other local, regional, national or Community sources.
- (32) The Hungarian authorities confirm that the aid applications for the first phase of the investment project were submitted on 5 December 2003 at the Ministry of Economy and Transport and on 16 September 2004 at the Ministry of Finance. The aid applications for the second phase of the investment project were submitted on 28 March 2005 and on 31 May 2005 respectively. Therefore, the respective aid applications had been made before work started on the first phase on the project on 6 October 2004 and on the second phase of the project on 20 June 2005.

2.8. General commitments

- (33) The Hungarian authorities committed themselves to submit to the Commission:
- within two months of granting the aid, a copy of the signed aid/investment contract(s) between the granting authority and the beneficiary;
 - on a five-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant);
 - within six months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

- (34) The notified project concerns the production of 'ceramic substrates for diesel particulate filters' (hereafter: DPF), which are installed in diesel passenger cars and light duty trucks. The ceramic part, which is produced by IBIDEN HU, is an intermediate product (TIER 3), which is then sold under market conditions to independent companies, which apply a precious metal coating of the substrate to form a coated DPF (TIER 2). The coated DPFs are then sold to exhaust manifold producers (TIER 1), which are the direct suppliers of car assembly factories.

⁽¹¹⁾ The tax allowance is capped in terms of its overall present value.

⁽¹²⁾ HU 1/2003 'Earmarked Scheme for Investment Promotion' and N 504/2004 (ex HU 3/2004) 'Development Tax Benefit Scheme'.

- (35) The Commission, in the Decision to initiate the formal investigation procedure indicated that the Hungarian authorities suggested a broad definition of the relevant market, covering both key parts of the exhaust gas treatment system of diesel engine vehicles, namely Diesel Oxidation Catalysts (hereafter: DOC), which treat gases (i.e. CO and HC) and to a certain extent the soluble organic fraction (SOF) of particulate matter (PM); and Diesel Particulate Filters (hereafter: DPF) ⁽¹³⁾, which are effective in treating the insoluble fraction of particulate matter, i.e. soot. They argue these devices are very similar to each other, since both aim to reduce harmful substances from emissions, and therefore belong to the same relevant market. They also argue that the production processes and technologies to manufacture the two components are very similar.
- (36) The Commission, in the Decision to initiate the formal investigation procedure in the present case, noted that it had doubts on the compatibility of the aid with the common market based on Article 87(3)(a) of the EC Treaty and on the MSF 2002. The Commission also noted that the approach of the Hungarian authorities with regards to the relevant market was also not supported by the two independent market studies (the study by *Frost & Sullivan Ltd (F&S)* ⁽¹⁴⁾ and by *AVL List GMBH (AVL)* ⁽¹⁵⁾, which were submitted by the Hungarian authorities.
- (37) In particular, the Commission expressed doubts whether DOC and DPF can be considered as substitutes, which belong to the same relevant product market of after-treatment devices and, at the moment of the initiation of the formal investigation procedure, the Commission considered that the relevant product market was narrower and covered only substrates of Diesel Particulate Filters to be fitted in diesel exhaust systems.
- (38) First, the Commission noted that the DPF's main function is to treat solid inorganic and insoluble particulate matter (i.e. soot), while the DOC aims to clean hazardous gases and the soluble organic fraction (SOF) contained in particulate matter, without being able to collect soot. While it is true that there is some overlap between the two functions insofar as the coated DPF treats as well harmful gases to a certain extent, this does not eliminate the need for a separate DOC in the exhaust gas treatment system. Both components will continue to co-exist and have to be installed together in the period to be considered (i.e. until 2008). For future Euro 5-6 technologies DOCs will continue to be used for oxidation of CO, HC and SOF. Thus, the Commission noted that there appeared to be no substitutability on the demand side, as these are two separate and complementing devices.
- (39) The Commission also noted in the decision to initiate the formal investigation procedure that, according to one of the studies, a truly multi-functional product, which integrates on one ceramic monolith the functions of both DOC and DPF, had recently been introduced by the company Eberspächer and it was used in the Volkswagen Passat. However, the Commission doubted whether IBIDEN HU's product is suitable for such a complete multi-functionality.
- (40) Second, the Commission noted that the substitutability on the supply side was also questionable. No concrete evidence of substrates for DOCs producers, which are also capable of producing substrates for DPFs with the same equipment without major additional investment costs, or vice versa, were provided. Furthermore, substitutability is also doubtful because the price of the DPF is around four times higher than the price of the DOC.
- (41) Finally, the Commission observed that while the aid appears to meet the conditions of the Guidelines on national regional aid 1998 ⁽¹⁶⁾, the Commission had doubts whether the market share of the beneficiary in the relevant market is below 25 % as required by paragraph 24(a) of the MSF 2002. The market studies submitted by the Hungarian authorities indicate that the share in volume terms of IBIDEN in the DPF market in Europe substantially exceeds the 25 % threshold both before and after the investment. Thus the condition under paragraph 24(a) of MSF 2002 is not respected if the DPF is regarded as the relevant market. However, in the combined market of the DPF and DOC, which is considered as relevant by the Hungarian authorities, IBIDEN's market share would remain below 25 % both before and after the investment in volume terms.

⁽¹³⁾ Differences in the intended use between the end products, DPF and DOC, are a reflection of the different uses of their respective substrates. Therefore, hereafter in the decision DPF will be used alternatively to *substrate of DPF*.

⁽¹⁴⁾ 'Strategic analysis of the European market for Diesel Particulate Filters', October 2006. The firm Frost & Sullivan is active in market/industry consulting and research.

⁽¹⁵⁾ 'Market survey on PM reduction after-treatment devices', March 2007. AVL List is closely involved with the design and development of internal combustion engines. The AVL study, which was commissioned by IBIDEN HU for the present case, argues that both DOC and DPF belong to the same relevant product market, however, the data and analysis presented in the AVL study do not confirm this argument, i.e. various elements/information in the study indicate the absence of substitutability, and not the opposite.

4. COMMENTS FROM INTERESTED PARTIES

- (42) In response to the publication of its Decision to open the formal investigation procedure in the *Official Journal of the European Union*, the Commission received observations by the following interested parties:

(a) the aid beneficiary IBIDEN Hungary Gyártó Kft.;

⁽¹⁶⁾ OJ C 74, 10.3.1998, p. 9.

(b) Aerosol & Particle Technology Laboratory, Thessaloniki, Greece, a centre for research and technology;

(c) Saint-Gobain Industrie Keramik Rödental GmbH, Rödental, Germany, a competitor (hereafter: Saint-Gobain);

(d) an interested party, which, pursuant to Article 6(2) of the Council Regulation (EC) No 659/1999⁽¹⁷⁾, requested the Commission to withhold its identity.

(43) The arguments put forward by the above-mentioned interested parties can be summarised as follows.

4.1. Relevant product market according to IBIDEN HU and Aerosol & Particle Technology Laboratory

(44) The aid beneficiary IBIDEN HU and Aerosol & Particle Technology Laboratory are in favour of taking a broad market definition, which would cover all components (mainly DOC and DPF) in the exhaust gas treatment system of diesel engine vehicles. They observe that DOC and DPF are very similar to each other, since both aim to reduce harmful substances from emissions, and therefore belong to the same relevant product market.

(45) According to this opinion, both DOC and DPF would be regarded as PM removal components, although IBIDEN HU acknowledges that DOC is ineffective in treating the insoluble part of PM (i.e. soot). The interested parties argue that due to the fact that IBIDEN HU's product is able to filter HC and CO in addition to its main function of filtering soot, it belongs to the same market as DOC. It is up to car manufacturers to decide whether to construct the exhaust gas treatment part from independent components for detoxifying gaseous harmful substances and for treating the particle substances or to use the multifunctional component.

(46) Nevertheless, IBIDEN HU acknowledges in its submission that in spite of the additional function of IBIDEN HU's DPF that helps cleaning gases (HC and CO) more efficiently, the combined use of DPF and DOC is necessary to ensure compliance with emission regulations. A high quality, well-developed DPF can reduce the size and sophistication of the DOC that car manufacturers need to install in their cars, thus, the DPF has had a huge

impact on the DOC, and vice versa, which means that as one device becomes more sophisticated, the other device has to correspond to these changes.

(47) Both IBIDEN HU and Aerosol & Particle Technology Laboratory refer to a trend in the technological development of DOC and DPF leading to a new generation of filters, which could incorporate the advantages, characteristics and former technologies in one unit, thereby combining the DOC and DPF on the same monolith substrate (for instance, Volkswagen has already introduced fourth generation after-treatment components to its Passat model, using just one DPF with no DOC). IBIDEN HU however indicated that it currently produces the 'third generation'⁽¹⁸⁾ DPF and carries out continuous product improvement so that it can be converted into the 'fourth generation' DPF capable of fully incorporating the functionalities of the DOC.

(48) IBIDEN HU also indicated that, although the Commission in the Decision to open the formal investigation procedure suggests the opposite, in reality the price of IBIDEN's product is not four times more than the price of a DOC. IBIDEN HU manufactures a semi-finished product, and therefore the final product (coated DPF) is much more expensive than IBIDEN HU's semi-finished product. The current industry experience shows that the market price of the device after the coating, canning and application of the mat is 2,5 times higher than that of the substrate, the product of IBIDEN Group: for example, in 2007 the market price of a DPF was EUR 453 and the price of the substrate (semi-finished product) was only EUR [...], while the market price of a DOC was EUR 102 in 2007⁽¹⁹⁾.

(49) Moreover, regarding the supply side substitution, IBIDEN HU indicates that the production technologies of DOC and DPF are very similar: the only main differences are that in the case of DPF a plugging process is added to that of DOC's and the phase of cutting is earlier than in the case of DOC.

(50) Furthermore, IBIDEN HU claims that according to several studies, including a document by Johnson Matthey Japan, there are manufacturers that produce both DOC and DPF, so the distinction between DOC manufacturers and DPF manufacturers is blurred.

⁽¹⁸⁾ The concept of subsequent generations of the product is used by IBIDEN HU to refer to the evolution of the technology.

⁽¹⁹⁾ However, as regards the DOC's market price of EUR 102, as provided in the AVL study, it seems that it refers to the DOC price after coating at TIER 2 as well, and therefore the price of the DOC substrate would need to be adjusted downwards the same way as IBIDEN adjusted DPF's substrate prices.

⁽¹⁷⁾ OJ L 83, 27.3.1999, p. 1.

4.2. Relevant product market according to Saint-Gobain and the interested party whose identity is withheld

- (51) Two of the four interested parties — Saint-Gobain and the party whose identity is withheld — supported the Commission's doubts expressed in the Decision to open the formal investigation procedure. According to them, DOC and DPF cannot be considered as substitutes and thus they do not belong to the same relevant product market. Therefore, they argue that in the present case the DPF market alone is the relevant product market. According to these parties, the main reasons for this are the following:

4.2.1. No demand side substitution

- (52) The interested parties indicate that the main characteristics of the substrates for a DOC and a DPF are different: a DOC substrate is usually made from non porous cordierite which must resist 400 °C temperatures or from stainless metal foil. A DPF substrate is in general made of porous silicon carbide which must resist 1 000 °C (resistance to such high temperature is needed to burn-off soot and avoid blockage of the coated filter). Thus, due to very different thermal characteristics, customers cannot switch between substrates for DPF and substrates for DOC in case of relative price increase for one of the products.
- (53) According to Saint-Gobain, since the materials used for the substrates for DPF are higher performance materials, there is also a difference in prices between the two components: a substrate (without the cost of catalyst coating and canning) of a DPF on average costs EUR 120, while a substrate of a DOC on average costs between EUR 12-EUR 20 (also without the cost of catalyst coating and canning). Therefore, as Saint-Gobain claims, DPF manufacturers can obviously not switch to a DOC substrate for technical reasons (which they would otherwise do given the price difference) and a DOC producer would not substitute a DOC substrate with a DPF substrate as he/she would get a much more expensive product without an oxidation function comparable to a DOC substrate.
- (54) Saint-Gobain and the party with withheld identity also emphasize the differences in the use of a DOC and a DPF ⁽²⁰⁾: the primary purpose of a DOC is to oxidise certain gases by way of chemical reaction, while the primary function of a DPF is to filter out soot by way of mechanical process. While, under certain circumstances, a DPF performs — as a collateral effect — some of the functionality of the DOC, the full oxidation effect cannot be achieved without the installation of both devices. Even the coated DPF that uses the

substrate produced by IBIDEN HU does not have the full functionality of a DOC, since it only serves the purpose of providing sufficient temperature for the burning-off the soot, but it does not have the same purification effect as a full-function DOC. They indicate that, according to the expectations of many car manufacturers and automotive suppliers, a DOC and a DPF will remain separate devices installed next to each other in the gas exhaust line.

4.2.2. No supply side substitution

- (55) Further, Saint-Gobain and the party with withheld identity also indicate that the production process of the DOC and DPF substrates are very different: the non porous cordierite used for the DOC substrate is sintered in the air at 400 °C temperature. While silicon carbide, the material used for a DPF substrate (which is also the material of IBIDEN HU's substrate), must be prepared at very high temperature (above 2 000 °C) in the oxygen free atmosphere. This difference of temperature alone is so vital that one of the most essential and costly production elements cannot be used to produce both types of product.
- (56) Further, a substrate for the DOC is always a single block honeycomb cylinder, the channels of which are not plugged. A substrate for the DPF is normally formed by gluing several filtering elements, and channels of the DPF are plugged. For the manufacture of DPF substrates a non-oxide high temperature sintering furnace, gluing and plugging equipment are needed, which are not necessary for the production of substrates for DOC. Thus, the interested parties argue that it is not possible to produce DPF on the DOC's production lines or vice versa.

5. COMMENTS FROM THE HUNGARIAN AUTHORITIES

- (57) The Hungarian authorities support the view of Aerosol & Particle Technology Laboratory and IBIDEN Hungary Gyártó Kft. in relation to the relevant product, market, price, demand side and supply side specificities.
- (58) According to the Hungarian authorities, modern diesel emission control is based on the integration of different functionalities at system level. The close interdependency of all sub-units (such as DOC and DPF) in a diesel emission control system, has led to multi-player supply-chains, linking substrate, coating and exhaust system manufacturers, and the performance characteristics of each individual sub-unit create challenges to the entire supply-chain. Therefore the diesel emission control system or diesel after-treatment system should be defined as the relevant product.

⁽²⁰⁾ Differences in the intended use between the end products, DPF and DOC, are a reflection of the different uses of their respective substrates.

(59) They also argue that the product of IBIDEN HU is a multifunctional part fitted into the exhaust pipe system. The combination of this product and a DOC creates the third generation after-treatment device. Furthermore, the product of IBIDEN HU is a semi-finished product due to the fact that it will be coated at a further level. Without coating the product is not fully-functional and may not be classified as a finished product in terms of third-generation DPF. This is also supported by the fact that the final product is much more expensive than IBIDEN HU's semi-finished product: currently the market price of the final device is 2,5 times higher than that of the filter produced by IBIDEN HU.

(60) Further, the Hungarian authorities indicate that, in practice, DPFs are installed in most diesel-engine cars, and manufacturers that need a DOC also need a DPF. The demand creates a common market for the products, as the same manufacturers use the same methods, infrastructure and efforts to obtain the products. On the supply side, DOC and DPF manufacturers usually use the same manufacturing processes, production technology and materials. In terms of materials, both DOCs and DPFs use cordierite. In production they undergo the same processes, such as material preparation, mixture, tempering, and moulding, drying, finishing and firing. The only differences between the production process of the two products are an extra stage (plugging) and the rescheduling of another stage (cutting). Consequently, the same manufacturers will be involved with supply, and DOC and DPF compete with each other in the exhaust gas after-treatment market.

(61) The Hungarian authorities emphasize that IBIDEN HU is able to produce substrates for particulate filters with the same equipment without any significant investment, as any manufacturer with the same production technology could. As the DPF is a form of developed DOC, the cost of the modification is not an initial investment in another product line, but an essential development of production assets.

(62) In addition, the Hungarian authorities indicate that a clear trend can also be seen in the technological development of DOC and DPF, which is leading to a new generation of filters which could incorporate the advantages, characteristics and former technologies in one unit, thereby combining a DOC and a DPF. When defining the relevant market and calculating the market share, the DOC should also be taken into account as it constitutes a combined after-treatment device with a DPF, and together they ensure compliance with the regulations.

(63) In view of the above arguments, the Hungarian authorities consider that the only supportable definition of the relevant market is the whole diesel after-treatment

devices market, including both DPF and DOC. According to the study prepared by an independent market research company AVL, IBIDEN's market share in the diesel after-treatment devices market remains below 25 % both before and after the investment, thus, fulfilling the condition in paragraph 24(a) of MSF 2002. Therefore, the Hungarian authorities consider that the Commission should terminate the Article 88(2) procedure by a positive decision.

6. ASSESSMENT OF THE AID

6.1. Existence of State aid in the meaning of Article 87(1) of the EC Treaty

(64) In the Decision to initiate the formal investigation procedure, the Commission concluded that the financial support given by the Hungarian authorities to IBIDEN Hungary Gyártó Kft. on the basis of the existing regional aid schemes (HU 1/2003 'Earmarked Scheme for Investment Promotion' and N 504/2004 'Development Tax Benefit') in the form of a grant and a tax credit constitutes State aid within the meaning of Article 87(1) of the EC Treaty. The Hungarian authorities have not contested that conclusion.

6.2. Notification requirement, legality of the aid, and applicable law

(65) By notifying the measure in 2006, the Hungarian authorities complied with the individual notification requirement of paragraph 24 of the MSF 2002.

(66) In line with paragraph 63 and footnote 58 of the Guidelines on national regional aid for 2007-2013 ⁽²¹⁾, the Commission assessed the aid measure under the provisions of the Guidelines on national regional aid 1998 (hereafter: RAG) and the MSF 2002.

6.3. Compatibility of the aid with the RAG

(67) In the Decision to initiate the formal investigation procedure, the Commission indicated that the aid is granted in conformity with the existing regional aid schemes ⁽²²⁾ and concluded that the standard compatibility criteria laid down in the RAG (such as compatibility criteria concerning initial investment in the region eligible for regional aid, eligible costs, own contribution, incentive effect, maintenance of the investment, cumulation) are respected.

⁽²¹⁾ OJ C 54, 4.3.2006, p. 13.

⁽²²⁾ HU 1/2003 'Earmarked Scheme for Investment Promotion' and N 504/2004 (ex HU 3/2004) 'Development Tax Benefit Scheme'.

6.4. Compatibility of the aid with the MSF 2002 provisions

6.4.1. Single investment project

(68) Paragraph 49 of the MSF 2002 states that an investment project should not be artificially divided into sub-projects in order to escape the provisions of the framework. A 'single investment project' includes all the fixed investments on a production site in a period of three years ⁽²³⁾. A production site is an economically indivisible series of fixed capital items fulfilling a precise technical function, linked by a physical or functional link, and which have clearly identified aims, such as the production of a defined product.

(69) As IBIDEN HU already received regional aid in the past for the first phase of the investment project on the same location and as the notification refers to the second phase of the investment project, it is necessary to establish whether the two phases form part of the same single investment project.

(70) In this regard the Commission observes that the two investment phases concern the same production site (the Dunavarsány Industrial Park, the region of Central Hungary), the same company (IBIDEN HU), the same product (ceramic substrates for Diesel Particulate Filters) and the start of works on each project were commenced within a period of three years (the first phase started in 2004, while the second phase started in 2005). Consequently, the Commission considers that the criteria of the definition of a 'production site' in paragraph 49 of the MSF 2002 are fulfilled and that the two phases of the investment form part of the same single investment project.

(71) In addition, the Commission observes that the Hungarian authorities agree that the two phases of the investment by IBIDEN HU in the Dunavarsány Industrial Park have to be considered as a single investment project.

6.4.2. Aid intensity

(72) As the first and second phases of the investment are considered to form a single investment project, they both are taken into account to calculate the maximum aid intensity of the project.

(73) Given that the planned eligible expenditure in present value is HUF 41 953 072 670 (EUR 168,30 million)

⁽²³⁾ Because investment projects may continue over several years, the three year period is calculated, in principle, from the start of works on each project.

and the applicable standard regional aid ceiling is 40 % (NGE), the adjusted maximum aid intensity in NGE resulting from the scaling down mechanism of paragraphs 21 and 22 of the MSF 2002 is 23,34 %.

(74) Since the aid intensity for the project is 22,44 % NGE and thus is below the maximum aid intensity allowed under the scaling down mechanism (23,34 % NGE), the proposed intensity of the overall aid package complies with the adjusted regional aid ceiling.

6.4.3. Compatibility with the rules under paragraphs 24(a) and (b) of the MSF 2002

(75) Since the total aid amount of HUF 9 793 809 933 (EUR 39,29 million) in present value exceeds the individual notification threshold of EUR 30 million, the compliance of the notified aid with paragraph 24(a) and (b) of the MSF 2002 has to be assessed.

(76) The Commission's Decision to allow regional aid to large investment projects falling under paragraph 24 of the MSF 2002 depends on the market share of the beneficiary before and after the investment and on the capacity created by the investment. To carry out the relevant tests under paragraph 24(a) and (b) of the MSF 2002, the Commission has first to identify the product(s) concerned by the investment, and to define the relevant product and geographic markets.

6.4.3.1. Product concerned by the investment project

(77) According to paragraph 52 of the MSF 2002, 'product concerned' means the product envisaged by the investment project and, where appropriate, its substitutes considered to be such, either by the consumer (by reason of the product's characteristics, prices and intended use) or by the producer (through flexibility of the production installations). When the project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned will be deemed to include the downstream products.

(78) The notified project concerns the production of 'ceramic substrates for diesel particulate filters (DPF)'. DPF is an automotive part, which is fitted into the exhaust gas treatment system of diesel engine vehicles and which cleans the exhaust gas generated by engine combustion ⁽²⁴⁾.

⁽²⁴⁾ DPF is not yet required by the current European legislation, but is already installed in certain motor vehicles. From September 2009 onwards, new limit values will become mandatory for new types of diesel passenger cars (category M₁) and light duty commercial vehicles (category N₁ class I) with a reference mass not exceeding 2 610 kg (these limits will apply for classes II and III of N₁ and N₂ vehicles as from September 2010). This will in practice result in the instalment of DPFs in order to fulfil the limit values.

- (79) The ceramic part, which is produced by IBIDEN HU, is an intermediate product. After having produced it in the factory (TIER 3), it is sold under market conditions through IBIDEN Deutschland GmbH ⁽²⁵⁾ to independent companies (the main customers are [...], [...] and [...]), which perform the precious metal coating of the substrate, and thus the DPF becomes a coated DPF (TIER 2). The coated DPFs are then sold to exhaust manifold producers (TIER 1), which are the direct suppliers of car assembly factories. The end users of ceramic substrates are diesel passenger cars and light duty trucks.
- (80) No other products for sale on the market or use by other IBIDEN Group's plants will result from the investment project. The Hungarian authorities confirmed that no other products than those notified and assessed will be produced at the aided facility for five years after the end of the project/full production.
- (81) Following the above, the Commission will consider the ceramic substrate for DPF, which is installed in diesel passenger cars and light duty trucks as the product envisaged by the investment project.

6.4.3.2. Relevant product and geographic markets

- (82) The definition of the relevant product market requires the examination of what other products could be considered as substitutes to the product envisaged by the investment project within the meaning of paragraph 52 of the MSF 2002. In this regard and, having taken into account the comments from the interested parties and the Hungarian authorities, the Commission has looked which products could be considered as substitutes for DPF. The summary of this analysis is presented below.

1. General overview of the exhaust gas treatment system

- (83) Emission reduction is a complex area with many interactions between technologies, impact on fuel economy, driving performance, durability and costs. Emission reduction measures can be divided into two main areas:

- (a) combustion system developments to reduce engine-out emissions; and

- (b) emission control technologies using 'after-treatment' of engines exhaust gas (only the latter is relevant for the present case).

- (84) The exhaust gas of diesel engines contains hazardous substances: significant amounts of particulate matter ('PM', such as soot and Soluble Organic Fraction (SOF) ⁽²⁶⁾), and hazardous gases (such as hydrocarbons (HC), carbon oxides (CO_x), nitrogen oxides (NO_x)). These materials are treated by the *exhaust gas treatment system* installed in vehicles.

- (85) Accordingly, there are certain components within the system which clean hazardous substances. In general, these can be devices: (1) which clean the gas components and (2) which clean the particulate matter (including soot). The following two emission after-treatment devices, which are relevant for the present case, are used in diesel passenger cars and light duty trucks:

- (a) 'DOC' — Diesel Oxidation Catalyst, which is intended to suppress hazardous gases (mainly hydrocarbons (HC), carbon oxides (CO_x)) and, as a collateral effect, it also eliminates to a certain extent SOF (soluble organic fraction of particulate matter), but which cannot treat soot. A DOC, similarly to a DPF, is composed of an inner-solid substrate through which the exhaust gases are channelled. When flowing through the channels, the exhaust gas enters into chemical reactions with the catalysers (platinum and palladium) deposited on the wall of the substrate. Since 2000 DOCs have been introduced in practically all diesel passenger car models in EEA in order to comply with more stringent emission norms, with regard to the limits of harmful gases in the emissions.

- (b) 'DPF' — Diesel Particulate Filter, which is intended to retain the insoluble fractions of the particulate matter, i.e. soot. This is achieved by mechanical filtering. The exhaust gas flows into the channels of the DPF honeycomb structure and is forced to flow through the walls since the channels are alternatively plugged. The substrate serves as a filter and the soot is deposited on its walls. However, the DPF becomes saturated with soot and in order for it to remain functional the soot needs to be eliminated by burning it (regeneration of the filter).

⁽²⁵⁾ The Hungarian authorities confirmed that IBIDEN Deutschland GmbH is a trade and marketing company, and it does not produce exhaust gas treatment parts. No other IBIDEN Group's company carries out any further processing on the parts produced by IBIDEN HU.

⁽²⁶⁾ SOF: soluble organic fraction like organic material derived from engine lubricating oil and from fuel.

(86) DPFs first appeared in series production in 2000 in the Peugeot 607 diesel car and have since become more and more widespread, witnessing a tremendous growth in the last 3-4 years. This growth is due partly to the tax incentives offered on diesel vehicles equipped with DPFs in several countries, partly to the more environmental conscious approach of the consumers, and also to the anticipation of tightening emission norms, notably, with regard to PM limits (in the EEA emission reduction is regulated by the 'Euro' emission standards). It is expected that before Euro 5⁽²⁷⁾ comes into effect in 2009, an increasing share of diesel cars will already be equipped with DPF. This trend will ensure a further expanding market for DPFs in the coming years.

(87) Different types of DPFs can be distinguished on the basis of the material of the filter (for instance, ceramic, cordierite or metal) and the filter regeneration strategy. Regeneration is necessary in order to eliminate (*i.e.* burn-off) the accumulated particles. In practice this is achieved either through an additive mixed with the fuel which lowers the oxidation temperature (the latter is known as an 'uncoated DPF with fuel borne catalyst') or through a precious metal coating covering the walls of the substrate which helps in the burn-off process (the latter is referred to as a 'coated DPF' or as an 'impregnated catalysed DPF').

(88) Due to the precious metal coating, this type of coated DPF also treats, to a limited extent, HC and CO gases by way of a chemical oxidation process. IBIDEN HU's product belongs to this category. It is a ceramic substrate which is subsequently coated at TIER 2, and then integrated into the exhaust manifold system at TIER 1.

2. The definition of the relevant product market following the interested parties' and Hungarian authorities' comments

(89) In the Decision to open the formal investigation procedure, the Commission expressed several doubts, which have been summarised above, whether DOC and DPF can be considered as substitutes, which belong to the same relevant product market.

(90) The Commission considers that the arguments put forward by the aid beneficiary IBIDEN HU, the interested party Aerosol & Particle Technology Laboratory and by the Hungarian authorities do not dispel the initial doubts of the Commission, which were confirmed by the comments of Saint-Gobain and the interested party

whose identity is withheld. In particular the Commission observes the following:

(91) The substrates of DPF and DOC do not belong to the same relevant product market as their product characteristics are different, as a consequence of which there is neither demand side nor supply side substitution between the two products.

(92) From the demand side perspective, the Commission observes that there are significant differences in product characteristics, intended use and price between substrates for DPF and substrates for DOC:

(a) As demonstrated by the interested parties, the substrates for DOC are mostly made of the non-porous cordierite. The material used for the DOC substrate must resist an internal temperature of approximately 400 °C present inside the DOC. The reference material used for the substrates for DPF is silicon carbide. The DPF substrate must be porous in order to ensure the soot filtration. Due to the necessary regeneration of DPF, the substrate must be made of material resisting to very high temperatures (approximately 1 000 °C in case of a coated DPF) and to repeated thermal shocks. Thus, due to their different thermal characteristics, customers will be unable to switch between substrates for DPF and substrates for DOC in the event of price increase for one of the products.

(b) As far as the price is concerned, the Commission supports the view of Saint-Gobain and the interested party with withheld identity in this regard and observes that there is a big price difference between substrates of DOC and DPF, since the materials used for the substrates for DPF are higher performance materials whose production implies higher costs (for example, the use of a non-oxide high temperature sintering furnace is required). According to the submission from the interested parties, the average price per unit of the substrate for DPF ranges between EUR 120-180 (without the cost of the catalyst coating and the canning cost), whereas the price of the substrate for DOC ranges between EUR 12 and EUR 20 (also without the cost of the catalyst coating and the canning cost). Such a price difference indicates that substrates for DPF do not belong to the same market as substrates for DOC, because DPF TIER 2 manufacturers cannot switch to purchasing a DOC substrate for technical reasons (otherwise they would do so because of a big price difference) and a DOC producer would not substitute a DOC substrate with a DPF substrate as s/he would get a more expensive product without an oxidation function comparable to a DOC substrate.

⁽²⁷⁾ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1).

(c) As far as the intended use is concerned, on the basis of the submissions from the interested parties, the Commission observes that the primary purpose of a DOC is to oxidise certain gases contained in the diesel exhaust into less harmful substances by way of a chemical reaction. The primary function of a DPF is to filter out soot by way of a mechanical filtering process. While, under certain circumstances, a DPF performs — as a collateral effect — some of the functionality of the DOC, the full oxidation effect cannot be achieved without the installation of both devices. Moreover, a DOC device does not fulfil any functionality of a DPF, as it does not filter soot. According to the expectations of car manufacturers and automotive suppliers, DOC and DPF will remain separate devices installed next to each other in the gas exhaust line ⁽²⁸⁾.

(d) The oxidation performed by the catalysts of IBIDEN HU DPF substrate serves the purpose of providing sufficient temperatures for the burning of the soot, but it does not have the same purification effect as a full-function DOC. As has been pointed out in the submissions from the interested parties, the so-called multi-functional product by IBIDEN HU does not eliminate the need for a separate DOC in the exhaust gas treatment system. The Hungarian authorities and the aid beneficiary also admit that, due to the current legislation, IBIDEN HU's so-called multi-functional product still needs to be installed together with the DOC.

(e) The Commission observes that the belief expressed by the IBIDEN HU and the Hungarian authorities concerning the tendency to use a combined single solution (of DOC and DPF) might reflect the future trend of the emission control technologies, however, it does not reflect the current situation, which is subject to the Commission's analysis. Thus both DPF and DOC will continue to co-exist and will be installed together in the period to be considered (from 2003 to 2008 i.e. one year before the start of and one year after full completion of the investment project). As illustrated by market data estimates in one of the studies, DOCs remain the major emission control component to be installed in all diesel cars in the period concerned. The study also confirms that for future Euro 5 and Euro 6 technologies DOCs will continue to be used for oxidation of CO, HC and SOF.

(f) In addition, the Commission observes that the market study by Frost & Sullivan, which is an independent industry consultant and researcher, analyses

only DPF as a stand alone product to treat particulate matter and it does not refer to DOC.

(93) Further, from the supply side perspective, there are differences in the production processes of the DOC and DPF substrates. Since the DPF substrate must have high temperature resistance, the material (mostly silicon carbide) must be prepared at very high temperatures and under oxygen free atmosphere. The cordierite which is predominantly used for the DOC substrate is sintered in the air and at relatively much lower temperature. Moreover, the substrate for DOC is a single block honeycomb cylinder whereas the DPF substrate is formed by gluing several filtering elements and the channels of the DPF are plugged, which is not the case for DOC. It follows then that the production of the DPF substrate necessitates a non oxide high temperature sintering furnace, gluing system and plugging machines and these equipments are not necessary for the production of the DOC substrate. It appears therefore that it is not possible to produce DPF and DOC substrate on the same production lines without significant additional costs.

(94) As regards, the argument put forward by IBIDEN HU and the Hungarian authorities that there are manufacturers that produce both DOC and DPF and that the distinction between DOC manufacturers and DPF manufacturers is thus blurred, the Commission considers that it is not relevant whether the same manufacturer can produce or not both products. What is relevant is whether the same equipment can be used for the production of both substrates without significant additional costs. This was not demonstrated by the interested parties or the Hungarian authorities. Notably, no concrete evidence of DOC substrate producers, which would produce substrates for DPFs with the same equipment without major additional investment costs, or vice versa, was provided.

(95) In view of the above-mentioned arguments, the Commission considers that although a DOC and a DPF belong, together with the other components (for instance, Lean NO_x Trap, the purpose of which is to reduce the NO_x in the exhaust gas) to a diesel passenger car's or light duty truck's after-treatment/diesel emission control system, the mere fact that they exist next to each other in the same exhaust line or influence each other's development does not make them substitutes from the demand side and/or supply side viewpoint, as these are two separate components with different characteristics, prices and intended use. Moreover, as regards substitutability on the supply side, there are differences in the production processes of the DOC and DPF substrates, leading to the conclusion that there is no substitutability between DOC substrates and DPF substrates on the supply side.

⁽²⁸⁾ This trend, as illustrated by Saint-Gobain, is underlined by the various presentations given during various expert forums in 2007 by General Motors, DaimlerChrysler, Johnson Matthey, Hyundai and Arvin Meritor.

(96) On the basis of the above and for the purpose of this Decision, the Commission considers that the relevant product market covers only substrates for Diesel Particulate Filters to be fitted in the exhaust systems of diesel passenger cars and light duty trucks.

3. Relevant geographic market

(97) In the Decision to initiate the formal investigation procedure the Commission considered that the relevant geographical market should be EEA-wide due to the differences in emission regulation and fuel quality standards compared to third countries and the lower share of diesel vehicles in other major automotive markets ⁽²⁹⁾. At present demand seems to be very low for after-treatment devices for diesel light duty vehicles in markets other than EEA. With the development of more advanced after-treatment devices for diesel vehicles, which will then be able to meet the requirements regarding exhaust-gas emission in some third countries, the market for after-treatment devices is expected to expand geographically only after 2008.

(98) None of the interested parties or the Hungarian authorities have contested this conclusion. On the basis of the above and for the purpose of this decision, the Commission considers that the relevant geographical market for DPF is EEA-wide.

6.4.3.3. Market share

(99) According to paragraph 24(a) of the MSF 2002, an individually notifiable investment project will not be eligible for investment aid if the aid beneficiary accounts for more than 25 % of the sales of the product concerned before the investment or will, after the investment, account for more than 25 %.

(100) To examine whether the project is compatible with paragraph 24(a) of the MSF 2002, the market share of the aid beneficiary at group level before and after the investment has to be analysed. As the investment of IBIDEN HU started in 2004 and the full capacity production of 2,4 million units per year was expected to be achieved in 2007, the Commission examined the market shares in 2003 and 2008.

(101) The Hungarian authorities confirmed that there are no joint-ventures and long-term marketing arrangements between IBIDEN and other companies in the ceramic division.

⁽²⁹⁾ According to the market study by AVL, modern exhaust after-treatment systems need sulphur free diesel fuel to ensure effective and durable performance. Low sulphur diesel fuel was introduced in the EU in 2005 and will be mandatory in 2009.

(102) The Hungarian authorities have provided market data from the following sources: Frost & Sullivan Ltd. and AVL List GmbH. The market shares of IBIDEN Group on DPF market before the start and after completion of the project in volume terms for Europe are given in Table III below.

Table III

Market share of IBIDEN at group level in Europe

(Data in units)		
	2003	2008
Sales by IBIDEN group	[...]	[...]
Total DPF market	702 000	6 340 000
Share in DPF market	[...] %	[...] %

Source: Frost & Sullivan Ltd. ⁽³⁰⁾.

(103) The studies submitted by the Hungarian authorities demonstrate that the market share of IBIDEN at Group level in the DPF market both before and after the investment amounts to [...] % — [...] % in Europe in volume terms ⁽³¹⁾ and therefore substantially exceeds the 25 % threshold ⁽³²⁾. Thus the condition in paragraph 24(a) of the MSF 2002 is not respected.

⁽³⁰⁾ Data compiled by AVL reflect a somewhat smaller market than F&S and would result in inconsistencies as the volume of the beneficiary's sales in Europe before the investment (i.e. in 2003) is higher than total sales estimated by AVL. Therefore for the DPF market figures contained in the F&S study were used where no such inconsistencies arose. Moreover, taking the higher F&S data is in favour of the beneficiary, but even in this scenario, market shares are well above 25 %. The F&S study directly refers to the number of DPFs sold or expected to be sold on the market taking into account all manufacturers of DPFs. It should also be noted that although the studies refer to DPF, i.e. the ready-made downstream product, in practice the volume of substrates sold equals the number of DPFs sold.

⁽³¹⁾ IBIDEN HU's ceramic substrate is an intermediary product which is subject to further processing (i.e. coating, canning) at subsequent levels of the value chain (carried out by independent companies). Since data in value terms contained in the submitted studies refer only to the ready made DPF whose price is substantially higher than that of IBIDEN's product, and since no reliable data has been submitted as regards the price of the intermediary product, the Commission considers that in the case at hand, analysis in volume terms should be used. In any event, if IBIDEN sells DPF substrates at close to the average market price, market shares in value terms would be comparable.

⁽³²⁾ According to data provided by Saint-Gobain, even in a hypothetical market comprising substrates for both DPF and DOC (DPF + DOC market), IBIDEN's market share is above 25 % in value terms in the EEA. However, this argument is not confirmed by the AVL study (which was commissioned by the beneficiary), as it indicates substantially higher prices of DOCs and thus a market share in value terms remains below 25 % in the combined market (however, as regards the market price of the DOC as provided in the AVL study, it would seem that this refers to the DOC price after coating at TIER 2, which would explain the significantly higher price compared with the one indicated for the substrate by Saint-Gobain). Therefore, on the basis of the available information it cannot be concluded whether in such a hypothetical market IBIDEN's market share would be above or below 25 % in value terms in the EEA.

6.4.3.4. Production capacity increase/Growing market test

- (104) Paragraph 24 of the MSF 2002 provides that individually notifiable projects will not be eligible for investment aid if one of the conditions stipulated in paragraph 24 is not fulfilled. Although, as indicated above, the condition in paragraph 24(a) of the MSF 2002 is not respected, the Commission has also examined whether the investment project complies with another condition stipulated in paragraph 24(b) of the MSF 2002. According to paragraph 24(b) of the MSF 2002, the individually notifiable investment project will not be eligible for investment aid if the capacity created by the project is more than 5 % of the size of the market measured using apparent consumption data of the product concerned, unless the average annual growth rate of its apparent consumption over the last five years is above the average annual growth rate of the European Economic Area's GDP over the same period.
- (105) In this context the Commission observes that, as shown in Table IV below, the average annual growth of the apparent consumption (measured as total sales) in Europe of DPF over the last five years is substantially above the average annual growth rate of the EEA's GDP ⁽³³⁾.

Table IV

Growing market test

(Sales in units)							
	2001	2002	2003	2004	2005	2006	CAGR (*)
DPF	29 000	290 000	702 000	1 169 000	1 791 000	2 957 000	152,17 %
GDP (millions of EUR in constant 1995 prices) (EU 27)	8 197 605,0	8 295 193,5	8 402 482,6	8 610 427,6	8 765 680,7	9 027 663,9	1,95 %

(*) CAGR: Compound annual growth rate.

- (106) Consequently, the Commission concludes that the aid under scrutiny is in conformity with paragraph 24(b) of the MSF 2002, however, as shown above, the aid is not in conformity with paragraph 24(a) of the MSF 2002.

6.5. Negative effects of the aid and conclusion

- (107) In accordance with the rules on regional aid, aid amounting to HUF 7 411 828 735 (EUR 29,73 million) in present value (HUF 11 745 422 640 or EUR 47,12 million in nominal value) had already been granted to IBIDEN HU on the basis of the existing regional aid schemes ⁽³⁴⁾ up to the individual notification threshold established in paragraph 24 of the MSF 2002. The aid amount, which is subject to the present notification, is the difference between the total amount of aid and the support already granted, i.e. HUF 2 381 981 198 (EUR 9,56 million) in present value (in nominal value this amount is HUF 3 845 801 110 or EUR 15,43 million).
- (108) Paragraph 24 of the MSF 2002 provides that individually notifiable projects will not be eligible for investment aid if one of the conditions stipulated in paragraph 24 is not fulfilled. As demonstrated above, the aid under the scrutiny does not comply with paragraph 24(a) of the MSF 2002 because the market share of IBIDEN at group level in the DPF market in Europe both before and after the investment substantially exceeds the 25 % threshold.

⁽³³⁾ For practical reasons, EU-27 GDP figures were considered.

⁽³⁴⁾ HU 1/2003 'Earmarked Scheme for Investment Promotion' and N 504/2004 (ex HU 3/2004) 'Development Tax Benefit Scheme'.

- (109) The high market share of IBIDEN reflects the prevailing position of the company in the DPF market. According to the study by Frost & Sullivan Ltd (F&S) ⁽³⁵⁾ and comments provided by the interested parties, IBIDEN enjoys an outstanding position in the European market for DPF, as it is one of the two major filter substrate manufacturers in the world (the other main manufacturer being NGK). The Commission observes that the DPF market in Europe has experienced tremendous growth over the last years, as all vehicle manufacturers adopt the technology to meet the Euro emission limits. It is a highly profitable market the future strong development of which also seems to be secured. The aid subject to the notification would even more strengthen the leading position of IBIDEN in this market, making it more difficult for new entrants to consolidate their position in this market. The aid subject to the notification is thus susceptible to create substantial distortion of competition.
- (110) On the basis of the foregoing considerations, the Commission concludes that the aid subject to the notification is not compatible with the common market. As the aid of HUF 2 381 981 198 (EUR 9,56 million) in present value (in nominal value this amount is HUF 3 845 801 110 or EUR 15,43 million) has not been granted, there is no need for its recovery,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which the Republic of Hungary is planning to implement for IBIDEN Hungary Gyártó Kft. amounting to HUF 2 381 981 198 in present value (HUF 3 845 801 110 in nominal terms) is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

The Republic of Hungary shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Republic of Hungary.

Done at Brussels, 30 April 2008.

For the Commission

Neelie KROES

Member of the Commission

⁽³⁵⁾ 'Strategic analysis of the European market for Diesel Particulate Filters', October 2006. The firm Frost & Sullivan is active in market/industry consulting and research.

COMMISSION DECISION

of 31 October 2008

setting a new deadline for the submission of dossiers for certain substances to be examined under the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC

*(notified under document number C(2008) 6266)***(Text with EEA relevance)**

(2008/831/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market ⁽¹⁾, and in particular the second subparagraph of Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market ⁽²⁾ establishes a list of active substances to be assessed, with a view to their possible inclusion in Annex I, IA or IB to Directive 98/8/EC.

(2) For a number of substances/product-type combinations included in that list, either all participants have withdrawn or no dossier has been received within the deadline specified in Article 9(2)(c) of Regulation (EC) No 1451/2007 by the Member State designated as rapporteur for the evaluation.

(3) Consequently, and pursuant to Article 11(2) of Regulation (EC) No 1451/2007, the Commission informed the Member States thereof. That information was also made public by electronic means on 8 November 2007.

(4) Within three months of the electronic publication of that information, companies indicated an interest in taking over the role of participant for some of the substances and product-types concerned, in accordance with Article 12(1) of Regulation (EC) No 1451/2007.

(5) A new deadline should therefore be established for the submission of dossiers for these substances and product-types in accordance with the second subparagraph of Article 12(3) of that Regulation.

(6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

For the substances and the product-types set out in the Annex, the new deadline for the submission of dossiers shall be 1 December 2009.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 31 October 2008.

For the Commission

Stavros DIMAS

Member of the Commission

⁽¹⁾ OJ L 123, 24.4.1998, p. 1.

⁽²⁾ OJ L 325, 11.12.2007, p. 3.

ANNEX

Substances and product-types for which the new deadline for the submission of dossiers is 1 December 2009

Name	EC number	CAS number	Product-type	RMS
1,2-benzisothiazol-3(2H)-one	220-120-9	2634-33-5	2	ES
2,2'-dithiobis[N-methylbenzamide]	219-768-5	2527-58-4	6	PL
2,2'-dithiobis[N-methylbenzamide]	219-768-5	2527-58-4	13	PL
2-Butanone, peroxide	215-661-2	1338-23-4	1	HU
2-Butanone, peroxide	215-661-2	1338-23-4	2	HU
2-Butanone, peroxide	215-661-2	1338-23-4	3	HU
2-Butanone, peroxide	215-661-2	1338-23-4	6	HU
2-chloroacetamide	201-174-2	79-07-2	3	EE
2-chloroacetamide	201-174-2	79-07-2	6	EE
2-chloroacetamide	201-174-2	79-07-2	13	EE
Dodecylguanidine monohydrochloride	237-030-0	13590-97-1	6	ES
Ethylene oxide	200-849-9	75-21-8	2	NO
Glyoxal	203-474-9	107-22-2	2	FR
Glyoxal	203-474-9	107-22-2	3	FR
Glyoxal	203-474-9	107-22-2	4	FR
Hexa-2,4-dienoic acid/Sorbic acid	203-768-7	110-44-1	6	DE
Mixture of cis- and trans-p-menthane-3,8 diol/Citriodiol	255-953-7	42822-86-6	1	UK
Mixture of cis- and trans-p-menthane-3,8 diol/Citriodiol	255-953-7	42822-86-6	2	UK
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	1	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	5	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	6	FR
Oligo(2-(2-ethoxy)ethoxyethylguanidinium chloride)	Polymer	374572-91-5	13	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	1	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	5	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	6	FR
Poly(hexamethylendiamine guanidinium chloride)	Polymer	57028-96-3	13	FR
Polyvinylpyrrolidone iodine	Polymer	25655-41-8	1	SE
Potassium (E,E)-hexa-2,4-dienoate	246-376-1	24634-61-5	6	DE
Pyridine-2-thiol 1-oxide, sodium salt	223-296-5	3811-73-2	2	SE
Pyridine-2-thiol 1-oxide, sodium salt	223-296-5	3811-73-2	3	SE
Salicylic acid	200-712-3	69-72-7	1	LT

Name	EC number	CAS number	Product-type	RMS
Salicylic acid	200-712-3	69-72-7	2	LT
Salicylic acid	200-712-3	69-72-7	3	LT
Salicylic acid	200-712-3	69-72-7	4	LT
Silicon dioxide — amorphous	231-545-4	7631-86-9	3	FR
Silver chloride	232-033-3	7783-90-6	3	SE
Silver chloride	232-033-3	7783-90-6	4	SE
Silver chloride	232-033-3	7783-90-6	5	SE
Silver chloride	232-033-3	7783-90-6	13	SE
Sulphur dioxide	231-195-2	7446-09-5	1	DE
Sulphur dioxide	231-195-2	7446-09-5	2	DE
Sulphur dioxide	231-195-2	7446-09-5	4	DE
Sulphur dioxide	231-195-2	7446-09-5	5	DE
Sulphur dioxide	231-195-2	7446-09-5	6	DE
Sulphur dioxide	231-195-2	7446-09-5	13	DE
Thiabendazole	205-725-8	148-79-8	2	ES
Thiabendazole	205-725-8	148-79-8	13	ES
Triclosan	222-182-2	3380-34-5	3	DK
Polymer of formaldehyde and acrolein	Polymer	26781-23-7	3	HU

COMMISSION DECISION

of 3 November 2008

concerning the non-inclusion of bromuconazole in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance

*(notified under document number C(2008) 6290)***(Text with EEA relevance)**

(2008/832/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular the fourth subparagraph of Article 8(2) thereof,

Whereas:

- (1) Article 8(2) of Directive 91/414/EEC provides that a Member State may, during a period of 12 years following the notification of that Directive, authorise the placing on the market of plant protection products containing active substances not listed in Annex I to that Directive that are already on the market two years after the date of notification, while those substances are gradually being examined within the framework of a programme of work.
- (2) Commission Regulations (EC) No 451/2000 ⁽²⁾ and (EC) No 1490/2002 ⁽³⁾ lay down the detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Directive 91/414/EEC and establish a list of active substances to be assessed with a view to their possible inclusion in Annex I to Directive 91/414/EEC. That list includes bromuconazole.
- (3) For bromuconazole the effects on human health and the environment have been assessed in accordance with the provisions laid down in Regulations (EC) No 451/2000 and (EC) No 1490/2002 for a range of uses proposed by the notifier. Moreover, those Regulations designate the rapporteur Member States which have to submit the relevant assessment reports and recommendations to the European Food Safety Authority (EFSA) in accordance with Article 10(1) of Regulation (EC) No 1490/2002. For bromuconazole the rapporteur Member State was Belgium and all relevant information was submitted on 14 November 2005.

- (4) The assessment report has been peer reviewed by the Member States and the EFSA within its Working Group Evaluation and presented to the Commission on 26 March 2008 in the format of the EFSA conclusion regarding the peer review of the pesticide risk assessment of the active substance bromuconazole ⁽⁴⁾. This report has been reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health and finalised on 11 July 2008 in the format of the Commission review report for bromuconazole.
- (5) During the evaluation of this active substance, a number of concerns have been identified. In particular, based on the available information, it was not possible to assess the potential contamination of surface water and groundwater. Moreover, with regard to ecotoxicology, there are concerns due to the high risk to aquatic organisms. Consequently, it was not possible to conclude on the basis of the information available that bromuconazole met the criteria for inclusion in Annex I to Directive 91/414/EEC.
- (6) The Commission invited the notifier to submit its comments on the results of the peer review and on its intention or not to further support the substance. The notifier submitted its comments which have been carefully examined. However, despite the arguments put forward by the notifier, the concerns identified could not be eliminated, and assessments made on the basis of the information submitted and evaluated during the EFSA expert meetings have not demonstrated that it may be expected that, under the proposed conditions of use, plant protection products containing bromuconazole satisfy in general the requirements laid down in Article 5(1)(a) and (b) of Directive 91/414/EEC.
- (7) Bromuconazole should therefore not be included in Annex I to Directive 91/414/EEC.
- (8) Measures should be taken to ensure that authorisations granted for plant protection products containing bromuconazole are withdrawn within a fixed period of time and are not renewed and that no new authorisations for such products are granted.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 55, 29.2.2000, p. 25.

⁽³⁾ OJ L 224, 21.8.2002, p. 23.

⁽⁴⁾ EFSA Scientific Report (2008) 136, Conclusion regarding the peer review of the pesticide risk assessment of the active substance bromuconazole, finalised 26 March 2008.

- (9) Any period of grace granted by a Member State for the disposal, storage, placing on the market and use of existing stocks of plant protection products containing bromuconazole should be limited to twelve months in order to allow existing stocks to be used in one further growing season, which ensures that plant protection products containing bromuconazole remain available to farmers for 18 months from the adoption of this Decision.
- (10) This Decision does not prejudice the submission of an application for bromuconazole according to the provisions of Article 6(2) of Directive 91/414/EEC, the detailed implementation rules of which have been laid down in Commission Regulation (EC) No 33/2008 ⁽¹⁾, in view of a possible inclusion in its Annex I.
- (11) 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

Bromuconazole shall not be included as active substance in Annex I to Directive 91/414/EEC.

Article 2

Member States shall ensure that:

- (a) authorisations for plant protection products containing bromuconazole are withdrawn by 3 May 2009;
- (b) no authorisations for plant protection products containing bromuconazole are granted or renewed from the date of publication of this Decision.

Article 3

Any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414/EEC, shall be as short as possible and shall expire on 3 May 2010 at the latest.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 3 November 2008.

For the Commission

Androulla VASSILIOU

Member of the Commission

⁽¹⁾ OJ L 15, 18.1.2008, p. 5.

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.