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REGULATIONS

COUNCIL REGULATION (EC) No 893/2007

of 23 July 2007

on the conclusion of a Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other

THE COUNCIL OF THE EUROPEAN UNION,

Article 2

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Community has negotiated with the Republic of Kiribati a Fisheries Partnership Agreement providing Community vessels with fishing opportunities in the waters over which Kiribati has sovereignty or jurisdiction in respect of fisheries.
- (2) As a result of those negotiations, a new Fisheries Partnership Agreement was initialled on 19 July 2006.
- (3) It is in the Community's interest to approve that Agreement.
- (4) The method for allocating the fishing opportunities among the Member States should be defined,

HAS ADOPTED THIS REGULATION:

Article 1

The Fisheries Partnership Agreement between the European Community, on the one hand, and the Republic of Kiribati, on the other, is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Regulation.

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

| | | |
|-----------------------|-----------|----------------------------|
| — purse seine vessels | France: | 27 % of available licences |
| | Spain: | 73 % of available licences |
| — long-liners: | Spain: | six vessels |
| | Portugal: | six vessels |

If licence applications from these Member States do not cover all the fishing opportunities fixed by the Protocol, the Commission may consider licence applications from any other Member State.

Article 3

The Member States whose vessels fish under the Agreement referred to in Article 1 shall notify the Commission of the quantities of each stock caught within the Kiribati fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas ⁽¹⁾.

Article 4

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

⁽¹⁾ OJ L 73, 15.3.2001, p. 8.

Article 5

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

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

Done at Brussels, 23 July 2007.

For the Council
The President
L. AMADO

FISHERIES PARTNERSHIP AGREEMENT

between the European Community on the one hand, and the Republic of Kiribati, on the other

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

of the one part,

and

THE REPUBLIC OF KIRIBATI, hereinafter referred to as 'Kiribati',

of the other part,

hereinafter referred to as 'the parties',

CONSIDERING the close working relationship between the Community and Kiribati, particularly in the context of the Cotonou Agreement, and their mutual desire to intensify that relationship,

CONSIDERING the desire of the two parties to promote the sustainable exploitation of fisheries resources by means of cooperation,

HAVING REGARD TO the United Nations Convention on the Law of the Sea and to the United Nations Fish Stock Agreement,

RECOGNISING that Kiribati exercises its sovereign rights or jurisdiction over a zone extending up to 200 nautical miles from the baselines in accordance with the United Nations Convention on the Law of the Sea,

AWARE of the importance of the principles established by the Code of Conduct for responsible fisheries adopted at the FAO Conference in 1995,

DETERMINED to cooperate, in their mutual interest, in promoting the introduction of responsible fisheries to ensure the long-term conservation and sustainable exploitation of marine living resources,

CONVINCED that such cooperation must take the form of initiatives and measures which, whether taken jointly or separately, are complementary and ensure consistent policies and synergy of effort,

INTENDING, to these ends, to commence a dialogue on the sectoral fisheries policy adopted by the Government of Kiribati and to identify the appropriate means of ensuring that this policy is effectively implemented and that economic operators and civil society are involved in the process,

DESIROUS of establishing terms and conditions governing the fishing activities of Community vessels in Kiribati waters and Community support for the introduction of responsible fishing in those waters,

RESOLVED to pursue closer economic cooperation in the fishing industry and related activities through the setting up and development of joint enterprises involving companies from both parties,

HEREBY AGREE AS FOLLOWS:

Article 1

Scope

This Agreement establishes the principles, rules and procedures governing:

- (a) economic, financial, technical and scientific cooperation in the fisheries sector with a view to promoting responsible

fishing in Kiribati waters to ensure the conservation and sustainable exploitation of fisheries resources and develop the Kiribati fisheries sector;

- (b) the conditions governing access by Community fishing vessels to Kiribati waters;

- (c) cooperation on the arrangements for policing fisheries in Kiribati waters with a view to ensuring that the above rules and conditions are complied with, that the measures for the conservation and management of fish stocks are effective and that illegal, unreported and unregulated fishing (IUU fishing) is prevented;

- (d) partnerships between companies aimed at developing economic activities in the fisheries sector and related activities, in the common interest.

Article 2

Definitions

For the purposes of this Agreement:

- (a) 'Kiribati authorities' means the Government of Kiribati;
- (b) 'Community authorities' means the European Commission;
- (c) 'Kiribati waters' means the waters over which Kiribati has sovereignty or jurisdiction;
- (d) 'Fishing' means the actual or attempted fishing, catching, taking, killing or harvesting of fish, and includes any other activity which may reasonably be expected to result in the fishing or attempted fishing or catching, taking, killing or harvesting of fish, or any operation in support of or in preparation of any of the foregoing activity;
- (e) 'fishing vessel' means any vessel used or adapted for use for fishing commercially and including craft, support vessels, helicopters and light aircrafts used in fisheries operations;
- (f) 'Community vessel' means a fishing vessel flying the flag of a Member State of the Community and registered in the Community;
- (g) 'joint enterprise' means a commercial company set up in Kiribati by vessel owners or national enterprises from the parties in order to engage in fishing or related activities;
- (h) 'Joint Committee' means a committee made up of representatives of the Community and Kiribati whose functions are described in Article 9 of this Agreement;
- (i) 'transshipment' means the transfer in port of some or all of the catch from one fishing vessel to another fishing vessel;
- (j) 'shipowner' means any person legally responsible for a fishing vessel who is in charge of and controls it;
- (k) 'ACP seamen' means any seamen who are nationals of a non-European signatory to the Cotonou Agreement. To this end, a Kiribati seaman is an ACP seaman.

Article 3

Principles and objectives underlying the implementation of this Agreement

1. The parties hereby undertake to promote responsible fishing in Kiribati waters on the basis of the principles laid down in the FAO's Code of Conduct for responsible fisheries and the principle of non-discrimination between the different fleets fishing in those waters without prejudice to agreements concluded between developing countries within a geographical region, including reciprocal fisheries agreements.
2. The parties shall cooperate with a view to monitoring the results of the implementation of a sectoral fisheries policy adopted by the Government of Kiribati and shall initiate a policy dialogue on the necessary reforms. They shall consult with a view to adopting potential measures in this area.
3. The parties shall also cooperate in carrying out evaluations of measures, programmes and actions implemented on the basis of this Agreement. The results of the evaluations shall be analysed by the Joint Committee provided for in Article 9.
4. The parties hereby undertake to ensure that this Agreement is implemented in accordance with the principles of good economic and social governance, respecting the state of fish stocks.
5. The employment of Kiribati and/or ACP seamen on board Community vessels shall be governed by the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, which shall apply as of right to the corresponding contracts and general terms of employment. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.

Article 4

Scientific cooperation

1. During the period covered by this Agreement, the Community and Kiribati shall monitor the state of resources in the Kiribati fishing zone.
2. Based on the best available scientific advice, the Parties shall consult each other within the Joint Committee provided for in Article 9 and, where necessary and by mutual agreement, take measures to ensure the sustainable management of fisheries resources.
3. The Parties shall consult each other, either directly or within the regional and international organisations concerned, to ensure the management and conservation of highly migratory resources in the region, and to cooperate in the relevant scientific research.

*Article 5***Access by Community vessels to fisheries in Kiribati waters**

1. Kiribati undertakes to authorise Community vessels to engage in fishing activities in its fishing zone in accordance with this Agreement, including the Protocol and Annex thereto.

2. The fishing activities governed by this Agreement shall be subject to the laws and regulations in force in Kiribati. The Kiribati authorities shall notify the Commission of any amendments to that legislation and to any other legislation which may have an impact on fishing legislation.

3. Kiribati shall assume responsibility for the effective application of the fisheries monitoring provisions in the Protocol. Community vessels shall cooperate with the Kiribati authorities responsible for carrying out such monitoring. The steps taken by Kiribati to regulate fishing in the interests of the conservation of fishery resources shall be based on objective and scientific criteria, including the precautionary approach. They shall apply without discrimination both to Community, Kiribati and foreign vessels, without prejudice to agreements concluded between developing countries within a single geographical region, including reciprocal fisheries agreements.

4. The Community undertakes to take all the appropriate steps required to ensure that its vessels comply with this Agreement and the legislation governing fisheries in the waters over which Kiribati has jurisdiction.

*Article 6***Licences**

1. Community vessels may fish in the Kiribati fishing zone only if they have a valid fishing licence issued under this Agreement.

2. The procedure for obtaining a fishing licence for a vessel, the taxes applicable and the method of payment to be used by shipowners shall be as set out in the Annex to the Protocol.

*Article 7***Financial contribution**

1. The Community shall grant Kiribati a financial contribution in accordance with the terms and conditions laid down in the Protocol and Annexes. This single contribution shall be composed of two related elements, namely:

- (a) access by Community vessels to Kiribati fisheries; and

- (b) the Community's financial support for promoting responsible fishing and the sustainable exploitation of fisheries resources in Kiribati waters.

2. The component of the financial contribution referred to in the above paragraph shall be determined and managed in the light of objectives identified by common accord between the parties in accordance with the Protocol, to be achieved in the context of the sectoral fisheries policy drawn up by the Government of Kiribati and an annual and multiannual programme for its implementation.

3. The financial contribution granted by the Community shall be paid each year in accordance with the Protocol and subject to this Agreement and the Protocol in the event of any change to the amount of the contribution as a result of:

- (a) unusual circumstances, other than natural phenomena, preventing fishing activities in Kiribati waters;
- (b) a reduction in the fishing opportunities granted to Community vessels, made by mutual agreement for the purposes of managing the stocks concerned, where this is considered necessary for the conservation and sustainable exploitation of resources on the basis of the best available scientific advice;
- (c) an increase in the fishing opportunities granted to Community vessels, made by mutual agreement between the parties where the best available scientific advice concurs that the state of resources so permits;
- (d) a reassessment of the terms of Community financial support for implementing a sectoral fisheries policy in Kiribati, where this is warranted by the results of the annual and multiannual programming observed by both parties;
- (e) termination of this Agreement under Article 12;
- (f) suspension of the application of this Agreement under Article 13.

*Article 8***Promoting cooperation among economic operators and in civil society**

1. The parties shall encourage economic, scientific and technical cooperation in the fisheries sector and related sectors. They shall consult one another with a view to coordinating the different measures that might be taken to this end.

2. The parties shall encourage exchanges of information on fishing techniques and gear, preservation methods and the industrial processing of fisheries products.

3. The parties shall endeavour to create conditions favourable to the promotion of relations between enterprises from the parties in the technical, economic and commercial spheres, by encouraging the establishment of an environment favourable to the development of business and investment.

4. The parties shall undertake to implement an action plan between Kiribati and Community operators, with the aim of developing local landings of Community vessels.

5. The parties shall encourage, in particular, the setting-up of joint enterprises in their mutual interest which shall systematically comply with Kiribati and Community legislation.

Article 9

Joint Committee

1. A Joint Committee shall be set up to monitor the application of this Agreement. The Joint Committee shall perform the following functions:

- (a) monitoring the performance, interpretation and application of this Agreement and, in particular, the definition of the annual and multiannual programming referred to in Article 7(2) and evaluation of its implementation;
- (b) providing the necessary liaison for matters of mutual interest relating to fisheries;
- (c) acting as a forum for the amicable settlement of any disputes regarding the interpretation or application of the Agreement;
- (d) reassessing, where necessary, the level of fishing opportunities and, consequently, of the financial contribution;
- (e) any other function which the parties decide on by mutual agreement.

2. The Joint Committee shall meet in principle once a year, alternately in the Community and in Kiribati or in any other location agreed between parties, and shall be chaired by the party hosting the meeting. It shall hold a special meeting at the request of either of the parties.

Article 10

Geographical area to which the Agreement applies

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

Article 11

Duration

This Agreement shall apply for six years from the date of its entry into force; it shall be renewable for additional periods of six years, unless notice of termination is given in accordance with Article 12.

Article 12

Termination

1. This Agreement may be terminated by either party in the event of unusual circumstances such as the degradation of the stocks concerned, the discovery of a reduced level of exploitation of the fishing opportunities granted to Community vessels, or failure to comply with undertakings made by the parties with regard to combating illegal, unreported and unregulated fishing.

2. The party concerned shall notify the other party of its intention to withdraw from the Agreement in writing at least six months before the date of expiry of the initial period or each additional period.

3. Dispatch of the notification referred to in the previous paragraph shall open consultations by the parties.

4. Payment of the financial contribution referred to in Article 7 for the year in which the termination takes effect shall be reduced proportionately and *pro rata temporis*.

Article 13

Suspension

1. Application of this Agreement may be suspended at the initiative of one of the parties in the event of a serious disagreement as to the application of provisions laid down in the Agreement. Suspension of application of the Agreement shall require the interested party to notify its intention in writing at least three months before the date on which suspension is due to take effect. On receipt of this notification, the parties shall enter into consultations with a view to resolving their differences amicably.

2. Payment of the financial contribution referred to in Article 7 shall be reduced proportionately and *pro rata temporis*, according to the duration of the suspension.

*Article 14***Protocol and Annex**

The Protocol and the Annex shall form an integral part of this Agreement.

*Article 15***National law**

The activities of Community vessels operating in Kiribati waters shall be governed by the applicable law in Kiribati, unless otherwise provided in this Agreement, the Protocol and the Annex and appendices thereto.

*Article 16***Review clause**

During the third year of application of this Agreement, the parties may review the provisions of the Agreement, and where necessary, make amendments.

*Article 17***Repeal**

This Agreement, on the date of its entry into force, repeals and replaces the Agreement between the European Community and the Republic of Kiribati on fishing off the coast of Kiribati of 16 September 2003.

*Article 18***Entry into force**

This Agreement, drawn up in duplicate in the Bulgarian, Czech, Estonian, Danish, Dutch, English, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic, shall enter into force on the date on which the parties notify each other that their procedures have been completed.

PROTOCOL

setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Kiribati for the period from 16 September 2006 to 15 September 2012

Article 1

Period of application and fishing opportunities

1. Kiribati shall grant annual fishing licences to Community tuna fishing vessels pursuant to Article 6 of the Agreement within the limits established by the Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery, hereinafter referred to as 'the Palau Arrangement'.

2. For a period of six years starting on 16 September 2006, the fishing opportunities granted under Article 5 of the Agreement shall be as follows:

Highly migratory species (species listed in Annex 1 to the 1982 United Nations Convention)

— purse seine vessels: 4 vessels,

— longliners: 12 vessels.

3. Starting from the second year of application of the Protocol and without prejudice to Articles 9(d) of the Agreement and 4 of the Protocol, at the request of the Community, the number of fishing licences for purse seine vessels granted in Article 1(2) of the Protocol may be increased, if resources permit and in accordance with the Palau Arrangement yearly limitations and with an appropriate tuna stock assessment based on objective and scientific criteria, including the 'Western and Central Pacific Tuna Fishery Overview and Status of Stocks' published yearly by the Secretariat of the Pacific Community.

4. Paragraph 1, 2 and 3 shall apply subject to Articles 4 and 5 of this Protocol.

5. Community vessels may fish in Kiribati waters only if they are in possession of a valid fishing licence issued under this Protocol in accordance with the Annex to this Protocol.

Article 2

Financial contribution — Methods of payment

1. The financial contribution referred to in Article 7 of the Agreement shall comprise, for the period referred to in Article 1, an annual amount of EUR 416 000 equivalent to a reference

tonnage of 6 400 tonnes per year and a specific amount of EUR 62 400 per year for the support and implementation of initiatives taken in the context of the Kiribati sectoral fisheries policy. This specific amount shall be an integral part of the single financial contribution defined in Article 7 of the Agreement.

2. Paragraph 1 shall apply subject to Articles 4, 5 and 7 of this Protocol.

3. The Community shall pay the sum of the amounts referred to in paragraph 1, EUR 478 400 each year during the period of application of this Protocol.

4. If the overall quantity of catches by Community vessels in Kiribati waters exceeds 6 400 tonnes per year as provided in the Article 2.1 of the Protocol, the amount of the financial contribution, as provided in the Article 2.1 of the Protocol, (EUR 416 000) shall be increased by EUR 65 for each additional tonne caught. However, the total annual amount paid by the Community shall not be more than twice the amount indicated in paragraph 3 (EUR 956 800). Where the quantities caught by Community vessels exceed the quantities corresponding to twice the total annual amount, the amount due for the quantity exceeding that limit shall be paid the following year.

5. Payment of the financial contribution referred to in paragraph 1 shall be made no later than 30 June 2007 for the first year and no later than 30 June 2008, 2009, 2010, 2011 and 2012 for the following years.

6. Subject to Article 7, the Kiribati authorities shall have full discretion regarding the use to which this financial contribution is put.

7. The share of the financial contribution indicated in Article 7(1) of this Protocol shall be paid into the Kiribati Government account No 4 with the ANZ Bank of Kiribati, Ltd, Betio, Tarawa (Fisheries Development Fund) opened for the Kiribati Government by the Ministry of Finance. The remaining share of the financial contribution shall be paid into the Kiribati Government account No 1 with the ANZ Bank of Kiribati Ltd, Betio, Tarawa opened for the Kiribati Government by the Ministry of Finance.

8. The financial contribution concerning the measures set out in the Article 5 of the previous protocol which have not been paid at its expiring date shall be paid under the present protocol.

*Article 3***Cooperation on responsible fishing — Annual scientific meeting**

1. The parties hereby undertake to promote responsible fishing in Kiribati waters on the basis of the principles laid down in the FAO's Code of Conduct for responsible fisheries and the principle of non-discrimination between the different fleets fishing in those waters.
2. During the period covered by this Protocol, the Community and the Kiribati authorities shall monitor the state of resources in the Kiribati fishing zone.
3. In accordance with Article 4 of the Agreement, the parties, based on the conclusions of the annual meeting of the members to the 'Palau Arrangement' and on the yearly assessment of stocks done by the Secretariat of the Pacific Community, shall consult each other within the Joint Committee provided for in Article 9 where appropriate after a scientific meeting. Kiribati may, in agreement with the Community, take measures to ensure the sustainable management of fisheries resources concerning the activities of Community vessels.

*Article 4***Review of fishing opportunities by mutual agreement**

1. The fishing opportunities referred to in Article 1 may be increased by mutual agreement provided that the conclusions of the annual meeting of the 'Palau Arrangement' members and the annual review of the status of stocks made by the Secretariat of the Pacific Community confirm that such an increase will not endanger the sustainable management of Kiribati resources. In this case the financial contribution referred to in Article 2(1) shall be increased proportionately and *pro rata temporis*.

However, the total amount of the financial contribution paid by the European Community shall not be more than twice the amount indicated in Article 2(1). Where the quantities caught by Community vessels exceed twice the quantities corresponding to the adjusted total annual amount, the amount due for the quantity exceeding that limit shall be paid the following year.

2. Conversely, if the parties agree to adopt a reduction in the fishing opportunities provided for in Article 1, the financial contribution shall be reduced proportionately and *pro rata temporis*.
3. The allocation of the fishing opportunities among different categories of vessels may also be reviewed by mutual agreement between the parties, provided that any changes comply with recommendations made by the scientific meeting referred to in

Article 3 regarding the management of stocks liable to be affected by such redistribution. The parties shall agree on the corresponding adjustment of the financial contribution where the redistribution of fishing opportunities so warrants.

*Article 5***Non tuna fishing opportunities**

1. Should Community vessels be interested in fishing activities which are not indicated in Article 1, the parties shall consult each other before any authorisation is granted by the Kiribati authorities. Where appropriate, the parties shall agree on the conditions applicable to these new fishing opportunities and, if necessary, make amendments to this Protocol and to the Annex.
2. At the request of one of the parties, they shall consult each other and determine on a case-by-case basis the relevant species, conditions and other parameters for conducting exploratory fishing in Kiribati waters.
3. The parties shall carry out exploratory fishing in accordance with parameters that shall be agreed by both parties in an administrative arrangement where appropriate. The authorisations for exploratory fishing may be agreed for a maximum period of three months.
4. If the parties conclude that the exploratory campaigns have achieved positive results, the Kiribati Government may allocate fishing opportunities for the new species to the Community fleet, until the expiry of this Protocol. The financial compensation referred to in Article 2(1) of the current Protocol shall consequently be increased.

*Article 6***Suspension and review of the payment of the financial contribution on grounds of *force majeure***

1. Where unusual circumstances, other than natural phenomena, prevent fishing activities in the Kiribati exclusive economic zone (EEZ), the European Community may suspend payment of the financial contribution provided for in Article 2(1), following consultations between the two parties within a period of two months following the request of one of the parties, and provided that the Community has paid in full any amounts due at the time of suspension.
2. Payment of the financial contribution shall resume as soon as the parties find, by mutual agreement following consultations, that the circumstances preventing fishing activities are no longer present and/or that the situation allows a resumption of fishing activities.
3. The validity of the licences granted to Community vessels under Article 6 of the Agreement shall be extended by a period equal to the period during which fishing activities were suspended.

Article 7

Promotion of responsible fishing in Kiribati waters

1. 30 % of the total amount of the financial contribution fixed in Article 2 shall be allocated the first year to the support and implementation of initiatives taken in the context of the sectoral fisheries policy drawn up by the Government of Kiribati. This percentage is fixed at 40 % the second year and at 60 % the year thereafter.

Kiribati shall manage the corresponding amount in the light of objectives identified by mutual agreement between the parties, and the annual and multiannual programming to attain them.

2. For the purposes of paragraph 1, as soon as this Protocol enters into force and no later than three months after that date, the Community and Kiribati shall agree, within the Joint Committee provided for in Article 9 of the Agreement, on a multiannual sectoral programme and detailed implementing rules covering, in particular:

- (a) annual and multiannual guidelines for using the percentage of the financial contribution referred to in paragraph 1 and its specific amounts for the initiatives to be carried out in 2007;
- (b) the objectives, both annual and multiannual, to be achieved with a view to promoting responsible fishing and sustainable fisheries, taking account of the priorities expressed by Kiribati in its national fisheries policy and other policies relating to or having an impact on the introduction of responsible fishing and sustainable fisheries;
- (c) criteria and procedures for evaluating the results obtained each year.

3. Any proposed amendments to the multiannual sectoral programme or of the use of the specific amounts for the initiatives to be carried out in 2007 must be approved by both parties within the Joint Committee.

4. Each year, Kiribati shall allocate the share corresponding to the percentage referred to in paragraph 1 with a view to implementing the multiannual programme. For the first year of application of the Protocol, that allocation must be notified to the Community at the time when the multiannual sectoral programme is approved within the Joint Committee. For each year of application of the Protocol thereafter, Kiribati shall notify the Community of the allocation no later than 1 March of the year concerned.

5. Where the annual evaluation of the progress made in implementing the multiannual sectoral programme so warrants, the European Community may ask for the financial contribution referred to in Article 2(1) of this Protocol to be readjusted with a view to bringing the actual amount of financial resources allocated to implementation of the programme into line with its results.

Article 8

Disputes — suspension of application of the Protocol

1. Any dispute between the parties over the interpretation of this Protocol or its application shall be the subject of consultations between the parties within the Joint Committee provided for in Article 9 of the Agreement, in a special meeting if necessary.

2. Without prejudice to Article 9, application of the Protocol may be suspended at the initiative of one party if the dispute between the two parties is deemed to be serious and if the consultations held within the Joint Committee under paragraph 1 have not resulted in an amicable settlement.

3. Suspension of application of the Protocol shall require the interested party to notify its intention in writing at least three months before the date on which suspension is due to take effect.

4. In the event of suspension, the parties shall continue to consult with a view to finding an amicable settlement to their dispute. Where such settlement is reached, application of the Protocol shall resume and the amount of the financial contribution shall be reduced proportionately and *pro rata temporis* according to the period during which application of the Protocol was suspended.

Article 9

Suspension of application of the Protocol on grounds of non-payment

Subject to Article 6, if the Community fails to make the payments provided for in Article 2, application of this Protocol may be suspended on the following terms:

- (a) The competent Kiribati authorities shall notify the European Commission of the non-payment. The latter shall make the necessary verifications and, where necessary, transmit the payment within no more than 60 working days of the date of receipt of the notification.
- (b) If no payment is made and non-payment is not adequately justified within the period provided for in Article 2(6) of this Protocol, the competent Kiribati authorities shall be entitled to suspend application of the Protocol. They shall inform the European Commission of such action forthwith.
- (c) Application of the Protocol shall resume as soon as the payment concerned has been made.

*Article 10***National law**

The activities of Community vessels operating in Kiribati waters under this Protocol shall be governed by the applicable law in Kiribati, unless otherwise provided in the Agreement, this Protocol and the Annex and appendices hereto.

*Article 11***Review clause**

During the third year of application of this Protocol, its Annex and its appendices, the parties may review the provisions of the Protocol, the Annex and the appendices and, where necessary, make amendments.

*Article 12***Repeal**

The Annex to the Agreement between the European Economic Community and Republic of Kiribati on fishing off the coast of Kiribati is hereby repealed and replaced by this Protocol.

*Article 13***Entry into force**

1. This Protocol with its Annex and Appendix shall enter into force on the date on which the parties notify each other of the completion of the procedures necessary for that purpose.
 2. It shall apply with effect from 16 September 2006.
-

ANNEX

Conditions governing fishing activities by Community vessels in the Kiribati fishing zone

CHAPTER I

REGISTRATION AND LICENCES

SECTION 1

Registration

1. Fishing by Community vessels within the Kiribati fishing zone shall be subject to the issuance of a registration number by the Kiribati competent authorities.
2. Applications for registration shall be made on the form provided for that purpose by the Kiribati authorities responsible for fisheries, in accordance with the specimen given in Appendix I.
3. Registration shall be contingent upon the receipt of a 15 cm by 20 cm photograph of the applying vessel and the payment of EUR 600 per vessels as registration fee to be paid into the Kiribati Government account No 1 in accordance with the Article 2(7) of the Protocol, cleared of any deductions.

SECTION 2

Licences

1. Only eligible vessels may obtain a licence to fish in the Kiribati fishing zone under the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Kiribati for the period from the date that the agreement enters into force to 15 September 2012.
2. For a vessel to be eligible, neither the owner, the master nor the vessel itself must be prohibited from fishing in Kiribati. They must be in order vis-à-vis the Kiribati authorities insofar as they must have fulfilled all prior obligations arising from their fishing activities in Kiribati under fisheries agreements concluded with the Community.
3. All Community vessels applying for a fishing licence may be represented by an agent resident in Kiribati. The name and address of that agent shall be stated in the licence application. However, any vessel applying for a fishing licence which provides for unloading or transhipment in a Kiribati port must be represented by an agent resident in Kiribati.
4. The relevant Community authorities shall present to the Ministry responsible for fisheries in Kiribati an application for each vessel wishing to fish under the Agreement at least 15 days before the date of commencement of the period of validity requested.
5. Applications shall be submitted to the Ministry responsible for fisheries in Kiribati on a form drawn up in accordance with the specimen in Appendix I.
6. All licence applications shall be accompanied by the following documents:
 - proof of payment of the fee for the period of validity of the licence,
 - any other documents or certificates required under the specific rules applicable to the type of vessel concerned pursuant to this Protocol.
7. The fee shall be paid into the Kiribati Government account No 1 in accordance with Article 2(7) of the Protocol, clear of any deductions.
8. The fees shall include all national and local charges. However, the payment of these fees shall not include port taxes, transhipment fees and service charges.

9. Licences for all vessels shall be issued to shipowners or their agents via the Delegation of the Commission of the European Communities to Kiribati (the Delegation) within 15 days of receipt of all the documents referred to in point 6 by the Ministry responsible for fisheries in Kiribati.
10. If a licence is signed at a time when the Delegation offices are closed, it may be sent, where appropriate, direct to the vessel's agent and a copy sent to the Delegation.
11. Licences shall be issued for a specific vessel and shall not be transferable.
12. However, at the request of the European Community and where *force majeure* is proven, a vessel's licence shall be replaced by a new licence for another vessel of the same category as the first vessel, with no further fee due. In this case, the calculation of the catch levels to determine whether an additional payment should be made shall take account of the sum of the total catches of the two vessels.
13. The owner of the first vessel, or the agent, shall return the cancelled licence to the competent Kiribati authorities via the Delegation.
14. The new licence shall take effect on the day that the vessel's owner returns the cancelled licence to the Ministry responsible for fisheries in Kiribati. The Delegation shall be informed of the licence transfer.
15. The licence must be held on board at all times. However, on receipt of notification of payment of the advance sent to the Kiribati authorities by the European Commission, the vessel shall be entered on a list of vessels authorised to fish, which shall be sent to the Kiribati authorities responsible for fisheries inspection. A copy of the list may be obtained by fax pending arrival of the licence itself; that copy shall be kept on board.

SECTION 3

Validity and fees

1. Licences shall be valid for a period of one year. They shall be renewable.
2. The fee shall be EUR 35 per tonne caught within the Kiribati fishing zone in the case of tuna seiners and surface longliners.
3. Licences shall be issued once the following standard amounts have been paid to the competent national authorities:
 - EUR 21 000 per tuna seiner equivalent to the fees due for 600 tonnes of highly migratory species and associated species caught per year,
 - EUR 4 200 per surface longliner equivalent to the fees due for 120 tonnes of highly migratory species and associated species caught per year.
4. The final statement of the fees due for year n shall be drawn up by the Commission of the European Communities by 30 June of the year $n + 1$ at the latest on the basis of the catch declarations made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data in the Member States, such as the Institut de Recherche pour le Développement (IRD), the Instituto Español de Oceanografía (IE), the Instituto de Investigação das Pescas e do Mar (IPIMAR) and by the Secretariat of the Pacific community (SPC).
5. The statement shall simultaneously be notified to the Ministry responsible for fisheries in Kiribati and the shipowners for checking and approval. The Kiribati authorities may, on the basis of duly justified arguments within no more than 30 working days of the date of transmission, contest the statement. In the event of disagreement, the Joint Committee shall be consulted. If no objection is made in the given deadline the statement shall be accepted.
6. Any additional payments shall be made by the shipowners to the competent Kiribati authorities by 30 September of the following year at the latest, into the Kiribati Government account No 1 in accordance with Article 2(7) of the Protocol, cleared of any deductions..
7. However, if the amount of the final statement is lower than the advance referred to in point 3 of this Section, the resulting balance shall not be reimbursable to the shipowner.

CHAPTER II

FISHING ZONES

1. The vessels shall be authorised to engage in fishing activities within the Kiribati fishing zone except in such areas as are designated as closed areas indicated by the chart 83005-FLC, in accordance with the Fisheries Ordinance (Cap. 33) and Marine Zone (Declaration) Act of the Government of Kiribati. Kiribati shall communicate to the Commission any modification to the said fishing zones at least two months before their application.
2. In any case, fishing shall not be permitted in the following areas:
 - within the 12 nautical miles from the base lines,
 - within three nautical miles of any anchored fish-aggregating device for which notification of its location shall be given by geographical coordinates.
3. As regards purse seine vessels in particular, fishing is prohibited within 60 nautical miles from the baselines of the islands of Tarawa, Kanton and Kiritimati;

CHAPTER III

CATCH REPORTING ARRANGEMENTS AND LANDINGS DECLARATIONS

1. Captains shall provide the Director of Fisheries with information relating to the time, position of, and catch on board of the licensed fishing vessel in the manner as described in Appendix IV by fax or e-mail on the following occasions:
 - at least 24 hours prior to entering the Kiribati fishing zone and immediately upon departure from the fishing zone,
 - every Tuesday while within the Kiribati fishing zone after the entry report or the last weekly report,
 - at least 48 hours prior to the estimated time of entry into any port of Kiribati and immediately upon port departure,
 - immediately after transhipping the catch to a licensed reefer carrier, and
 - at least 24 hours prior to refuelling from a licensed bunkering vessel.

This information should be communicated by facsimile (686) 211 20/222 87 or e-mail to the following address: flue@mfmrd.gov.ki

2. A vessel found to be fishing without having informed the Director of Fisheries shall be regarded as not in compliance with Kiribati national legislation.
3. During an annual period of validity of the licence declarations shall include the catches made by the vessel during each trip in the WCPFC area. A new trip starts as from each transhipment or landing of catches in the WCPFC area.
- 3.1. Vessels shall declare their catches on the corresponding sheet in the logsheet, in accordance with the specimen in Appendix III A and III B. The words 'Outside Kiribati EEZ' or the name of the corresponding EEZ of another relevant coastal State in the WCPFC area shall be entered in the abovementioned logbook in respect of periods during which the vessel is not in Kiribati waters.
4. For the purposes of this Annex, the duration of a trip by a Community vessel in Kiribati waters shall be defined as follows:
 - either the period elapsing between entering and leaving the Kiribati fishing zone,
 - or the period elapsing between entering the Kiribati fishing zone and a transhipment,
 - or the period elapsing between entering the Kiribati fishing zone and a landing in Kiribati.

5. All vessels authorised to fish in Kiribati waters under the Agreement shall be obliged to communicate their catches to the Ministry responsible for fisheries in Kiribati so that it can check the quantities caught, which shall be validated by the competent scientific institutes in accordance with the procedure referred to in paragraph 4 of Section 3 of Chapter I of this Annex. Catches shall be communicated as follows:
 - the original logsheet shall be submitted to the local competent Kiribati authorities or be transmitted by registered mail or courier to the Ministry responsible for fisheries in Kiribati within 45 days following the end of the last trip made during the period. Copies shall be sent at the same time by electronic means or by fax to the flag Member State and the Ministry responsible for fisheries in Kiribati,
 - the forms shall be filled in legibly in block capitals, and signed by the master of the vessel or their legal representative.
6. Where the provisions set out in this Chapter are not complied with, the Government of Kiribati reserves the right to suspend the licence of the offending vessel until formalities have been completed and to apply the penalty laid down in current Kiribati legislation.
7. The Director of Fisheries and the shipowners shall keep a copy of fax communications or e-mail messages until both parties have agreed to the final statement of fees due referred to in Chapter 1.
8. The shipowners of purse seine vessels shall provide copy of the landing receipt after completion of every fishing trip that took place totally or in part within the Kiribati fishing zone. If this provision is not complied with, the Director of Fisheries reserves the right to suspend the licence of the offending vessel until these formalities have been carried out and to apply the penalties provided for under Kiribati's national law.

CHAPTER IV

EMBARKING SEAMEN

1. Owners of tuna vessels and surface longliners shall employ ACP nationals, including Kiribati nationals, subject to the following conditions and limits:
 - for the fleet of tuna seiners, at least six ACP seamen shall be signed on during the tuna fishing season in the Kiribati fishing zone,
 - for the fleet of surface longliners, at least four ACP seamen shall be signed on during the fishing season in the Kiribati fishing zone.
2. Shipowners shall endeavour to take on board additional Kiribati seamen.
3. Shipowners shall be free to select the seamen they take on board their vessels from the names on lists submitted by the competent authorities of the ACP countries concerned, including Kiribati.
4. Where contracts have been signed with Kiribati nationals, in accordance with point 1 of this Article, the shipowner or agent shall inform the competent Kiribati authorities of the names of the local seamen taken on board the vessel concerned, mentioning their position in the crew.
5. The International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by EU vessels. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.
6. The employment contracts of Kiribati seamen, in accordance with point 1 of this Article, shall be drawn up between the shipowners' agent(s) and the seamen and/or their trade unions or representatives in consultation with the Kiribati maritime authority. A copy shall be given to the signatories. These contracts shall guarantee the seamen the social security cover, applicable to them, including life assurance and sickness and accident insurance.
7. Seamen's wages shall be paid by the shipowners. They shall be fixed, before licences are issued, by mutual agreement between the shipowners or their agents and the authorities of the ACP country concerned. However, the wage conditions granted to local seamen shall not be lower than those applied to Kiribati crews and shall under no circumstances be below ILO standards.

8. All seamen employed aboard Community vessels shall report to the master of the vessel designated on the day before their proposed embarkation date. Where a seaman fails to report at the date and time agreed for embarkation, shipowners shall be automatically absolved of their obligation to take the seaman on board.
9. However, where no ACP seamen are taken on board for reasons other than that referred to in the previous point, Community shipowners shall be obliged to pay, for each day of the fishing trip in the waters of the ACP country concerned, a flat-rate amount of EUR 20 per day. The payment of this amount shall take place within the limits laid down in point I.2.6 of this Annex. Upon its entry into the Kiribati EEZ, Community shipowners will notify the number of ACP seamen on board.
10. This sum shall be used for training local seamen and shall be paid into the account specified by the authorities of the ACP country concerned.

CHAPTER V

TECHNICAL MEASURES

Vessels shall comply with the measures and recommendations adopted by WCPFC in the region regarding fishing gear and the technical specifications thereof and all other technical measures applicable to their fishing activities.

CHAPTER VI

OBSERVERS

1. At the moment of the vessel registration, all Community vessels shall contribute EUR 400 to a 'Fisheries Observers Project Fund' to be paid into the Kiribati Government account No 4 in accordance with Article 2(7) of the Protocol, cleared of any deductions.
2. Vessels authorised to fish in Kiribati waters under the Agreement shall take on board observers appointed by the WCPFC on the terms set out below:
 - at the request of the WCPFC Community vessels shall take on board an observer designated by the organisation in order to check catches made in Kiribati waters,
 - the WCPFC shall draw up a list of vessels designated to take an observer on board and a list of the appointed observers. These lists shall be kept up to date. They shall be forwarded to the European Commission as soon as they have been drawn up and every three months thereafter where they have been updated,
 - the WCPFC shall inform the shipowners concerned, or their agents, of the name of the observer appointed to be taken on board their vessel at the time the licence is issued, or no later than 15 days before the observer's planned embarkation date.
3. The time spent on board by observers shall be one fishing trip. However, at the express request of the WCPFC, this embarkation may be spread over several trips according to the average duration of trip for a particular vessel. This request shall be made by the competent WCPFC when the name of the observer appointed to board the vessel in question is notified.
4. The conditions under which observers are taken on board shall be agreed between shipowners or their agents and the competent WCPFC.
5. Observers shall be taken on board at a port chosen by the shipowner at the beginning of the first voyage in Kiribati waters after notification of the list of designated vessels.
6. Within two weeks and giving 10 days' notice, the shipowners concerned shall make known at which ports in the subregion and on what dates they intend to take observers on board.
7. Where observers are taken on board in a port outside the subregion, their travel costs shall be borne by the shipowner. Should a vessel with a regional observer on board leave regional waters, all measures must be taken to ensure the observer's return as soon as possible at the expense of the shipowner.

8. If the observer is not present at the time and place agreed and during the twelve hours following the time agreed, shipowners shall be automatically absolved of their obligation to take the observer on board.
9. Observers shall be treated as officers. They shall carry out the following tasks:
 - observe the fishing activities of the vessels,
 - verify the position of vessels engaged in fishing operations,
 - perform biological sampling in the context of scientific programmes,
 - note the fishing gear used,
 - verify the catch data for Kiribati waters recorded in the logbook,
 - verify the percentages of by-catches and estimate the quantity of discards of species of marketable fin-fish,
 - report fishing data by any appropriate means once a week while the vessel is fishing in Kiribati waters, including the quantity of catches and by-catches on board.
10. Masters shall do everything in their power to ensure the physical safety and welfare of observers during performance of their duties.
11. As far as possible, observers shall be offered every facility needed to carry out their duties. The master shall give them access to the means of communication needed for the discharge of their duties, to documents directly concerned with the vessel's fishing activities, including in particular the logbook and the navigation log, and to those parts of the vessel necessary to facilitate the exercise of their tasks as observer.
12. While on board, observers shall:
 - take all appropriate steps to ensure that the conditions of their boarding and presence on the vessel neither interrupt nor hamper fishing operations,
 - respect the material and equipment on board and the confidentiality of all documents belonging to the vessel.
13. At the end of the observation period and before leaving the vessel, observers shall draw up an activity report to be transmitted to the WCPFC, with a copy to the master of the vessel.
14. Shipowners shall bear the cost of accommodating observers in the same conditions as the officers, within the confines of the practical possibilities offered by the vessel.
15. The salary and social contributions of the observer shall be borne by the WCPFC.
16. The two parties shall consult each other, and interested third parties, as soon as possible as regards the definition of a system of regional observers and the choice of the competent regional fisheries organisation. Pending the implementation of a system of regional observers, vessels authorised to fish in Kiribati waters under the Agreement shall take on board, instead of regional observers, observers designated by the competent Kiribati authorities in accordance with the rules set out above.

CHAPTER VII

MONITORING

1. The European Community shall keep an up-to-date list of the vessels to which a fishing licence has been issued under this Protocol. This list shall be notified to the Kiribati authorities responsible for fisheries inspection as soon as it is drawn up and each time it is updated.

2. Entering and leaving the zone

- Community vessels shall notify, at least three hours in advance, the Kiribati authorities responsible for fisheries inspection of their intention to enter or leave the Kiribati fishing zone, as described in Appendix IV. They shall also declare the total quantities and the species on board.
- When notifying leaving, vessels shall also communicate their position. This information should preferably be communicated by fax or, for vessels not equipped with a fax, by radio and by e-mail.
- Vessels found to be fishing without having informed the competent Kiribati authority shall be regarded as vessels in breach of the legislation.
- Vessels shall also be informed of the fax and telephone numbers and e-mail address when the fishing licence is issued.

3. Control procedures

- Masters of Community fishing vessels engaged in fishing activities in Kiribati waters shall allow and facilitate boarding and the discharge of their duties by any Kiribati official responsible for the inspection and control of fishing activities.
- These officials shall not remain on board for longer than is necessary for the discharge of their duties.
- Once the inspection has been completed, a certificate shall be issued to the master of the vessel.

4. Marking of vessels

Community vessels shall display external markings in accordance with FAO rules.

5. Satellite monitoring

All Community vessels fishing under this Agreement shall be subject to satellite monitoring in accordance with Appendix V. These provisions shall enter into force on the 10th day following notification by the Government of Kiribati to the Delegation of the entry into operation of the body responsible for satellite monitoring of Kiribati fishing vessels.

6. Boarding

- The competent Kiribati authorities shall inform the flag State and the European Commission, within no more than 24 hours, of all infringements and penalties imposed on Community vessels in Kiribati waters.
- The flag State and the European Commission shall at the same time receive a brief report of the circumstances and reasons leading to the boarding during which an infringement was cited.

7. Statement of boarding

- After the competent Kiribati authorities have drawn up a statement, the master of the vessel shall sign it.
- This signature shall not prejudice the rights of the master or any defence which he may make to the alleged infringement.
- The master shall take the vessel to the port indicated by the Kiribati authorities. In the case of minor infringements, the competent Kiribati authorities may authorise the boarded vessel to continue its fishing activities.

8. Settlement of boarding

- Before any judicial procedure, an attempt shall be made to resolve the presumed infringement through a compromise procedure. This procedure shall end no later than five working days after the entry into port pursuant to the boarding.
- In the event of an amicable settlement, the amount of the fine shall be determined in accordance with Kiribati legislation.

- If the case cannot be settled by amicable procedure and has to be brought before a competent judicial body, a bank security set to take account of the boarding costs and the fines and compensation payable by the parties responsible for the infringement shall be paid by the shipowner into a bank account specified by the competent Kiribati authorities.
- The bank security shall be irrevocable until the legal proceedings have been concluded. It shall be released once legal proceedings end without a conviction. Similarly, in the event of a conviction leading to a fine of less than the security lodged, the balance shall be released by the competent Kiribati authorities.
- The vessel shall be released and its crew authorised to leave the port:
 - once the obligations arising under the amicable settlement have been fulfilled, or
 - when the bank security referred in point (c) has been lodged and accepted by the competent Kiribati authorities, pending completion of the legal proceedings.

9. **Transshipment**

- All Community vessels wishing to tranship catches in Kiribati waters shall do so within Kiribati ports.
 - The owners of such vessels must notify the information in accordance with the Appendix IV to the competent Kiribati authorities at least 48 hours in advance:
 - Transshipment shall be considered as an exit from the Kiribati fishing zone. Vessels must therefore submit their logsheets to the competent Kiribati authorities and state whether they intend to continue fishing or leave the Kiribati fishing zone, in accordance with Appendix III A and III B.
 - Any transshipment of catches in the Kiribati fishing zone or not covered above is prohibited in the Kiribati fishing zone. Any person infringing this provision shall be liable to the penalties provided for by Kiribati law.
10. Masters of Community fishing vessels engaged in landing or transshipment operations in a Kiribati port shall allow and facilitate the inspection of such operations by Kiribati inspectors. Once the inspection has been completed, a copy of the inspection report shall be provided to the master of the vessel.
-

Appendices

- I. Republic of Kiribati register of fishing vessel application form
 - II. Application form for a fishing licence
 - III A. South Pacific regional purse-seine logsheet
 - III B. South Pacific regional longline logsheet
 - IV. Reporting details
 - V. VMS Protocol
-

Appendix I

Republic of Kiribati Register of Fishing Vessel Application Form

Fisheries Licence & Enforcement Unit,
 PO Box 64, Bairiki,
 Republic of Kiribati
 Tel.: (686) 210 99
 Fax: (686) 211 20
 E-mail: flue@mfmrd.gov.ki

INSTRUCTIONS:

- Underline surname.
- Address means complete mailing address.
- Clearly mark X where appropriate; if not typed, print clearly.
- All units Metric; specify units if other systems used.
- Affix a recent 6 × 8 inch colour side photo of the vessel to this application.
- Affix a recent passport size colour portrait photo of the Fishing Master (Fish Captain)

The Director of Fisheries,

I hereby apply for registration of a vessel on the National Fisheries Register.

Name of vessel _____ Apply Date ____ / ____ / ____
 (dd/mm/yy)

If this vessel was registered before, specify:

Old vessel name _____ Old call sign _____

Old registration number _____

Vessel owner:

Name _____

Address _____

Tel. _____

Fax _____

Vessel operator:

Name _____

Address _____

Tel. _____

Fax _____

Country of registration _____

Country of registration No _____

International radio call sign _____

Onboard telephone No _____

Onboard telex No _____

Home port _____

Country _____

Operational base(s):

Port 1 _____ Country1 _____

Port 2 _____ Country 2 _____

Vessel master:

Name _____

Fishing Master (Fish Captain):

Name _____

Date of birth ____ / ____ / ____

Date of birth ____ / ____ / ____

(dd/mm/yy)

(dd/mm/yy)

Social Security No _____

Social Security No _____

Nationality _____

Nationality _____

Residence address _____

Residence address _____

Vessel type:

| | | | |
|---------------------|--------------------------|------------------|--------------------------|
| Single purse | <input type="checkbox"/> | Seiner longliner | <input type="checkbox"/> |
| Group purse seiner | <input type="checkbox"/> | Pole and liner | <input type="checkbox"/> |
| Purse seine carrier | <input type="checkbox"/> | Longline reefer | <input type="checkbox"/> |
| Support craft | <input type="checkbox"/> | Bunker | <input type="checkbox"/> |

If other, specify _____

Usual number of crew _____

State(s) of authorised area of operation _____

| | | | | | | |
|----------------|-----------|--------------------------|------|--------------------------|-----|--------------------------|
| Hull material: | Steel | <input type="checkbox"/> | Wood | <input type="checkbox"/> | FRP | <input type="checkbox"/> |
| | Aluminium | <input type="checkbox"/> | | | | |

If other, specify _____

Year built _____ Place built _____

Gross tonnage _____ Overall length _____

Main engine(s) power (specify units) _____

Maximum fuel carrying capacity _____ kilolitres/gallons

Daily freezing capacity (more than one, if appropriate):

| Method | | Capacity Metric tonnes/day | Temperature (C) |
|--------------------|-------|-------------------------------|--------------------|
| Brine (NaCl) | Br | _____ | _____ |
| Brine (CaCl) | CB | _____ | _____ |
| Air (Blast) | BF | _____ | _____ |
| Air (Coils) | RC | _____ | _____ |
| If other, specify: | _____ | _____ | _____ |

Storage capacity (more than one, if appropriate):

| Method | | Capacity m ³ | Temperature (C) |
|------------------------|----|----------------------------|--------------------|
| Ice | IC | _____ | _____ |
| Refrigerated sea water | RW | _____ | _____ |
| Brine (NaCl) | BR | _____ | _____ |
| Brine (CaCl) | CB | _____ | _____ |
| Air (coils) | RC | _____ | _____ |

Complete either A, B, or C below as appropriate.

A. For purse seine vessels:

Helicopter Registration No _____ Helicopter Model _____

Net length (metres) _____ Net Depth (metres) _____

Power block net pull _____ Kilograms

Purse winch bare drum line pull _____ Metres per minute

Doppler current meter present? Y/N (please circle your response)

Bird radar present? Y/N (please circle your response)

Number of wells:

Stern _____ Storage capacity _____ St/Mt

Bow _____ Storage capacity _____ St/Mt

Support craft:

| | | | |
|---------------------------|------------|-----------------------|-------|
| Skiff length _____ | Metre/feet | Power of engine _____ | HP/PS |
| Speed boat 1 length _____ | Metre/feet | Power of engine _____ | HP/PS |
| Speed boat 2 length _____ | Metre/feet | Power of engine _____ | HP/PS |
| Speed boat 3 length _____ | Metre/feet | Power of engine _____ | HP/PS |

B. For longline vessels:

Maximum number of baskets _____ Main line length in Km _____

Maximum number of hooks _____

Main line material _____

Line shooter present? _____ Y/N (please circle your response)

C. For support craft:

Activities (more than one, if appropriate)

| | | | |
|-------------|--------------------------|---------------|--------------------------|
| Light boat | <input type="checkbox"/> | Scouting boat | <input type="checkbox"/> |
| Anchor boat | <input type="checkbox"/> | Aircraft | <input type="checkbox"/> |

If other, specify _____

Fishing vessel(s) Supported _____

I declare that the above information is true and complete. I understand, I am required to report within 30 days any changes to the above information, including the change in Vessel Master and Fish Captain during the period of registration. I further understand that failure to do so may affect good standing of my vessel on the Fishing Vessel Register.

Applicant:

Name _____ Signature _____

OWNER ☐ CHARTERER ☐ AUTHORISED AGENT ☐

Address

Tel. No _____ Fax No _____ E-mail _____

Appendix II

Application form for a fishing licence

1. New application or renewal:
2. Name of vessel and flag:
3. Period of validity: from..... to
4. Name of shipowner:
5. Address of shipowner:
6. Name and address of charterer (if different from 4 and 5):
7. Name and address of official representative in Kiribati:
8. Name of the captain of the vessel
9. Type of vessel:
10. Registration number:
11. Vessel's external identification:
12. Port and country of registration:
13. Overall length and breadth of vessel:
14. Gross and net tonnage:
15. Make and power of main engine:
16. Freezer capacity (t/d):
17. Hold capacity (m³):
18. Radio call sign and frequency:
19. Other communications equipment (telex, fax):
20. Fishing applicants:
21. Number of crew broken down by nationality:
22. Number of fishing licence (in the case of a renewal, attach licence):

I, the undersigned,....., certify that the above information is correct and undertake to comply therewith.

(Stamp and signature of shipowner)

(Date)

South Pacific regional purse-seine logsheet

Page _____ of _____

| | | | | | |
|--|-------------------------------|--|----------------------------|---|--|
| Name of vessel | | Fishing permit or licence number(s) | | | Year |
| Name of fishing company | Ffa regional register number | Name of agent in port of unloading | | Port of departure | Port of unloading |
| Country of registration | Ffa type approved alc (Y/N)? | Number of fads used | Tender vessels used? (Y/N) | Date and time of departure | Date and time of arrival in port |
| Registration number in country of registration | International radio call sign | — All dates and times must be utc/gmt — All weights must be metric tonnes | | Amount of fish onboard at start of trip | Amount of fish onboard after unloading |

[illegible]

| Activity codes | School association codes |
|--|---------------------------------------|
| — Record all sets | 1 Unassociated |
| — If no fishing set made in a day Record the main activity for that day | 2 Feeding on baitfish |
| 1 Fishing set | 3 Drifting log, debris or dead animal |
| 2 Searching | 4 Drifting raft, fad or payao |
| 3 Transit | 5 Anchored raft, fad or payao |
| 4 No fishing — breakdown | 6 Live whale |
| 5 No fishing — bad weather | 7 Live whale shark |
| 6 In port — specify | 8 Other |
| 7 Net cleaning set | Tuna discard codes |
| 10 Deploying or retrieving raft, fad or payao | 1 Fish too small |
| | 2 Fish damaged |
| | 3 Vessel fully loaded |
| | 4 Other reason |

| Unloadings to cannery, cold storage, carrier or other vessel | | | | | | | |
|--|----------|-----------------------------------|-------------------------------|----------|-----------|--------|-------|
| Start date | End date | Cannery or vessel and destination | International radio call sign | Skipjack | Yellowfin | Bigeye | Mixed |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

| | | |
|-----------------|----------------------|------|
| Name of captain | Signature of captain | Date |
|-----------------|----------------------|------|

Appendix IV

REPORTING DETAILS

Reports to the Director of Fisheries

Tel.: (686) 210 99, Fax: (686) 211 20, E-mail: flue@mfmrd.gov.ki

1. Reporting of entry to the zone

24 hours prior to entering the fishery limits:

- (a) Report code (ZENT);
- (b) Registration or licence No;
- (c) Call sign or signal letters;
- (d) Date of entry (DD-MM-YY);
- (e) Time of entry (GMT);
- (f) Position of entry;
- (g) Total catch on board by weight by species:

SKIPJACK (SJ)_____(Mt)

YELLOWFIN (YF)_____(Mt)

OTHERS (OT)_____(Mt)

e.g. ZENT/89TKS-PS001TN/JJAP2/11.10.89/0635Z/0230N;17610E/SK-510:YF-120:OT-10

2. Reporting of departure from the zone

Immediately upon leaving the fishery limits:

- (a) Report code (ZDEP);
- (b) Registration or licence No;
- (c) Call sign or signal letters;
- (d) Date of departure;
- (e) Time of departure (GMT);
- (f) Position of departure;
- (g) Catch on board by weight by species:

SKIPJACK (SJ)_____(Mt)

YELLOWFIN (YF)_____(Mt)

OTHERS (OT)_____(Mt)

- (h) Total catch in zone by weight by species (like catch on board)
- (i) Total fishing days (the actual number of days in which a set was made in the zone)

e.g. ZDEP/89TKS-PS001TN/JJAP2/21.10.89/1045Z/0125S;16730E/SJ-450:YF-190:OT-4/SJ-42:BE-70:OT-1/14

3. Weekly position and catch reporting while within the zone

Every Tuesday while within the fishery limits after the entry report or the last weekly report:

- (a) Report code (WPCR);
- (b) Registration or licence No;
- (c) Call sign or signal letters;
- (d) Date of WPCR (DD:MM:YY);
- (e) Reporting position;
- (f) Catch since the last report:

SKIPJACK (SJ)_____(Mt)

YELLOWFIN (YF)_____(Mt)

OTHERS (OT)_____(Mt)

- (g) Fishing days since the last report.

e.g. WPCR/89TKS-PS001TN/JJAP2/11.12.89/0140N;16710W/SJ-23:YF-9:OT-2.0/7

4. Port entry, including entry for transhipment, re-provisioning, discharging crew or emergency

At least 48 hours before the vessel enters port:

- (a) Report code (PENT);
- (b) Registration or licence No;
- (c) Call sign or signal letters;
- (d) Date of reporting (DD:MM:YY);
- (e) Reporting position;
- (f) Port name;
- (g) Estimated time of arrival (LST) DDMM:hhmm;
- (h) Catch on board by weight by species:

SKIPJACK (SJ)_____(Mt)

YELLOWFIN (YF)_____(Mt)

OTHERS (OT)_____(Mt)

- (i) Reason for visiting port

e.g. PENT/89TKS-PS001TN/JJAP2/24.12.89/0130S;17010E/BETIO/26.12:1600L/SJ-562:YF-150:OT-4/
TRANSSHIPPING

5. Port departure

Immediately after leaving port:

- (a) Report code (PDEP);
- (b) Registration or Licence number;

- (c) Call sign or signal letters;
- (d) Date of reporting (GMT) DD-MM-YY;
- (e) Port name;
- (f) Date and time of departure (LST) DD-MM:hhmm
- (g) Catch on board by weight by species:
 - SKIPJACK (SJ)_____(Mt)
 - YELLOWFIN (YF)_____(Mt)
 - OTHERS (OT)_____(Mt)
- (h) Next destination.

e.g. PDEP/89TKS-PS001TN/JJAP2/30.12.89/BETIO/29.12:1600L/SJ-0.0:YF-0.0:OT-4/FISHING GROUND

6. Entry into or departure from a closed area

At least 12 hours before entering and immediately after leaving the closed area:

- (a) Report type (ENCA for entry and DECA for exit);
- (b) Registration or licence No;
- (c) Call sign or signal letters;
- (d) Date of ENCA or DECA;
- (e) Time of ENCA or DECA (GMT) DD-MM-YY:hhmm;
- (f) Position of ENCA or DECA (to one minute of arc);
- (g) Speed and course
- (h) Reason for ENCA

e.g. ENCA/89TKS-PS001TN/JJAP2/30.12.89:1645Z/0130S;17010E/7:320/ENTER PORT

7. Refuelling notice

At least 24 hours before refuelling from a licensed tanker:

- (a) Report type (FUEL);
- (b) Registration or licence No;
- (c) Call sign or signal letters;
- (d) Date of reporting (GMT);
- (e) Position of reporting (to one minute of arc)
- (f) Amount of fuel on board (Kilolitres);
- (g) Estimated date of bunkering;
- (h) Estimated position of bunkering;
- (i) name of tanker.

e.g. FUEL/89TKS-PS001TN/JJAP2/06.02.90/0130S;17010E/35/08.02.90/0131S;17030E/CHEMSION

8. Bunkering activity report

Immediately after refuelling from a licensed tanker.

- (a) Report type (BUNK);
- (b) Registration or licence number;
- (c) Call sign or signal letters;
- (d) Starting date and time of bunkering (GMT) DD-MM-YY:hhmm;
- (e) Starting position of bunkering;
- (f) Amount of fuel received in kilolitres;
- (g) Ending time of bunkering (GMT);
- (h) Ending position of bunkering;
- (i) Name of tanker.

e.g. BUNK/89TKS-S001TN/JJAP2/08.02.90:1200Z/0131S;17030E/160/08.02.90:1800Z/0131S;17035E/CRANE PHOENIX

9. Transhipment activity report

Immediately after transhipping at an authorised port in Kiribati to a licensed carrier vessel.

- (a) Report type (TSHP);
- (b) Registration or licence number;
- (c) Call sign or letters;
- (d) Date of discharge (DD-MM-YY);
- (e) Port of discharge;
- (f) Transhipped catch by weight by species;
SKIPJACK (SJ) _____.__(Mt)
YELLOWFIN (YF)_____.__(Mt)
OTHERS (OT)_____.__(Mt)
- (g) Name of reefer carrier;
- (h) Destination of catch.

e.g. TSHP/89TKS-PS001TN/JJAP2/11.12.89/BETIO/SJ-450:YF-150:OT-0.0/JAPANSTAR/PAGO PAGO

10. Completion report

Within 48 hours after completing a trip by discharging catch at other fishing ports (outside Kiribati) including operational port, or home port.

- (a) Report type (COMP);
- (b) Vessel name;
- (c) Licence number;
- (d) Call sign signal letters;
- (e) Date of discharge (DD-MM-YY);

(f) Discharged catch by species

SKIPJACK (SJ)_____(Mt)

YELLOWFIN (YF)_____(Mt)

OTHERS (OT)_____(Mt)

(g) Name of port.

e.g. COMP/89TKS-PS001TN/JJAP2/26.12.89/SJ-670:YF-65:OT-0.0/BETIO

*Appendix V***Protocol (VMS)****Provisions applicable to satellite monitoring of Community fishing vessels operating in the Kiribati EEZ**

1. The provisions of this Protocol supplement the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Kiribati for the period from 16 September 2006 to 15 September 2012 and apply in accordance with point 5 of 'Chapter VII — Monitoring' in the Annex thereto.
2. All fishing vessels with an overall length exceeding 15 metres operating under the Fisheries Agreement between the European Community and Kiribati shall be tracked by satellite when fishing in the Kiribati EEZ.

For the purposes of the satellite tracking, the Kiribati authorities shall communicate to the Community party the latitude and longitude coordinates of the Kiribati EEZ.

The Kiribati authorities shall transmit this information in electronic form, expressed in decimal degrees (WGS 84).

3. The parties shall exchange information on X.25 addresses and the specifications for electronic data transmission between their Control Centres in accordance with 5 to 7. Such information shall include the following where they exist: names, telephone, telex and fax numbers, and e-mail addresses (Internet or X.400), which may be used for general communications between Control Centres.
4. The position of vessels shall be determined with a margin of error of less than 500 metres and a confidence interval of 99 %.
5. When a vessel which is fishing under the Agreement and is the subject of satellite tracking pursuant to Community legislation enters the Kiribati EEZ, the subsequent position reports (vessel identification, longitude, latitude, course and speed) shall be transmitted immediately by the Control Centre of the flag State to the Kiribati Fisheries Monitoring Centre (FMC) at intervals of no more than three hours. The messages concerned shall be identified as position reports.
6. The messages specified at 5 shall be transmitted electronically in X.25 format, without any further protocol. They shall be communicated in real time in the format set out in Table II.
7. Where the continuous satellite monitoring equipment installed on board a fishing vessel develops a technical fault or breaks down, the master of the vessel shall transmit the information specified at 5 to the control centre of the flag State and the Kiribati FMC in good time. It will be necessary in those circumstances to send a global position report every eight hours. This global position report shall include the position reports as recorded by the master of the vessel on a three-hourly basis in accordance with the requirements laid down in point 5.

The control centre of the flag State shall send these messages immediately to the Kiribati FMC. The faulty equipment shall be repaired or replaced within a period of not more than one month. After this deadline, the vessel in question must leave the Kiribati EEZ.

8. The control centres of the flag States shall monitor the movements of their vessels in Kiribati waters. If the vessels are not being monitored in accordance with the conditions laid down, the Kiribati FMC shall be informed immediately this is discovered and the procedure laid down at 7 shall be applicable.
9. If the Kiribati FMC establishes that the flag State is not transmitting the information specified in point 5, the competent European Commission departments shall be informed immediately.
10. The monitoring data communicated to the other party in accordance with these provisions is intended solely for the purposes of the Kiribati authorities in controlling and monitoring the Community fleet fishing under the Fisheries Agreement between the European Community and Kiribati. Such data may not under any circumstances be communicated to other parties.
11. The satellite-tracking system software and hardware components shall be reliable and shall not permit the input or output of false positions or be capable of being manually overridden.

The system shall be fully automatic and operational at all times regardless of environmental and weather conditions. Destroying, damaging, rendering inoperative or tampering with the satellite-tracking system shall be prohibited.

Masters shall ensure that:

- data are not altered in any way,
 - the antenna or antennas connected to the satellite-tracking equipment are not obstructed in any way,
 - the power supply of the satellite-tracking equipment is not interrupted in any way, and
 - the satellite-tracking equipment is not removed from the vessel.
12. The parties agree to exchange upon request information on the equipment used for satellite monitoring, in order to ensure that each piece of equipment is fully compatible with the requirements of the other party for the purposes of these provisions.
 13. Any dispute over the interpretation or application of these provisions shall be the subject of consultation between the parties within the Joint Committee provided for in Article 9 of the Agreement.
 14. The parties agree to review these provisions, as appropriate.

Communication of VMS messages to Kiribati

Position report

| Data element | Code | Mandatory/ optional | Comments |
|---|------|------------------------|--|
| Start record | SR | O | System detail — indicates start of record |
| Recipient | AD | O | Message detail — recipient. Alpha 3 ISO country code |
| From | FR | O | Message detail — sender. Alpha 3 ISO country code |
| Flag State | FS | F | |
| Type of message | TM | O | Message detail — Message type 'POS' |
| Radio call sign | RC | O | Vessel detail — international radio call sign of vessel |
| Contracting party internal reference number | IR | F | Unique contracting party number as flag State ISO-3 code followed by number) |
| External registration number | XR | O | Vessel detail — number marked on side of vessel |
| Latitude | LA | O | Vessel position detail — position in degrees and minutes N/S DDMM (WGS-84) |
| Longitude | LO | O | Vessel position detail — position in degrees and minutes E/W DDMM (WGS-84) |
| Course | CO | O | Vessel course 360° scale |
| Speed | SP | O | Vessel speed in tenths of knots |
| Dates | DA | O | Vessel position detail — date of record of UTC position (YYYYMMDD) |
| Time | TI | O | Vessel position detail — time of record of UTC position (HHMM) |
| End record | ER | O | System detail — indicates end of record |

Character set. ISO 8859.1

Each data transmission is structured as follows:

- a double slash (//) and field code indicate the start of the message,
- a single slash (/) separates the field code and the data.

Optional data elements have to be inserted between the start and end of the record.

Limits of the Kiribati EEZ**Coordinates of EEZ****Coordinates of the Kiribati FMC**

Name of FMC:

VMS Tel.:

VMS Fax:

VMS E-mail:

DSPG Tel.:

DSPG Fax:

Address X25 =

Declaration of entries/exits:

COUNCIL REGULATION (EC) No 894/2007**of 23 July 2007****on the conclusion of a Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community**

THE COUNCIL OF THE EUROPEAN UNION,

Article 2

Having regard to the Treaty establishing the European Community, and in particular Article 37 in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Community and the Democratic Republic of São Tomé and Príncipe have negotiated and initialled a Fisheries Partnership Agreement providing Community fishermen with fishing opportunities in the waters falling within the sovereignty or jurisdiction of the Democratic Republic of São Tomé and Príncipe.
- (2) It is in the Community's interest to approve that Agreement.
- (3) The method for allocating the fishing opportunities among the Member States should be defined,

HAS ADOPTED THIS REGULATION:

Article 1

The Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Regulation.

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

Done at Brussels, 23 July 2007.

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

| Fishing category | Type of vessel | Member State | Licences or quota |
|------------------|----------------------|--------------|-------------------|
| Tuna fishing | Freezer tuna seiners | Spain | 13 |
| | | France | 12 |
| Tuna fishing | Surface longliners | Spain | 13 |
| | | Portugal | 5 |

If licence applications from these Member States do not cover all the fishing opportunities laid down by the Protocol, the Commission may take into consideration licence applications from any other Member State.

Article 3

The Member States whose vessels fish under this Agreement shall notify the Commission of the quantities of each stock caught within São Tomé and Príncipe's fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas ⁽¹⁾.

Article 4

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

Article 5

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

For the Council
The President
L. AMADO

⁽¹⁾ OJ L 73, 15.3.2001, p. 8.

FISHERIES PARTNERSHIP AGREEMENT**between the Democratic Republic of São Tomé and Príncipe and the European Community**

THE DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE,

hereinafter referred to as 'São Tomé and Príncipe',

and

THE EUROPEAN COMMUNITY,

hereinafter referred to as 'the Community',

hereinafter referred to as 'the Parties',

CONSIDERING the close working relationship between the Community and São Tomé and Príncipe, particularly in the context of the Cotonou Agreement, and their mutual desire to intensify that relationship,

CONSIDERING the desire of the two Parties to promote the sustainable exploitation of fisheries resources by means of cooperation,

HAVING REGARD TO the United Nations Convention on the Law of the Sea,

DETERMINED to apply the decisions and recommendations of the International Commission for the Conservation of Atlantic Tunas, hereinafter referred to as 'ICCAT',

AWARE of the importance of the principles established by the Code of Conduct for Responsible Fisheries adopted at the FAO Conference in 1995,

DETERMINED to cooperate, in their mutual interest, in promoting the introduction of responsible fisheries to ensure the long-term conservation and sustainable exploitation of marine living resources,

CONVINCED that such cooperation must take the form of initiatives and measures which, whether taken jointly or separately, are complementary and ensure consistent policies and synergy of effort,

INTENDING, to these ends, to commence a dialogue on the sectoral fisheries policy adopted by the Government of São Tomé and Príncipe and to identify the appropriate means of ensuring that this policy is effectively implemented and that economic operators and civil society are involved in the process,

DESIROUS of establishing terms and conditions governing the fishing activities of Community vessels in São Toméan waters and Community support for the introduction of responsible fishing in those waters,

RESOLVED to pursue closer economic cooperation in the fishing industry and related activities through the setting up and development of joint enterprises involving companies from both Parties,

HEREBY AGREE AS FOLLOWS:

- the conditions governing access by Community fishing vessels to São Tomé and Príncipe's fishing zones,

Article 1

Scope

This Agreement establishes the principles, rules and procedures governing:

- economic, financial, technical and scientific cooperation in the fisheries sector with a view to promoting responsible fishing in São Tomé and Príncipe's fishing zones to guarantee the conservation and sustainable exploitation of fisheries resources and develop São Tomé and Príncipe's fisheries sector,
- cooperation on the arrangements for policing fisheries in São Tomé and Príncipe's fishing zones with a view to ensuring that the above rules and conditions are complied with, that the measures for the conservation and management of fish stocks are effective and that illegal, undeclared and unregulated fishing is prevented,
- partnerships between companies aimed at developing economic activities in the fisheries sector and related activities, in the common interest.

Article 2

Definitions

For the purposes of this Agreement:

- (a) 'São Toméan authorities' means the Government of São Tomé and Príncipe;
- (b) 'Community authorities' means the European Commission;
- (c) 'São Tomé and Príncipe's fishing zone' means the waters over which, as regards fisheries, São Tomé and Príncipe has sovereignty or jurisdiction;
- (d) 'fishing vessel' means any vessel equipped for commercial exploitation of living aquatic resources;
- (e) 'Community vessel' means a fishing vessel flying the flag of a Member State of the Community and registered in the Community;
- (f) 'Joint Committee' means a committee made up of representatives of the Community and São Tomé and Príncipe, as specified in Article 9 of this Agreement;
- (g) 'transshipment' means the transfer in or off the port of some or all of the catch from one fishing vessel to another vessel;
- (h) 'unusual circumstances' means circumstances, other than natural phenomena, which are beyond the reasonable control of one of the Parties and are such as to prevent fishing activities in São Toméan waters;
- (i) 'ACP seamen' means any seamen who are nationals of a non-European signatory to the Cotonou Agreement. To this end, a São Toméan seaman is an ACP seaman;
- (j) 'by-catches' means any quantity of species not listed in Annex 1 to the 1982 United Nations Convention caught.

Article 3

Principles and objectives underlying the implementation of this Agreement

1. The Parties hereby undertake to promote responsible fishing in São Tomé and Príncipe's fishing zones on the basis of the principles of non-discrimination between the different fleets fishing in those waters, without prejudice to the agreements concluded between developing countries within a geographical region, including reciprocal fisheries agreements.

2. The Parties shall cooperate with a view to implementing a sectoral fisheries policy adopted by the Government of São Tomé and Príncipe and to that end shall initiate a policy dialogue on the necessary reforms. They shall consult with a view to adopting potential measures in this area.

3. The Parties shall also cooperate in carrying out *ex ante*, ongoing and *ex post* evaluations, both jointly and unilaterally, of measures, programmes and actions implemented on the basis of this Agreement.

4. The Parties hereby undertake to ensure that this Agreement is implemented in accordance with the principles of good economic and social governance, respecting the state of fish stocks.

5. In particular, the employment of ACP seamen on board Community vessels shall be governed by the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, which shall apply as of right to the corresponding contracts and general terms of employment. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.

Article 4

Scientific cooperation

1. During the period covered by this Agreement, the Community and São Tomé and Príncipe shall endeavour to monitor the evolution of resources in São Tomé and Príncipe's fishing zone.

2. The two Parties, on the basis of the recommendations and resolutions adopted within the International Commission for the Conservation of Atlantic Tunas (ICCAT), and in the light of the best available scientific advice, shall consult each other within the Joint Committee provided for in Article 9 of the Agreement and adopt, where appropriate after a scientific meeting and by mutual agreement, measures to ensure the sustainable management of fisheries resources affecting the activities of Community vessels.

3. The parties undertake to consult one other, either directly, including at subregional level within COREP (Regional Fisheries Committee for the Gulf of Guinea (COREP), or within the competent international organisations, to ensure the management and conservation of living resources in the Atlantic Ocean, and to cooperate in the relevant scientific research.

Article 5

Access by Community vessels to fisheries in São Toméan waters

1. São Tomé and Príncipe undertakes to authorise Community vessels to engage in fishing activities in its fishing zone in accordance with this Agreement, including the Protocol and Annex thereto.

2. The fishing activities governed by this Agreement shall be subject to the laws and regulations in force in São Tomé and Príncipe. The São Toméan authorities shall notify the Commission of any amendments to that legislation.

3. São Tomé and Príncipe shall take all the appropriate steps required for the effective application of the fisheries monitoring provisions in the Protocol. Community vessels shall cooperate with the São Toméan authorities responsible for carrying out such monitoring.

4. The Community undertakes to take all the appropriate steps required to ensure that its vessels comply with this Agreement and the legislation governing fisheries in the waters over which São Tomé and Príncipe has jurisdiction.

Article 6

Licences

1. Community vessels may fish in São Tomé and Príncipe's fishing zone only if they are in possession of a fishing licence issued by São Tomé and Príncipe under this Agreement and the Protocol hereto.

2. The procedure for obtaining a fishing licence for a vessel, the taxes applicable and the method of payment to be used by shipowners shall be as set out in the Annex to the Protocol.

Article 7

Financial contribution

1. The Community shall grant São Tomé and Príncipe a financial contribution in accordance with the terms and conditions laid down in the Protocol and Annex. This single contribution shall be based on two elements, namely:

- (a) access by Community vessels to São Toméan waters and fisheries resources, and
- (b) the Community's financial support for promoting responsible fishing and the sustainable exploitation of fisheries resources in São Toméan waters.

2. The element of the financial contribution referred to in paragraph 1(a) above shall be determined in the light of objectives identified by common accord between the Parties in accordance with the Protocol, to be achieved in the context of the sectoral fisheries policy drawn up by the Government of São Tomé and Príncipe and an annual and multiannual programme for its implementation.

3. The financial contribution granted by the Community shall be paid each year in accordance with the Protocol and subject to this Agreement and the Protocol in the event of any change to the amount of the contribution as a result of:

- (a) unusual circumstances;
- (b) a reduction in the fishing opportunities granted to Community vessels, made by mutual agreement for the purposes of managing the stocks concerned, where this is considered necessary for the conservation and sustainable exploitation of resources on the basis of the best available scientific advice;

(c) an increase in the fishing opportunities granted to Community vessels, made by mutual agreement between the Parties where the best available scientific advice concurs that the state of resources so permits;

(d) a reassessment of the terms of financial support for implementing a sectoral fisheries policy in São Tomé and Príncipe, where this is warranted by the results of the annual and multiannual programming observed by both Parties;

(e) termination of this Agreement under Article 13;

(f) suspension of the application of this Agreement under Article 12.

Article 8

Promoting cooperation among economic operators and civil society

1. The Parties shall encourage economic, scientific and technical cooperation in the fisheries sector and related sectors. They shall consult each other with a view to coordinating the different measures that might be taken to this end.

2. The Parties undertake to promote exchanges of information on fishing techniques and gear, preservation methods and the industrial processing of fisheries products.

3. The Parties shall endeavour to create conditions favourable to the promotion of relations between their enterprises in the technical, economic and commercial spheres, by encouraging the establishment of an environment favourable to the development of business and investment.

4. The Parties shall encourage, in particular, the setting-up of joint enterprises in their mutual interest which shall systematically comply with São Toméan and Community legislation.

Article 9

Joint Committee

1. A Joint Committee shall be set up to monitor the application of this Agreement. The Joint Committee shall perform the following functions:

- (a) monitoring the performance, interpretation and application of this Agreement and, in particular, the definition of the annual and multiannual programming referred to in Article 7(2) and evaluation of its implementation;
- (b) providing the necessary liaison for matters of mutual interest relating to fisheries, in particular statistical analysis of data on catches;
- (c) acting as a forum for the amicable settlement of any disputes regarding the interpretation or application of the Agreement;

- (d) reassessing, where necessary, the level of fishing opportunities and, consequently, of the financial contribution;
- (e) any other function which the Parties decide on by mutual agreement.

2. The Joint Committee shall meet at least once a year, alternately in São Tomé and Príncipe and in the Community, and shall be chaired by the Party hosting the meeting. It shall hold a special meeting at the request of either of the Parties.

Article 10

Geographical area to which the Agreement applies

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community applies, under the conditions laid down in that Treaty, and, on the other, to the territory of São Tomé and Príncipe.

Article 11

Duration

This Agreement shall apply for four years from the date of its entry into force; it shall be tacitly renewed for additional periods of four years, unless notice of termination is given in accordance with Article 13.

Article 12

Suspension

1. Application of this Agreement may be suspended at the initiative of one of the Parties in the event of a serious disagreement as to the application of provisions laid down in the Agreement. Suspension of application of the Agreement shall require the interested Party to notify its intention in writing at least three months before the date on which suspension is due to take effect. On receipt of this notification, the Parties shall enter into consultations with a view to resolving their differences amicably.

2. Payment of the financial contribution referred to in Article 7 shall be reduced proportionately and *pro rata temporis*, according to the duration of the suspension.

Article 13

Termination

1. This Agreement may be terminated by either Party in the event of unusual circumstances such as the degradation of the stocks concerned, the discovery of a reduced level of exploitation of the fishing opportunities granted to Community vessels, or failure to comply with undertakings made by the Parties with regard to combating illegal, unreported and unregulated fishing.

2. The Party concerned shall notify the other Party in writing of its intention to withdraw from the Agreement at least six months before the date of expiry of the initial period or each additional period.

3. Dispatch of the notification referred to in the previous paragraph shall open consultations by the Parties.

4. Payment of the financial contribution referred to in Article 7 for the year in which the termination takes effect shall be reduced proportionately and *pro rata temporis*.

Article 14

Protocol and Annex

The Protocol and the Annex shall form an integral part of this Agreement.

Article 15

National law

The activities of Community vessels operating in São Toméan waters shall be governed by the applicable law in São Tomé and Príncipe, unless otherwise provided in the Agreement, this Protocol and the Annex and Appendices hereto.

Article 16

Repeal

On the date of its entry into force, this Agreement repeals and replaces the Agreement between the European Community and the Republic of São Tomé and Príncipe on fishing off the coast of São Tomé and Príncipe which entered into force on 25 February 1984.

However, the Protocol setting out for the period from 1 June 2006 to 31 May 2010 the fishing opportunities and financial contribution provided for in the Fisheries Agreement between the European Community and the Republic of São Tomé and Príncipe on fishing off the coast of São Tomé and Príncipe shall remain in force during the period referred to in Article 1(1) thereof and shall become an integral part of the present Agreement.

Article 17

Entry into force

This Agreement, drawn up in duplicate in the Czech, Estonian, Danish, Dutch, English, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic, shall enter into force on the date on which the Parties notify each other in writing that they have completed the necessary internal procedures to that end.

PROTOCOL

setting out the fishing opportunities and the financial contribution provided for by the Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community on fishing off the coast of São Tomé and Príncipe for the period from 1 June 2006 to 31 May 2010

Article 1

Period of application and fishing opportunities

1. For a period of four years from 1 June 2006, the fishing opportunities granted under Article 5 of the Agreement shall be as follows:

highly migratory species (species listed in Annex 1 to the 1982 United Nations Convention):

— freezer tuna seiners: 25 vessels,

— surface longliners: 18 vessels.

2. Paragraph 1 shall apply subject to Articles 4 and 5 of this Protocol.

3. Vessels flying the flag of a Member State of the European Community may fish in São Tomé and Príncipe's fishing zone only if they are in possession of a fishing licence issued by São Tomé and Príncipe under this Protocol in accordance with the Annex hereto.

Article 2

Financial contribution – Methods of payment

1. The financial contribution referred to in Article 7 of the Agreement shall comprise, for the period referred to in Article 1, an annual amount of EUR 552 500 equivalent to a reference tonnage of 8 500 tonnes per year and a specific amount of EUR 1 105 000 per year for the support and implementation of São Tomé and Príncipe's sectoral fisheries policy. This specific amount shall be an integral part of the single financial contribution defined in Article 7 of the Agreement.

2. Paragraph 1 shall apply subject to Articles 4, 5 and 7 of this Protocol.

3. The Community shall pay the total amount referred to in paragraph 1, i.e. EUR 663 000, each year during the period of application of this Protocol.

4. If the overall quantity of catches by Community vessels in São Toméan waters exceeds 8 500 tonnes per year, the amount of the financial contribution (EUR 552 500) shall be increased by EUR 65 for each additional tonne caught. However, the total annual amount paid by the Community shall not be more than

twice the amount equivalent to the reference tonnage (i.e. EUR 1 105 000). Where the quantities caught by Community vessels exceed the quantities corresponding to twice the total annual amount (17 000 tonnes), the amount due for the quantity exceeding that limit shall be paid the following year.

5. Payment of the financial contribution referred to in paragraph 1 shall be made no later than 15 May 2007 for the first year and no later than 31 July 2007, 2008 and 2009 for the following years.

6. Subject to Article 6, the São Toméan authorities shall have full discretion regarding the use to which this financial contribution is put.

7. The financial contribution shall be paid into a single São Tomé and Príncipe Public Treasury account opened with a financial institution specified by the São Toméan authorities.

Article 3

Cooperation on responsible fishing – Scientific cooperation

1. The Parties hereby undertake to promote responsible fishing in São Toméan waters on the basis of the principles of non-discrimination between the different fleets fishing in those waters.

2. During the period covered by this Protocol, the Community and the São Toméan authorities shall endeavour to monitor the evolution of resources in São Tomé and Príncipe's fishing zone.

3. The Parties undertake to promote cooperation at subregional level on responsible fishing and, in particular, within COREP.

4. In accordance with Article 4 of the Agreement and on the basis of the recommendations and resolutions adopted within the International Commission for the Conservation of Atlantic Tunas (ICCAT), and in the light of the best available scientific advice, the Parties shall consult each other within the Joint Committee provided for in Article 9 of the Agreement and adopt, where appropriate after a scientific meeting possibly at subregional level, and by mutual agreement, measures to ensure the sustainable management of fisheries resources affecting the activities of Community vessels.

Article 4

Review of fishing opportunities by mutual agreement

1. The fishing opportunities referred to in Article 1 may be increased by mutual agreement provided that the conclusions of the scientific meeting referred to in Article 3(4) confirm that such an increase will not endanger the sustainable management of São Tomé and Príncipe's resources. In this case the share of the financial contribution of EUR 552 000 referred to in Article 2(1) shall be increased proportionately and *pro rata temporis*. However, the total amount of the financial contribution paid by the European Community in respect of the reference tonnage shall not be more than twice the amount of EUR 552 500. Where the quantities caught annually by Community vessels are more than twice 8 500 tonnes (i.e. 17 000 tonnes), the amount due for the quantity exceeding that limit shall be paid the following year.

2. Conversely, if the Parties agree to adopt a reduction in the fishing opportunities provided for in Article 1, the financial contribution shall be reduced proportionately and *pro rata temporis*.

3. The allocation of the fishing opportunities among different categories of vessels may also be reviewed, following consultations and by mutual agreement between the Parties, provided that any changes comply with recommendations made by the scientific meeting referred to in Article 3 regarding the management of stocks liable to be affected by such redistribution. The Parties shall agree on the corresponding adjustment of the financial contribution where the redistribution of fishing opportunities so warrants.

Article 5

New fishing opportunities

Should Community vessels be interested in fishing activities which are not indicated in Article 1, the Community shall consult São Tomé and Príncipe in order to seek authorisation for these new activities. Where appropriate, the Parties shall agree on the conditions applicable to these new fishing opportunities and, if necessary, make amendments to this Protocol and to the Annex hereto.

Article 6

Suspension and review of the payment of the financial contribution in the event of unusual circumstances

1. Where unusual circumstances, other than natural phenomena, prevent fishing activities in São Tomé and Príncipe's exclusive economic zone (EEZ), the European Community may suspend payment of the financial contribution provided for in Article 2(1). The suspension decision shall be taken following consultations between the two Parties within a period of two months following the request of one of the Parties, and provided that the Community has paid in full any amounts due at the time of suspension.

2. Payment of the financial contribution shall resume as soon as the Parties find, by mutual agreement following consultations, that the circumstances preventing fishing activities are no longer present and/or that the situation allows a resumption of fishing activities.

3. Where the validity of the licences granted to Community vessels is suspended along with the payment of the financial contribution, it shall be extended by a period equal to the period during which fishing activities were suspended.

Article 7

Promotion of responsible fishing in São Toméan waters

1. Out of the total amount of the financial contribution (EUR 663 000) fixed in Article 2, 50 % (or EUR 331 500) shall be allocated each year to the support and implementation of initiatives taken in the context of the sectoral fisheries policy drawn up by the Government of São Tomé and Príncipe.

São Tomé and Príncipe shall manage the corresponding amount following the identification by mutual agreement between the two Parties, in accordance with the current priorities of São Tomé and Príncipe's fisheries policy for ensuring sustainable and responsible management of the sector, of the objectives to be attained and the annual and multiannual programming required to attain them, pursuant to paragraph 2 below.

2. On a proposal from São Tomé and Príncipe and for the purposes of implementing the preceding paragraph, as soon as this Protocol enters into force and no later than three months after that date, the Community and São Tomé and Príncipe shall agree, within the Joint Committee provided for in Article 9 of the Agreement, on a multiannual sectoral programme and detailed implementing rules covering, in particular:

- (a) annual and multiannual guidelines for using the percentage of the financial contribution referred to in paragraph 1 and its specific amounts for the initiatives to be carried out each year;
- (b) the objectives, both annual and multiannual, to be achieved with a view to promoting responsible fishing and sustainable fisheries, taking account of the priorities expressed by São Tomé and Príncipe in its national fisheries policy and other policies relating to or having an impact on the promotion of responsible fishing and sustainable fisheries;
- (c) criteria and procedures for evaluating the results obtained each year;
- (d) any revision of the percentage of the total amount of the financial contribution referred to in paragraph 1 of this Article, applicable in the years following the first year of application of this Protocol.

3. Any proposed amendments to the multiannual sectoral programme or of the use of the specific amounts for the initiatives to be carried out each year must be approved by both Parties within the Joint Committee.

4. Each year, São Tomé and Príncipe shall allocate the share corresponding to the percentage referred to in paragraph 1 with a view to implementing the multiannual programme. For the first year of application of the Protocol, that allocation must be notified to the Community at the time when the multiannual sectoral programme is approved within the Joint Committee. For each year of application of the Protocol thereafter, São Tomé and Príncipe shall notify the Community of the allocation no later than 1 May of the previous year.

5. Where the annual evaluation of the progress made in implementing the multiannual sectoral programme so warrants, the European Community may ask for the financial contribution referred to in Article 2(1) of this Protocol to be readjusted with a view to bringing the actual amount of financial resources allocated to implementation of the programme into line with its results.

Article 8

Disputes – suspension of application of the Protocol

1. Any dispute between the Parties over the interpretation of this Protocol or its application shall be the subject of consultations between the Parties within the Joint Committee provided for in Article 9 of the Agreement, in a special meeting if necessary.

2. Without prejudice to Article 9, application of the Protocol may be suspended at the initiative of one Party if the dispute between the two Parties is deemed to be serious and if the consultations held within the Joint Committee under paragraph 1 have not resulted in an amicable settlement.

3. Suspension of application of the Protocol shall require the interested Party to notify its intention in writing at least three months before the date on which suspension is due to take effect.

4. In the event of suspension, the Parties shall continue to consult with a view to finding an amicable settlement to their dispute. As soon as an amicable settlement is reached, application of the Protocol shall resume and the amount of the financial contribution shall be reduced proportionately and *pro rata temporis* according to the period during which application of the Protocol was suspended.

Article 9

Suspension of application of the Protocol on grounds of non-payment

Subject to Article 6, if the Community fails to make the payments provided for in Article 2, application of this Protocol may be suspended on the following terms:

- (a) The competent São Toméan authorities shall notify the European Commission of the non-payment. The latter shall carry out the requisite checks and, where necessary, transmit the payment within no more than 60 working days of the date of receipt of the notification.
- (b) If no payment is made and non-payment is not adequately justified within the period provided for in Article 2(5) of this Protocol, the competent São Toméan authorities shall be entitled to suspend application of the Protocol. They shall inform the European Commission of such action forthwith.
- (c) Application of the Protocol shall resume as soon as the payment concerned has been made.

Article 10

National law

The activities of Community vessels operating in São Toméan waters shall be governed by the applicable law in São Tomé and Príncipe, unless otherwise provided in the Agreement, this Protocol and the Annex and Appendices hereto.

Article 11

Repeal

The Annex to the Agreement between the European Economic Community and the Republic of São Tomé and Príncipe on fishing off the coast of São Tomé and Príncipe is hereby repealed and replaced by the Annex to this Protocol.

Article 12

Entry into force

1. This Protocol with its Annex shall enter into force on the date on which the Parties notify each other of the completion of the procedures necessary for that purpose.
2. They shall apply with effect from 1 June 2006.

ANNEX

Conditions governing fishing activities by Community vessels in São Tomé and Príncipe's fishing zone

CHAPTER I

APPLICATION FOR AND ISSUE OF LICENCES

SECTION 1

Issue of licences

1. Only eligible vessels may obtain a licence to fish in São Tomé and Príncipe's fishing zone.
2. For a vessel to be eligible, neither the owner, the skipper nor the vessel itself must be prohibited from fishing in São Tomé and Príncipe. They must be in order vis-à-vis the São Toméan authorities insofar as they must have fulfilled all prior obligations arising from their fishing activities in São Tomé and Príncipe under fisheries agreements concluded with the Community.
3. The relevant Community authorities shall submit (by electronic means) to the Ministry responsible for fisheries in São Tomé and Príncipe an application for each vessel wishing to fish under the Agreement at least 15 working days before the date of commencement of the period of validity requested.
4. Applications shall be submitted to the Ministry responsible for fisheries on a form drawn up in accordance with the specimen in Appendix I. The São Toméan authorities shall take all the necessary steps to ensure that the data received as part of the licence application are treated as confidential. This data will be used exclusively in the context of the implementation of the Fisheries Agreement.
5. All licence applications shall be accompanied by the following documents:
 - proof of payment of the flat-rate advance for the period of validity of the licence;
 - (any other documents or certificates required under the specific rules applicable to the type of vessel concerned pursuant to this Protocol).
6. The fee shall be paid into the account specified by the São Toméan authorities in accordance with Article 2(7) of the Protocol.
7. The fees shall include all national and local charges with the exception of port taxes and service charges.
8. Licences for all vessels shall be issued to shipowners or their representatives via the European Commission Delegation to Gabon within 15 working days of receipt of all the documents referred to in point 5 by the Ministry responsible for fisheries in São Tomé and Príncipe.
9. Licences shall be issued for a specific vessel and shall not be transferable.
10. However, at the request of the European Community and where *force majeure* is proven, a vessel's licence shall be replaced by a new licence for another vessel of the same category as the first vessel, as referred to in Article 1 of the Protocol, with no further fee due. In this case, the calculation of the catch levels to determine whether an additional payment should be made shall take account of the sum of the total catches of the two vessels.
11. The owner of the first vessel, or his or her representative, shall return the cancelled licence to the Ministry responsible for fisheries in São Tomé and Príncipe via the European Commission Delegation.
12. The new licence shall take effect on the day that the vessel's owner returns the cancelled licence to the Ministry responsible for fisheries in São Tomé and Príncipe. The European Commission Delegation to Gabon shall be informed of the licence transfer.

13. The licence must be held on board at all times. The European Community shall keep an up-to-date list of the vessels to which a fishing licence has been issued under this Protocol. This draft shall be notified to the São Toméan authorities as soon as it is drawn up, and then each time it is updated. On receipt of this draft list and of notification of payment of the advance sent to the São Toméan authorities by the Commission, the vessel shall be entered by the competent São Toméan authority on a list of vessels authorised to fish, which shall be notified to the authorities responsible for fisheries inspection. In this case, a certified copy of this list shall be sent to the shipowner and kept on board instead of the fishing licence until the licence has been issued.

SECTION 2

Licence conditions – fees and advance payments

1. Licences shall be valid for a period of one year. They shall be renewable.
2. The fee shall be EUR 35 per tonne caught within São Tomé and Príncipe's fishing zone in the case of tuna seiners and surface longliners.
3. Licences shall be issued once the following standard amounts have been paid to the competent national authorities:
 - EUR 5 250 per tuna seiner, equivalent to the fees due for 150 tonnes per year,
 - EUR 1 925 per surface longliner, equivalent to the fees due for 55 tonnes per year.
4. Member States shall inform the European Commission not later than 15 June each year of the tonnages caught during the past year, as confirmed by the scientific institutes referred to in point 5 below.
5. The final statement of the fees due for year n shall be drawn up by the European Commission by 31 July of year $n + 1$ at the latest on the basis of the catch declarations made by each shipowner and confirmed by the scientific institutes responsible for verifying catch data in the Member States, such as the IRD (Institut de Recherche pour le Développement), the IEO (Instituto Español de Oceanografía) and the IPIMAR (Instituto Português de Investigação Marítima) via the European Commission Delegation.
6. This statement shall be sent simultaneously to the Ministry responsible for fisheries in São Tomé and Príncipe and to the shipowners.
7. Any additional payments (for quantities caught in excess of 150 tonnes for tuna seiners and 55 tonnes for longliners) shall be made by the shipowners to the competent São Toméan national authorities by 31 August of year $n + 1$, into the account referred to in point 6 of Section 1 of this Chapter, on the basis of EUR 35 per tonne.
8. However, if the amount of the final statement is lower than the advance referred to in point 3 of this Section, the resulting balance shall not be reimbursable to the shipowner.

CHAPTER II

FISHING ZONES

1. Community vessels may carry out fishing activities in waters beyond 12 nautical miles from the base lines in the case of tuna seiners and surface longliners.
2. Without exception, all fishing activity in the zone destined for joint exploitation by São Tomé and Príncipe and Nigeria, delimited by the coordinates set out in Appendix 3, shall be prohibited.

CHAPTER III

CATCH REPORTING ARRANGEMENTS

1. For the purposes of this Annex, the duration of a trip by a Community vessel in São Tomé and Príncipe's fishing zone shall be defined as follows:
 - the period elapsing between entering and leaving São Tomé and Príncipe's fishing zone,
 - or the period elapsing between entering São Tomé and Príncipe's fishing zone and a transshipment and/or a landing in São Tomé and Príncipe.

2. All vessels authorised to fish in São Toméan waters under the Agreement shall be obliged to notify their catches to the Ministry responsible for fisheries in São Tomé and Príncipe so that it can check the quantities caught, which shall be validated by the competent scientific institutes in accordance with the procedure referred to in point 4 of Section 2 of Chapter I of this Annex. Catches shall be notified as follows:
 - 2.1. During an annual period of validity of the licence within the meaning of Section 2 of Chapter I of this Annex, declarations shall include the catches made by the vessel during each trip. The original of the declarations shall be transmitted on a physical medium to the Ministry responsible for fisheries in São Tomé and Príncipe within 45 days following the end of the last trip made during the period.
 - 2.2. Vessels shall declare their catches on the corresponding form in the logbook, in accordance with the specimen in Appendix 2. The words 'Outside São Tomé and Príncipe's fishing zone' shall be entered in the logbook in respect of periods during which the vessel is not in São Tomé and Príncipe's fishing zone.
 - 2.3. The forms shall be filled in legibly and signed by the skipper of the vessel or by his or her legal representative.
3. At the request of one of the Parties, the Joint Committee may meet to compare the data on fishing activities.
4. Where the provisions set out in this Chapter are not complied with, the Government of São Tomé and Príncipe reserves the right to suspend the licence of the offending vessel until formalities have been completed and to apply to the shipowner the penalty laid down in current São Toméan legislation. The European Commission and the flag Member State shall be informed thereof.

CHAPTER IV

LANDING

The parties shall cooperate with a view to improving transhipment options in or off São Toméan ports.

1. Transhipment:

Community tuna vessels which opt to tranship their catches in or off a São Toméan port shall benefit from a reduction of EUR 5 per tonne fished in São Tomé and Príncipe's fishing zone in the fee indicated in point 2 of Section 2 of Chapter I of the Annex.

This mechanism shall apply, for all Community vessels, up to a maximum of 50 % of the final statement of catches (as defined in Chapter III of the Annex) from the first year of this Protocol.

2. Detailed rules on checks on the tonnages transhipped shall be laid down at the first meeting of the Joint Committee.
3. Evaluation:

The level of the financial incentives and the maximum percentage of the final statement of catches shall be adjusted within the Joint Committee, in accordance with the socio-economic impact of transhipments in the year concerned.

CHAPTER V

EMBARKING SEAMEN

1. Owners of tuna seiners and surface longliners shall employ ACP nationals, subject to the following conditions and limits:
 - for the fleet of tuna seiners, at least 20 % of the seamen signed on during the tuna fishing season in the fishing zone of third countries shall be of ACP origin,
 - for the fleet of surface longliners, at least 20 % of the seamen signed on during the fishing season in the fishing zone of third countries shall be of ACP origin.

2. Shipowners shall endeavour to sign on additional seamen of São Toméan origin.
3. The International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work shall apply as of right to seamen signed on by Community vessels. This concerns in particular the freedom of association and the effective recognition of the right to collective bargaining, and the elimination of discrimination in respect of employment and occupation.
4. The employment contracts of ACP seamen shall be drawn up between the shipowners' representative(s) and the seamen and/or their trade unions or representatives. A copy of these contracts shall be given to the signatories. These contracts shall guarantee the seamen the social security cover applicable to them, including life assurance and sickness and accident insurance.
5. The wages of the ACP seamen shall be paid by the shipowners. They shall be fixed by mutual agreement among the shipowners or their representatives and the seamen and/or their trade unions or representatives. However, the wage conditions granted to ACP seamen shall not be lower than those applied to crews from their respective countries and shall under no circumstances be below ILO standards.
6. All seamen employed aboard Community vessels shall report to the skipper of the vessel designated on the day before their proposed embarkation date. Where a seaman fails to report at the date and time agreed for embarkation, shipowners shall be automatically absolved of their obligation to take the seaman on board.
7. However, where no ACP seamen are taken on board for reasons other than that referred to in the previous point, Community shipowners shall be obliged to pay, for each day of the fishing trip in São Toméan waters, a flat-rate amount of USD 20 per day. The payment of this amount shall take place within the limits laid down in point 7 of Section 2 of Chapter I of this Annex.

CHAPTER VI

TECHNICAL MEASURES

1. Vessels shall comply with the measures and recommendations adopted by ICCAT in the region regarding fishing gear and the technical specifications thereof and all other technical measures applicable to their fishing activities.
2. Tuna seiners shall make any by-catches available to the São Tomé and Príncipe Directorate for Fisheries, which will take charge of recovering and landing them.
3. The two Parties shall agree by mutual agreement on a provision ensuring the effective implementation of the previous point or on an alternative solution in the first meeting of the Joint Committee referred to in Article 9 of the Agreement. The Joint Committee shall analyse all possible options to this end, including an obligation for the seiners concerned to pay an annual contribution equivalent to a share of the value of by-catches to a São Tomé and Príncipe Directorate for Fisheries fund to support small-scale fishing.

CHAPTER VII

OBSERVERS

1. Vessels authorised to fish in São Toméan waters under the Agreement shall take on board observers appointed by the competent regional fisheries organisation on the terms set out below:
 - 1.1. At the request of the competent authority, Community vessels shall take on board an observer designated by the authority in order to check catches made in São Toméan waters.
 - 1.2. The competent authority shall draw up a list of vessels designated to take an observer on board and a list of the appointed observers. These lists shall be kept up to date. They shall be forwarded to the European Commission as soon as they have been drawn up and every three months thereafter where they have been updated.
 - 1.3. The competent authority shall inform the shipowners concerned, or their representatives, of the name of the observer appointed to be taken on board their vessel at the time the licence is issued, or no later than 15 days before the observer's planned embarkation date.

2. The time spent on board by observers shall be one fishing trip. However, at the express request of the competent São Toméan authorities, this embarkation may be spread over several trips according to the average duration of trip for a particular vessel. This request shall be made by the competent authority when the name of the observer appointed to board the vessel in question is notified.
3. The conditions under which observers are taken on board shall be agreed between shipowners or their representatives and the competent authority.
4. Observers shall be taken on board at a port chosen by the shipowner at the beginning of the first voyage in São Toméan waters after notification of the list of designated vessels.
5. Within two weeks and giving 10 days' notice, the shipowners concerned shall make known at which ports in the subregion and on what dates they intend to take observers on board.
6. Where observers are taken on board in a country outside the subregion, their travel costs shall be borne by the shipowner. Should a vessel with a regional observer on board leave the regional fishing zone, all measures must be taken to ensure the observer's return as soon as possible at the expense of the shipowner.
7. If the observer is not present at the time and place agreed and during the 12 hours following the time agreed, shipowners shall be automatically absolved of their obligation to take the observer on board.
8. Observers shall be treated as officers. Where vessels are operating in São Toméan waters, they shall carry out the following tasks:
 - 8.1. observe the fishing activities of the vessels;
 - 8.2. verify the position of vessels engaged in fishing operations;
 - 8.3. perform biological sampling in the context of scientific programmes;
 - 8.4. note the fishing gear used;
 - 8.5. verify the catch data for São Toméan waters recorded in the logbook;
 - 8.6. verify the percentages of by-catches and estimate the quantity of discards of species of marketable fish;
 - 8.7. report by any appropriate means fishing data, including the quantity of catches and by-catches on board, to their competent authority.
9. Skippers shall do everything in their power to ensure the physical safety and welfare of observers during performance of their duties.
10. Observers shall be offered every facility needed to carry out their duties. The skipper shall give them access to the means of communication needed for the discharge of their duties, to documents directly concerned with the vessel's fishing activities, including in particular the logbook and the navigation log, and to those parts of the vessel necessary to facilitate the exercise of their tasks as observer.
11. While on board, observers shall:
 - 11.1. take all appropriate steps to ensure that the conditions of their boarding and presence on the vessel neither interrupt nor hamper fishing operations,
 - 11.2. respect the material and equipment on board and the confidentiality of all documents belonging to the vessel.
12. At the end of the observation period and before leaving the vessel, observers shall draw up an activity report to be transmitted to the competent authorities, with a copy to the European Commission. They shall sign it in the presence of the skipper, who may add or cause to be added to it any observations considered relevant, followed by the skipper's signature. A copy of the report shall be handed to the skipper when the observer is put ashore.
13. Shipowners shall bear the cost of accommodating observers in the same conditions as the officers, within the confines of the practical possibilities offered by the vessel.
14. The salary and social contributions of the observer shall be borne by the competent authorities.

15. The two Parties shall consult each other, and interested third parties, as soon as possible as regards the definition of a system of regional observers and the choice of the competent regional fisheries organisation. Pending the implementation of a system of regional observers, vessels authorised to fish in São Tomé and Príncipe's fishing zone under the Agreement shall take on board, instead of regional observers, observers designated by the competent São Toméan authorities in accordance with the rules set out above.

CHAPTER VIII

MONITORING

1. In accordance with point 13 of Section 1 of Chapter I of this Annex, the European Community shall keep an up-to-date list of the vessels to which a fishing licence has been issued under this Protocol. This list shall be notified to the São Toméan authorities responsible for fisheries inspection as soon as it is drawn up and each time it is updated.
2. On receipt of this draft list and of notification of payment of the advance (referred to in point 3 of Section 2 of Chapter I of this Annex) sent to the coastal state authorities by the European Commission, the vessel shall be entered by the competent São Toméan authority on a list of vessels authorised to fish, which shall be sent to the authorities responsible for fisheries inspection. In this case, a certified copy of this list shall be sent to the shipowner and kept on board instead of the fishing licence until the licence has been issued.
3. **Entering and leaving the zone**
 - 3.1. At least three hours in advance Community vessels shall notify the competent São Toméan authorities responsible for fisheries inspection of their intention to enter or leave the São Toméan fishing zone; they shall also declare the overall quantities and the species on board.
 - 3.2. When notifying leaving, vessels shall also communicate their position. This information should preferably be communicated by fax (+ 239 222 828) or e-mail (dpescas1@cstome.net) or, for vessels not equipped with a fax or e-mail, by radio (call sign: 12,00 Hz from 08,00 to 12,00, and 8 634 Hz from 14,00 to 17,00).
 - 3.3. Vessels found to be fishing without having informed the competent São Toméan authority shall be regarded as vessels in breach of the legislation.
 - 3.4. Vessels shall also be informed of the fax and telephone numbers and e-mail address when the fishing licence is issued.
4. **Control procedures**
 - 4.1. Skippers of Community fishing vessels engaged in fishing activities in São Toméan waters shall allow and facilitate boarding and the discharge of their duties by any São Toméan official responsible for the inspection and control of fishing activities.
 - 4.2. These officials shall not remain on board for longer than is necessary for the discharge of their duties.
 - 4.3. Once the inspection has been completed, a certificate shall be issued to the master of the vessel.
5. **Satellite monitoring**
 - 5.1. All Community vessels fishing under this Agreement shall be subject to satellite monitoring in line with Appendix 4. These provisions shall enter into force on the 10th day following notification by the Government of São Tomé and Príncipe to the European Commission Delegation to Gabon of the entry into operation of the São Toméan Fisheries Monitoring Centre (FMC).
6. **Boarding**
 - 6.1. The competent São Toméan authorities shall inform the flag State and the European Commission, within no more than 24 hours, of all boardings of and penalties imposed on Community vessels in São Toméan waters.
 - 6.2. The flag State and the European Commission shall at the same time receive a brief report of the circumstances and reasons leading to the boarding.

7. Statement of boarding

- 7.1. After the competent São Toméan authority has drawn up a statement, the skipper of the vessel shall sign it.
- 7.2. This signature shall not prejudice the rights of the skipper or any defence which the skipper may make to the presumed infringement. If the skipper refuses to sign this document, he or she shall specify the reasons for doing so in writing and the inspector shall write 'refusal to sign' on it.
- 7.3. The skipper shall take the vessel to the port indicated by the São Toméan authorities. In the case of minor infringements, the competent São Toméan authorities may authorise the boarded vessel to continue fishing.

8. Consultation meeting in the event of boarding

- 8.1. Before any measures regarding the skipper or the crew of the vessel or any action regarding the cargo and equipment of the vessel are considered, other than those to safeguard evidence relating to the presumed infringement, a consultation meeting shall be held, within one working day of the receipt of the above information, between the European Commission and the competent São Toméan authorities, possibly attended by a representative of the Member State concerned.
- 8.2. At the meeting, the Parties shall exchange any relevant documentation or information helping to clarify the circumstances of the established facts. The shipowner or his or her representative shall be informed of the outcome of the meeting and of any measures resulting from the boarding.

9. Settlement of boarding

- 9.1. Before any judicial procedure, an attempt shall be made to resolve the presumed infringement through a compromise procedure. This procedure shall end no later than three working days after the boarding.
- 9.2. In the event of an amicable settlement, the amount of the fine shall be determined in accordance with São Toméan legislation.
- 9.3. If the case cannot be settled by amicable procedure and has to be brought before a competent judicial body, a bank security set to take account of the boarding costs and the fines and compensation payable by the parties responsible for the infringement shall be lodged by the shipowner with a bank specified by the competent São Toméan authorities.
- 9.4. The bank security shall be irrevocable until the legal proceedings have been concluded. It shall be released once legal proceedings end without a conviction. Similarly, in the event of a conviction leading to a fine of less than the security lodged, the balance shall be released by the competent São Toméan authorities.
- 9.5. The vessel shall be released and its crew authorised to leave the port:
 - once the obligations arising under the amicable settlement have been fulfilled, or
 - when the bank security referred to in point 9.3 has been lodged and accepted by the competent São Toméan authorities, pending completion of the legal proceedings.

10. Transhipment

- 10.1. All Community vessels wishing to tranship catches in São Toméan waters shall do so in or off São Toméan ports.
- 10.2. The owners of such vessels must notify the following information to the competent São Toméan authorities at least 24 hours in advance:
 - the names of the transshipping fishing vessels,
 - the names, OMI numbers and flag of the cargo vessels,
 - the tonnage by species to be transhipped,
 - the day and place of transhipment.

- 10.3. Transhipment shall be considered as an exit from São Tomé and Príncipe's fishing zone. Skippers of vessels must submit their catch declarations to the competent São Toméan authorities and state whether they intend to continue fishing or leave São Tomé and Príncipe's fishing zone.
 - 10.4. Any transhipment of catches not covered above shall be prohibited in São Tomé and Príncipe's fishing zone. Any person infringing this provision shall be liable to the penalties provided for by São Toméan law.
 11. Skippers of Community fishing vessels engaged in landing or transhipment operations in a São Toméan port shall allow and facilitate the inspection of such operations by São Toméan inspectors. Once the inspection has been completed, a copy of the inspection and control report or a certificate shall be issued to the skipper of the vessel.
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Appendices

1. Licence application form
 2. ICCAT logbook
 3. Coordinates of the zone in which fishing is prohibited
 4. Provisions applicable to the satellite-based vessel monitoring system (VMS) and coordinates of São Tomé and Príncipe's fishing zone
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Appendix 1

MINISTRY RESPONSIBLE FOR FISHERIES IN SÃO TOMÉ AND PRÍNCIPE**APPLICATION FOR A LICENCE FOR FOREIGN INDUSTRIAL FISHING VESSELS**

1. Name of shipowner:
2. Address of shipowner:
3. Name of representative or agent:
4. Address of shipowner's representative or local agent:
.....
5. Name of skipper:
6. Name of vessel:
7. Registration No:
8. Fax No:
9. E-mail address:
10. Radio code:
11. Date and place of construction:
12. Flag country:
13. Port of registration:
14. Port of fitting out:
15. Overall length:
16. Width of vessel:
17. Gross tonnage:
18. Hold capacity:
19. Cold storage and freezing capacity:
20. Engine type and horse power:
21. Fishing gear:
22. Number of crew:
23. Communications equipment:
24. Call sign:
25. Identification markings:
26. Fishing operations to be carried out:

- 27. Place of landing:
- 28. Fishing zones:
- 29. Species to be caught:
- 30. Period of validity:
- 31. Special conditions:
- Opinion of the Directorate-General for Fisheries and Aquaculture:
- Comments of the Ministry responsible for fisheries:

Appendix 3

| Latitude | | | | Longitude | | | |
|----------|---------|---------|---|-----------|---------|---------|---|
| Degrees | Minutes | Seconds | | Degrees | Minutes | Seconds | |
| 03 | 02 | 22 | N | 07 | 07 | 31 | E |
| 02 | 50 | 00 | N | 07 | 25 | 52 | E |
| 02 | 42 | 38 | N | 07 | 36 | 25 | E |
| 02 | 20 | 59 | N | 06 | 52 | 45 | E |
| 01 | 40 | 12 | N | 05 | 57 | 54 | E |
| 01 | 09 | 17 | N | 04 | 51 | 38 | E |
| 01 | 13 | 15 | N | 04 | 41 | 27 | E |
| 01 | 21 | 29 | N | 04 | 24 | 14 | E |
| 01 | 31 | 39 | N | 04 | 06 | 55 | E |
| 01 | 42 | 50 | N | 03 | 50 | 23 | E |
| 01 | 55 | 18 | N | 03 | 34 | 33 | E |
| 01 | 58 | 53 | N | 03 | 53 | 40 | E |
| 02 | 02 | 59 | N | 04 | 15 | 11 | E |
| 02 | 05 | 10 | N | 04 | 24 | 56 | E |
| 02 | 10 | 44 | N | 04 | 47 | 58 | E |
| 02 | 15 | 53 | N | 05 | 06 | 03 | E |
| 02 | 19 | 30 | N | 05 | 17 | 11 | E |
| 02 | 22 | 49 | N | 05 | 26 | 57 | E |
| 02 | 26 | 21 | N | 05 | 36 | 20 | E |
| 02 | 30 | 08 | N | 05 | 45 | 22 | E |
| 02 | 33 | 37 | N | 05 | 52 | 58 | E |
| 02 | 36 | 38 | N | 05 | 59 | 00 | E |
| 02 | 45 | 18 | N | 06 | 15 | 57 | E |
| 02 | 50 | 18 | N | 06 | 26 | 41 | E |
| 02 | 51 | 29 | N | 06 | 29 | 27 | E |
| 02 | 52 | 23 | N | 06 | 31 | 46 | E |
| 02 | 54 | 46 | N | 06 | 38 | 07 | E |
| 03 | 00 | 24 | N | 06 | 56 | 58 | E |
| 03 | 01 | 19 | N | 07 | 01 | 07 | E |
| 03 | 01 | 27 | N | 07 | 01 | 46 | E |
| 03 | 01 | 44 | N | 07 | 03 | 07 | E |
| 03 | 02 | 22 | N | 07 | 07 | 31 | E |

Appendix 4

Protocol (VMS)**setting out the provisions applicable to satellite monitoring of Community fishing vessels operating in São Tomé and Príncipe's EEZ**

1. The provisions of this Protocol supplement the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe on fishing off the coast of São Tomé and Príncipe for the period from 1 June 2006 to 31 May 2010 and apply in accordance with point 5 of 'Chapter VIII – Monitoring' in the Annex thereto.
2. All fishing vessels with an overall length exceeding 15 metres operating under the Fisheries Agreement between the European Community and São Tomé and Príncipe shall be monitored by satellite when fishing in São Tomé and Príncipe's EEZ.

For the purposes of the satellite monitoring, the São Toméan authorities shall communicate to the Community party the latitude and longitude coordinates of São Tomé and Príncipe's EEZ.

The São Toméan authorities shall transmit this information in electronic form, expressed in decimal degrees (WGS 84).

3. The Parties shall exchange information on X.25 addresses and the specifications for electronic data transmission between their Control Centres in accordance with points 5 and 7. Such information shall include the following where they exist: names, telephone, telex and fax numbers, and e-mail addresses (Internet or X.400) which may be used for general communications between Control Centres.
4. The position of vessels shall be determined with a margin of error of less than 500 metres and a confidence interval of 99 %.
5. When a vessel which is fishing under the Agreement and is the subject of satellite monitoring pursuant to Community legislation enters São Tomé and Príncipe's EEZ, the subsequent position reports (vessel identification, longitude, latitude, course and speed) shall be transmitted immediately by the Control Centre of the flag State to São Tomé and Príncipe's Fisheries Monitoring Centre (FMC) at intervals of no more than three hours. The messages concerned shall be identified as position reports.
6. The messages specified in point 5 shall be transmitted electronically in X.25 format, or any other secure protocol. They shall be communicated in real time in the format set out in Table II.
7. Where the continuous satellite monitoring equipment installed on board a fishing vessel develops a technical fault or breaks down, the skipper of the vessel shall transmit the information specified in point 5 to the Control Centre of the flag State and São Tomé and Príncipe's FMC in good time. In those circumstances a global position report shall be sent every nine hours. This global position report shall include the position reports as recorded by the skipper of the vessel on a three-hourly basis in accordance with the requirements laid down in point 5.

The Control Centre of the flag State shall send these messages to São Tomé and Príncipe's FMC. The faulty equipment shall be repaired or replaced within a period of not more than one month. After this deadline, the vessel in question must leave São Tomé and Príncipe's EEZ.

8. The Control Centres of the flag States shall monitor the movements of their vessels in São Toméan waters. If the vessels are not being monitored in accordance with the conditions laid down, São Tomé and Príncipe's FMC shall be informed by the FMC of the flag State as soon as this is discovered and the procedure laid down in point 7 shall be applicable.
9. If São Tomé and Príncipe's FMC establishes that the flag State is not transmitting the information specified in point 5, the competent European Commission departments shall be informed immediately.
10. The monitoring data communicated to the other party in accordance with these provisions is intended solely for the purposes of the São Toméan authorities in controlling and monitoring the Community fleet fishing under the Fisheries Agreement between the European Community and São Tomé and Príncipe. Such data may not under any circumstances be communicated to other parties.
11. The satellite-monitoring system software and hardware components shall be reliable and shall not permit the input or output of false positions or be capable of being manually overridden.

The system shall be fully automatic and operational at all times regardless of environmental and weather conditions. Destroying, damaging, rendering inoperative or tampering with the satellite-monitoring system shall be prohibited.

Skippers shall ensure that:

- data are not altered in any way,
 - the antenna or antennas connected to the satellite-monitoring equipment are not obstructed,
 - the power supply of the satellite-monitoring equipment is not interrupted, and
 - the satellite-monitoring equipment is not removed from the vessel.
12. The Parties agree to exchange upon request information on the equipment used for satellite monitoring, in order to ensure that each piece of equipment is fully compatible with the requirements of the other Party for the purposes of these provisions.
 13. Any dispute over the interpretation or application of these provisions shall be the subject of consultation between the Parties within the Joint Committee provided for in Article 9 of the Agreement.
 14. The Parties agree to review these provisions, as appropriate.

Communication of VMS messages to São Tomé and Príncipe

Position report

| Data element | Code | Mandatory/ optional | Comments |
|---|------|------------------------|---|
| Start record | SR | M | System detail – indicates start of record |
| Recipient | AD | M | Message detail – recipient. Alpha 3 ISO country code |
| From | FR | M | Message detail – sender. Alpha 3 ISO country code |
| Flag State | FS | O | |
| Type of message | TM | M | Message detail – Message type 'POS' |
| Radio call sign | RC | M | Vessel detail – international radio call sign of vessel |
| Contracting party internal reference number | IR | O | Vessel detail – unique contracting party number as flag State (ISO-3 code followed by number) |
| External registration number | XR | M | Vessel detail – number marked on side of vessel |
| Latitude | LA | M | Vessel position detail – position in degrees and minutes N/S DD.ddd (WGS-84) |
| Longitude | LO | M | Vessel position detail – position in degrees and minutes E/W DD.ddd (WGS-84) |
| Course | CO | M | Vessel course 360° scale |
| Speed | SP | M | Vessel speed in tenths of knots |
| Date | DA | M | Vessel position detail – date of record of UTC position (YYYYMMDD) |
| Time | TI | M | Vessel position detail – time of record of UTC position (HHMM) |
| End record | ER | M | System detail – indicates end of record |

Character set: ISO 8859.1

Each data transmission is structured as follows:

- a double slash (//) and field code indicate the start of the message,
- a single slash (/) separates the field code and the data.

Optional data elements have to be inserted between the start and end of the record.

Limits of São Tomé and Príncipe's EEZ**Coordinates****Coordinates of São Tomé and Príncipe's FMC**

Name of FMC:

SSN tel.

SSN fax

SSN e-mail:

DSPG tel.

DSPG fax

Address X25 =

Declaration of entries/exits

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 23 July 2007

on the conclusion of the Agreement in the form of an Exchange of Letters on the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community for the period from 1 June 2006 to 31 May 2010

(2007/532/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

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

Article 1

Having regard to the proposal from the Commission,

Whereas:

- (1) The Community and the Democratic Republic of São Tomé and Príncipe have negotiated and initialled a Fisheries Partnership Agreement providing Community fishermen with fishing opportunities in the waters falling within the sovereignty or jurisdiction of the Democratic Republic of São Tomé and Príncipe.
- (2) It is necessary to guarantee the pursuit of fishing activities between the date of expiry of the previous Protocol setting out the fishing opportunities off the coast of São Tomé and Príncipe and the date of entry into force of the new Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement.
- (3) To this end the Community and the Democratic Republic of São Tomé and Príncipe have initialled an Agreement in the form of an Exchange of Letters concerning the provisional application of the new Protocol.
- (4) It is in the Community's interest to approve that Agreement in the form of an Exchange of Letters.
- (5) The method for allocating the fishing opportunities among the Member States should be defined,

The Agreement in the form of an Exchange of Letters on the provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community for the period from 1 June 2006 to 31 May 2010 is hereby approved on behalf of the Community.

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

Article 2

The Agreement shall apply provisionally from 1 June 2006.

Article 3

The fishing opportunities set out in the Protocol to the Fisheries Partnership Agreement shall be allocated among the Member States as follows:

| Fishing category | Type of vessel | Member State | Licences or quota |
|------------------|----------------------|--------------|-------------------|
| Tuna fishing | Freezer tuna seiners | Spain | 13 |
| | | France | 12 |
| Tuna fishing | Surface longliners | Spain | 13 |
| | | Portugal | 5 |

If licence applications from these Member States do not cover all the fishing opportunities laid down by the Protocol to the Fisheries Partnership Agreement, the Commission may take into consideration licence applications from any other Member State.

Article 4

The Member States whose vessels fish under this Agreement in the form of an Exchange of Letters shall notify the Commission of the quantities of each stock caught within São Tomé and Príncipe's fishing zone in accordance with Commission Regulation (EC) No 500/2001 of 14 March 2001 laying down detailed rules for the application of Council Regulation (EEC) No 2847/93

on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas ⁽¹⁾.

Article 5

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

Done at Brussels, 23 July 2007.

For the Council
The President
L. AMADO

⁽¹⁾ OJ L 73, 15.3.2001, p. 8.

AGREEMENT

in the form of an Exchange of Letters on the provisional application of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community for the period from 1 June 2006 to 31 May 2010

A. Letter from the Government of the Democratic Republic of São Tomé and Príncipe

Sir,

Referring to the Protocol initialled on Thursday 25 May 2006 setting out the fishing opportunities and financial contribution for the period from 1 June 2006 to 31 May 2010, I have the honour to inform you that the Government of the Democratic Republic of São Tomé and Príncipe is willing to apply this Protocol provisionally from 1 June 2006 pending its entry into force in accordance with Article 12 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment of the financial contribution, laid down by Article 2 of the Protocol, must be paid before 15 May 2007.

I should be grateful if you would confirm the agreement of the European Community to such a provisional application.

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

For the Government of São Tomé and Príncipe

B. Letter from the Community

Sir,

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

'Referring to the Protocol initialled on Thursday 25 May 2006 setting out the fishing opportunities and financial contribution for the period from 1 June 2006 to 31 May 2010, I have the honour to inform you that the Government of the Democratic Republic of São Tomé and Príncipe is willing to apply this Protocol provisionally from 1 June 2006 pending its entry into force in accordance with Article 12 thereof, provided that the European Community is prepared to do likewise.

This is on the understanding that the first instalment of the financial contribution, laid down by Article 2 of the Protocol, must be paid before 15 May 2007.'

I am pleased to confirm the agreement of the European Community to a provisional application.

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

On behalf of the European Community

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL DECISION 2007/533/JHA

of 12 June 2007

on the establishment, operation and use of the second generation Schengen Information System (SIS II)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30(1)(a) and (b), 31(1)(a) and (b) and 34(2)(c) thereof,

Having regard to the proposal from the Commission,

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

Whereas:

(1) The Schengen information system (SIS) set up pursuant to the provisions of Title IV of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ⁽²⁾ (the Schengen Convention), and its development, SIS 1+, constitute an essential tool for the application of the provisions of the Schengen *acquis* as integrated into the framework of the European Union.

(2) The development of the second generation of SIS (SIS II) has been entrusted to the Commission pursuant to Council Regulation (EC) No 2424/2001 ⁽³⁾ and Council Decision 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) ⁽⁴⁾. SIS II will replace SIS as created pursuant to the Schengen Convention.

(3) This Decision constitutes the necessary legislative basis for governing SIS II in respect of matters falling within the scope of the Treaty on European Union (the EU Treaty). Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ⁽⁵⁾ constitutes the necessary legislative basis for governing SIS II in respect of matters falling within the scope of the Treaty establishing the European Community (the EC Treaty).

(4) The fact that the legislative basis necessary for governing SIS II consists of separate instruments does not affect the principle that SIS II constitutes one single information system that should operate as such. Certain provisions of these instruments should therefore be identical.

(5) SIS II should constitute a compensatory measure contributing to maintaining a high level of security within the area of freedom, security and justice of the European Union by supporting operational cooperation between police authorities and judicial authorities in criminal matters.

⁽¹⁾ Opinion of 25 October 2006 (not yet published in the Official Journal).

⁽²⁾ OJ L 239, 22.9.2000, p. 19. Convention as amended by Regulation (EC) No 1160/2005 of the European Parliament and of the Council (OJ L 191, 22.7.2005, p. 18).

⁽³⁾ OJ L 328, 13.12.2001, p. 4.

⁽⁴⁾ OJ L 328, 13.12.2001, p. 1.

⁽⁵⁾ OJ L 381, 28.12.2006, p. 4.

- (6) It is necessary to specify the objectives of SIS II, its technical architecture and financing, to lay down rules concerning its operation and use and to define responsibilities, the categories of data to be entered into the system, the purposes for which the data are to be entered, the criteria for their entry, the authorities authorised to access the data, the interlinking of alerts and further rules on data processing and the protection of personal data.
- (7) SIS II is to include a central system (Central SIS II) and national applications. The expenditure involved in the operation of Central SIS II and related communication infrastructure should be charged to the general budget of the European Union.
- (8) It is necessary to establish a manual setting out the detailed rules for the exchange of certain supplementary information concerning the action called for by alerts. National authorities in each Member State should ensure the exchange of this information.
- (9) For a transitional period, the Commission should be responsible for the operational management of Central SIS II and of parts of the communication infrastructure. However, in order to ensure a smooth transition to SIS II, it may delegate some or all of these responsibilities to two national public sector bodies. In the long term, and following an impact assessment, containing a substantive analysis of alternatives from financial, operational and organisational perspective, and legislative proposals from the Commission, a management authority with responsibility for these tasks should be established. The transitional period should last for no more than five years from the date from which this Decision applies.
- (10) SIS II is to contain alerts on persons wanted for arrest for surrender purposes and wanted for arrest for extradition purposes. In addition to alerts, it is appropriate to provide for the exchange of supplementary information which is necessary for the surrender and extradition procedures. In particular, data referred to in Article 8 of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States ⁽¹⁾ should be processed in SIS II.
- (11) It should be possible to add to SIS II a translation of the additional data entered for the purpose of surrender under the European Arrest Warrant and for the purpose of extradition.
- (12) SIS II should contain alerts on missing persons to ensure their protection or to prevent threats, on persons wanted for judicial procedure, on persons and objects for discreet checks or specific checks and on objects for seizure or use as evidence in criminal proceedings.
- (13) Alerts should not be kept in SIS II longer than the time required to fulfil the purposes for which they were supplied. As a general principle, alerts on persons should be automatically erased from SIS II after a period of three years. Alerts on objects entered for discreet checks or specific checks should be automatically erased from the SIS II after a period of five years. Alerts on objects for seizure or use as evidence in criminal proceedings should be automatically erased from SIS II after a period of 10 years. Decisions to keep alerts on persons should be based on a comprehensive individual assessment. Member States should review alerts on persons within the defined period and keep statistics about the number of alerts on persons the retention period of which has been extended.
- (14) SIS II should permit the processing of biometric data in order to assist in the reliable identification of the individuals concerned. In the same perspective, SIS II should also allow for the processing of data concerning individuals whose identity has been misused in order to avoid inconveniences caused by their misidentification, subject to suitable safeguards, in particular the consent of the individual concerned and a strict limitation of the purposes for which such data can be lawfully processed.
- (15) It should be possible for a Member State to add an indication, called a flag, to an alert, to the effect that the action to be taken on the basis of the alert will not be taken on its territory. When alerts are issued for arrest for surrender purposes, nothing in this Decision should be construed so as to derogate from or prevent the application of the provisions contained in the Framework Decision 2002/584/JHA. The decision to add a flag to an alert should be based only on the grounds for refusal contained in that Framework Decision.
- (16) When a flag has been added and the whereabouts of the person wanted for arrest for surrender becomes known, the whereabouts should always be communicated to the issuing judicial authority, which may decide to transmit a European Arrest Warrant to the competent judicial authority in accordance with the provisions of the Framework Decision 2002/584/JHA.
- (17) It should be possible for Member States to establish links between alerts in SIS II. The establishment by a Member State of links between two or more alerts should have no impact on the action to be taken, their retention period or the access rights to the alerts.

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

- (18) Data processed in SIS II in application of this Decision should not be transferred or made available to third countries or to international organisations. However, it is appropriate to strengthen cooperation between the European Union and Interpol by promoting an efficient exchange of passport data. Where personal data is transferred from SIS II to Interpol, these personal data should be subject to an adequate level of protection, guaranteed by an agreement, providing strict safeguards and conditions.
- (19) All Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data. The Convention allows exceptions and restrictions to the rights and obligations it provides, within certain limits. The personal data processed in the context of the implementation of this Decision should be protected in accordance with the principles of the Convention. The principles set out in the Convention should be supplemented or clarified in this Decision where necessary.
- (20) The principles contained in Recommendation R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 regulating the use of personal data in the police sector should be taken into account when personal data is processed by police authorities in application of this Decision.
- (21) The Commission has submitted a proposal to the Council for a Framework Decision on the data protection of personal data processed in the framework of police and judicial cooperation in criminal matters, which should be approved by the end of 2006 and be applied to the personal data which are processed in the framework of the second generation of the Schengen Information System and the related exchange of supplementary information pursuant to this Decision.
- (22) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾ and in particular thereof concerning confidentiality and security of processing apply to the processing of personal data by the Community institutions and bodies when carrying out their responsibilities in the operational management of SIS II in the exercise of activities all or part of which fall within the scope of Community law. Part of the processing of personal data in SIS II falls within the scope of Community law. Consistent and homogeneous application of the rules regarding the protection of individuals' fundamental rights and freedoms with regard to the processing of personal data requires clarification that, when the Commission is processing personal data in application of this Decision, Regulation (EC) No 45/2001 is applicable to it. The principles set out in Regulation (EC) No 45/2001 should be supplemented or clarified in this Decision where necessary.
- (23) In so far as confidentiality is concerned, the relevant provisions of the Staff Regulations of Officials of the European Communities and the conditions of employment of other servants of the European Communities should apply to officials or other servants employed and working in connection with SIS II.
- (24) It is appropriate that national supervisory authorities monitor the lawfulness of the processing of personal data by the Member States, whilst the European Data Protection Supervisor, appointed pursuant to Decision 2004/55/EC of the European Parliament and of the Council of 22 December 2003 appointing the independent supervisory body provided for in Article 286 of the EC Treaty ⁽²⁾, should monitor the activities of the Community institutions and bodies in relation to the processing of personal data in view of the limited tasks of the Community institutions and bodies with regard to the data themselves.
- (25) Both the Member States and the Commission should draw up a security plan in order to facilitate the implementation of security obligations and should cooperate with each other in order to address security issues from a common perspective.
- (26) The provisions of the Convention of 26 July 1995 on the establishment of a European Police Office ⁽³⁾ (hereinafter referred to as the 'Europol Convention') concerning data protection apply to the processing of SIS II data by Europol, including the powers of the Joint Supervisory Body, set up under the Europol Convention, to monitor the activities of Europol and liability for any unlawful processing of personal data by Europol.
- (27) The provisions of Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime ⁽⁴⁾ concerning data protection apply to the processing of SIS II data by Eurojust, including the powers of the Joint Supervisory Body, set up under that Decision, to monitor the activities of Eurojust and liability for any unlawful processing of personal data by Eurojust.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

⁽²⁾ OJ L 12, 17.1.2004, p. 47.

⁽³⁾ OJ C 316, 27.11.1995, p. 2.

⁽⁴⁾ OJ L 63, 6.3.2002, p. 1.

- (28) In order to ensure transparency, a report on the technical functioning of Central SIS II and the communication infrastructure, including its security, and on the exchange of supplementary information should be produced every two years by the Commission or, when it is established, the management authority. An overall evaluation should be issued by the Commission every four years.
- (29) Certain aspects of SIS II such as technical rules on entering data, including data required for entering an alert, updating, deleting and searching data, rules on compatibility and priority of alerts, the adding of flags, links between alerts and exchange of supplementary information cannot owing to their technical nature, level of detail and need for regular updating be covered exhaustively by the provisions of this Decision. Implementing powers in respect of those aspects should therefore be delegated to the Commission. Technical rules on searching alerts should take into account the smooth operation of national applications. Subject to an impact assessment by the Commission, it should be decided to what extent the implementing measures could be the responsibility of the management authority, once it is set up.
- (30) This Decision should define the procedure for the adoption of the measures necessary for its implementation. The procedure for adopting implementing measures under this Decision and Regulation (EC) No 1987/2006 should be the same.
- (31) It is appropriate to lay down transitional provisions in respect of alerts issued in SIS 1+ which are to be transferred to SIS II. Some provisions of the Schengen *acquis* should continue to apply for a limited period of time until the Member States have examined the compatibility of those alerts with the new legal framework. The compatibility of alerts on persons should be examined as a matter of priority. Furthermore, any modification, addition, correction or update of an alert transferred from SIS 1+ to SIS II, as well as any hit on such an alert, should trigger an immediate examination of its compatibility with the provisions of this Decision.
- (32) It is necessary to lay down special provisions regarding the part of the budget earmarked for the operations of SIS which is not part of the general budget of the European Union.
- (33) Since the objectives of the action to be taken, namely the establishment and regulation of a joint information system, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the European Union, the Council may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the EC Treaty and referred to in Article 2 of the EU Treaty.
- In accordance with the principle of proportionality, as set out in Article 5 of the EC Treaty, this Decision does not go beyond what is necessary to achieve those objectives.
- (34) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (35) The United Kingdom is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the EU Treaty and to the EC Treaty, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽¹⁾.
- (36) Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the EU Treaty and to the EC Treaty, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽²⁾.
- (37) This Decision is without prejudice to the arrangements for the United Kingdom and Ireland's partial participation in the Schengen *acquis*, as defined in Decisions 2000/365/EC and 2002/192/EC, respectively.
- (38) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽³⁾, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC ⁽⁴⁾ on certain arrangements for the application of that Agreement.
- (39) An arrangement should be made to allow representatives of Iceland and Norway to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchanges of Letters between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning committees which assist the European Commission in the exercise of its executive powers ⁽⁵⁾, annexed to the abovementioned Agreement.

⁽¹⁾ OJ L 131, 1.6.2000, p. 43.

⁽²⁾ OJ L 64, 7.3.2002, p. 20.

⁽³⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁵⁾ OJ L 176, 10.7.1999, p. 53.

(40) As regards Switzerland, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point G, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC ⁽¹⁾ and 2004/860/EC ⁽²⁾.

(41) An arrangement should be made to allow representatives of Switzerland to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchange of Letters between the Community and Switzerland, annexed to the abovementioned Agreement.

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

(43) This Decision should apply to the United Kingdom, Ireland and Switzerland on dates determined in accordance with the procedures set out in the relevant instruments concerning the application of the Schengen *acquis* to those States,

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1

Establishment and general purpose of SIS II

1. A second generation Schengen Information System (SIS II) is hereby established.

2. The purpose of SIS II shall be, in accordance with this Decision, to ensure a high level of security within the area of freedom, security and justice of the European Union including the

⁽¹⁾ Council Decision 2004/849/EC of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 368, 15.12.2004, p. 26).

⁽²⁾ Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 370, 17.12.2004, p. 78).

maintenance of public security and public policy and the safeguarding of security in the territories of the Member States, and to apply the provisions of Title IV of Part Three of the EC Treaty relating to the movement of persons in their territories, using information communicated via this system.

Article 2

Scope

1. This Decision establishes the conditions and procedures for the entry and processing in SIS II of alerts on persons and objects, the exchange of supplementary information and additional data for the purpose of police and judicial cooperation in criminal matters.

2. This Decision also lays down provisions on the technical architecture of SIS II, the responsibilities of the Member States and of the management authority referred to in Article 15, general data processing, the rights of the persons concerned and liability.

Article 3

Definitions

1. For the purposes of this Decision, the following definitions shall apply:

(a) 'alert' means a set of data entered in SIS II allowing the competent authorities to identify a person or an object with a view to taking specific action;

(b) 'supplementary information' means information not stored in SIS II, but connected to SIS II alerts, which is to be exchanged:

(i) in order to allow Member States to consult or inform each other when entering an alert;

(ii) following a hit in order to allow the appropriate action to be taken;

(iii) when the required action cannot be taken;

(iv) when dealing with the quality of SIS II data;

(v) when dealing with the compatibility and priority of alerts;

(vi) when dealing with rights of access;

(c) 'additional data' means the data stored in SIS II and connected with SIS II alerts which are to be immediately available to the competent authorities where a person in respect of whom data has been entered in SIS II is located as a result of searches made therein;

- (d) 'personal data' means any information relating to an identified or identifiable natural person (data subject); an identifiable person is one who can be identified, directly or indirectly;
- (e) 'processing of personal data' (processing) means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

2. Any reference in this Decision to provisions of the Framework Decision 2002/584/JHA shall be construed as including the corresponding provisions of Agreements concluded between the European Union and third countries on the basis of Articles 24 and 38 of the EU Treaty for the purpose of surrender of persons on the basis of an arrest warrant which provide for the transmission of such an arrest warrant via the Schengen Information System.

Article 4

Technical architecture and ways of operating the SIS II

1. SIS II shall be composed of:
- (a) a central system (Central SIS II) composed of:
- a technical support function ('CS-SIS') containing a database, the 'SIS II database',
 - a uniform national interface (NI-SIS);
- (b) a national system (N.SIS II) in each of the Member States, consisting of the national data systems which communicate with Central SIS II. An N.SIS II may contain a data file (a 'national copy'), containing a complete or partial copy of the SIS II database;
- (c) a communication infrastructure between CS-SIS and NI-SIS (the Communication Infrastructure) that provides an encrypted virtual network dedicated to SIS II data and the exchange of data between SIRENE Bureaux as referred to in Article 7(2).

2. SIS II data shall be entered, updated, deleted and searched via the various N.SIS II systems. A national copy shall be available for the purpose of carrying out automated searches in the territory of each of the Member States using such a copy. It shall not be possible to search the data files of other Member States' N.SIS II.

3. CS-SIS, which performs technical supervision and administration functions, shall be located in Strasbourg (France) and a backup CS-SIS, capable of ensuring all functionalities of the principal CS-SIS in the event of failure of this system, shall be located in Sankt Johann im Pongau (Austria).

4. CS-SIS shall provide the services necessary for the entry and processing of SIS II data, including searches in the SIS II database. For the Member States which use a national copy CS-SIS shall:

- (a) provide on-line update of the national copies;
- (b) ensure synchronisation of and consistency between the national copies and the SIS II database;
- (c) provide the operation for initialisation and restoration of the national copies.

Article 5

Costs

1. The costs of setting up, operating and maintaining Central SIS II and the Communication Infrastructure shall be borne by the general budget of the European Union.

2. These costs shall include work done with respect to CS-SIS that ensures the provision of the services referred to in Article 4(4).

3. The costs of setting up, operating and maintaining each N.SIS II shall be borne by the Member State concerned.

CHAPTER II

RESPONSIBILITIES OF THE MEMBER STATES

Article 6

National systems

Each Member State shall be responsible for setting up, operating and maintaining its N.SIS II and connecting its N.SIS II to NI-SIS.

Article 7

N.SIS II Office and SIRENE Bureau

1. Each Member State shall designate an authority (the N.SIS II Office), which shall have central responsibility for its N.SIS II.

That authority shall be responsible for the smooth operation and security of the N.SIS II, shall ensure the access of the competent authorities to the SIS II and shall take the necessary measures to ensure compliance with the provisions of this Decision.

Each Member State shall transmit its alerts via its N.SIS II Office.

2. Each Member State shall designate the authority which shall ensure the exchange of all supplementary information (the SIRENE Bureau) in accordance with the provisions of the SIRENE Manual, as referred to in Article 8.

Those Bureaux shall also coordinate the verification of the quality of the information entered in SIS II. For those purposes they shall have access to data processed in the SIS II.

3. The Member States shall inform the management authority of their N.SIS II office and of their SIRENE Bureau. The management authority shall publish the list of them together with the list referred to in Article 46(8).

Article 8

Exchange of supplementary information

1. Supplementary information shall be exchanged in accordance with the provisions of the SIRENE Manual and using the Communication Infrastructure. Should the Communication Infrastructure be unavailable, Member States may use other adequately secured technical means for exchanging supplementary information.

2. Supplementary information shall be used only for the purpose for which it was transmitted.

3. Requests for supplementary information made by other Member States shall be answered as soon as possible.

4. Detailed rules for the exchange of supplementary information shall be adopted in accordance with the procedure defined in Article 67 in the form of a manual called the 'SIRENE Manual', without prejudice to the provisions of the instrument setting up the management authority.

Article 9

Technical compliance

1. To ensure the prompt and effective transmission of data, each Member State shall observe, when setting up its N.SIS II, the protocols and technical procedures established to ensure the compatibility of its N-SIS II with CS-SIS. These protocols and technical procedures shall be established in accordance with the procedure referred to in Article 67, without prejudice to the provisions of the instrument setting up the management authority.

2. If a Member State uses a national copy it shall ensure, by means of the services provided by CS-SIS, that data stored in the national copy are, by means of automatic updates referred to in Article 4(4), identical to and consistent with the SIS II database, and that a search in its national copy produces a result equivalent to that of a search in the SIS II database.

Article 10

Security – Member States

1. Each Member State shall, in relation to its N.SIS II, adopt the necessary measures, including a security plan, in order to:

- (a) physically protect data, including by making contingency plans for the protection of critical infrastructure;
- (b) deny unauthorised persons access to data-processing facilities used for processing personal data (facilities access control);
- (c) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
- (e) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);
- (f) ensure that persons authorised to use an automated data-processing system have access only to the data covered by their access authorisation, by means of individual and unique user identities and confidential access modes only (data access control);
- (g) ensure that all authorities with a right of access to SIS II or to the data processing facilities create profiles describing the functions and responsibilities of persons who are authorised to access, enter, update, delete and search the data and make these profiles available to the national supervisory authorities referred to in Article 60 without delay upon their request (personnel profiles)
- (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- (i) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems, when, by whom and for what purpose the data were input (input control);
- (j) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media, in particular by means of appropriate encryption techniques (transport control);
- (k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Decision (self-auditing).

2. Member States shall take measures equivalent to those referred to in paragraph 1 as regards security in respect of the exchange of supplementary information.

Article 11

Confidentiality – Member States

Each Member State shall apply its rules of professional secrecy or other equivalent duties of confidentiality to all persons and bodies required to work with SIS II data and supplementary information, in accordance with its national legislation. This obligation shall also apply after those people leave office or employment or after the termination of the activities of those bodies.

Article 12

Keeping of records at national level

1. Member States not using national copies shall ensure that every access to and all exchanges of personal data within CS-SIS are recorded in their N.SIS II for the purposes of checking whether or not the search is lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of N.SIS II, data integrity and security.

2. Member States using national copies shall ensure that every access to and all exchanges of SIS II data are recorded for the purposes specified in paragraph 1. This does not apply to the processes referred to in Article 4(4).

3. The records shall show, in particular, the history of the alerts, the date and time of the data transmission, the data used to perform a search, a reference to the data transmitted and the name of both the competent authority and the person responsible for processing the data.

4. The records may be used only for the purpose mentioned in paragraph 1 and 2 and shall be deleted at the earliest one year, and at the latest three years, after their creation. The records which include the history of alerts shall be erased one to three years after deletion of the alerts.

5. Records may be kept longer if they are required for monitoring procedures that are already under way.

6. The competent national authorities in charge of checking whether or not searches are lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of the N.SIS II, data integrity and security, shall have access, within the limits of their competence and at their request, to these records for the purpose of fulfilling their duties.

Article 13

Self-monitoring

Member States shall ensure that each authority entitled to access SIS II data takes the measures necessary to comply with this Decision and cooperates, where necessary, with the national supervisory authority.

Article 14

Staff training

Before being authorised to process data stored in SIS II, the staff of the authorities having a right to access SIS II shall receive appropriate training about data-security and data-protection rules and shall be informed of any relevant criminal offences and penalties.

CHAPTER III

RESPONSIBILITIES OF THE MANAGEMENT AUTHORITY

Article 15

Operational management

1. After a transitional period, a management authority (the Management Authority), funded by the general budget of the European Union, shall be responsible for the operational management of Central SIS II. The Management Authority shall ensure, in cooperation with the Member States, that at all times the best available technology, subject to a cost-benefit analysis, is used for Central SIS II.

2. The Management Authority shall also be responsible for the following tasks relating to the Communication Infrastructure:

- (a) supervision;
- (b) security;
- (c) the coordination of relations between the Member States and the provider.

3. The Commission shall be responsible for all other tasks relating to the Communication Infrastructure, in particular:

- (a) tasks relating to implementation of the budget;
- (b) acquisition and renewal;
- (c) contractual matters.

4. During a transitional period before the Management Authority takes up its responsibilities, the Commission shall be responsible for the operational management of Central SIS II. The Commission may delegate that task and tasks relating to implementation of the budget in accordance with the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, to national public-sector bodies, in two different countries.

5. Each national public sector body, as referred to in paragraph 4, must comply in particular with the following selection criteria:

- (a) it must demonstrate that it has a lengthy experience in operating a large-scale information system with the functionalities referred to in Article 4(4);
- (b) it must have considerable expertise in the service and security requirements of an information system with functionalities comparable to those referred to in Article 4(4);
- (c) it must have sufficient and experienced staff with the appropriate professional expertise and linguistic skills to work in an international cooperation environment such as that required by SIS II;
- (d) it must have a secure and custom-built facility infrastructure available, in particular, to backup and guarantee the continuous functioning of large-scale IT systems; and
- (e) its administrative environment must allow it to implement its tasks properly and avoid any conflict of interests.

6. Prior to any such delegation as referred to in paragraph 4 and at regular intervals thereafter, the Commission shall inform the European Parliament and the Council of the terms of the delegation, its precise scope, and the bodies to which tasks are delegated.

7. Where the Commission delegates its responsibility during the transitional period pursuant to paragraph 4, it shall ensure that this delegation fully respects the limits set by the institutional system laid out in the EC Treaty. It shall ensure, in particular, that this delegation does not adversely affect any effective control mechanism under European Union law, whether of the Court of Justice, the Court of Auditors or the European Data Protection Supervisor.

8. Operational management of Central SIS II shall consist of all the tasks necessary to keep Central SIS II functioning 24 hours a day, seven days a week in accordance with this Decision, in particular the maintenance work and technical developments necessary for the smooth running of the system.

Article 16

Security

1. The Management Authority, in relation to Central SIS II and the Commission in relation to the Communication Infrastructure, shall adopt the necessary measures, including of a security plan, in order to:

- (a) physically protect data, including by making contingency plans for the protection of critical infrastructure;
- (b) deny unauthorised persons access to data-processing facilities used for processing personal data (facilities access control);
- (c) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (d) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
- (e) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);
- (f) ensure that persons authorised to use an automated data-processing system have access only to the data covered by their access authorisation by means of individual and unique user identities and confidential access modes only (data access control);
- (g) create profiles describing the functions and responsibilities for persons who are authorised to access the data or the data processing facilities and make these profiles available to the European Data Protection Supervisor referred to in Article 61 without delay upon its request (personnel profiles);
- (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- (i) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems, when and by whom the data were input (input control);
- (j) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media in particular by means of appropriate encryption techniques (transport control);
- (k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Decision (self-auditing).

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

2. The Management Authority shall take measures equivalent to those referred to in paragraph 1 as regards security in respect of the exchange of supplementary information through the Communication Infrastructure.

Article 17

Confidentiality – Management Authority

1. Without prejudice to Article 17 of the Staff Regulations of officials of the European Communities, the Management Authority shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality of comparable standards to those provided in Article 11 in this Decision to all its staff required to work with SIS II data. This obligation shall also apply after those people leave office or employment or after the termination of their activities.

2. The Management Authority shall take measures equivalent to those referred to in paragraph 1 as regards confidentiality in respect of the exchange of supplementary information through the communication infrastructure.

Article 18

Keeping of records at central level

1. The Management Authority shall ensure that every access to and all exchanges of personal data within CS-SIS are recorded for the purposes mentioned in Article 12(1) and (2).

2. The records shall show, in particular, the history of the alerts, the date and time of the data transmitted, the data used to perform searches, the reference to the data transmitted and the name of the competent authority responsible for processing the data.

3. The records may only be used for the purposes mentioned in paragraph 1 and shall be deleted at the earliest one year, and at the latest three years, after their creation. The records which include the history of alerts shall be erased after one to three years after deletion of the alerts.

4. Records may be kept longer if they are required for monitoring procedures that are already underway.

5. The competent authorities in charge of checking whether or not a search is lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of CS-SIS, data integrity and security, shall have access, within the limits of their competence and at their request, to those records for the purpose of fulfilling their tasks.

Article 19

Information campaign

The Commission shall, in cooperation with the national supervisory authorities, and the European Data Protection Supervisor accompany the start of the operation of SIS II with an information campaign informing the public about the objectives, the data stored, the authorities having access and the rights of persons. After its establishment, the Management Authority, in cooperation with the national supervisory authorities and the European Data Protection Supervisor, shall repeat such campaigns regularly. Member States shall, in cooperation with their national supervisory authorities, devise and implement the necessary policies to inform their citizens about SIS II generally.

CHAPTER IV

CATEGORIES OF DATA AND FLAGGING

Article 20

Categories of data

1. Without prejudice to Article 8(1) or the provisions of this Decision providing for the storage of additional data, SIS II shall contain only those categories of data which are supplied by each of the Member States, as required for the purposes laid down in Articles 26, 32, 34, 36 and 38.

2. The categories of data shall be as follows:

- (a) persons in relation to whom an alert has been issued;
- (b) objects referred to in Articles 36 and 38.

3. The information on persons in relation to whom an alert has been issued shall be no more than the following:

- (a) surname(s) and forename(s), name(s) at birth and previously used names and any aliases which may be entered separately;
- (b) any specific, objective, physical characteristics not subject to change;
- (c) place and date of birth;
- (d) sex;
- (e) photographs;
- (f) fingerprints;
- (g) nationality(ies);
- (h) whether the person concerned is armed, violent or has escaped;
- (i) reason for the alert;
- (j) authority issuing the alert;
- (k) a reference to the decision giving rise to the alert;
- (l) action to be taken;

- (m) link(s) to other alerts issued in SIS II pursuant to Article 52;
- (n) the type of offence.

4. The technical rules necessary for entering, updating, deleting and searching the data referred to in paragraphs 2 and 3 shall be established in accordance with the procedure referred to in Article 67, without prejudice to the provisions of the instrument setting up the Management Authority.

5. The technical rules necessary for searching data referred to in paragraph 3 shall be similar for searches in CS-SIS, in national copies and in technical copies, as referred to in Article 46(2).

Article 21

Proportionality

Before issuing an alert, Member States shall determine whether the case is adequate, relevant and important enough to warrant entry of the alert in SIS II.

Article 22

Specific rules for photographs and fingerprints

The use of photographs and fingerprints as referred to in Article 20(3)(e) and (f) shall be used subject to the following provisions:

- (a) photographs and fingerprints shall only be entered following a special quality check to ascertain the fulfilment of a minimum data quality standard. The specification of the special quality check shall be established in accordance with the procedure referred to in Article 67, without prejudice to the provisions of the instrument setting up the Management Authority;
- (b) photographs and fingerprints shall only be used to confirm the identity of a person who has been located as a result of an alphanumeric search made in SIS II.
- (c) as soon as this becomes technically possible, fingerprints may also be used to identify a person on the basis of his biometric identifier. Before this functionality is implemented in SIS II, the Commission shall present a report on the availability and readiness of the required technology, on which the European Parliament shall be consulted.

Article 23

Requirement for an alert to be entered

1. Alerts on persons may not be entered without the data referred to in Article 20(3)(a), (d), (l) as well as, where applicable, (k).
2. When available, all other data listed in Article 20(3) shall also be entered.

Article 24

General provisions on flagging

1. Where a Member State considers that to give effect to an alert entered in accordance with Articles 26, 32 or 36 is incompatible with its national law, its international obligations or essential national interests, it may subsequently require that a flag be added to the alert to the effect that the action to be taken on the basis of the alert will not be taken in its territory. The flag shall be added by the SIRENE Bureau of the Member State which entered the alert.

2. In order to enable Member States to require that a flag be added to an alert issued in accordance with Article 26, all Member States shall be notified automatically about any new alert of that category by the exchange of supplementary information.

3. If in particularly urgent and serious cases, a Member State issuing an alert requests the execution of the action, the Member State executing the alert shall examine whether it is able to allow the flag added at its behest to be withdrawn. If the Member State executing the alert is able to do so, it shall take the necessary steps to ensure that the action to be taken can be carried out immediately.

Article 25

Flagging related to alerts for arrest for surrender purposes

1. Where Framework Decision 2002/584/JHA applies, a flag preventing arrest shall only be added to an alert for arrest for surrender purposes where the competent judicial authority under national law for the execution of a European Arrest Warrant has refused its execution on the basis of a ground for non-execution and where the addition of the flag has been required.

2. However, at the behest of a competent judicial authority under national law, either on the basis of a general instruction or in a specific case, a flag may also be required to be added to an alert for arrest for surrender purposes if it is obvious that the execution of the European Arrest Warrant will have to be refused.

CHAPTER V

ALERTS IN RESPECT OF PERSONS WANTED FOR ARREST FOR SURRENDER OR EXTRADITION PURPOSES

Article 26

Objectives and conditions for issuing alerts

1. Data on persons wanted for arrest for surrender purposes on the basis of a European Arrest Warrant or wanted for arrest for extradition purposes shall be entered at the request of the judicial authority of the issuing Member State.

2. Data on persons wanted for arrest for surrender purposes shall also be entered on the basis of arrest warrants issued in accordance with Agreements concluded between the European Union and third countries on the basis of Articles 24 and 38 of the EU Treaty for the purpose of surrender of persons on the basis of an arrest warrant, which provide for the transmission of such an arrest warrant via the Schengen Information System.

Article 27

Additional data on persons wanted for arrest for surrender purposes

1. If a person is wanted for arrest for surrender purposes on the basis of a European Arrest Warrant the issuing Member State shall enter in SIS II a copy of the original of the European Arrest Warrant.

2. The issuing Member State may enter a copy of a translation of the European Arrest Warrant in one or more other official languages of the institutions of the European Union.

Article 28

Supplementary information on persons wanted for arrest for surrender purposes

The Member State which entered the alert in SIS II for arrest for surrender purposes shall communicate the information referred to in Article 8(1) of Framework Decision 2002/584/JHA to all Member States through the exchange of supplementary information.

Article 29

Supplementary information on persons wanted for arrest for extradition purposes

1. The Member State which entered the alert into SIS II for extradition purposes shall communicate the following data to all Member States through the exchange of supplementary information to all Member States:

- (a) the authority which issued the request for arrest;
- (b) whether there is an arrest warrant or a document having the same legal effect, or an enforceable judgment;
- (c) the nature and legal classification of the offence;
- (d) a description of the circumstances in which the offence was committed, including the time, place and the degree of participation in the offence by the person for whom the alert has been issued;
- (e) in so far as possible, the consequences of the offence;
- (f) any other information useful or necessary for the execution of the alert.

2. The data mentioned in paragraph 1 shall not be communicated where the data referred to in Articles 27 or 28 have already been provided and are considered sufficient for the execution of the alert by the Member State concerned.

Article 30

Conversion of alerts on persons wanted for arrest for surrender purposes or extradition purposes

If an arrest cannot be made, either because a requested Member State refuses in accordance with the procedures on flagging set out in Articles 24 or 25, or because, in the case of an alert for arrest for extradition purposes, an investigation has not been completed, the requested Member State must regard the alert as being an alert for the purposes of communicating the whereabouts of the person concerned.

Article 31

Execution of action based on an alert on a person wanted for arrest with a view to surrender or extradition

1. An alert entered in SIS II in accordance with Article 26 in conjunction with the additional data referred to in Article 27, shall constitute and have the same effect as a European Arrest Warrant issued in accordance with Framework Decision 2002/584/JHA where this Framework Decision applies.

2. Where Framework Decision 2002/584/JHA does not apply, an alert entered in SIS II in accordance with Articles 26 and 29 shall have the same legal force as a request for provisional arrest under Article 16 of the European Convention on Extradition of 13 December 1957 or Article 15 of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962.

CHAPTER VI

ALERTS ON MISSING PERSONS

Article 32

Objectives and conditions for issuing alerts

1. Data on missing persons who need to be placed under protection and/or whose whereabouts need to be ascertained shall be entered in SIS II at the request of the competent authority of the Member State issuing the alert.

2. The following categories of missing persons may be entered:

- (a) missing persons who need to be placed under protection
 - (i) for their own protection;
 - (ii) in order to prevent threats;
- (b) missing persons who do not need to be placed under protection.

3. Paragraph 2(a) shall apply only to persons who must be interned following a decision by a competent authority.

4. Paragraphs 1, 2 and 3 shall apply in particular to minors.

5. Member States shall ensure that the data entered in SIS II indicate which of the categories mentioned in paragraph 2 the missing person falls into.

Article 33

Execution of action based on an alert

1. Where a person as referred to in Article 32 is located, the competent authorities shall, subject to paragraph 2, communicate his whereabouts to the Member State issuing the alert. They may, in the cases referred to in Article 32(2)(a) move the person to a safe place in order to prevent him from continuing his journey, if so authorised by national law.

2. The communication, other than between the competent authorities, of data on a missing person who has been located and who is of age shall be subject to that person's consent. However, the competent authorities may communicate the fact that the alert has been erased because the person has been located to the person who reported the person missing.

CHAPTER VII

ALERTS ON PERSONS SOUGHT TO ASSIST WITH A JUDICIAL PROCEDURE

Article 34

Objectives and conditions for issuing alerts

For the purposes of communicating their place of residence or domicile Member States shall, at the request of a competent authority, enter in SIS II data on:

- (a) witnesses;
- (b) persons summoned or persons sought to be summoned to appear before the judicial authorities in connection with criminal proceedings in order to account for acts for which they are being prosecuted;
- (c) persons who are to be served with a criminal judgment or other documents in connection with criminal proceedings in order to account for acts for which they are being prosecuted;
- (d) persons who are to be served with a summons to report in order to serve a penalty involving deprivation of liberty.

Article 35

Execution of the action based on an alert

Requested information shall be communicated to the requesting Member State through the exchange of supplementary information.

CHAPTER VIII

ALERTS ON PERSONS AND OBJECTS FOR DISCREET CHECKS OR SPECIFIC CHECKS

Article 36

Objectives and conditions for issuing alerts

1. Data on persons or vehicles, boats, aircrafts and containers shall be entered in accordance with the national law of the Member State issuing the alert, for the purposes of discreet checks or specific checks in accordance with Article 37(4).

2. Such an alert may be issued for the purposes of prosecuting criminal offences and for the prevention of threats to public security:

- (a) where there is clear indication that a person intends to commit or is committing a serious criminal offence, such as the offences referred to in Article 2(2) of the Framework Decision 2002/584/JHA; or
- (b) where an overall assessment of a person, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit serious criminal offences in the future, such as the offences referred to in Article 2(2) of the Framework Decision 2002/584/JHA.

3. In addition, an alert may be issued in accordance with national law, at the request of the authorities responsible for national security, where there is concrete indication that the information referred to in Article 37(1) is necessary in order to prevent a serious threat by the person concerned or other serious threats to internal or external national security. The Member State issuing the alert pursuant to this paragraph shall inform the other Member States thereof. Each Member State shall determine to which authorities this information shall be transmitted.

4. Alerts on vehicles, boats, aircrafts and containers may be issued where there is a clear indication that they are connected with the serious criminal offences referred to in paragraph 2 or the serious threats referred to in paragraph 3.

Article 37

Execution of the action based on an alert

1. For the purposes of discreet checks or specific checks, all or some of the following information shall be collected and communicated to the authority issuing the alert when border control or other police and customs checks are carried out within a Member State:

- (a) the fact that the person for whom, or the vehicle, boat, aircraft or container, for which an alert has been issued, has been located;
- (b) the place, time or reason for the check;

- (c) the route and destination of the journey;
- (d) the persons accompanying the persons concerned or the occupants of the vehicle, boat or aircraft who can reasonably be expected to be associated to the persons concerned;
- (e) the vehicle, boat, aircraft or container used;
- (f) objects carried;
- (g) the circumstances under which the person or the vehicle, boat, aircraft or container was located.

2. The information referred to in paragraph 1 shall be communicated through the exchange of supplementary information.

3. For the collection of the information referred to in paragraph 1, Member States shall take the necessary steps not to jeopardise the discreet nature of the check.

4. During specific checks, persons, vehicles, boats, aircraft, containers and objects carried, may be searched in accordance with national law for the purposes referred to in Article 36. If specific checks are not authorised under the law of a Member State, they shall automatically be replaced, in that Member State, by discreet checks.

CHAPTER IX

ALERTS ON OBJECTS FOR SEIZURE OR USE AS EVIDENCE IN CRIMINAL PROCEEDINGS

Article 38

Objectives and conditions for issuing alerts

1. Data on objects sought for the purposes of seizure or use as evidence in criminal proceedings shall be entered in SIS II.
2. The following categories of readily identifiable objects shall be entered:
 - (a) motor vehicles with a cylinder capacity exceeding 50cc, boats and aircrafts;
 - (b) trailers with an unladen weight exceeding 750 kg, caravans, industrial equipment, outboard engines and containers;
 - (c) firearms;
 - (d) blank official documents which have been stolen, misappropriated or lost;
 - (e) issued identity papers such as passports, identity cards, driving licenses, residence permits and travel documents which have been stolen, misappropriated, lost or invalidated;

- (f) vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated;
- (g) banknotes (registered notes);
- (h) securities and means of payment such as cheques, credit cards, bonds, stocks and shares which have been stolen, misappropriated, lost or invalidated.

3. The technical rules necessary for entering, updating, deleting and searching the data referred to in paragraph 2 shall be established in accordance with the procedure referred to in Article 67, without prejudice to the provisions of the instrument setting up the Management Authority.

Article 39

Execution of the action based on an alert

1. If a search brings to light an alert for an object which has been located, the authority which matched the two items of data shall contact the authority which issued the alert in order to agree on the measures to be taken. For this purpose, personal data may also be communicated in accordance with this Decision.

2. The information referred to in paragraph 1 shall be communicated through the exchange of supplementary information.

3. The Member State which located the object shall take measures in accordance with national law.

CHAPTER X

RIGHT TO ACCESS AND RETENTION OF ALERTS

Article 40

Authorities having a right to access alerts

1. Access to data entered in SIS II and the right to search such data directly or in a copy of SIS II data shall be reserved exclusively to the authorities responsible for:

- (a) border control, in accordance with Regulation (EC) No 562/2006 of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁽¹⁾;
- (b) other police and customs checks carried out within the Member State concerned, the coordination of such checks by designated authorities.

2. However, the right to access data entered in SIS II and the right to search such data directly may also be exercised by national judicial authorities, including those responsible for the initiation of public prosecutions in criminal proceedings and for judicial inquiries prior to charge, in the performance of their tasks, as provided for in national legislation, and by their coordinating authorities.

⁽¹⁾ OJ L 105, 13.4.2006, p. 1.

3. The authorities referred to in this Article shall be included in the list referred to in Article 46(8).

Article 41

Access to SIS II data by Europol

1. The European Police Office (Europol) shall within its mandate have the right to access and search directly, data entered into SIS II in accordance with Articles 26, 36 and 38.

2. Where a search by Europol reveals the existence of an alert in SIS II, Europol shall inform, via the channels defined by the Europol Convention the Member State which issued the alert thereof.

3. Use of information obtained from a search in the SIS II is subject to the consent of the Member State concerned. If the Member State allows the use of such information, the handling thereof shall be governed by the Europol Convention. Europol may only communicate such information to third countries and third bodies with the consent of the Member State concerned.

4. Europol may request further information from the Member State concerned in accordance with the provisions of the Europol Convention.

5. Europol shall:

- (a) record every access and search made by it, in accordance with the provisions of Article 12;
- (b) without prejudice to paragraphs 3 and 4, not connect parts of SIS II nor transfer the data contained therein to which it has access to any computer system for data collection and processing operated by or at Europol nor download or otherwise copy any part of SIS II;
- (c) limit access to data entered in SIS II to specifically authorised staff of Europol;
- (d) adopt and apply measures provided for in Articles 10 and 11;
- (e) allow the Joint Supervisory Body, set up under Article 24 of the Europol Convention, to review the activities of Europol in the exercise of its right to access and search data entered in SIS II.

Article 42

Access to SIS II data by Eurojust

1. The national members of Eurojust and their assistants shall, within their mandate, have the right to access and search data entered in SIS II, in accordance with Articles 26, 32, 34 and 38.

2. Where a search by a national member of Eurojust reveals the existence of an alert in SIS II, he shall inform the Member State having issued the alert thereof. Any communication of information obtained from such a search may only be communicated to third countries and third bodies with the consent of the Member State which issued the alert.

3. Nothing in this Article shall be interpreted as affecting the provisions of Decision 2002/187/JHA concerning data protection and the liability for any unauthorised or incorrect processing of such data by national members of Eurojust or their assistants, or as affecting the powers of the Joint Supervisory Body set up pursuant to that Decision.

4. Every access and search made by a national member of Eurojust or an assistant shall be recorded in accordance with the provisions of Article 12 and every use made by them of data accessed by them shall be registered.

5. No parts of SIS II shall be connected nor shall the data contained therein to which the national members or their assistants have access be transferred to any computer system for data collection and processing operated by or at Eurojust nor shall any part of SIS II be downloaded.

6. Access to data entered in SIS II shall be limited to the national members and their assistants and shall not be extended to Eurojust staff.

7. Measures to ensure security and confidentiality as provided for in Articles 10 and 11 shall be adopted and applied.

Article 43

Scope of access

Users, including Europol, the national members of Eurojust and their assistants, may only access data which they require for the performance of their tasks.

Article 44

Retention period of alerts on persons

1. Alerts on persons entered in SIS II pursuant to this Decision shall be kept only for the time required to achieve the purposes for which they were entered.

2. A Member State issuing an alert shall, within three years of its entry into SIS II, review the need to keep it. The period shall be one year in the case of alerts on persons pursuant to Article 36.

3. Each Member State shall, where appropriate, set shorter review periods in accordance with its national law.

4. Within the review period, the Member State issuing the alert may, following a comprehensive individual assessment, which shall be recorded, decide to keep the alert longer, should this prove necessary for the purposes for which the alert was issued. In such a case paragraph 2 shall apply also to the extension. Any extension of an alert shall be communicated to CS-SIS.

5. Alerts shall automatically be erased after the review period referred to in paragraph 2 except where the Member State issuing the alert has communicated the extension of the alert to CS-SIS pursuant to paragraph 4. CS-SIS shall automatically inform the Member States of the scheduled deletion of data from the system four months in advance.

6. Member States shall keep statistics about the number of alerts the retention period of which has been extended in accordance with paragraph 4.

Article 45

Retention period of alerts on objects

1. Alerts on objects entered in SIS II pursuant to this Decision shall be kept only for the time required to achieve the purposes for which they were entered.

2. Alerts on objects entered in accordance with Article 36 shall be kept for a maximum of five years.

3. Alerts on objects entered in accordance with Article 38 shall be kept for a maximum of 10 years.

4. The retention periods referred to in paragraphs 2 and 3 may be extended should this prove necessary for the purposes for which the alert was issued. In such a case, paragraphs 2 and 3 shall apply also to the extension.

CHAPTER XI

GENERAL DATA PROCESSING RULES

Article 46

Processing of SIS II data

1. The Member States may process the data referred to in Articles 20, 26, 32, 34, 36 and 38 only for the purposes laid down for each category of alert referred to in those Articles.

2. Data may only be copied for technical purposes, provided that such copying is necessary in order for the authorities referred to in Article 40 to carry out a direct search. The provisions of this Decision shall apply to such copies. Alerts issued by one Member State may not be copied from its N.SIS II into other national data files.

3. Technical copies, as referred to in paragraph 2, which lead to off-line databases may be retained for a period not exceeding 48 hours. That period may be extended in an emergency until the emergency comes to an end.

Member States shall keep an up-to-date inventory of such copies, make this inventory available to their national supervisory authority, and ensure that the provisions of this Decision, in particular those of Article 10, are applied in respect of such copies.

4. Access to data shall only be authorised within the limits of the competence of the national authorities referred to in Article 40 and to duly authorised staff.

5. With regard to the alerts laid down in Articles 26, 32, 34, 36 and 38 of this Decision, any processing of information contained therein for purposes other than those for which it was entered in SIS II must be linked with a specific case and justified by the need to prevent an imminent serious threat to public policy and public security, on serious grounds of national security or for the purposes of preventing a serious criminal offence. Prior authorisation from the Member State issuing the alert must be obtained for this purpose.

6. Data may not be used for administrative purposes.

7. Any use of data which does not comply with paragraphs 1 to 6 shall be considered as misuse under the national law of each Member State.

8. Each Member State shall send to the Management Authority a list of its competent authorities which are authorised to search directly the data contained in SIS II pursuant to this Decision, as well as any changes to the list. The list shall specify, for each authority, which data it may search and for what purposes. The Management Authority shall ensure the annual publication of the list in the *Official Journal of the European Union*.

9. In so far as European Union law does not lay down specific provisions, the law of each Member State shall apply to data entered in its N.SIS II.

Article 47

SIS II data and national files

1. Article 46(2) shall not prejudice the right of a Member State to keep in its national files SIS II data in connection with which action has been taken on its territory. Such data shall be kept in national files for a maximum period of three years, except if specific provisions in national law provide for a longer retention period.

2. Article 46(2) shall not prejudice the right of a Member State to keep in its national files data contained in a particular alert issued in SIS II by that Member State.

*Article 48***Information in case of non-execution of alert**

If a requested action cannot be performed, the requested Member State shall immediately inform the Member State issuing the alert.

*Article 49***Quality of the data processed in SIS II**

1. A Member State issuing an alert shall be responsible for ensuring that the data are accurate, up-to-date and entered in SIS II lawfully.

2. Only the Member State issuing an alert shall be authorised to modify, add to, correct, update or delete data which it has entered.

3. If a Member State other than that which issued an alert has evidence suggesting that an item of data is factually incorrect or has been unlawfully stored, it shall, through the exchange of supplementary information, inform the Member State that issued the alert thereof at the earliest opportunity and not later than 10 days after the said evidence has come to its attention. The Member State that issued the alert shall check the communication and, if necessary, correct or delete the item in question without delay.

4. If the Member States are unable to reach agreement within two months, the Member State which did not issue the alert shall submit the matter to the European Data Protection Supervisor who shall, jointly with the national supervisory authorities concerned, act as mediator.

5. The Member States shall exchange supplementary information if a person complains that he is not the person wanted by an alert. If the outcome of the check is that there are in fact two different persons the complainant shall be informed of the provisions of Article 51.

6. Where a person is already the subject of an alert in SIS II, a Member State which enters a further alert shall reach agreement on the entry of the alert with the Member State which entered the first alert. The agreement shall be reached on the basis of the exchange of supplementary information.

*Article 50***Distinguishing between persons with similar characteristics**

Where it becomes apparent, when a new alert is entered, that there is already a person in SIS II with the same identity description element, the following procedure shall be followed:

(a) the SIRENE Bureau shall contact the requesting authority to clarify whether or not the alert is on the same person;

(b) if the cross-check reveals that the subject of the new alert and the person already in SIS II are indeed one and the same, the SIRENE Bureau shall apply the procedure for entering multiple alerts as referred to in Article 49(6). If the outcome of the check is that there are in fact two different persons, the SIRENE Bureau shall approve the request for entering the second alert by adding the necessary elements to avoid any misidentifications.

*Article 51***Additional data for the purpose of dealing with misused identities**

1. Where confusion may arise between the person actually intended as the subject of an alert and a person whose identity has been misused, the Member State which entered the alert shall, subject to that person's explicit consent, add data relating to the latter to the alert in order to avoid the negative consequences of misidentification.

2. Data relating to a person whose identity has been misused shall be used only for the following purposes:

(a) to allow the competent authority to distinguish the person whose identity has been misused from the person actually intended as the subject of the alert;

(b) to allow the person whose identity has been misused to prove his identity and to establish that his identity has been misused.

3. For the purpose of this Article, no more than the following personal data may be entered and further processed in SIS II:

(a) surname(s) and forename(s), name(s) at birth and previously used names and any aliases possibly entered separately;

(b) any specific objective and physical characteristic not subject to change;

(c) place and date of birth;

(d) sex;

(e) photographs;

(f) fingerprints;

(g) nationality(ies);

(h) number(s) of identity paper(s) and date of issue.

4. The technical rules necessary for entering and further processing the data referred to in paragraph 3 shall be established in accordance with the procedure referred to in Article 67, without prejudice to the provisions of the instrument setting up the Management Authority.

5. The data referred to in paragraph 3 shall be erased at the same time as the corresponding alert or earlier if the person so requests.

6. Only the authorities having a right of access to the corresponding alert may access the data referred to in paragraph 3. They may do so for the sole purpose of avoiding misidentification.

Article 52

Links between alerts

1. A Member State may create a link between alerts it enters in SIS II. The effect of such a link shall be to establish a relationship between two or more alerts.

2. The creation of a link shall not affect the specific action to be taken on the basis of each linked alert or the retention period of each of the linked alerts.

3. The creation of a link shall not affect the rights of access provided for in this Decision. Authorities with no right of access to certain categories of alerts shall not be able to see the link to an alert to which they do not have access.

4. A Member State shall create a link between alerts only when there is a clear operational need.

5. Links may be created by a Member State in accordance with its national legislation provided that the principles outlined in the present Article are respected.

6. Where a Member State considers that the creation by another Member State of a link between alerts is incompatible with its national law or international obligations, it may take the necessary measures to ensure that there can be no access to the link from its national territory or by its authorities located outside its territory.

7. The technical rules for linking alerts shall be adopted in accordance with the procedure defined in Article 67, without prejudice to the provisions of the instrument setting up the Management Authority.

Article 53

Purpose and retention period of supplementary information

1. Member States shall keep a reference to the decisions giving rise to an alert at the SIRENE Bureau to support the exchange of supplementary information.

2. Personal data held in files by the SIRENE Bureau as a result of information exchanged shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be deleted at the latest one year after the related alert has been deleted from SIS II.

3. Paragraph 2 shall not prejudice the right of a Member State to keep in national files data relating to a particular alert which that Member State has issued or to an alert in connection with which action has been taken on its territory. The period for which such data may be held in such files shall be governed by national law.

Article 54

Transfer of personal data to third parties

Data processed in SIS II pursuant to this Decision shall not be transferred or made available to third countries or to international organisations.

Article 55

Exchange of data on stolen, misappropriated, lost or invalidated passports with Interpol

1. By way of derogation from Article 54, the passport number, country of issuance and the document type of stolen, misappropriated, lost or invalidated passports entered in SIS II may be exchanged with members of Interpol by establishing a connection between SIS II and the Interpol database on stolen or missing travel documents, subject to the conclusion of an Agreement between Interpol and the European Union. The Agreement shall provide that the transmission of data entered by a Member State shall be subject to the consent of that Member State.

2. The Agreement referred to in paragraph 1 shall foresee that the data shared shall only be accessible to members of Interpol from countries that ensure an adequate level of protection of personal data. Before concluding this Agreement, the Council shall seek the opinion of the Commission on the adequacy of the level of protection of personal data and respect of fundamental rights and liberties regarding the automatic processing of personal data by Interpol and by countries which have delegated members to Interpol.

3. The Agreement referred to in paragraph 1 may also provide for access through SIS II for the Member States to data from the Interpol database on stolen or missing travel documents, in accordance with the relevant provisions of this Decision governing alerts on stolen, misappropriated, lost and invalidated passports entered in SIS II.

CHAPTER XII

DATA PROTECTION*Article 56***Processing of sensitive categories of data**

Processing of the categories of data listed in the first sentence of Article 6 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, shall be prohibited.

*Article 57***Application of the Council of Europe Data Protection Convention**

Personal data processed in application of this Decision shall be protected in accordance with the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, and subsequent amendments thereto.

*Article 58***Right of access, correction of inaccurate data and deletion of unlawfully stored data**

1. The right of persons to have access to data relating to them entered in SIS II in accordance with this Decision shall be exercised in accordance with the law of the Member State before which they invoke that right.

2. If national law so provides, the national supervisory authority shall decide whether information is to be communicated and by what procedures.

3. A Member State other than that which has issued an alert may communicate information concerning such data only if it first gives the Member State issuing the alert an opportunity to state its position. This shall be done through the exchange of supplementary information.

4. Information shall not be communicated to the data subject if this is indispensable for the performance of a lawful task in connection with an alert or for the protection of the rights and freedoms of third parties.

5. Any person has the right to have factually inaccurate data relating to him corrected or unlawfully stored data relating to him deleted.

6. The individual concerned shall be informed as soon as possible and in any event not later than 60 days from the date on which he applies for access or sooner if national law so provides.

7. The individual shall be informed about the follow-up given to the exercise of his rights of correction and deletion as soon as possible and in any event not later than three months from the date on which he applies for correction or deletion or sooner if national law so provides.

*Article 59***Remedies**

1. Any person may bring an action before the courts or the authority competent under the law of any Member State to access, correct, delete or obtain information or to obtain compensation in connection with an alert relating to him.

2. The Member States undertake mutually to enforce final decisions handed down by the courts or authorities referred to in paragraph 1, without prejudice to the provisions of Article 64.

3. The rules on remedies provided for in this Article shall be evaluated by the Commission by 23 August 2009.

*Article 60***Supervision of N.SIS II**

1. Each Member State shall ensure that an independent authority (the national supervisory authority) monitors independently the lawfulness of the processing of SIS II personal data on their territory and its transmission from their territory, and the exchange and further processing of supplementary information.

2. The national supervisory authority shall ensure that an audit of the data processing operations in its N.SIS II is carried out in accordance with international auditing standards at least every four years.

3. Member States shall ensure that their national supervisory authority has sufficient resources to fulfil the tasks entrusted to it under this Decision.

*Article 61***Supervision of the Management Authority**

1. The European Data Protection Supervisor shall check that the personal data processing activities of the Management Authority are carried out in accordance with this Decision. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 shall apply accordingly.

2. The European Data Protection Supervisor shall ensure that an audit of the Management Authority's personal data processing activities is carried out in accordance with international auditing standards at least every four years. A report of such audit shall be sent to the European Parliament, the Council, the Management Authority, the Commission and the National Supervisory Authorities. The Management Authority shall be given an opportunity to make comments before the report is adopted.

*Article 62***Cooperation between national supervisory authorities and the European Data Protection Supervisor**

1. The national supervisory authorities and the European Data Protection Supervisor, each acting within the scope of its respective competences, shall cooperate actively in the framework of their responsibilities and shall ensure coordinated supervision of SIS II.

2. They shall, each acting within the scope of its respective competences, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Decision, study problems with the exercise of independent supervision or in the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.

3. The national supervisory authorities and the European Data Protection Supervisor shall meet for that purpose at least twice a year. The costs and servicing of these meetings shall be for the account of the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary. A joint report of activities shall be sent to the European Parliament, the Council, the Commission and the Management Authority every two years.

*Article 63***Data protection during the transitional period**

Where the Commission delegates its responsibilities during the transitional period to another body or bodies, pursuant to Article 15(4), it shall ensure that the European Data Protection Supervisor has the right and is able to fully exercise his tasks, including carrying out on-the-spot checks and to exercise any other powers conferred on him by Article 47 of Regulation (EC) No 45/2001.

CHAPTER XIII

LIABILITY AND PENALTIES*Article 64***Liability**

1. Each Member State shall be liable in accordance with its national law for any damage caused to a person through the use of N.SIS II. This shall also apply to damage caused by the Member State which issued the alert, where the latter entered factually inaccurate data or stored data unlawfully.

2. If the Member State against which an action is brought is not the Member State issuing the alert, the latter shall be required to reimburse, on request, the sums paid out as compensation unless the use of data by the Member State requesting reimbursement infringes this Decision.

3. If any failure by a Member State to comply with its obligations under this Decision causes damage to SIS II, that Member State shall be held liable for such damage, unless and in so far as the Management Authority or another Member States participating in SIS II failed to take reasonable steps to prevent the damage from occurring or to minimise its impact.

*Article 65***Penalties**

Member States shall ensure that any misuse of data entered in SIS II or any exchange of supplementary information contrary to this Decision is subject to effective, proportionate and dissuasive penalties in accordance with national law.

CHAPTER XIV

FINAL PROVISIONS*Article 66***Monitoring and statistics**

1. The Management Authority shall ensure that procedures are in place to monitor the functioning of SIS II against objectives, relating to output, cost-effectiveness, security and quality of service.

2. For the purposes of technical maintenance, reporting and statistics, the Management Authority shall have access to the necessary information relating to the processing operations performed in Central SIS II.

3. Each year the Management Authority shall publish statistics showing the number of records per category of alert, the number of hits per category of alert and how many times SIS II was accessed, in total and for each Member State.

4. Two years after SIS II is brought into operation and every two years thereafter, the Management Authority shall submit to the European Parliament and the Council a report on the technical functioning of Central SIS II and the Communication Infrastructure, including the security thereof, and the bilateral and multilateral exchange of supplementary information between Member States.

5. Three years after SIS II is brought into operation and every four years thereafter, the Commission shall produce an overall evaluation of Central SIS II and the bilateral and multilateral exchange of supplementary information between Member States. This overall evaluation shall include an examination of results achieved against objectives, and an assessment of the continuing validity of the underlying rationale, the application of this Decision in respect of Central SIS II, the security of Central SIS II and any implications for future operations. The Commission shall transmit the evaluation to the European Parliament and the Council.

6. Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports referred to in paragraphs 3, 4 and 5.

7. The Management Authority shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5.

Article 67

Regulatory Committee

1. Where reference is made to this Article, the Commission shall be assisted by a regulatory Committee composed of the representatives of the Member States and chaired by the representative of the Commission. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chair may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the EC Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chair shall not vote.

2. The Committee shall adopt its rules of procedure on a proposal made by the Chair on the basis of standard rules of procedure which have been published in the *Official Journal of the European Union*.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee. If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken.

4. The Council may act by qualified majority on the proposal, within a period of two months from the date of referral to the Council. If within that period the Council has indicated by qualified majority that it opposes the proposal, the Commission shall re-examine it. It may submit an amended proposal to the Council, re-submit its proposal or present a legislative proposal. If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.

5. The Committee referred to in paragraph 1 shall exercise its function from 23 August 2007.

Article 68

Amendment of the provisions of the Schengen *acquis*

1. For the purposes of matters falling within the scope of the EU Treaty, this Decision shall replace on the date referred to in Article 71(2) the provisions of Articles 64 and 92 to 119 of the Schengen Convention, with the exception of Article 102 A thereof.

2. For the purposes of matters falling within the scope of the EU Treaty, this Decision shall replace, on the date referred to in

Article 71(2), the following provisions of the Schengen *acquis* implementing those Articles ⁽¹⁾:

- (a) Decision of the Executive Committee of 14 December 1993 on the Financial Regulation on the costs of installing and operating the Schengen information system (C.SIS) (SCH/Com-ex (93) 16);
- (b) Decision of the Executive Committee of 7 October 1997 on the development of the SIS (SCH/Com-ex (97) 24);
- (c) Decision of the Executive Committee of 15 December 1997 amending the Financial Regulation on C.SIS (SCH/Com-ex (97) 35);
- (d) Decision of the Executive Committee of 21 April 1998 on C.SIS with 15/18 connections (SCH/Com-ex (98) 11);
- (e) Decision of the Executive Committee of 25 April 1997 on awarding the contract for the SIS II Preliminary Study (SCH/Com-ex (97) 2 rev. 2);
- (f) Decision of the Executive Committee of 28 April 1999 on C.SIS installation expenditure (SCH/Com-ex (99) 4);
- (g) Decision of the Executive Committee of 28 April 1999 on updating the SIRENE Manual (SCH/Com-ex (99) 5);
- (h) Declaration of the Executive Committee of 18 April 1996 defining the concept of alien (SCH/Com-ex (96) decl. 5);
- (i) Declaration of the Executive Committee of 28 April 1999 on the structure of SIS (SCH/Com-ex (99) decl. 2 rev.);
- (j) Decision of the Executive Committee of 7 October 1997 on contributions from Norway and Iceland to the costs of installing and operating of the C.SIS (SCH/Com-ex (97) 18).

3. For the purposes of matters falling within the scope of the EU Treaty, references to the replaced Articles of the Schengen Convention and relevant provisions of the Schengen *acquis* implementing those Articles shall be construed as references to this Decision.

Article 69

Repeal

Decision 2004/201/JHA, Decision 2005/211/JHA, Decision 2005/719/JHA, Decision 2005/727/JHA, Decision 2006/228/JHA, Decision 2006/229/JHA, and Decision 2006/631/JHA are repealed on the date referred to in Article 71(2).

⁽¹⁾ OJ L 239, 22.9.2000, p. 439.

Article 70

Transitional period and budget

1. Alerts shall be transferred from SIS 1+ to SIS II. The Member States shall ensure, giving priority to alerts on persons, that the contents of the alerts that are transferred from SIS 1+ to SIS II satisfy the provisions of this Decision as soon as possible and within three years after the date referred to in Article 71(2) at the latest. During this transitional period, the Member States may continue to apply the provisions of Articles 94, 95, and 97-100 of the Schengen Convention to the contents of the alerts that are transferred from SIS 1+ to SIS II subject to the following rules:

- (a) in the event of a modification of, an addition to or a correction or update of the content of an alert transferred from SIS 1+ to SIS II, the Member States shall ensure that the alert satisfies the provisions of this Decision as from the time of that modification, addition, correction or update;
- (b) in the event of a hit on an alert transferred from SIS 1+ to SIS II, the Member States shall examine the compatibility of that alert with the provisions of this Decision immediately but without delaying the action to be taken on the basis of that alert.

2. The remainder of the budget at the date set in accordance with Article 71(2), which has been approved in accordance with the provisions of Article 119 of the Schengen Convention, shall be paid back to the Member States. The amounts to be repaid shall be calculated on the basis of the contributions from the Member States as laid down in the Decision of the Executive Committee of 14 December 1993 on the financial regulation on the costs of installing and operating the Schengen Information System.

3. During the transitional period referred to in Article 15(4), references in this Decision to the Management Authority shall be construed as references to the Commission.

Article 71

Entry into force, applicability and migration

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

2. It shall apply to the Member States participating in SIS 1+ from dates to be fixed by the Council, acting by the unanimity of its Members representing the Governments of the Member States participating in SIS 1+.

3. The dates referred to in paragraph 2 shall be fixed after:

- (a) the necessary implementing measures have been adopted;
- (b) all Member States fully participating in SIS 1+ have notified the Commission that they have made the necessary technical and legal arrangements to process SIS II data and exchange supplementary information;
- (c) the Commission has declared the successful completion of a comprehensive test of SIS II, which shall be conducted by the Commission together with the Member States, and the preparatory bodies of the Council have validated the proposed test result and confirmed that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+;
- (d) the Commission has made the necessary technical arrangements for allowing Central SIS II to be connected to N.SIS II of the Member States concerned.

4. The Commission shall inform the European Parliament of the results of the tests carried out in accordance with paragraph 3(c).

5. Any Decision of the Council taken in accordance with paragraph 2 shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 12 June 2007.

For the Council,
The President
W. SCHÄUBLE