

## II

*(Preparatory Acts)*

## COMMISSION

**Proposal for a Council Regulation (EC) on the common organisation of the markets in fishery and aquaculture products**

(1999/C 78/01)

(Text with EEA relevance)

COM(1999) 55 final — 99/0047 (CNS)

*(Submitted by the Commission on 16 February 1999)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 28, 42 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

(1) Whereas the basic provisions concerning the organisation of the market in fishery products must be revised to take account of market developments, changes in recent years in fishing activities and the shortcomings detected in the implementation of the rules currently in force; whereas by reason of the number and complexity of the amendments to be made, these provisions will lack the clarity required of any set of rules unless they are completely redrafted; whereas Council Regulation (EEC) No 3759/92<sup>(1)</sup> of 17 December 1992 on the common organisation of the market in fishery and aquaculture products should therefore be replaced by a new Regulation;

(2) Whereas, in the interests of simplifying the rules and facilitating their use by those for whom they are intended, the new Regulation should also

include the basic provisions, duly updated and supplemented, of Council Regulation (EEC) No 105/76 of 19 January 1976 on the recognition of producers' organisations in the fishing industry<sup>(2)</sup> and Council Regulation (EEC) No 1772/82 of 29 June 1982 laying down general rules concerning the extension of certain rules adopted by producers' organisations in the fisheries sector<sup>(3)</sup>; whereas these Regulations should therefore be repealed;

(3) Whereas the common agricultural policy must include, in particular, a common organisation of agricultural markets, which may take various forms depending on the products concerned;

(4) Whereas the fishing industry is of special importance to the economy of some coastal regions of the Community; whereas the industry provides a major part of the income of fishermen in such regions; whereas, therefore, market stability should be encouraged by appropriate means, implemented in compliance with the Community's international commitments, particularly with regard to the provisions of the World Trade Organisation on internal production support mechanisms and tariff agreements;

(5) Whereas the production and marketing of fishery products should take account of the need to safeguard the equilibrium of resources and

<sup>(1)</sup> OJ L 388, 31.12.1992, p. 1.

<sup>(2)</sup> OJ L 20, 28.1.1976, p. 39. Regulation amended by Commission Regulation (EEC) No 3940/87 (OJ L 373, 31.12.1987, p. 6).

<sup>(3)</sup> OJ L 197, 6.7.1982, p. 1.

- marine ecosystems; whereas the common organisation of markets in these products should therefore comprise such measures as will ensure that supply is better matched to demand, in terms of both quality and quantity, and increase the return on products, both for the above purpose and to improve the income of producers by ensuring stability of market prices;
- (6) Whereas one of the ways of implementing the common organisation of markets is to apply common marketing standards to the products concerned; whereas applying these standards should tend to keep products of unsatisfactory quality off the market and facilitate commerce based on fair competition, thus helping to improve the profitability of production;
- (7) Whereas the application of these standards calls for the inspection of the products for which they have been laid down; whereas provision should therefore be made for such inspections;
- (8) Whereas the widening variety of supply, particularly of fresh and chilled fishery products, makes it essential to provide consumers with a minimum amount of information on the main characteristics of products; whereas it is the responsibility of the Member States to adopt to that end a list of the accepted names used in their territory for trading in the products in question;
- (9) Whereas producer organisations form the backbone of the common market organisation, the decentralised operation of which they are to ensure at their level; whereas, in the face of ever greater concentration of demand, the concentration of supply through these organisations is more than ever an economic necessity in order to strengthen the position of producers in the market; whereas such concentrations should be voluntary and be meaningful in terms of the scope and efficiency of the services offered by the producer organisations to their members; whereas a producer organisation should not be recognised by a Member State as able to contribute to achieving the objectives of the common market organisation unless its articles of association impose certain obligations on it and its members;
- (10) Whereas initiatives by producer organisations to improve the quality of fishery products should be assisted by providing for specific recognition of the organisations concerned, subject to certain conditions;
- (11) Whereas, in order to support the activity of producer organisations and facilitate greater market stability, Member States should be permitted to extend the rules adopted by the organisation in a region on behalf of its members, on certain conditions, to all non-members who market goods in a specific region, in particular the rules on production and marketing, including intervention; whereas this procedure is subject to checks by the Commission, which may, in certain circumstances, declare such extensions null and void;
- (12) Whereas application of the system described above involves costs to be borne by the organisation whose rules have been extended; whereas, therefore, non-members should contribute towards these costs; whereas Member States should also be allowed to grant compensation to such operators on products which, although they meet the marketing standards, cannot be marketed and are withdrawn from the market;
- (13) Whereas, at all events, provisions should be laid down to ensure that the producer organisations do not hold a dominant position in the Community;
- (14) Whereas, in order to achieve rational and sustainable use of resources, producer organisations should guide the production of their members towards meeting market requirements and foster conditions that will ensure that their members obtain the best possible returns on their catches, particularly of species subject to quota restrictions; whereas, for these reasons, it is advisable to require producer organisations to define and submit to the competent authorities before the beginning of each fishing year a proposed programme for planning supply and regulate in advance the deliveries from their members and, where appropriate, specific provisions for products which habitually present marketing difficulties;
- (15) Whereas, in view of the costs that producer organisations will incur in fulfilling the above obligations, it is justified to grant commensurate compensation to such organisations for a limited period;
- (16) Whereas the planning of supply and regulation of deliveries by members of producer organisations may be improved, in particular, by recourse to pre-sale contracts; whereas producer organisations should therefore be encouraged to

market a substantial proportion of their production under contract by granting them a flat-rate allowance for a limited period, subject to certain conditions;

- (17) Whereas interbranch organisations set up on the initiative of individuals or existing groups of operators may, where they account for a significant proportion of the members of the various occupational divisions of the fishery product sector, help to take closer account of market realities and facilitate a commercial approach that will improve the reporting as well as the organisation of production, product presentation and marketing; whereas, since the work of such organisations may contribute in general to attaining the goals of Article 39 of the Treaty and in particular those of this Regulation, it is appropriate, once the relevant forms of action are defined, that recognition be granted to those organisations which carry out practical steps to attain the above goals; whereas provision should be made, subject to certain conditions, for extension of the rules adopted by interbranch organisations and for the costs resulting from such extension to be shared; whereas this procedure is subject to checks by the Commission, which may, in certain circumstances, declare such extensions null and void;
- (18) Whereas the conditions in which the agreements, decisions and concerted practices of interbranch organisations may be exempted from Article 1 of Council Regulation No 26<sup>(1)</sup> should be specified;
- (19) Whereas in order to cope with market situations which, in the case of certain fishery products of special importance to producers' incomes, are likely to lead to prices which might cause disturbances on the Community market, a guide price or, in the case of tuna, a Community producer price, which is representative of production areas in the Community and which will be used to determine price levels for intervention on the market must be fixed for each fishing year, using the most recent technical data; whereas, with this in view, the guide price must be fixed so as to reflect market realities and prevent excessive price variations from one fishing year to the next; whereas the guide price is a central factor upon which a series of other intervention measures are based; whereas the

Council, acting on a proposal from the Commission, should adopt measures to this end;

- (20) Whereas, in order to stabilise prices, producer organisations should be able to intervene in the market, notably by applying prices below which the products of their members are withdrawn from the market;
- (21) Whereas it is appropriate in specific cases and under certain conditions to support the activities of producer organisations by providing financial compensation for quantities withdrawn definitively from the market for human consumption;
- (22) Whereas, however, this type of intervention by producer organisations should be restricted to localised excess supplies which the market cannot absorb and which cannot be avoided by measures of a different kind; whereas the financial compensation must therefore be limited to a small volume of production;
- (23) Whereas, to encourage fishermen to adjust their deliveries more accurately to market requirements, provision should be made for different levels of financial compensation depending on the volume of market withdrawals;
- (24) Whereas application of all the new measures implemented under this Regulation will enable producer organisations to substantially reduce complete withdrawals from the market; whereas it is therefore justified to reduce both the quantities qualifying for financial compensation and the level of compensation gradually during a transitional period;
- (25) Whereas in view of the scarcity of certain species, in particular, the destruction of fish withdrawn from the market should be avoided where possible; whereas, to this end, aid should be granted for processing, stabilising and storing for human consumption certain quantities of fresh products withdrawn from the market; whereas all the species likely to be withdrawn from the market should qualify for this measure; whereas this mechanism, which is both a form of intervention and a means of increasing the return on fishery products, should be more widely available to producer organisations than

<sup>(1)</sup> Regulation No 26 applying certain rules of competition to production of and trade in agricultural products (OJ 30, 20.4.1962, p. 993/62). Regulation amended by Regulation No 49 (OJ 53, 1.7.1962, p. 1571/62).

complete withdrawal; whereas, therefore, the quantities eligible under this mechanism should be increased;

- (26) Whereas the regional variations in prices for some species are such that those species cannot yet be covered by the scheme to grant financial compensation to producer organisations; whereas, however, in order to foster greater market stability for the products concerned, with due account being taken of their characteristics and of the diversity of the circumstances pertaining to their production and marketing, such products should be covered by a Community price support scheme adapted to their specific features, based on the application of a withdrawal price fixed independently by producer organisations and the granting of flat-rate aid, on certain conditions, to such organisations for products that have been the subject of independent intervention;
- (27) Whereas provision should be made for a specific support scheme for some products frozen at sea, in the form of private storage aid for such products, subject to certain limits and conditions, provided they cannot be disposed of on the market above a price to be set at Community level;
- (28) Whereas a drop in import prices for tuna for the canning industry may threaten the income levels of Community producers of this product; whereas provision should therefore be made for compensation to be granted to these producers when necessary; whereas, in order to rationalise the marketing of a uniform product, these compensatory allowances should be paid only to producer organisations on certain conditions;
- (29) Whereas in order to discourage an abnormal expansion in tuna production, with a consequent increase in associated costs, provision should be made for limits within which allowances may be granted to producer organisations on the basis of supply conditions recorded on the Community market and the criteria for triggering the mechanism should be reviewed;
- (30) Whereas, in order to assess whether a situation exists on the Community market linked to the trend of prices on the world market in tuna that warrants payment of compensatory allowances, a check should be made that the drop in Community market prices stems from a drop in import prices;
- (31) Whereas the application of common customs tariff duties is suspended in full for certain products; whereas, since Community production of tuna is insufficient, conditions of supply comparable to those enjoyed in exporting third countries should be maintained for the food-processing industries using these products so as not to hinder their development in the context of international conditions of competition; whereas any disadvantage which this system might present for Community tuna producers could be offset by payment of the compensation envisaged for this purpose;
- (32) Whereas, to ensure adequate supplies to the Community market of raw materials intended for the processing industries on terms that will enable them to remain competitive, the application of common customs tariff duties to some products should be suspended in full or in part for an indefinite period;
- (33) Whereas, however, the suspension of duties under the above arrangements should not result in supplies from third countries being offered at abnormally low prices; whereas qualification for such suspension should therefore be subject to compliance with a reference price calculated in accordance with rules to be laid down;
- (34) Whereas if exceptional circumstances caused by imports or exports should give rise to or threaten serious disturbance likely to jeopardise attainment of the goals set out in Article 39 of the Treaty, it should be possible to apply appropriate measures in trade with third countries, while complying with the Community's international commitments;
- (35) Whereas experience has shown that it may prove necessary to take measures very rapidly, in order to ensure the supply of the Community market and to ensure that the Community's international undertakings are complied with; whereas, in order to allow the Community to deal with such situations with all the necessary dispatch, provision should be made for a procedure under which the requisite measures can be taken rapidly;

- (36) Whereas the establishment of a single market based on a common price system would be jeopardised by the granting of certain aids; whereas, therefore, the provisions of the Treaty under which state aid granted by Member States may be examined, leading to the prohibition of schemes which are incompatible with the common market, should also apply to the fishing industry;
- (37) Whereas the implementation of this Regulation requires systems to be set up and maintained for the communication of information between the Commission and the Member States; whereas the cost of such a system, part of which is to be borne by the Community budget, should be specified;
- (38) Whereas expenditure incurred by the Member States as a result of the obligations arising out of the application of this Regulation should be financed by the Community in accordance with Council Regulation (EC) No ... on ... the financing of the common agricultural policy<sup>(1)</sup>;
- (39) Whereas implementation of this common organisation must also take account of the fact that it is in the Community's interest to preserve fishing grounds as far as possible; whereas the financing of measures covering quantities of fish exceeding those which may be allocated to the Member States should not therefore be permitted;
- (40) Whereas it is the responsibility of the Member States to adopt all appropriate measures to ensure compliance with this Regulation and to forestall and bring to an end any fraud;

- (41) Whereas in order to facilitate implementation of these provisions, there should be a procedure for close cooperation between Member States and the Commission within a management committee;
- (42) Whereas the common organisation of the market in fishery products should take appropriate account, at the same time, of the goals set out in Articles 39 and 110 of the Treaty,

HAS ADOPTED THIS REGULATION:

*Article 1*

A common organisation of markets in fishery products is hereby established, comprising a price and trading system and common rules on competition.

For the purposes of this Regulation:

- 'producer' means physical or moral persons using means of production to produce fishery products with a view to first-stage marketing of them
- 'fishery products' covers both products taken at sea and the products of aquaculture listed below:

CN code	Description
a) 0301	Live fish
0302	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading No 0304
0303	Fish, frozen, excluding fish fillets and other fish meat of heading No 0304
0304	Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen
b) 0305	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption

<sup>(1)</sup> OJ L ...

CN code	Description
c) 0306	Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine; flours, meals and pellets of fish, fit for human consumption
0307	Molluscs, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine; aquatic invertebrates other than crustaceans and molluscs, live, fresh, chilled, frozen, dried, salted or in brine; flours, meals and pellets of aquatic invertebrates other than crustaceans, fit for human consumption
d)	Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human consumption:
	— Other:
	— — Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3:
0511 91 10	— — — Fish waste
0511 91 90	— — — Other
e) 1604	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs
f) 1605	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved
g)	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:
1902 20	— Uncooked pasta, not stuffed or otherwise prepared:
	— Stuffed pasta, whether or not cooked or otherwise prepared:
1902 20 10	— — Containing more than 20% by weight of fish, crustaceans, molluscs or other aquatic invertebrates
h)	Flours, meals and pellets, or meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves:
2301 20 00	— Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates

## TITLE I

## MARKETING STANDARDS AND CONSUMER INFORMATION

## CHAPTER 1

## Marketing standards

*Article 2*

1. Common marketing standards and the scope of such standards may be determined for the products listed in Article 1 or groups of these products; these standards may, in particular, cover classification by quality, size or weight, packing, presentation and labelling.

2. Where marketing standards have been issued, the products to which they apply may not be displayed for sale, offered for sale, sold or otherwise marketed unless they conform to these standards, subject to special rules which may be adopted for trade with third countries.

3. Marketing standards and detailed rules for their application, including the special rules referred to in paragraph 2, shall be adopted in accordance with the procedure laid down in Article 38.

*Article 3*

1. Products for which common marketing standards have been adopted shall be subject to inspection by Member States for conformity with these standards.

This inspection may take place at all marketing stages and during transport.

2. Not later than one month after the entry into force of each marketing standard, Member States shall notify the other Member States and the Commission of the name and address of the bodies entrusted with the inspection of each product or group of products for which a standard has been adopted.

3. Detailed rules for the application of paragraph 1 shall be adopted as necessary in accordance with the procedure laid down in Article 38, account being taken in particular of the need to ensure coordination of the work of the inspection bodies and uniformity in the interpretation and application of common marketing standards.

## CHAPTER 2

## Consumer information

*Article 4*

1. Without prejudice to the provisions of Council Directive 79/112/EEC<sup>(1)</sup>, the products referred to in Article 1 a), b) and c) may not be offered for retail sale to the final consumer, irrespective of the marketing method, unless appropriate marking or labelling indicates:

a) the commercial designation of the species,

b) the production method (taken at sea or farmed),

c) the catch area (Atlantic Ocean, Baltic Sea, Mediterranean Sea, North Sea, Indian Ocean, Pacific Ocean, other).

2. For the purposes of paragraph 1 (a), the Member States shall draw up and publish a list of the commercial designations accepted in their territory, for at least all the species listed in Annexes I to IV to this Regulation, not later than 1 January 2001. The list shall indicate the scientific name for each species, its name in the official language or languages of the Member State and, where applicable, any other name or names accepted or permitted locally or regionally.

3. Member States shall take all the necessary measures to ensure compliance with paragraph 1.

4. Detailed rules for applying this Article shall, where necessary, be adopted in accordance with the procedure laid down in Article 38.

<sup>(1)</sup> Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ L 33, 8.2.1979, p. 1). Directive as last amended by the European Parliament and the Council Directive 97/4/EC (OJ L 43, 14.2.1997, p. 21).

## TITLE II

## PRODUCER ORGANISATIONS

## CHAPTER 1

**Conditions for, grant of and withdrawal of recognition of producer organisations***Article 5*

1. For the purposes of this Regulation, 'producer organisation' means any legal entity:

- a) set up on the own initiative of a group of producers of one or more of the products referred to in Article 1 a), b) and c) in so far, in the case of frozen, treated or processed products, as the operations in question have been carried out on board fishing vessels;
  - b) established for the purpose, in particular, of ensuring that fishing is carried out along rational lines and that conditions for the sale of their members' products are improved, by taking such measures as will:
    - 1) encourage the planning of production and its adjustment to demand, in terms of both quantity and quality, in particular by implementing catch plans;
    - 2) promote the concentration of supply;
    - 3) regularise prices;
    - 4) promote those fishing methods which do most to maintain the equilibrium of resources and safeguard biodiversity;
  - c) the rules of association of which require its producer members, in particular, to:
    - 1) apply to fishing, production and marketing the rules adopted by it;
    - 2) where the Member State concerned has decided that some or all of its catch quota or quotas is to be managed by producer organisations, apply the measures adopted by the organisation to that end;
    - 3) belong to only one producer organisation for any given product or group of products;
  - 4) dispose of their total output of the products in respect of which they are members through the producer organisation; the organisation may, however, decide that this requirement can be waived if products are disposed of in accordance with common rules it has established in advance;
  - 5) provide the information requested by the producer organisation to determine the measures referred to in paragraph 1 b) or fulfil statutory obligations, or for statistical purposes;
  - 6) pay the financial contributions provided for in the rules of association for the establishment and replenishment of the intervention fund under Article 17 (3);
  - 7) remain members of the organisation for at least three years after its recognition and notify the organisation at least one year in advance if they wish to leave;
- d) the rules of association of which provide for:
- 1) procedures for determining, adopting and amending the rules referred to in point c) (1);
  - 2) the exclusion of all forms of discrimination among members, particularly on grounds of nationality or place of establishment;
  - 3) the levying on members of the financial contributions needed to finance the producer organisation;
  - 4) rules enabling the producer members to scrutinise their organisation and its decisions democratically;
  - 5) penalties for infringement of obligations under the rules of association, particularly non-payment of financial contributions, and of the rules laid down by the producer organisation;
  - 6) rules on the admission of new members;
  - 7) the accounting and budgetary rules necessary for the operation of the organisation, including



the keeping of separate accounts for the activities for which recognition is granted.

- e) which has been recognised by the Member State concerned under paragraph 2.

2. Member States shall recognise as producer organisations for the purposes of this Regulation all producer groups which have their official headquarters in their territory and which apply for such recognition, on condition that:

- a) they meet the requirements laid down in paragraph 1 and provide the relevant evidence, including proof that they have a minimum number of producer members and cover a minimum volume of marketable production;
- b) there is sufficient evidence that they can carry out their activities properly, both over time and in terms of effectiveness;
- c) they have the necessary legal status under national legislation;

3. Producer organisations may not hold a dominant position on a given market unless necessary in pursuance of the goals of Article 39 of the Treaty.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

#### Article 6

1. Member States:

- a) decide whether to grant recognition within three months of the submission of and application with all relevant supporting documents;
- b) carry out checks at regular intervals to ascertain that producer organisations comply with the terms and conditions for recognition; without prejudice to the application of Article 10(2)(c), recognition of a producer organisation may be withdrawn if the conditions set out in Article 5 are no longer

fulfilled or if recognition is based on wrong information; if the organisation obtains or benefits from recognition by fraudulent means, recognition shall immediately be withdrawn retroactively;

- c) notify the Commission, within two months, of any decision to grant, refuse or withdraw recognition.

2. A Member State shall grant recognition to a producer organisation which has its official headquarters on its territory but whose members are nationals of one or more other Member States, provided the conditions laid down in Article 5 are complied with.

Member States whose nationals are members of a producer organisation established in the territory of another Member State shall set up, in collaboration with the latter, the administrative cooperation needed to carry out checks on the activities of the organisation concerned.

3. Member States may recognise a single producer organisation exclusively for a specific fishing area if it is found to be representative according to the criteria set under Article 8 (1).

4. Member States may grant recognition to an association of producer organisations provided it complies with the conditions laid down in Article 5. However, Articles 10 and 11 shall not apply to such associations.

5. The Commission shall ensure that Article 5 and paragraph (1) (b) of this Article are complied with by carrying out checks in accordance with Council Regulation (EEC) No 2847/93<sup>(1)</sup>, and in the light of such checks may, where appropriate, require Member States to withdraw recognition.

6. At the beginning of each year the Commission shall publish in the C series of the *Official Journal of the European Communities* a list of the producer organisations recognised during the previous year and those from which recognition has been withdrawn during the same period.

<sup>(1)</sup> Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ L 261, 20.10.1993, p. 1). Regulation as last amended by Regulation (EC) No 2846/98 (OJ L 358, 31.12.1998, p. 5).

7. Detailed rules for the application of this Article, in particular the conditions for withdrawal of recognition, shall be adopted in accordance with the procedure laid down in Article 38.

## CHAPTER 2

### Specific recognition

#### Article 7

1. Member States may grant specific recognition to producer organisations as referred to in Article 5 (1) which market the products covered by common marketing standards as laid down in Council Regulation (EC) No 2406/96<sup>(1)</sup> and which have submitted a plan to improve the quality and marketing of such products approved that has been approved by the competent national authorities.

2. The primary purpose of the plans referred to in paragraph 1 shall be to include all stages of production and marketing. Such plans shall include the following, in particular:

- a substantial improvement in the quality of products while held on board of vessels,
- optimal maintenance of quality during unloading, transport and marketing of products,
- the application of appropriate techniques and know-how to attain the above objectives;
- a description of the planned measures, including preparatory studies, training and investments.

3. Member States shall forward the plans submitted to them by producer organisations to the Commission. Such plans may not be approved by the competent authority in the Member State until they have been sent to the Commission and 60 days have subsequently elapsed during which the Commission may request changes or reject a plan.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

<sup>(1)</sup> Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products (OJ L 334, 23.12.1996, p. 1). Regulation as last amended by Commission Regulation (EC) No 323/97 (OJ L 52, 22.2.1997, p. 8).

## CHAPTER 3

### Extension of rules to non-members

#### Article 8

1. Where a producer organisation is considered to be representative of production and marketing in one or more landing places of a Member State and makes application to the competent national authorities, the Member State concerned may require producers who are not members of the organisation and who market any of the products referred to in Article 1 within the area of which the producer organisation is representative to comply with:

- a) production and marketing rules introduced by the organisation to attain the objectives set out in Article 5 (1) (b);
- b) rules adopted by the organisation on market withdrawal and carry-over for the fresh and chilled products referred to in points a) and c) of Article 1.

However, in the case of the products listed in Annex I, parts A, B and C, these rules may be extended to non-members only in so far as the price applied by the producer organisation is the withdrawal price or the Community selling price, and no tolerance shall be allowed.

The Member State may decide that the extension of the rules referred in points a) and b) shall not apply to certain categories of sales.

2. The rules which are made obligatory under paragraph 1 shall apply up to the first-stage sale of products on the market for a period not longer than 12 months.

3. Member States shall immediately notify to the Commission the rules which they have decided to make obligatory under to paragraph 1.

Where the Commission is unsure as to validity of the decision in relation to the cases referred to in paragraph 4 where extension must be declared null and void, it may ask the Member State in question within one month of receipt of the said notification to suspend application of the decision in whole or in part. In this case and within two months from that date, the Commission:

— shall confirm that the rules notified may be made obligatory,

or

— by reasoned decision, shall declare the extension of the rules decided by the Member State null and void, on the basis of one of the circumstances referred to in paragraph 4 (a) and (b);

4. The Commission shall declare the extension referred to in paragraph 1 null and void:

a) if it finds that the extension in question jeopardises free trade, or that the goals of Article 39 of the Treaty are thereby endangered;

b) if it finds that Article 85(1) of the Treaty applies to the rule which it has been decided to extend to other producers.

5. Following ex-post checks under Regulation (EEC) No 2847/93, the Commission may at any time identify cases of nullity under paragraph 4 and declare the extension in question null and void.

6. The Commission shall immediately inform the other Member States at each stage of the procedure laid down in paragraphs 3, 4 and 5.

7. Member States shall take all the necessary measures to ensure compliance with the rules referred to in paragraph 1. They shall forthwith inform the Commission of such measures.

8. Where paragraph 1 is applied, the Member State concerned may decide that non-members are liable to the organisation for the equivalent of all or part of the fees paid by member producers in so far as these fees are intended to cover administrative costs resulting from the application of the system referred to in paragraph 1.

9. Where paragraph 1 is applied, Member States shall ensure, where necessary through the agency of the producer organisations, the withdrawal of products not satisfying the marketing rules or which cannot be sold at a price at least equal to the withdrawal price.

10. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

#### *Article 9*

1. Where Article 8 (1) is applied, a Member State may grant compensation to producers who are not members of an organisation and who are established in the Community, in respect of products which:

— cannot be marketed under Article 8(1)(a)

or

— have been withdrawn from the market under Article 8(1)(b).

The compensation shall be granted without discrimination as to the nationality or place of establishment of the recipients. It may not exceed 60% of the amount arrived at by applying to the quantities withdrawn:

— the withdrawal price fixed under Article 20 for the products listed in Annex I, parts A and B,

or

— the selling price fixed under Article 22 for the products listed in Annex I, part C.

2. The expenditure resulting from granting the compensation referred to in paragraph 1 shall be borne by the Member State concerned.

#### CHAPTER 4

#### Operational programmes for the fishing year

#### *Article 10*

1. Before the beginning of the fishing year, each producer organisation shall draw up an operational programme for the fishing year and send it to the competent authorities of the Member State, comprising:

a) a forward marketing plan setting out the measures to be implemented by the organisation to match the quantity and quality of supply to market requirements;

b) a catch plan by species, particularly for species covered by catch quotas, in so far as such species represent a significant share of the landings of its members;

- c) special anticipatory measures to adjust the supply of species which habitually present marketing difficulties during the fishing year;
- d) penalties applicable to members who infringe the decisions adopted to implement such plans.
2. Member States shall carry out appropriate checks to ensure that each producer organisation fulfils the obligations provided for in paragraph 1, and shall apply the following provisions in the event that these obligations are not fulfilled:
- a) no financial assistance shall be granted for the fishing year concerned for intervention operations carried out under Title IV to producer organisations which have failed to draw up or transmit in good time an operational programme for the fishing year drawn up in accordance with paragraph 1;
- b) the penalty provided for in a) shall also apply in cases where a producer organisation has not implemented, or has failed adequately to implement, the measures provided for in its operational programme for the fishing year.
- c) producer organisations shall have their recognition withdrawn after the second instance of application of the penalties provided for in a) and b).
3. Member States shall immediately inform the Commission of cases where paragraph 2 (a), (b) or (c) have been applied.
4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.
- period to offset the costs arising from the obligations imposed on them under Article 10.
- Producer organisations recognised before 1 January 2001 shall receive such compensation for five years from that date.
- Producer organisations recognised subsequently shall receive compensation for five years following the year in which they are granted recognition.
2. The compensation referred to in paragraph 1 shall be made up of the following:
- a) an amount in proportion to the number of member vessels, calculated degressively in accordance with the method set out in Annex VI.A.
- b) a flat-rate amount of EUR 500 per species covered by Article 10 (1) (b), up to 10 species in all.
3. Member States shall pay the compensation to producer organisations within four months following the end of the year for which it is granted, in so far as their competent authorities have checked that the recipient organisations have fulfilled the obligations imposed on them under Article 10.
4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

#### *Article 12*

1. Member States shall grant an additional allowance to producer organisations which provide in their operational programme for the fishing year for at least 10 % of their production to be disposed of through pre-sale contracts, in order to plan better the supply from their members.

In such cases, copies of all contracts must be attached to the operational programmes for the fishing year submitted by producer organisations to the competent authorities under Article 10.

For the purposes of applying this paragraph, account shall be taken of the average production of producer organisations during the three previous fishing years.

#### *Article 11*

1. Without prejudice to aid which might be granted to encourage the creation and facilitate the operation of producer organisations under Article 16(1) of Council Regulation (EC) No ... ..<sup>(1)</sup>, producer organisations shall receive compensation for a limited

<sup>(1)</sup> Council Regulation (EC) No ... .. of ... .. 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (OJ L ...).

2. The annual amount of the allowance referred to in paragraph 1 shall be calculated degressively in accordance with the method set out in Annex VI.B.

3. The allowance shall be paid within four months following the end of the fishing year concerned, in so far as the recipient producer organisation provides proof, to the satisfaction of the competent national authorities, that the quantities marketed under the

contracts in question are at least equal to the minimum percentage referred to in paragraph 1.

4. The allowance provided for in this Article may be granted for five years from 1 January 2001.

5. Detailed rules for applying this Article shall, where necessary, be adopted in accordance with the procedure laid down in Article 38.

### TITLE III

#### INTERBRANCH ORGANISATIONS AND AGREEMENTS

##### CHAPTER 1

#### Conditions for, grant and withdrawal of recognition of interbranch organisations

##### *Article 13*

1. Member States may recognise as interbranch organisations, within the meaning of this Regulation, all legal persons established on their territory which make an appropriate application and which are made up of representatives of activities linked to the production of and/or trade in and/or processing of the products referred to in Article 1, on condition that:

- a) they have been established at the initiative of all or some of the organisations or associations which constitute them;
- b) they represent a significant share of the production of and trade in and/or processing of fishery products and products processed from fishery products in the region or regions in question and, where more than one region is involved, they can demonstrate a minimum level of representativeness in each region for each of the branches that they cover;
- c) they are not themselves engaged in activities relating to the production, processing or marketing of fishery products or products processed from fishery products;
- d) they carry out one or more of the following measures in one or more regions of the Community, under conditions that are compatible with Community rules, particularly as regards competition, taking account of the interests of consumer, and provided they do not hinder the sound operation of the market organisation:
  - improving knowledge of and the transparency of production and the market;

— helping to coordinate better the way fishery products are placed on the market, in particular by means of research and market studies;

— study and develop techniques to optimise the operation of the market, including information and communication technology;

— drawing up standard contracts which are compatible with Community rules;

— providing the information and carrying out the research needed to channel production towards products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality and the use of fishing methods which maintain the equilibrium of resources;

— developing methods and instruments and organising training schemes to improve product quality;

— exploiting the potential of, and protecting, designations of origin, quality seals and geographical designations;

— laying down rules on the catching and marketing of fishery products which are stricter than Community or national rules;

— exploiting more fully the potential of fishery products;

2. Before granting recognition Member States shall notify the Commission of the interbranch organisations which have applied for recognition, providing all relevant information about their representativeness and their various activities, together with all other information needed for an assessment.

The Commission may object to recognition within a time-limit of two months after notification.

3. Member States:

- a) decide whether to grant recognition within three months of the submission of an application with all relevant supporting documents;
- b) carry out checks at regular intervals to ascertain that interbranch organisations comply with the terms and conditions for recognition;
- c) withdraw recognition if:
  - (i) the terms and conditions for recognition laid down in this Regulation are no longer met;
  - (ii) the interbranch organisation contravenes any of the prohibitions imposed in Article 14 or damages the sound operation of the market organisation, without prejudice to any other penalties otherwise incurred under national law;
- d) notify the Commission, within two months, of any decision to grant, refuse or withdraw recognition.

4. The Commission shall check that paragraphs 1 and 3 (b) are complied with by carrying out checks in accordance with Regulation (EEC) No 2847/93 and may, as a result of these checks, require a Member State to withdraw recognition.

5. Recognition shall constitute an authorisation to carry out the measures listed in paragraph 1 (d), consistent with the terms of this Regulation.

6. The Commission shall publish in the C series of the *Official Journal of the European Communities* a list of the interbranch organisations recognised, indicating the economic area or area of their activities and the activities they carry out for the purposes of Article 15. Withdrawals of recognition shall also be made public.

7. Detailed rules for the application of this Article and, in particular, the terms and conditions on which and the frequency with which the Member States are to report to the Commission on the activities of interbranch organisations, shall be adopted in accordance with the procedure laid down in Article 38.

## CHAPTER 2

### Terms and conditions relating to agreements, decisions and concerted practices of interbranch organisations

#### *Article 14*

Notwithstanding Article 1 of Regulation No 26, Article 85 (1) of the Treaty shall not apply to the agreements, decisions and concerted practices of recognised interbranch organisations intended to implement the measures referred to in Article 13 (1) (d) and which, without prejudice to measures taken by interbranch organisations under specific provisions of Community law, do not:

- a) entail an obligation to apply a fixed price;
- b) lead to the partitioning of markets in any form within the Community;
- c) give rise to discrimination;
- d) eliminate competition in respect of a substantial proportion of the products in question;
- e) otherwise restrict competition in ways which are not essential to achieving the goals of the common fisheries policy as pursued by interbranch activity.

## CHAPTER 3

### Extension of agreements, decisions and concerted practices to non-members

#### *Article 15*

1. Where an interbranch organisation operation in a specific region or regions of a Member State is considered to be representative of the production of and/or trade in and/or processing of a given product, the Member State concerned may, at the request of the organisation, make some of the agreements, decisions or concerted practices agreed on within that organisation binding for a limited period on other operators in the region or regions in question, whether individuals or groups, who do not belong to the organisation.

2. An interbranch organisation shall be deemed representative within the meaning of paragraph 1 where it accounts for at least two thirds of the production and/or trade in and/or processing of the product or products concerned in the region or regions concerned of a Member State. Where the application for extension of its rules to other operators covers more than one region, the interbranch organisation

must demonstrate its representativeness for each of the branches it covers in each of the regions concerned.

3. The rules for which extension to other operators may be requested:

a) must concern one of the following:

- information about production and the market;
- stricter production rules than any laid down in Community or national rules;
- drawing up standard contracts which are compatible with Community rules;
- rules on marketing;
- protecting designations of origin, quality seals and geographical designations.

b) must have been in force for at least one year;

c) may be made binding for no more than three marketing years;

d) must not cause any harm to other operators established in other regions of the Member State or in other Member States.

#### Article 16

1. Member States shall notify the Commission forthwith of the rules which they have made binding on all operators in one or more specified regions. These rules shall be published in the C series of the *Official Journal of the European Communities*.

Before such publication, the Commission shall inform the Committee provided for in Article 38 of any

notification of the extension of interbranch agreements.

The Commission shall decide that a Member State must repeal an extension of the rules decided on by that Member State:

a) if it finds that the extension in question jeopardises free trade, or that the goals of Article 39 of the Treaty are endangered;

b) if it finds that Article 85 (1) of the Treaty applies to the agreement, decision or concerted practice which it has been decided to extend to other producers;

c) where, following ex-post checks under Regulation (EEC) No 2847/93, it finds that Article 15 has not been complied with.

The Commission's decision shall apply from the date on which the existence one of the circumstances referred to in (a), (b) or (c) was determined.

2. Where rules for one or more products are extended and one or more of the activities referred to in Article 15 (3) (a) are pursued by a recognised interbranch organisation and are in the general economic interest of those operators whose activities relate to one or more of the products concerned, the Member State which has granted recognition may decide that individuals or groups which are not members of the organisation but which benefit from those activities shall pay the organisation the equivalent of all or part of the financial contributions paid by its members, to the extent that such contributions are intended to cover costs directly incurred as a result of pursuing the activities in question.

## TITLE IV

### PRICES AND INTERVENTION

#### CHAPTER 1

#### Prices

#### Article 17

#### General provisions

1. For the products listed in Article 1, producer organisations may fix a withdrawal price below

which they will not sell products supplied by their members.

In this event, for quantities withdrawn from the market, producer organisations:

- shall grant an indemnity to members in respect of the products listed in Annex I, parts A and B and in Annex IV which conform to the standards adopted in accordance with Article 2,

— may grant an indemnity to members in respect of the other products referred to in Article 1.

For each product listed in Article 1, a maximum level for the withdrawal price may be fixed in accordance with paragraph 5.

2. The disposal of products withdrawn from the market shall be determined by producer organisations in such a way as not to interfere with normal marketing of the products in question.

3. To finance these withdrawal measures, producer organisations shall create an intervention fund replenished from contributions assessed on quantities offered for sale or, alternatively, shall apply an equalisation system.

4. Producer organisations shall supply the following items of information to the national authorities, who shall communicate them to the Commission:

- a list of the products for which they intend to operate the system described in paragraph 1,
- the period during which withdrawal prices are applicable,
- the level of withdrawal prices proposed and applied.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

#### *Article 18*

##### **Guide price**

1. A guide price shall be fixed before the beginning of the fishing year for each of the products listed in Annex I, parts A, and B and for each of the products and groups of products listed in Annex II.

These prices shall be valid for the whole Community and shall be fixed for each fishing year or for each of the periods into which that year is subdivided.

2. The guide price shall be based on:

- the average of prices recorded for a significant proportion of Community output on representative wholesale markets or in representative ports during the three fishing years immediately preceding the year for which the price is fixed,

— taking into account trends in production and demand.

In fixing their price, account shall also be taken of the need to:

- stabilise market prices and avoid the formation of surpluses in the Community,
- help support producers' incomes,
- consider consumers' interests.

3. The Council, acting by a qualified majority on a proposal from the Commission, shall determine the level of the guide prices referred to in paragraph 1.

#### *Article 19*

##### **Price reporting**

1. Throughout the period during which the guide price is applicable, Member States shall notify the Commission of the prices recorded on representative wholesale markets or in representative ports for the products referred to in Article 18 (1).

2. For the purposes of paragraph 1, the representative markets and ports in the Member States shall be those where a significant proportion of Community output of a given product is marketed.

3. Detailed rules for the application of this Article shall be adopted, and the list of representative markets and ports referred to in paragraph 2 approved, in accordance with the procedure laid down in Article 38.

#### *Article 20*

##### **Community withdrawal prices**

1. For each of the products listed in Annex I, parts A and B, a Community withdrawal price shall be fixed on the basis of the freshness, size and weight and the presentation of the product, hereinafter called 'product category', by applying to an amount equal at least to 70 %, and not exceeding 90 %, of the guide price, the conversion factor for the product category concerned. These conversion factors shall reflect the price relationship between the product category under consideration and that adopted for fixing the guide price. The Community withdrawal price shall, however, in no case exceed 90 % of the guide price.



2. In order to ensure that producers in landing areas which are very far away from the principal consumption centres of the Community have access to markets under satisfactory conditions, the prices referred to in paragraph 1 may be weighted for each area, by an adjustment factor.

3. The procedures for applying this Article, in particular setting of the percentage of the guide price to serve as an element in calculating the Community withdrawal price and designating the landing areas referred to in paragraph 2 as well as setting prices, shall be adopted in accordance with the procedure laid down in Article 38.

## CHAPTER 2

### Intervention

#### Article 21

#### Financial compensation for withdrawals

1. Member States shall grant financial compensation to producer organisations carrying out withdrawals under Article 17 in respect of the products listed in Annex I, parts A and B, provided that:

- a) the withdrawal price applied by these organisations is the Community withdrawal price fixed in accordance with Article 20, a margin of tolerance extending 10% below and 10% above this price being, however, permitted to take account in particular of seasonal fluctuations in market prices;
- b) the products withdrawn meet the marketing standards adopted under Article 2 and are of an adequate quality, to be defined in accordance with the procedure provided for in Article 2 (3);
- c) the withdrawal price referred to at a) is applied throughout the fishing year for each product category concerned; however, a producer organisation which, as one of the measures referred to in Article 5 (1), applies a ban on the sale of certain product categories shall not be required to apply the Community withdrawal price for those categories of products.

2. Financial compensation shall be granted only where products withdrawn from the market are disposed of for purposes other than human consumption or in such a way as not to interfere with normal marketing of other products.

3. For the products referred to in paragraph 1:

- a) The financial compensation shall be equal to:
  - (i) 87,5 % of the withdrawal price applied by the producers' organisation concerned for quantities withdrawn not exceeding 2 % of the quantities put up for sale each year
  - (ii) 80 % of the withdrawal price applied by the producer organisation concerned for quantities withdrawn which exceed 2 % but not 5 % of the quantities put up for sale each year
  - (iii) from the 2003 fishing year, 50 % of the withdrawal price applied by the producer organisation concerned for quantities withdrawn which exceed 5 % but not 8 % of the quantities put up for sale each year; for the 2001 and 2002 fishing years, it shall be equal to 70 % and 60 % of the withdrawal price, respectively
- b) No financial compensation shall be granted in respect of quantities withdrawn exceeding 8 % of the quantities put up for sale by each producer organisation.

4. For the purpose of calculating the amount of financial compensation to be granted to a producer organisation, the output of all its members shall be taken into account, including any quantities withdrawn from the market by another organisation under Article 5.

5. The financial compensation shall be reduced by the value, set at a standard amount, of products intended for purposes other than human consumption or any net revenue from the disposal of products for human consumption in accordance with paragraph 2. The above value shall be set at the beginning of the fishing year. It shall, however, be adjusted if significant and lasting price changes are noted on the Community market.

6. Where producer organisations carry out the withdrawals referred to in paragraph 1, they shall grant their members, for the quantities withdrawn from the market, an indemnity at least equal to the sum of the financial compensation calculated in accordance with paragraph 3 (a), plus an amount equal to:

- 10 %, in the case referred to in paragraph 3 (a) (i),

- 12 %, in the case referred to in paragraph 3 (a) (ii),
- 15 %, in the case referred to in paragraph 3 (a) (iii) and (b),

of the withdrawal price applied by that organisation.

However, producer organisations may, under a system of internal penalties, grant their members lower indemnity than that provided for in the previous subparagraph, provided the difference is placed in a reserve fund exclusively called on for subsequent intervention operations.

7. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

#### *Article 22*

##### **Community selling prices**

For each of the products listed in Annex I, part C, a Community selling price shall be fixed on the same terms as laid down in Article 20 for fixing withdrawal prices.

#### *Article 23*

##### **Carry-over aid**

1. The following shall be eligible for carry-over aid:

- (i) products listed in Annex I, parts A and B which are withdrawn from the market at the withdrawal price referred to in Article 20,
- (ii) products listed in Annex I, part C which have been put up for sale but for which it can be shown that a buyer has not been found at the Community selling price fixed in accordance with Article 22.

A margin of tolerance extending 10 % below and 10 % above these prices, however, is permitted to take account in particular of seasonal fluctuations in market prices.

2. Only such quantities shall be considered as eligible for a carry-over aid as:

- a) have been supplied by a member producer,
- b) meet certain quality, size and presentation requirements,
- c) are either processed to stabilise them and stored or preserved in accordance with conditions and for a period to be determined.

3. The aid may be granted for each of the products concerned up to a quantity equivalent to 20 % of the quantities put up for sale each year, minus the percentage of quantities referred to above in respect of which financial compensation has been paid under Article 21.

The amount of this aid may not exceed the amount of the technical and financial costs associated with the operations which are essential for stabilisation and storage.

4. The processing methods referred to in this Article are:

- a) — freezing
  - salting
  - drying
  - marinating
 and, where relevant
  - boiling

b) filleting or cutting-up and, where appropriate, heading where these operations are accompanied by one of the processes listed in a).

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

#### *Article 24*

##### **Independent withdrawals and carry-over by producer organisations**

1. For products listed in Annex IV, Member States shall grant flat-rate aid to producer organisations which practise intervention in accordance with Article 17, provided that:

- a) such organisations set a withdrawal price, hereinafter called an 'autonomous withdrawal price', before the beginning of the fishing year; the producer organisations must apply that price throughout the fishing year, a tolerance of 10 % below and 10 % above being allowed; the price may not, however, exceed 80 % of the weighted average price recorded for the product categories in question in the area of activity of the producer organisations concerned during the previous three fishing years;
- b) the products withdrawn meet the marketing standards adopted under Article 2 and are of an adequate quality, to be defined in accordance with the procedure provided for in Article 2(3);

c) the indemnity granted to associated producers in respect of the products withdrawn from the market is equal to the autonomous withdrawal price applied by the producer organisations.

2. The flat-rate aid shall be granted for quantities withdrawn from the market which have been put up for sale in accordance with Article 5 (1) and which are disposed of in a way that does not affect the normal disposal of production.

3. The amount of the flat-rate aid shall be 75 % of the autonomous withdrawal price applied during the current fishing year, this amount being reduced by the value, fixed at a standard amount, of the product which is disposed of as specified in paragraph 2.

4. The flat-rate aid shall also be granted for quantities withdrawn from the market which are either processed to stabilise them and stored or preserved in accordance with conditions and for a period to be determined. The amount of the flat-rate aid in such cases may not exceed the amount of the technical and financial costs associated with the operations which are essential for stabilisation and storage.

5. The quantities eligible for the flat-rate aid pursuant to paragraphs 2 and 5 may not exceed 5 % of the annual quantities of the products concerned put up for sale in accordance with Article 5 (1).

The quantities eligible for flat-rate aid under paragraphs 2 and 4 may together not exceed 10 % of the annual quantities referred to in the previous subparagraph.

6. The Member States concerned shall introduce inspection arrangements ensuring that products for which the flat-rate aid is applied do in fact qualify for it.

For the purposes of these inspection arrangements, recipients of the flat-rate aid shall keep stock records which meet criteria to be determined. Member States shall send to the Commission, at intervals to be laid down, a table showing average product and category prices recorded at representative wholesale markets or ports.

7. The Council, acting by a qualified majority on a proposal from the Commission, shall decide, depending on the mutual alignment of the prices for the species covered by this Article, on their inclusion in the list of products in Annex I, part A.

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

## Article 25

### Private storage aid

1. A Community selling price shall be fixed for each of the products referred to in Annex II before the beginning of the fishing year, at a level at least equal to 70 % and not exceeding 90 % of the guide price referred to in Article 18 (1).

2. Private storage aid may be granted to producer organisations which, throughout the fishing year in question:

a) apply Article 5 (1) for the production and marketing of the products concerned;

b) apply the selling price referred to in paragraph 1, a margin of tolerance extending 10 % below and 10 % above these prices being permitted, however, to take account in particular of seasonal fluctuations in market prices.

3. Private storage aid shall be granted for the products listed in Annex II which have been put up for sale but for which it can be shown that a buyer has not been found at the Community selling price fixed in accordance with paragraph 1.

4. The following restrictions shall apply to the grant of private storage aid:

a) the products must have been fished, frozen on board and landed in the Community by a member of a producer organisation,

b) the products must be stored for a minimum period and then placed on the Community market again,

up to a maximum of 15 % of the annual quantities of the products concerned put up for sale by the producer organisation.

5. The amount of the private storage aid may not exceed the sum of technical costs and interest for a maximum period of three months. This amount shall be fixed each month degressively.

6. Detailed rules for the application of this Article, including the fixing of the selling price referred to in paragraph 1, shall be adopted in accordance with the procedure laid down in Article 38.

## CHAPTER 3

### Tuna for canning

## Article 26

### Community producer price

1. The Council, acting by qualified majority on a proposal from the Commission, shall fix for each of

the products listed in Annex III a Community producer price before the start of the fishing year. These prices shall be established in accordance with the first and second indents of Article 18 (2).

In fixing their price, account shall also be taken of the need to:

- consider the supply conditions for the Community processing industry,
- help support producers' incomes,
- avoid the formation of surpluses in the Community.

These prices shall be valid throughout the Community and shall be fixed for each fishing year.

2. Member States shall notify the Commission of the average prices recorded at representative wholesale markets or ports for products of Community origin as referred to in paragraph 1 which have defined commercial characteristics.

3. For the purposes of paragraph 2, the representative markets and ports in the Member States shall be those where a significant proportion of Community tuna production is marketed.

4. Detailed rules for the application of this Article, in particular the setting of conversion factors for the various species, sizes and presentations of tuna and a list of the representative markets and ports referred to in paragraph 3, shall be adopted in accordance with the procedure laid down in Article 38.

#### *Article 27*

#### **Allowance for producer organisations**

1. An allowance may be granted to the producers' organisations for the quantities of products listed in Annex III caught by their members, then sold and delivered to processing industries established within the customs territory of the Community and intended for the industrial manufacture of products falling within CN code 1604.

— the average selling price recorded on the Community market

and

— the import price referred to in Article 30 (3)

are both lower than a triggering threshold equivalent to 85 % of the Community producer price for the product in question.

The Member States shall prepare or update and notify to the Commission a list of the industries referred to in this paragraph before the start of each fishing year.

2. The amount of the allowance in any case may not exceed:

— either the difference between the triggering threshold and the average selling price of the product in question on the Community market,

— or a flat-rate amount equivalent to 12 % of this threshold.

3. The maximum total quantity of each of the products eligible for the allowance shall be limited to an amount equal to the average of the quantities sold and delivered, under the terms set out in paragraph 1, during the equivalent quarter in the three fishing years preceding the quarter for which the allowance is paid.

4. The amount of the allowance granted to each producer organisation shall be equal to:

— the ceiling laid down in paragraph 2 for the quantities of the product in question which are disposed of in accordance with paragraph 1 and which do not exceed the average of the quantities sold and delivered under the same conditions by its members in the equivalent quarter in the three fishing years preceding the quarter for which the allowance is paid,

— 50 % of the ceiling laid down in paragraph 2 for the quantities of the product in question which exceed the quantities referred to in the first indent and which are equal to the surplus of the quantities resulting from allocating the quantities eligible under paragraph 3 among the producer organisations.

This allocation shall be made proportionally between the producer organisations in question on the basis of their respective average production in the equivalent quarter in the three fishing years preceding the quarter for which the allowance is paid.

5. The producer organisations shall allocate the allowance granted to their members proportionally on

the basis of the quantities produced by them and sold and delivered in accordance with paragraph 1.

6. Detailed rules for the application of this Article, in particular the amount and the conditions under which the allowance is granted, shall be adopted in accordance with the procedure laid down in Article 38.

## TITLE V

### TRADE WITH THIRD COUNTRIES

#### CHAPTER 1

##### Customs arrangements

###### *Article 28*

1. To ensure adequate supply to the Community market of raw materials intended for the processing industries, total or partial autonomous suspension of common customs tariff duties for certain products shall be adopted for an indefinite period in accordance with Annex V to this Regulation.

2. In order to prevent the suspension arrangements referred to in paragraph 1 from jeopardising the stabilisation measures referred to in Articles 20, 21, 22, 23, 25 and 26, qualification for such suspension shall be granted when the products concerned are imported, provided the price fixed under Article 29 is complied with.

#### CHAPTER 2

##### Reference prices

###### *Article 29*

1. Reference prices valid for the Community may be fixed each year, by product category, for the products specified in Article 1 that are the subject of:

- (i) tariff reduction or suspension arrangements, where the rules binding them in the WTO provide for compliance with a reference price,
  - (ii) one of the measures referred to in Article 28(1),
- or
- (iii) arrangements other than those referred to at (i) or (ii), which provide for compliance with a

reference price and which are in line with the Community's international undertakings.

2. If the declared customs value of a given product imported from a third country under one of the measures referred to in paragraph 1 is lower than the reference price, the quantities concerned shall not qualify for the tariff arrangements in question.

Member States shall inform the Commission immediately of cases where the measure provided for in this paragraph is applied.

3. Reference prices adopted:

- a) for the products listed in Annex I, parts A and B, shall be equal to the withdrawal price fixed in accordance with Article 20 (1);
- b) for the products specified in Annex I, part C, shall be equal to the Community selling price fixed in accordance with Article 22;
- c) for the products specified in Annex II shall be equal to the Community selling price fixed in accordance with Article 25 (1);
- d) for other products shall be fixed, in particular, on the basis of the weighted average of customs values recorded on the most representative import markets or in the most representative ports of import in the Member States during the three years immediately preceding the date on which the reference price is fixed, taking account of the need to ensure that prices reflect the market situation.

4. Member States shall notify the Commission regularly of the prices and quantities of imports of the products in Annexes I to IV, recorded on their representative markets or in representative ports. These prices shall be equal to the customs value of the products concerned.

5. Detailed rules for the application of this Article, including the level of the reference prices, shall be adopted in accordance with the procedure laid down in Article 38.

### CHAPTER 3

#### Safeguard measures

##### *Article 30*

1. Where, by reason of imports or exports, the Community market in one or more of the products

listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardise the achievement of the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

2. The measures provided for in paragraph 1 shall be applied and implemented in accordance with the procedures of Article 16 of Council Regulation (EC) No 3285/94<sup>(1)</sup>.

## TITLE VI

### GENERAL PROVISIONS

##### *Article 31*

Where price increases and supply problems are recorded on the Community market for one or more of the products referred to in Article 1 such that the attainment of some of the goals of Article 39 of the Treaty might be jeopardised, and where this situation is likely to persist, the measures needed to remedy the situation may be taken in accordance with the procedure laid down in Article 38.

##### *Article 32*

Subject to any provisions contrary to this Regulation adopted under Articles 42 and 43 of the Treaty, Articles 92, 93 and 94 of the Treaty shall apply to production of and trade in the products referred to in Article 1.

##### *Article 33*

Without prejudice to other Community provisions, the Member States shall take the necessary steps to ensure that all fishing vessels flying the flag of one of the Member States enjoy equal access to ports and first-stage marketing installations together with all associated equipment and technical installations.

##### *Article 34*

1. The Member States and the Commission shall communicate to each other the information necessary for implementing this Regulation. To that end they shall set up the necessary communication and information exchange systems, maintain them in good operating order and bear the attendant costs.

Part of the cost of the systems referred to in paragraph 1 shall be borne by the Community budget.

2. Detailed rules for the application of this Article, including determination of the expenditure to be borne by the Community budget, shall be adopted in accordance with the procedure laid down in Article 38.

##### *Article 35*

1. Expenditure incurred from the grant of payments provided for in this Regulation shall be deemed to relate to intervention measures within the meaning of Article 2(2) of Council Regulation (EC) No ... on ... the financing of the common agricultural policy<sup>(2)</sup>.

2. Financing for the expenditure referred to in paragraph 1 shall be granted in respect of products from a stock or group of stocks only up to the limit of any quantities allocated to the Member State in question from the total volume of allowable catches for the stock or group of stocks in question.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 38.

##### *Article 36*

The Member States shall adopt all appropriate measures to ensure compliance with this Regulation

<sup>(1)</sup> Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94(OJ L 349, 31.12.1994, p. 53). Regulation as last amended by Regulation (EC) No 2315/96 (OJ L 314, 4.12.1996, p. 1).

<sup>(2)</sup> OJ L....

and to forestall and bring to an end any fraud. To that end:

- they shall carry out systematic checks on the beneficiaries of financial assistance;
- if it is appropriate to carry out certain checks by sampling, they shall ensure, on the basis of risk analysis, that the frequency of the checks and the methods used are appropriate throughout their territory for the measure being checked and are adequate for the volume of products marketed or held with a view to marketing.

#### *Article 37*

A Management Committee for Fishery Products (hereinafter called 'the Committee') shall be established, consisting of representatives of the Member States and presided over by a representative of the Commission.

#### *Article 38*

Where the procedure laid down in this Article is to be followed, the Chairman shall refer the matter to the Committee either on his own initiative or at the request of the representative of a Member State.

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 Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the 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 Chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

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

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

#### *Article 39*

The Committee may consider any other question referred to it by its Chairman either on his own initiative or at the request of the representative of a Member State.

#### *Article 40*

This Regulation shall be so applied that appropriate account is taken at the same time of the goals set out in Articles 39 and 110 of the Treaty.

#### *Article 41*

By 31 December 2005 at the latest, the Commission shall send to the Council and the European Parliament an evaluation report on the results of implementing this Regulation. This report shall be accompanied, where necessary, by appropriate proposals based on an analysis of the impact of this Community action and its effectiveness in relation to its objectives.

#### *Article 42*

1. Regulation (EEC) No 3759/92, Regulation (EEC) No 105/76, and Regulation (EEC) No 1772/82 are hereby repealed with effect from 1 January 2001.

2. References to the repealed Regulation (EEC) No 3759/92 shall be construed as referring to this Regulation and should be read in accordance with the correlation Table in Annex VII.

#### *Article 43*

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

It shall apply from 1 January 2001.

## ANNEX I

CN code	Description
A. Fresh or chilled products of heading Nos 0302 and 0307:	
a) 1. 0302 22 00	Plaice ( <i>Pleuronectes platessa</i> )
2. ex 0302 29 90	Dab ( <i>Limanda limanda</i> )
3. 0302 29 10	Megrim ( <i>Lepidorhombus</i> spp.)
4. ex 0302 29 90	Flounder ( <i>Platichthys flesus</i> )
5. 0302 31 10 and 0302 31 90	Albacore or longfinned tunas ( <i>Thunnus alalunga</i> )
6. ex 0302 40	Herring of the species <i>Clupea harengus</i>
7. 0302 50 10	Cod of the species <i>Gadus morhua</i>
8. 0302 61 10	Sardines of the species <i>Sardina pilchardus</i>
9. 0302 62 00	Haddock ( <i>Melanogrammus aeglefinus</i> )
10. 0302 63 00	Coalfish ( <i>Pollachius virens</i> )
11. ex 0302 64	Mackerel of the species <i>Scomber scombrus</i> and <i>Scomber japonicus</i>
12. 0302 65 20 and 0302 65 50	Dogfish ( <i>Squalus aeanthias</i> and <i>Scyliorhinus</i> spp.)
13. 0302 69 31 and 0302 69 33	Redfish ( <i>Sebastes</i> spp.)
14. 0302 69 41	Whiting ( <i>Merlangius merlangus</i> )
15. 0302 69 45	Ling ( <i>Molva</i> spp.)
16. 0302 69 55	Anchovies ( <i>Engraulis</i> spp.)
17. ex 0302 69 68	Hake of the species <i>Merluccius merluccius</i>
18. 0302 69 81	Monkfish ( <i>Lophius</i> spp.)
19. ex 0307 41 10	Cuttlefish ( <i>Sepia officinalis</i> and <i>Rossia macrosoma</i> )
B. Live, fresh or chilled products or products cooked by steaming or by boiling in water:	
ex 0306 23 10	Shrimps of the species <i>Crangon crangon</i> and Deep-water prawn ( <i>Pandalus borealis</i> )
ex 0306 23 31	
ex 0306 23 39	
C. Live, fresh or chilled products or products cooked by steaming or by boiling in water:	
0302 23 00	Sole ( <i>Solea</i> spp.)
0306 24 30	Edible crabs ( <i>Cancer pagurus</i> )
0306 29 30	Norway lobsters ( <i>Nephrops norvegicus</i> )



## ANNEX II

CN code	Description
A. Frozen products of heading Nos 0303 and 0304:	
0303 31 10	Lesser or Greenland halibut ( <i>Reinhardtius hippoglossoides</i> )
0303 78 11	Hake of the genus <i>Merluccius</i>
0303 78 12	
0303 78 13	
0303 78 19	
and	
0304 20 55	
0304 20 56	
0304 20 58	
0303 79 71	Sea bream ( <i>Dentex dentex</i> and <i>Pagellus</i> spp.)
B. Frozen products of heading No 0306:	
0306 13 40	Shrimps of the family <i>Penaeidae</i>
0306 13 50	
ex 0306 13 80	
C. Frozen products of heading No 0307:	
1. 0307 49 18	Cuttlefish of the species <i>Sepia officinalis</i> , <i>Rossia macrosoma</i> and <i>Sepiola rondeletti</i>
0307 49 01	
2. 0307 49 31	Squid ( <i>Loligo</i> spp.)
0307 49 33	
0307 49 35	
and	
0307 49 38	
3. 0307 49 51	Squid ( <i>Ommastrephes sagittatus</i> )
4. 0307 59 10	Octopus ( <i>Octopus</i> spp.)
5. 0307 99 11	<i>Illex</i> spp.

## ANNEX III

Tuna (of the genus *Thunnus*), skipjack or stripe-bellied bonito (*Euthynnus* [*Katsuwonus*] *pelamis*) and other species of the genus *Euthynnus*, fresh, chilled or frozen, intended for industrial manufacture of products falling within heading No 1604, and classified under one of the following Combined Nomenclature codes:

Description	CN code	
	Fresh or chilled	Frozen
Presented in a form other than those listed under heading No 0304		
I. The following species:		
a) Albacore or longfinned tuna ( <i>Thunnus alalunga</i> ), excluding fresh or chilled:		
1. Weighing more than 10 kg each (*)		0303 41 11, 0303 41 13 and 0303 41 19
2. Weighing not more than 10 kg each (*)		0303 41 11, 0303 41 13 and 0303 41 19
b) Yellowfin tuna ( <i>Thunnus albacares</i> ):		
1. Weighing more than 10 kg each	0302 32 10 (*)	0303 42 12, 0303 42 32 and 0303 42 52
2. Weighing not more than 10 kg each	0302 32 10 (*)	0303 42 18, 0303 42 38 and 0303 42 58
c) Skipjack or stripe-bellied tuna ( <i>Euthynnus</i> [ <i>Katsuwonus</i> ] <i>pelamis</i> )	0302 33 10	0303 43 11, 0303 43 13 and 0303 43 19
d) Bluefin tuna ( <i>Thunnus thynnus</i> ), excluding fresh or chilled		0303 49 21, 0303 49 23 and 0303 49 29
e) Other species of the gender <i>Thunnus</i> and <i>Euthynnus</i>	0302 39 11 0302 39 19 0302 69 21	0303 49 41, 0303 49 43, 0303 49 49, 0303 79 21, 0303 79 23 and 0303 79 29
II. Presented in one of the following ways:		
a) Whole		
b) Gilled and gutted		
c) Other (for example 'heads off')		

(\*) Reference to weight applies to the whole product.

## ANNEX IV

	Fresh or chilled products of the following species	CN code
1.	Lemon sole ( <i>Microstomus kitt</i> )	ex 0302 29 90
2.	Bluefin tunas ( <i>Thunnus thynnus</i> )	0302 39 11 and 0302 39 91
3.	Pollack ( <i>Pollachius pollachius</i> )	ex 0302 69 51
4.	Ray's bream ( <i>Brama</i> spp.)	0302 69 75
5.	Blue whiting ( <i>Micromesistius poutassou</i> or <i>Gadus poutassou</i> )	0302 69 85
6.	Pout ( <i>Trisopterus luscus</i> ) and poor cod ( <i>Trisopterus minutus</i> )	ex 0302 69 99
7.	Bogues ( <i>Boops boops</i> )	ex 0302 69 99
8.	Picarel ( <i>Maena smaris</i> )	ex 0302 69 99
9.	Conger ( <i>Conger conger</i> )	ex 0302 69 99
10.	Gurnard ( <i>Trigla</i> spp.)	ex 0302 69 99
11.	Horse mackerel ( <i>Trachurus</i> spp.)	ex 0302 69 91 ex 0302 69 99
12.	Mullet ( <i>Mugil</i> spp.)	ex 0302 69 99
13.	Skate ( <i>Raja</i> spp.)	ex 0302 69 99 and ex 0304 10 98
14.	Scabbard fish ( <i>Lepidopus caudatus</i> and <i>Aphanopus carbo</i> )	ex 0302 69 99

## ANNEX V

## SUSPENSIONS OF COMMON CUSTOMS TARIFF DUTIES REFERRED TO IN ARTICLE 28

1. The customs duty for frozen fillets of Alaska pollack (*Theragra chalcogramma*) presented as industrial blocks and intended for processing, falling within CN code ex 0304 20 85, is reduced to 3,5 % for an indefinite period.
2. The customs duty for frozen meat of Alaska pollack (*Theragra chalcogramma*) presented as industrial blocks and intended for processing, falling within CN code ex 0304 90 61, is reduced to 3,5 % for an indefinite period.
3. The customs duty for fish of the species: *Gadus morhua*, *Gadus ogac*, *Gadus macrocephalus* and *Boreogadus saida*, excluding livers and roes, presented fresh, chilled or frozen and intended for processing, falling within CN codes:

ex 0302 50 10  
ex 0302 50 90  
ex 0302 69 35  
ex 0303 60 11  
ex 0303 60 19  
ex 0303 60 90  
ex 0303 79 41

is reduced to 3 % for an indefinite period.

4. The duty rate for surimi intended for processing, falling within CN code ex 0304 90 05, is reduced to 3,5 % for an indefinite period.
5. The duty rate for frozen fillets of Blue grenadier (*Macruronus novaezealandiae*) intended for processing, falling within CN code ex 0304 20 91, is reduced to 3,5 % for an indefinite period.
6. The duty rate for frozen meat of Blue grenadier (*Macruronus novaezealandiae*) intended for processing, falling within CN code ex 0304 90 97, is reduced to 3,5 % for an indefinite period.
7. The duty rate for so called 'loin' fillets of tunas and skipjack intended for processing, falling within CN code ex 1604 14 16, is reduced to 6 % for an indefinite period. This rate of duty is to be reviewed in the light of changes to the Scheme of Generalised Preferences and the design of the new system that will apply from 2002.
8. The levying of the customs duty for prawns of the species (*Pandalus borealis*), in shell, fresh, chilled or frozen and intended for processing, falling within CN code:

ex 0306 13 10  
ex 0306 23 10

is suspended for an indefinite period.

9. The customs duty for whole herring (*Clupea harengus*, *Clupea pallasii*) weighing more than 140 g each or herring fillets weighing more than 80 g each including flaps, excluding livers and roes, presented fresh, chilled or frozen and intended for processing, falling within CN codes:

ex 0302 40 98  
ex 0303 50 98  
ex 0304 10 96  
ex 0304 90 27

is reduced to 5 % for an indefinite period.

Checks to ensure that the above products are actually processed are carried out in accordance with the relevant Community provisions. Total or partial suspension of the duty on these products shall be permitted where they are to undergo any operation, except where they are to undergo only one or more of the following:

- cleaning, gutting, tailing, heading,
- cutting (excluding filleting or cutting of frozen blocks),
- sampling, sorting,
- labelling,
- packing,
- chilling,
- freezing,
- deep freezing,
- thawing, separation.

The suspension is not allowed for products intended, in addition, to undergo treatment (or operations) qualifying for suspension where such treatment (or operations) is (are) carried out at retail or catering level. The suspension of customs duties shall apply only to fish intended for human consumption.

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## ANNEX VI

## A. Method for calculating the allowance provided for in Article 1

*(in EUR per member vessel)*

Member vessels	Annual amount during the first three years	Annual amount during the two subsequent years
from the 1st to the 50th	600	300
from the 51st to the 100th	200	100
from the 101st to the 500th	100	50
from the 501st	0	0

## B. Method for calculating the allowance provided for in Article 12

*(in EUR per member vessel)*

Member vessels	Annual amount
from the 1st to the 50th	1 000
from the 51st to the 100th	500
from the 101st to the 500th	250
from the 501st	0

## ANNEX VII

## Correlation Table

Regulation (EEC) No 3759/92	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 5
Article 4a	Article 6
Article 5	Article 8
Article 5a	—
Article 6	Article 9
Article 7	—
Article 7a	Article 7
Article 7b	—
Article 8	Article 17
Article 9	Article 18
Article 10	Article 19
Article 11	Article 20
Article 12	Article 21
Article 12a	—
Article 13	Article 22
Article 14	Article 23
Article 15	Article 24
Article 16	Article 25
Article 17	Article 26
Article 18	Article 27
Article 19	—
Article 20	—
Article 21	—
Article 22	Article 29
Article 23	Article 29

Regulation (EEC) No 3759/92	This Regulation
Article 24	Article 30
Article 25	Article 35
Article 26	Article 33
Article 27	Article 32
Article 28	Article 31
Article 29	—
Article 30	Article 34
Article 31	Article 37
Article 32	Article 38
Article 33	Article 39
Article 34	Article 40
Article 35	Article 42
Article 36	Article 43
Annex I	Annex I
Annex II	Annex II
Annex III	Annex III
Annex IV	—
Annex V	—
Annex VI	Annex IV
Annex VII	Annex V