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REPORT

on the proposal for a Council regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Reunion as a result of those regions' remoteness (COM(2003) 516 – C5-0390/2003 – 2003/0202(CNS))

Committee on Fisheries

Rapporteur: Margie Sudre

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 11 September 2003 the Council consulted Parliament, pursuant to Article 37 of the EC Treaty, on the proposal for a Council regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Reunion as a result of those regions' remoteness (COM(2003) 516 – 2003/0202(CNS)).

At the sitting of 22 September 2003 the President of Parliament announced that he had referred the proposal to the Committee on Fisheries as the committee responsible and the Committee on Budgets and the Committee on Regional Policy, Transport and Tourism for their opinions (C5-0390/2003).

The Committee on Fisheries had appointed Margie Sudre rapporteur at its meeting of 9 September 2003.

The committee considered the Commission proposal and draft report at its meetings of 2 October and 24 November 2003.

By letter of 4 November 2003 the Committee on Legal Affairs and the Internal Market notified the Committee on Fisheries that it had decided to deliver an opinion on the proposal's legal basis pursuant to Rule 63(3).

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Struan Stevenson (chairman), Rosa Miguélez Ramos (vice-chairwoman), Margie Sudre (rapporteur), Elspeth Attwooll, Niels Busk, Giovanni Claudio Fava, Ian Stewart Hudghton, Heinz Kindermann, Carlos Lage, Giorgio Lisi, Ioannis Marinos, James Nicholson (for Brigitte Langenhagen), Bernard Poinant, Catherine Stihler and Daniel Varela Suanzes-Carpegna.

The opinions of the Committee on Budgets and the Committee on Regional Policy, Transport and Tourism and the opinion of the Committee on Legal Affairs and the Internal Market on the legal basis are attached.

The report was tabled on 26 November 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion as a result of those regions' remoteness
(COM(2003) 516 – C5-0390/2003 – 2003/0202(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2003) 516)¹,
 - having regard to Article 37 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0390/2003),
 - having regard to the opinion of the Committee on Legal Affairs and the Internal Market on the proposed legal basis,
 - having regard to Rules 67 and 63 of its Rules of Procedure,
 - having regard to the report of the Committee on Fisheries and the opinions of the Committee on Budgets and the Committee on Regional Policy, Transport and Tourism (A5-0411/2003),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Citation 1

Having regard to the Treaty establishing the European Community, and in particular

Having regard to the Treaty establishing the European Community, and in particular

¹ Not yet published in OJ.

Article 37 thereof,

Article 299(2) thereof,

Justification

Article 299(2) is the appropriate legal basis.

Amendment 2

Recital 4

(4) The regions concerned are facing specific development problems, and in particular additional costs incurred in the marketing of certain products as a result of their remoteness.

(4) The regions concerned are facing specific development problems, and in particular additional costs incurred in the ***production and*** marketing of certain products as a result of their remoteness ***and other restrictive factors.***

Justification

There are other factors warranting differentiated treatment, such as the lack of economies of scale, high production costs, etc.

Amendment 3

Article 8, paragraph 2 a (new)

2a. The Commission may, in accordance with the same procedure, revise on an annual basis the quantities referred to in Articles 3 to 7. In so doing, it shall take account of the rates of utilisation of appropriations in each of the regions concerned, without prejudice to the key for distributing the financial amounts available under this Regulation for the following years, and after verifying that the possibility for modulation within regions belonging to the same Member State, or among species, has not resulted in the full use of the amounts available.

Justification

Provision should be made for appropriations to be revised on an annual basis without there

being any obligation to increase them (under-utilisation would mean a downward revision) and, at the same time, for modulation between the regions concerned (giving the Commission the option to cut appropriations for a region in which they are poorly used or under-used, for redeployment to regions where they are used well).

Amendment 4
Article 10, paragraphs 1 and 2

1. The Commission shall be assisted by ***the Management Committee for Fishery Products (hereafter "the Committee")***.

2. Where reference is made to this paragraph, ***Articles 4*** and 7 of Decision 1999/468/EEC shall apply.

The period referred to in Article 4(3) of Decision 1999/468/CE shall be one month.

1. The Commission shall be assisted by ***an Advisory Committee***.

2. Where reference is made to this paragraph, ***Articles 3*** and 7 of Decision 1999/468/EEC shall apply, ***having regard to the provisions of Article 8 thereof***.

Justification

In order to keep administrative costs down and make the decision-making process as effective as possible, the advisory procedure should be used, keeping in line with the traditional approach of the Committee on Budgets as regards comitology.

Amendment 5
Article 12, paragraph 1 a (new)

In addition, by 1 May each year, the Commission shall submit to the budgetary authority a report on the implementation of this Regulation, accompanied by an updated financial statement.

Justification

Given the exceptional nature of the measures foreseen, Parliament, as a branch of the budgetary authority, should be informed annually and before first reading on the progress made in the implementation of the scheme.

EXPLANATORY STATEMENT

1. Background

The fisheries industry in the EU's outermost regions faces additional costs when marketing products outside their territories. These additional costs include transport, energy, insurance and packaging costs related to transport. Fisheries operators are also submitted to higher operating cost than in the continent (fuel costs, lack of qualified staff for vessel maintenance and repairs, slow and costly delivery of spare parts from the mainland, vessels forced by mechanical failures or cyclones to remain in ports), which make their products more expensive and less competitive than those of ACP or community continental producers.

The compensation measures concern only the marketing of the following fisheries products:

- tuna, pelagic and demersal species from the Azores;
- tuna, black scabbard, mackerel and aquaculture products from Madeira;
- tuna, sardine, mackerel, aquaculture products, cephalopods and demersal species from the Canary Islands;
- shrimp, whitefish and aquaculture products from Guiana; and
- tuna, swordfish, dolphinfish, marlins and sharks from Reunion.

Since 1992, an EU scheme has been put in place to assist producers in the EU's outermost regions with marketing certain fisheries products. This scheme was renewed in 1994, 1995, 1998 and 2002. Council Decisions had been taken in 1989 (89/686/EEC) and 1991 (91/314/EEC and 91/315/EEC) creating a suitable framework for the adoption of measures in the various sectors of activity aiming to compensate for the remoteness of these regions. The need to adopt special measures to assist them was recognised by Art 299 (2) of the EC Treaty.

2. The Commission Proposal COM(2003) 516

The Commission proposal for a Council Regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fisheries products in the EU's outermost regions, is a continuation of a scheme which was first introduced in 1992. The scheme provides for compensation for the fisheries products from the Portuguese regions of Azores and Madeira, the Canary Islands and the French departments of Guiana and Reunion which are all remote and heavily dependent on fisheries. Reunion was added to the list of the beneficiary regions only in 1997, and thus never had the same level of compensation as the other ones.

Specific conditions that are inherent to these regions, as a result of their remoteness, island location and difficult transport links, cause higher production and marketing costs for fisheries products which are marketed outside these regions in substantial quantities. Compared with the fisheries industry on the mainland EU, these additional costs weaken the competitiveness of the fisheries sector in the OR.

The Commission proposal is based on the percentages of amounts agreed for each of the beneficiary regions in 1998. The budget available from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) for 2003-2007 has been diminished from €17m to €15m.

Moreover, the Commission proposal provides for the establishment of a permanent legal framework for compensation which aims to create stability for fisheries operators and address a situation resulting from the inherent characteristics of these regions in the long term.

3. Rapporteur's Comments

The rapporteur proposes a change to the legal basis from Article 37 to Article 299(2) which is the appropriate article for measures relating to the outermost regions.

The Commission's proposals have caused concern in Reunion and Guiana. Reunion is 9600 km from the European continent and is the furthest away of the outermost regions. It also has severe structural problems including the small size of local markets, and the small scale of local enterprises. Reunion has an unemployment rate of 28.5% (in August 2003); the fisheries sector, which has been really developed in the last ten years thanks to the compensation scheme, is the second productive sector, after sugar-cane industry, in terms of employment and revenue. Therefore the compensation scheme is one on which the Reunion fisheries sector relies considerably.

The basic reason for the problem is that the Commission has not taken into account the level of utilisation of the scheme which has been high in Reunion and Guiana but relatively low in the Canaries and the Azores, caused by the following reasons: in the Canaries, the non-renewal of the fisheries agreement with Morocco has led to a decline in fishing and therefore a considerable decline in the utilisation of the compensation scheme; and in the Portuguese outermost regions, the decline of capture in the Atlantic Ocean has also led to low utilisation of the scheme. Therefore, the Commission's proposal presents amounts and quantities eligible for compensation which represents an equal but not equitable reduction, because it does not take into account the rate of execution of the preceding scheme by each region. Furthermore, the amounts and quantities which have been proposed by the Commission are not always adequate compensation for the extra costs involved and could consequently prevent the use of the scheme by certain regions.

The rapporteur therefore proposes an amendment to the system which will provide for annual fixing of the amounts and quantities, taking account of the level of utilisation of the scheme.

3 November 2003

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Fisheries

on the proposal for a Council regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion as a result of those regions' remoteness
(COM(2003) 516 – C5-0390/2003 – 2003/0202(CNS))

Draftsperson: Bárbara Dührkop Dührkop

PA_Leg

PROCEDURE

The Committee on Budgets appointed Bárbara Dührkop Dührkop draftsperson at its meeting of 7 October 2003.

It considered the draft opinion at its meeting of 3 November 2003.

At the meeting it adopted the following suggestions unanimously.

The following were present for the vote: Terence Wynn (chairman), Reimer Böge (vice-chairman), Franz Turchi (vice-chairman), Bárbara Dührkop Dührkop (draftswoman), Ioannis Averoff, Joan Colom i Naval, Bárbara Dührkop Dührkop, Salvador Garriga Polledo, Catherine Guy-Quint, María Esther Herranz García, John Joseph McCartin, Juan Andrés Naranjo Escobar, Giovanni Pittella, Ralf Walter and Brigitte Wenzel-Perillo.

BACKGROUND/GENERAL COMMENTS

Outermost regions (Azores, Madeira, the Canary Islands and the French Overseas Departments) display socio-economic factors which, as recognised by Art. 299(2) of the EC Treaty, call for specific measures aimed at facilitating the application of the Treaty in these regions.

Accordingly, the Council has adopted a legal framework¹ for the adoption of measures in the policy areas that deserve particular attention, including the fisheries sector. This legislation institutes programmes for addressing the remoteness and insularity of these regions which, subsequently, are lagging behind in socio-economic terms. The following factors call particularly for Community intervention:

- a per capita GDP below the Community average;
- high unemployment rates in some regions and situations of serious underemployment;
- a primary sector still largely dependent on traditional industries and employing a large part of the population (with family firms dominate the fishing industry);
- additional costs in relation to supplies and transport: the absence of nearby regional markets, the limitations of local markets and transport difficulties mean that there are permanent constraints on these economies as regards access to the outlets where their products are marketed.

In this framework the Community adopted in 1992 a scheme aimed at compensating producers in these regions for the additional costs incurred in the marketing of certain fishery products. This scheme was successively renewed in 1994, 1995 and 1998² and extended to 2003.

Art. 6 of Council Regulation (EC) No 1587/98 of 17 July 1998 requires the Commission to submit a report to the Parliament on the implementation of the scheme. This report, which has only recently been transmitted to Parliament³, recognises that, while the scheme has been very successful, enabling the operators concerned to enjoy similar conditions to those prevailing on the European mainland, and thus contributing to maintaining employment in regions where alternative opportunities are scarce, the conditions giving rise to the additional costs will not change, given that they derive from the very nature of the outermost regions.

In line with the above report, the purpose of the present Proposal is to enable the scheme to continue in offsetting the additional costs arising from the disposal of the fishery products, thus bringing conditions into line with those on the European mainland.

The financial statement in annex to the Commission Proposal indicates the amount of the financial compensation foreseen under budget line B1-3240, as indicated in table 1 over the next page. The Commission does not propose a time limit for the scheme, but since the

¹ Council Decision 89/686/EEC, OJ L 399, 30.12.1989, p.39; Council Decision 91/314/EEC, OJ L 171, 29.6.1991, p.5; Council Decision 91/315/EEC, OJ L 171, 29.6.1991, p. 10.

² Council Regulation (EC) No 1503/94, OJ L 162, 30.6.1994, p.8; Council Regulation (EC) No 2337/95, OJ L 236, 5.10.1995, p. 2; Council Regulation (EC) No 1587/98, OJ L 208, 24.7.1998, p. 1; Council Regulation (EC) No 597/2002, OJ L 89, 5.4.2002, p. 1;

³ COM(2003)574 final

Council usually sets a period of application of four years, the multiannual expenditure can be estimated as follows:

Table 1 Budget line B1-3240 (in €)

	2003	2004	2005	2006	Total
CA	14.985.412	14.985.412	14.985.412	14.985.412	59.941.648
PA	14.985.412	14.985.412	14.985.412	14.985.412	59.941.648

It should be underlined that a "p.m" has been entered under budget line B1-3240 in the 2003 budget, and that an amount of € 15 000 000 has been entered into the reserve¹.

AMENDMENTS

The Committee on Budgets calls on the Committee on Fisheries, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission²

Amendments by Parliament

Amendment 1
Article 12 a (new)

In addition, by 1 May each year the Commission shall submit to the budgetary authority a report on the implementation of this Regulation, accompanied by an updated financial statement.

Justification

Given the exceptional nature of the measures foreseen, Parliament, as a branch of the budgetary authority should be informed annually and before first reading on the progress made in the implementation of the scheme.

Amendment 2
Article 10, paragraphs 1 and 2

¹ With regard to the 2004 PDB, a "p.m" has been entered under budget line 11 02 03, and an amount of € 15 000 000 has been entered under chapter 31 02 (reserve).

² Not yet published in OJ..

1. The Commission shall be assisted by ***the Management Committee for Fishery Products (hereafter "the Committee")***.

2. Where reference is made to this paragraph, ***Articles 4*** and 7 of Decision 1999/468/EEC shall apply.

The period referred to in Article 4(3) of Decision 1999/468/CE shall be one month.

1. The Commission shall be assisted by ***an Advisory Committee***.

2. Where reference is made to this paragraph, ***Articles 3*** and 7 of Decision 1999/468/EEC shall apply.

Justification

In order to keep administrative costs down and make the decision-making process as effective as possible, the draftsman is in favour of the advisory procedure, keeping in line with the traditional approach of the Committee on Budgets as regards comitology.

24 November 2003

**OPINION OF THE COMMITTEE ON REGIONAL POLICY, TRANSPORT AND
TOURISM**

for the Committee on Fisheries

on the proposal for a Council regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion as a result of those regions' remoteness
(COM(2003) 516 – C5-0390/2003 – 2003/0202(CNS))

Draftsman: Alonso José Puerta

PA_Leg

PROCEDURE

The Committee on Regional Policy, Transport and Tourism appointed Alonso José Puerta draftsman at its meeting of 10 September 2003.

It considered the draft opinion at its meetings of 4 and 24 November 2003.

At the latter meeting it adopted the following amendments unanimously.

The following were present for the vote: Paolo Costa (chairman), Alonso José Puerta (draftsman), Sylviane H. Ainardi, Graham H. Booth (for Rijk van Dam), Philip Charles Bradbourn, Luigi Cocilovo, Christine de Veyrac, Jan Dhaene, Jacqueline Foster, Konstantinos Hatzidakis, Ewa Hedkvist Petersen, Georg Jarzembowski, Giorgio Lisi, Nelly Maes, Emmanouil Mastorakis, Erik Meijer, Wilhelm Ernst Piecyk, Samuli Pohjamo, Carlos Ripoll y Martínez de Bedoya, Margie Sudre and Herman Vermeer.

SHORT JUSTIFICATION

Since 1992 the Community has adopted a series of measures designed to compensate for the additional costs incurred in the production and marketing of certain fisheries products from the Azores, Madeira, the Canary Islands and the French departments of Guyana and Réunion as a result of the remoteness of these regions. In particular, Council Regulation (EC) No 1587/98, amended and extended by Council Regulation (EC) No 579/2002, introduced a compensation scheme aimed at adapting the common fisheries policy to take into account the specific characteristics and requirements of these regions.

The proposal under consideration here is intended to continue these arrangements by adopting a permanent legal and financial instrument that will help create a stable framework for those working in the sector.

In support of these measures, the Commission's explanatory memorandum cites Article 299(2) of the EC Treaty in full. In addition, recital 3 of the proposed regulation states: 'Article 299(2) of the Treaty recognises the particular handicaps affecting the economic and social situation of the outermost regions, made worse by their remoteness and insularity. The same also applies to the fishing industry.' In the light of this justification and given the purpose of the measure, the appropriate legal basis for the adoption of the proposal for a regulation should therefore be Article 299(2) of the EC Treaty.

However, the legal basis proposed by the Commission is Article 37 of the EC Treaty, which relates to the *general* measures needed in order to achieve the various objectives of the common fisheries policy. Yet in this case, the proposal for a regulation refers to *specific* measures intended for the outermost regions. By way of a compromise, your draftsman is therefore proposing that a twin legal basis be used. There is already a precedent for this in the adoption of Council Regulation (EC) No 579/2002. Furthermore, when setting out the aims of the regulation, emphasis needs to be placed on the scale of the structural problems faced by these regions. An amendment has therefore been tabled to extend the scope of recital 4.

Given the importance of this scheme for the regions concerned, the draftsman proposes that the Commission proposal, as amended, be adopted as quickly as possible.

AMENDMENTS

The Committee on Regional Policy, Transport and Tourism calls on the Committee on Fisheries, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
	Amendment 1 Citation 1
having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,	having regard to the Treaty establishing the European Community, and in particular Article 37 and Article 299(2) thereof,

Justification

The use of a twin legal basis is in line with the precedent established by Council Regulation (EC) No 579/2002 of 25 March 2002 amending Regulation (EC) No 1587/98 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fisheries products from the Azores, Madeira, the Canary Islands and the French departments of Guyana and Réunion as a result of those regions' remoteness.

	Amendment 2 Recital 4
(4) The regions concerned are facing specific development problems, and in particular additional costs incurred in the marketing of certain products as a result of their remoteness,	(4) The regions concerned are facing specific development problems, and in particular additional costs incurred in the production and marketing of certain products as a result of their remoteness and other restrictive factors ,

Justification

There are other factors warranting differentiated treatment, such as the lack of economies of scale, high production costs, etc.

¹ Not yet published in OJ.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET ON THE LEGAL BASIS

Mr Struan Stevenson
Chairman
Committee on Fisheries
BRUSSELS

Subject: Legal basis of the proposal for a Council regulation introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion as a result of those regions' remoteness (COM(2003) 516 - C5-0390/2003 - 2003/0202(CNS))

Dear Mr Chairman,

By letter of 24 September 2003 you requested the Committee on Legal Affairs and the Internal Market to verify the legal basis of the above Commission proposal, which is based on Article 37 of the EC Treaty.

Pursuant to the procedure set out in Rule 63 of the Rules of Procedure, the Committee on Legal Affairs and the Internal Market was asked for its opinion.

The legal basis of the proposal under consideration is Article 37 of the EC Treaty, which relates to agricultural policy.

In 1992, the Community introduced a specific scheme to assist producers in the outermost regions with the marketing of certain fishery products. This scheme has been extended several times.

The explanatory memorandum states that 'the purpose of this proposal is to enable the scheme already in place to continue' to offset the additional costs arising from the disposal of fishery products in view of the fact that 'the conditions previously noted with regard to the marketing of the products covered by this [proposal for a] Regulation still prevail'. 'The aim is to bring conditions into line with those prevailing on the mainland so that the sector can integrate into the single market'.

The explanatory memorandum also explains that 'the measures proposed are designed to support the market in order to compensate for a permanent geographical handicap ...'.

The proposal under consideration accordingly adds a number of specific provisions concerning compensation for the additional costs arising from the marketing of fishery products by way of derogation from a common policy of the European Community, in this particular case, the common fisheries policy.

The first recital of the proposal for a regulation refers to the difficulties faced by the fisheries sector in the outermost regions of the Community 'which are aggravated in particular by the cost of transporting fishery products to the markets as a result of their remoteness and isolation'.

The proposal for a regulation 'introduces a scheme to compensate for the additional costs incurred in the marketing of certain fishery products (...) from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion (...) as a result of those regions' remoteness' (Article 1).

The amounts of compensation are laid down by outermost region in Articles 3 et seq. Article 11 states that the measures provided for in the proposal for a regulation are to be financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF).

The basic question is to determine whether Article 37 or Article 299 of the EC Treaty is the appropriate legal basis for the proposal for a regulation.

In this particular case, the fact of the matter is that both Article 37(2) of the EC Treaty and Article 299(2) of the EC Treaty provide for adoption by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

According to settled case law, in the context of the organisation of the powers of the Community the choice of the legal basis for a measure must be based on objective factors which are amenable to judicial review. Those factors include, in particular, the aim and the content of the measure¹.

It is necessary to examine whether the measures laid down in the proposal for a regulation relate mainly to a particular field of action having only incidental effects on other policies and whether it follows from the aim and content of the proposal for a regulation as enshrined in its actual wording that it relates inseparably both to the fishery sector and the outermost regions.

However, a dual legal basis is not admissible where the enabling provisions provide for incompatible procedures². Use of a dual legal basis might therefore be likely to divest the consultation procedure of its very substance.

Article 37 of the EC Treaty relates to agricultural policy. This provision must be interpreted in the light of Article 32 of the EC Treaty and of Annex I (ex-Annex II) to the EC Treaty. Article 32(1) states that 'agricultural products' means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. The operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy (Article 32(4)).

The Court of Justice has ruled that Article 37 is the appropriate legal basis for all legislation relating to the production and marketing of the agricultural products listed in Annex II to the Treaty which contribute to the attainment of one or more of the objectives of the common

¹ See in particular the Judgment of 23 February 1999 in Case C-42/97 *Parliament v. Council* [1999] ECR I-00869, point 36.

² Judgment of 11 June 1991 in Case C-300/89 *Commission v. Council* [1991] ECR I-2867, points 17-21.

agricultural policy as set out in Article 33 of the Treaty¹.

Article 299 of the EC Treaty provides for the territorial application of that Treaty. Paragraph 2 empowers the Council to adopt, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, specific measures aimed, in particular, at laying down the conditions of application of the EC Treaty to the regions of the Azores, Madeira and the Canary Islands.

The Council has to adopt the measures taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Community legal order, including the internal market and common policies.

On 4 November 2003, in the light of the considerations set out above and of the case law of the Court of Justice of the European Communities, the Committee on Legal Affairs and the Internal Market decided unanimously that the proposal for a regulation must be based on Article 299(2) of the EC Treaty².

Yours sincerely,

Giuseppe Gargani

¹ See Judgment of 23 February 1988 in Case 68/86 *United Kingdom v. Council* [1988] ECR 855 and Judgment of 23 February 1988 in Case 131/86 *United Kingdom v. Council* [1988] ECR 905.

² The following were present for the vote: Giuseppe Gargani (chairman), Ioannis Koukiadis, Willi Rothley (vice-chairmen), François Zimeray (rapporteur), Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Malcolm Harbour, Hans Karlsson, Kurt Lechner, Klaus-Heiner Lehne, Sir Neil MacCormick, Manuel Medina Ortega, Marcelino Oreja Arburúa, Barbara O'Toole, Fernando Pérez Royo, Imelda Mary Read and Diana Wallis.