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## I

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

## REGULATIONS

**COMMISSION REGULATION (EC) No 360/2007****of 30 March 2007****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables <sup>(1)</sup>, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 31 March 2007.

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

Done at Brussels, 30 March 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

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<sup>(1)</sup> OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

## ANNEX

**to Commission Regulation of 30 March 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

CN code	Third country code <sup>(1)</sup>	Standard import value
0702 00 00	IL	171,2
	MA	101,6
	SN	320,6
	TN	175,4
	TR	159,0
	ZZ	185,6
0707 00 05	JO	171,8
	MA	102,4
	TR	116,2
	ZZ	130,1
0709 90 70	MA	58,2
	TR	109,3
	ZZ	83,8
0709 90 80	EG	242,2
	IL	80,8
	ZZ	161,5
0805 10 20	CU	38,6
	EG	38,5
	IL	41,9
	MA	44,7
	TN	54,1
	TR	40,7
	ZZ	43,1
0805 50 10	IL	62,2
	TR	52,4
	ZZ	57,3
0808 10 80	AR	77,6
	BR	75,4
	CA	101,7
	CL	88,3
	CN	55,8
	NZ	123,6
	US	110,8
	UY	68,1
	ZA	81,5
ZZ	87,0	
0808 20 50	AR	69,5
	CL	78,2
	CN	54,5
	ZA	76,8
	ZZ	69,8

<sup>(1)</sup> Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 361/2007****of 30 March 2007****fixing the import duties in the cereals sector applicable from 1 April 2007**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals <sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 on rules of application (cereal sector import duties) for Council Regulation (EEC) No 1766/92 <sup>(2)</sup>, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 10(2) of Regulation (EC) No 1784/2003 states that the import duty on products falling within CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002, ex 1005 other than hybrid seed, and ex 1007 other than hybrids for sowing, is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.
- (2) Article 10(3) of Regulation (EC) No 1784/2003 lays down that, for the purposes of calculating the import

duty referred to in paragraph 2 of that Article, representative cif import prices are to be established on a regular basis for the products in question.

- (3) Under Article 2(2) of Regulation (EC) No 1249/96, the price to be used for the calculation of the import duty on products of CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002 00, 1005 10 90, 1005 90 00 and 1007 00 90 is the daily cif representative import price determined as specified in Article 4 of that Regulation.
- (4) Import duties should be fixed for the period from 1 April 2007, and should apply until new import duties are fixed and enter into force,

HAS ADOPTED THIS REGULATION:

*Article 1*

From 1 April 2007, the import duties in the cereals sector referred to in Article 10(2) of Regulation (EC) No 1784/2003 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

*Article 2*

This Regulation shall enter into force on 1 April 2007.

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

Done at Brussels, 30 March 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

<sup>(2)</sup> OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1816/2005 (OJ L 292, 8.11.2005, p. 5).

## ANNEX I

**Import duties on the products referred to in Article 10(2) of Regulation (EC) No 1784/2003 applicable from 1 April 2007**

CN code	Description	Import duties <sup>(1)</sup> (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	0,00
1005 10 90	Maize seed other than hybrid	5,51
1005 90 00	Maize, other than seed <sup>(2)</sup>	5,51
1007 00 90	Grain sorghum other than hybrids for sowing	0,00

<sup>(1)</sup> For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EC) No 1249/96, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

<sup>(2)</sup> The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

## ANNEX II

**Factors for calculating the duties laid down in Annex I**

Period from 16-29 March 2007

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

	<i>EUR/t</i>					
	Common wheat (*)	Maize	Durum wheat, high quality	Durum wheat, medium quality (**)	Durum wheat, low quality (***)	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	152,25	117,98	—	—	—	—
Fob price USA	—	—	180,60	170,60	150,60	152,43
Gulf of Mexico premium	26,80	6,98	—	—	—	—
Great Lakes premium	—	—	—	—	—	—

(\*) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

(\*\*) Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(\*\*\*) Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight costs: Gulf of Mexico–Rotterdam: 30,84 EUR/tonne

Freight costs: Great Lakes–Rotterdam: — EUR/tonne

**COMMISSION REGULATION (EC) No 362/2007****of 30 March 2007****fixing the minimum selling prices for butter for the 28th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products <sup>(1)</sup>, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/1999 as regards measures for the disposal of cream, butter and concentrated butter on the Community market <sup>(2)</sup>, the intervention agencies may sell by standing invitation to tender certain quantities of butter from intervention stocks that they hold and may grant aid for cream, butter and concentrated butter. Article 25 of that Regulation lays down that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further

laid down that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure. The amount of the processing security as referred to in Article 28 of Regulation (EC) No 1898/2005 should be fixed accordingly.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 28th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005 the minimum selling prices for butter from intervention stocks and the amount of the processing security, as referred to in Articles 25 and 28 of that Regulation respectively, are fixed as set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 31 March 2007.

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

Done at Brussels, 30 March 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

<sup>(2)</sup> OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).



## ANNEX

**Minimum selling prices for butter and processing security for the 28th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—

**COMMISSION REGULATION (EC) No 363/2007****of 30 March 2007****fixing the maximum aid for cream, butter and concentrated butter for the 28th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products <sup>(1)</sup>, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/99 as regards measures for the disposal of cream, butter and concentrated butter on the Community market <sup>(2)</sup>, the intervention agencies may sell by standing invitation to tender certain quantities of butter of intervention stocks that they hold and may grant aid for cream, butter and concentrated butter. Article 25 of that Regulation lays down that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further laid down

that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure. The amount of the processing security as referred to in Article 28 of Regulation (EC) No 1898/2005 should be fixed accordingly.

- (2) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 28th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005 the amount of the maximum aid for cream, butter and concentrated butter and the amount the processing security, as referred to in Articles 25 and 28 of that Regulation respectively, are fixed as set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 31 March 2007.

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

Done at Brussels, 30 March 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

<sup>(2)</sup> OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

## ANNEX

**Maximum aid for cream, butter and concentrated butter and processing security for the 28th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005***(EUR/100 kg)*

Formula		A		B	
		With tracers	Without tracers	With tracers	Without tracers
Incorporation procedure					
Maximum aid	Butter $\geq$ 82 %	11,5	8	10	—
	Butter $<$ 82 %	—	7,7	—	—
	Concentrated butter	—	—	—	—
	Cream	—	—	—	—
Processing security	Butter	13	—	11	—
	Concentrated butter	—	—	—	—
	Cream	—	—	—	—

**COMMISSION REGULATION (EC) No 364/2007****of 30 March 2007****fixing the maximum aid for concentrated butter for the 28th individual invitation to tender opened under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products <sup>(1)</sup>, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Article 47 of Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/1999 as regards measures for the disposal of cream, butter and concentrated butter on the Community market <sup>(2)</sup>, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter. Article 54 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 %.
- (2) An end-use security provided for in Article 53(4) of Regulation (EC) No 1898/2005 is to be lodged to

ensure the taking over of the concentrated butter by the retail trade.

- (3) In the light of the tenders received, the maximum aid should be fixed at the appropriate level and the end-use security should be determined accordingly.
- (4) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 28th individual tender under the standing invitation to tender opened in accordance with Regulation (EC) No 1898/2005 the maximum amount of the aid for concentrated butter with a minimum fat content of 96 %, as referred to in Article 47(1) of that Regulation, is fixed at 12,00 EUR/100 kg.

The end-use security provided for in Article 53(4) of Regulation (EC) No 1898/2005 is fixed at 13 EUR/100 kg.

*Article 2*

This Regulation shall enter into force on 31 March 2007.

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

Done at Brussels, 30 March 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

<sup>(2)</sup> OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

**COMMISSION REGULATION (EC) No 365/2007****of 30 March 2007****fixing the minimum selling price for butter for the 60th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2771/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products <sup>(1)</sup>, and in particular Article 10(c) thereof,

Whereas:

- (1) Pursuant to Article 21 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream <sup>(2)</sup>, intervention agencies have put up for sale by standing invitation to tender certain quantities of butter held by them.
- (2) In the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no

award, in accordance with Article 24a of Regulation (EC) No 2771/1999.

- (3) In the light of the tenders received, a minimum selling price should be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 60th individual invitation to tender pursuant to Regulation (EC) No 2771/1999, in respect of which the time limit for the submission of tenders expired on 27 March 2007, the minimum selling price for butter is fixed at 243,05 EUR/100 kg.

*Article 2*

This Regulation shall enter into force on 31 March 2007.

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

Done at Brussels, 30 March 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

<sup>(2)</sup> OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 1802/2005 (OJ L 290, 4.11.2005, p. 3).

**COMMISSION REGULATION (EC) No 366/2007****of 30 March 2007****amending the representative prices and additional duties for the import of certain products in the sugar sector fixed by Regulation (EC) No 1002/2006 for the 2006/2007 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector <sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector <sup>(2)</sup>, and in particular of the Article 36,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2006/2007 marketing year are fixed by Commission Regulation (EC) No 1002/2006 <sup>(3)</sup>. These prices and duties have been last amended by Commission Regulation (EC) No 331/2007 <sup>(4)</sup>.

- (2) The data currently available to the Commission indicate that the said amounts should be changed in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

*Article 1*

The representative prices and additional duties on imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 1002/2006 for the 2006/2007 marketing year are hereby amended as set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 31 March 2007.

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

Done at Brussels, 30 March 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 2011/2006 (OJ L 384, 29.12.2006, p. 1).

<sup>(2)</sup> OJ L 178, 1.7.2006, p. 24. Regulation as amended by Regulation (EC) No 2031/2006 (OJ L 414, 30.12.2006, p. 43).

<sup>(3)</sup> OJ L 179, 1.7.2006, p. 36.

<sup>(4)</sup> OJ L 88, 29.3.2007, p. 14.

## ANNEX

**Amended representative prices and additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99 applicable from 31 March 2007**

(EUR)

CN code	Representative price per 100 kg of the product concerned	Additional duty per 100 kg of the product concerned
1701 11 10 <sup>(1)</sup>	20,09	6,26
1701 11 90 <sup>(1)</sup>	20,09	11,88
1701 12 10 <sup>(1)</sup>	20,09	6,07
1701 12 90 <sup>(1)</sup>	20,09	11,37
1701 91 00 <sup>(2)</sup>	25,25	12,73
1701 99 10 <sup>(2)</sup>	25,25	8,09
1701 99 90 <sup>(2)</sup>	25,25	8,09
1702 90 99 <sup>(3)</sup>	0,25	0,40

<sup>(1)</sup> Fixed for the standard quality defined in Annex I.III to Council Regulation (EC) No 318/2006 (OJ L 58, 28.2.2006, p. 1).

<sup>(2)</sup> Fixed for the standard quality defined in Annex I.II to Regulation (EC) No 318/2006.

<sup>(3)</sup> Fixed per 1 % sucrose content.

## COMMISSION REGULATION (EC) No 367/2007

of 30 March 2007

## amending Regulation (EEC) No 2131/93 laying down the procedure and conditions for the sale of cereals held by intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals <sup>(1)</sup>, and in particular Article 6 and the second paragraph of Article 24 thereof,

Whereas:

- (1) Article 1(2) of Commission Regulation (EEC) No 2131/93 <sup>(2)</sup> defines 'invitation to tender' and the related award conditions. In order to avoid any ambiguity as regards the award of the contract, it is necessary to clarify those conditions.
- (2) Under the third subparagraph of Article 2(1) and the third subparagraph of Article 7(1) of Regulation (EEC) No 2131/93, a period of at least eight days must elapse between the date of publication in the *Official Journal of the European Union* of decisions opening invitations to tender for sale on the Community market or for export and the first closing date for the submission of tenders. The first paragraph of Article 12 of that Regulation provides for the same period between the publication of the notice of invitation to tender and the first closing date for submission of tenders. These time limits now appear too long, in view of the progress made in communications and information provision by electronic means, and should therefore be reduced.
- (3) Article 3 of Regulation (EEC) No 2131/93 specifies minimum rules for publicising notices of invitations to tender and lays down certain general rules applicable to standing invitations to tender, irrespective of the destination of the products. For the sake of clarity, those rules should appear in Title III of that Regulation setting out general and final provisions.
- (4) Article 10 of Regulation (EEC) No 2131/93 specifies the information to be sent to the Commission following the submission of tenders, and the terms for accepting the tenders, in particular as regards price. For the sake of effective management, the lot to which the tender relates should be identified, and the circumstances in

which the fixing of the minimum selling price should not prejudice other export operations should be specified.

- (5) Article 12 of Regulation (EEC) No 2131/93 lays down general provisions on the notice of invitation to tender. For the sake of clarity, the provisions deleted from Article 3 should appear in this Article.
- (6) Regulation (EEC) No 2131/93 should therefore be amended accordingly.
- (7) Regulation (EEC) No 2131/93 contains entries in all Community languages. Under Council Regulation No 1 of 6 October 1958 determining the languages to be used by the European Economic Community <sup>(3)</sup>, as amended by Regulation (EC) No 920/2005 <sup>(4)</sup>, Irish has been one of the official languages of the Community since 1 January 2007. The above entries should therefore include the Irish language version.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 2131/93 is amended as follows:

1. Article 1(2) is replaced by the following:

'2. For the purposes of this Regulation, "invitation to tender" means competition between interested parties in response to a call for tenders, the contract being awarded for each of the lots to the tenderer submitting the most favourable bid from among the bids that comply with this Regulation, for which the price tendered is at least equal to the minimum selling price laid down by the Commission in accordance with Article 10(2).';

2. The third subparagraph of Article 2(1) is replaced by the following:

'There must be a gap of at least six days between publication and the first closing date for submission of tenders.';

<sup>(1)</sup> OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

<sup>(2)</sup> OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 1996/2006 (OJ L 398, 30.12.2006, p. 1).

<sup>(3)</sup> OJ 17, 6.10.1958, p. 385/58.

<sup>(4)</sup> OJ L 156, 18.6.2005, p. 3.



3. Article 3 is replaced by the following:

*'Article 3*

The intervention agencies shall draw up and publish notices of invitations to tender in accordance with Article 12.;

4. The third subparagraph of Article 7(1) is replaced by the following:

'There must be a gap of at least six days between publication and the first closing date for submission of tenders.;

5. Article 10 is replaced by the following:

*'Article 10*

1. When each period for the submission of tenders has expired, the Member State concerned shall forward to the Commission a list of the tenders, without names, in each case showing in particular the lot number, the quantity tendered, the price tendered and the price increases and reductions applying thereto.

2. The Commission, in accordance with the procedure laid down in Article 25(2) of Regulation (EC) No 1784/2003, shall fix the minimum selling price or decide not to award any quantities.

3. In the case of invitations to tender for export, the minimum selling price shall be fixed at a level which does not prejudice other export operations.;

6. Article 12 is replaced by the following:

*'Article 12*

1. At least four days before the first closing date for the submission of tenders, the intervention agencies shall publish a notice of invitation to tender setting out:

(a) the additional clauses and conditions of sale compatible with this Regulation;

(b) the main physical and technological characteristics of the various lots established upon buying in by the intervention agency or during checks carried out subsequently;

(c) the places of storage and the names and addresses of the storers.

2. Intervention agencies shall ensure that notices of invitation to tender are properly publicised, in particular by displaying them at their head offices and on their website or the website of the competent ministry. In the case of standing invitations to tender, they shall specify therein the closing dates for the submission of tenders for each partial invitation to tender.

3. Notices of invitation to tender shall specify the minimum quantities which tenders must cover.

4. Notices of invitation to tender, and any changes to them, shall be forwarded to the Commission before the expiry of the first deadline for the submission of tenders.'

7. In the Annex, after the entry in French, the following indent is inserted:

'— *in Irish*: Onnmhairiú gránach ar muir, Airteagal 17a de Rialachán (CEE) 2131/93'.

*Article 2*

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

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

Done at Brussels, 30 March 2007.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

**COMMISSION REGULATION (EC) No 368/2007****of 30 March 2007****on the issue of system B export licences in the fruit and vegetables sector (apples)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables <sup>(1)</sup>,

Having regard to Commission Regulation (EC) No 1961/2001 of 8 October 2001 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables <sup>(2)</sup>, and in particular Article 6(6) thereof,

Whereas:

- (1) Commission Regulation (EC) No 134/2007 <sup>(3)</sup> fixes the indicative quantities for which system B export licences may be issued.
- (2) In the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for

apples will shortly be exceeded. This overrun will prejudice the proper working of the export refund scheme in the fruit and vegetables sector.

- (3) To avoid this situation, applications for system B licences for apples after 30 March 2007 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

*Article 1*

Applications for system B export licences for apples submitted pursuant to Article 1 of Regulation (EC) No 134/2007, export declarations for which are accepted after 30 March and before 1 July 2007, are hereby rejected.

*Article 2*

This Regulation shall enter into force on 31 March 2007.

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

Done at Brussels, 30 March 2007.

*For the Commission*

Jean-Luc DEMARTY

*Director-General for Agriculture and  
Rural Development*

<sup>(1)</sup> OJ L 297, 21.11.1996, p. 1. Regulation as last amended by Commission Regulation (EC) No 47/2003 (OJ L 7, 11.1.2003, p. 64).

<sup>(2)</sup> OJ L 268, 9.10.2001, p. 8. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

<sup>(3)</sup> OJ L 42, 14.2.2007, p. 16, as corrected by OJ L 52, 21.2.2007, p. 12.

## DIRECTIVES

## COMMISSION DIRECTIVE 2007/19/EC

of 30 March 2007

**amending Directive 2002/72/EC relating to plastic materials and articles intended to come into contact with food and Council Directive 85/572/EEC laying down the list of simulants to be used for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs**

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC <sup>(1)</sup>, and in particular Article 5(2) thereof,

After consulting the European Food Safety Authority (the Authority),

Whereas:

(1) Commission Directive 2002/72/EC <sup>(2)</sup> is a specific Directive within the meaning of the framework Regulation (EC) No 1935/2004, harmonising the rules for the plastics materials and articles intended to come into contact with food.

(2) Directive 2002/72/EC establishes a list of authorised substances for the manufacture of those materials and articles, in particular additives and monomers, the restrictions on their use, rules on labelling as well as the information to be given to consumers or to food business operators concerning correct use of those materials and articles.

(3) Information provided to the Commission demonstrates that the plasticizers used e.g. in polyvinyl chloride (PVC) gaskets in lids may migrate into fatty foods in quantities that could endanger human health or bring about an unacceptable change in the composition of the foods.

It should therefore be made clear that, even if they are part of e.g. metal lids, gaskets fall under the scope of Directive 2002/72/EC. At the same time, specific rules should be laid down as regard the use of additives for the manufacture of those gaskets. It is appropriate to take account of the need of lid manufacturers to have sufficient time to adapt to some of the provisions of Directive 2002/72/EC. In particular, taking into account the time needed to prepare an application for the evaluation of specific additives used for the manufacture of gaskets of lids, it is not yet possible to establish a timetable for their evaluation. Therefore, in a first stage, the positive list of authorised additives that will be adopted in the future for plastic materials and articles should not apply for the manufacture of gaskets in lids, so that the use of other additives will remain possible, subject to national law. This situation should be reassessed at a later stage.

(4) On the basis of new information related to the risk assessment of substances evaluated by the Authority and the need to adapt to technical progress the existing rules for calculating migration, Directive 2002/72/EC should be updated. For reasons of clarity definitions of technical terms used should be introduced.

(5) The rules for overall migration and specific migration should be based on the same principle and should therefore, be aligned.

(6) Specific rules should be introduced to improve the protection of infants, since infants ingest more food in proportion to their body weight than adults.

(7) The verification of compliance with the specific migration limits (SML) in simulant D for additives listed in Annex III, Section B, to Directive 2002/72/EC should be applied at the same time as the other provisions for calculating migration introduced in this Directive for better estimation of the real exposure of the consumer to those additives. Therefore, the deadline for application of the abovementioned verification of compliance should be extended.

<sup>(1)</sup> OJ L 338, 13.11.2004, p. 4.

<sup>(2)</sup> OJ L 220, 15.8.2002, p. 18. Directive as last amended by Directive 2005/79/EC (OJ L 302, 19.11.2005, p. 35).

- (8) The status of additives acting as polymerisation production aids (PPA) should be clarified. The PPA which also function as additives are to be evaluated and included in the future positive list of additives. Some of them are already included in the current incomplete list of additives. As regards additives which exclusively act as PPA and are therefore not intended to remain in the finished article, it should be made clear that their use will remain possible, subject to national law, even after the adoption of the future positive list of additives. That situation should be reassessed at a later stage.
- (9) Studies have shown that azodicarbonamide decomposes into semicarbazide during high temperature processing. In 2003 the Authority was asked to gather data and to assess the possible risks posed by semicarbazide in food. Until that information was obtained and in accordance to Article 7 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety <sup>(1)</sup>, the use of azodicarbonamide in plastic materials and articles was suspended by Commission Directive 2004/1/EC <sup>(2)</sup>. In its opinion of 21 June 2005, the Authority <sup>(3)</sup> concluded that carcinogenicity of semicarbazide is not of concern for human health at the concentrations encountered in food, if the source of semicarbazide related to azodicarbonamide is eliminated. Therefore it is appropriate to maintain the prohibition of use of azodicarbonamide in plastic materials and article.
- (10) The concept of the plastic functional barrier, that is a barrier within plastic materials or articles preventing or reducing the migration from behind this barrier into the food should be introduced. Only glass and some metals may ensure complete blockage of migration. Plastics may be partial functional barriers with properties and effectiveness to be assessed and may help reducing the migration of a substance below a SML or a limit of detection. Behind a plastic functional barrier, non-authorised substances may be used, provided they fulfil certain criteria and their migration remains below a given detection limit. Taking into account foods for infants and other particularly susceptible persons as well as the difficulties of this type of analysis affected by a large analytical tolerance, a maximum level of 0,01 mg/kg in food or a food simulant should be established for the migration of a non-authorised substance through a plastic functional barrier.
- (11) Article 9 of Directive 2002/72/EC provides that materials and articles must be accompanied by a written declaration of compliance attesting that they comply with the rules applicable to them. In accordance with Article 5(1)(h) and (i) of Regulation (EC) No 1935/2004, to strengthen the co-ordination and responsibility of the suppliers at each stage of manufacture, including that of the starting substances, the responsible persons should document the compliance with the relevant rules in a declaration of compliance which is made available to his customer. Further, at each stage of manufacture, supporting documentation, substantiating the declaration of compliance, should be kept available for the enforcement authorities.
- (12) Article 17(1) of Regulation (EC) No 178/2002 requires the food business operator to verify that foods are compliant with the rules applicable to them. To this end subject to the requirement of confidentiality, food business operators should be given access to the relevant information to enable them to ensure that the migration from the materials and articles to food complies with the specifications and restrictions laid down in food legislation.
- (13) Compliance with Article 3 of Regulation (EC) No 1935/2004 for substances non-listed in Annexes II and III of Directive 2002/72/EC such as impurities or reaction products referred to in point 3 of Annex II and point 3 of Annex III to Directive 2002/72/EC should be assessed by the relevant business operator in accordance with internationally recognised scientific principles.
- (14) For a more adequate estimation of exposure of the consumer, a new reduction factor should be introduced in migration testing, called Fat Reduction Factor (FRF). Until now, the exposure to substances migrating predominantly into fatty food (lipophilic substances) was based on the general assumption that a person ingests daily 1 kg of food. However, a person ingests at most 200 g of fat on a daily basis. This should be taken into consideration through the correction of the specific migration by the FRF applicable to lipophilic substances in accordance with the opinion of the Scientific Committee on Food (SCF) <sup>(4)</sup> and the opinion of the Authority <sup>(5)</sup>.

<sup>(1)</sup> OJ L 31, 1.2.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 575/2006 (OJ L 100, 8.4.2006, p. 3).

<sup>(2)</sup> OJ L 7, 13.1.2004, p. 45.

<sup>(3)</sup> The EFSA Journal (2005) 219, 1-36.

<sup>(4)</sup> SCF opinion of 4 December 2002 on the introduction of a Fat (Consumption) Reduction Factor (FRF) in the estimation of the exposure to a migrant from food contact materials.  
[http://ec.europa.eu/food/fs/sc/scf/out149\\_en.pdf](http://ec.europa.eu/food/fs/sc/scf/out149_en.pdf)

<sup>(5)</sup> Opinion of the Scientific Panel on Food Additives, Flavourings, Processing Aids and Materials in Contact with Food (AFC) on a request from the Commission related to the introduction of a Fat (consumption) Reduction Factor for infants and children, The EFSA Journal (2004) 103, 1-8.

- (15) On the basis of new information related to the risk assessment of monomers and other starting substances evaluated by the Authority <sup>(1)</sup>, certain monomers provisionally admitted at national level as well as new monomers should be included in the Community list of authorised substances. For others, the restrictions and/or specifications already established at Community level should be amended on the basis of the new information available.
- (16) The incomplete list of additives which may be used in the manufacture of plastic materials and articles should be amended so as to include other additives evaluated by the Authority. For certain additives, the restrictions and/or specifications already established at Community level should be amended on the basis of those new evaluations available.
- (17) Commission Directive 2005/79/EC <sup>(2)</sup> introduced the changes in the restrictions and/or specifications for substance Ref. No 35760 in section A instead of section B of Annex III to Directive 2002/72/EC and for substance Ref. No 67180 the changes were introduced in section B instead of section A of that Annex. In addition, for substances Ref. No 43480, 45200, 81760 and 88640 the indication to the restrictions and/or specifications in Annex III to Directive 2002/72/EC is ambiguous. Therefore, for legal certainty, there is a need to place substances Ref. No 35760 and 67180 in the appropriate section of the list of additives and re-introduce the restrictions and specifications for substances Ref. No 43480, 45200, 81760 and 88640.
- (18) It has been shown that distilled water, which is used at present is not an adequate simulant for some milk products. It should be replaced by 50 % ethanol, which better simulates their fatty character.
- (19) Epoxidised soybean oil (ESBO) is used as plasticizer in gaskets. Taking into account the opinion of the Authority adopted on 16 March 2006 <sup>(3)</sup> concerning exposure of adults to ESBO used in food contact materials, it is appropriate to set a shorter deadline for the compliance of gaskets of lids with the restrictions of ESBO and its substitutes set out in Directive 2002/72/EC. The same deadline should apply as regards the prohibition of use of azodicarbonamide.
- (20) Certain phthalates are used as plasticizers in gaskets and in other plastic applications. In its opinions on certain phthalates <sup>(4)</sup> published in September 2005 the Authority set tolerable daily intakes (TDI) for certain phthalates and estimated that the exposure of humans to certain phthalates is in the same range as the TDI. Therefore, it is appropriate to set a shorter deadline for the compliance of plastic materials and articles with the restrictions set in Directive 2002/72/EC for those substances.
- (21) Council Directive 85/572/EEC <sup>(5)</sup> and Directive 2002/72/EC should therefore be amended accordingly.
- (22) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2002/72/EC is amended as follows:

1. Article 1 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. This Directive shall apply to the following materials and articles which, in the finished product state, are intended to come into contact or are brought into contact with foodstuffs and are intended for that purpose (hereafter referred to as "plastic materials and articles"):

(a) materials and articles and parts thereof consisting exclusively of plastics;

(b) plastic multi-layer materials and articles;

(c) plastic layers or plastic coatings, forming gaskets in lids that together are composed of two or more layers of different types of materials.'

<sup>(1)</sup> The EFSA Journal (2005) 218, 1-9.  
The EFSA Journal (2005) 248, 1-16.  
The EFSA Journal (2005) 273, 1-26.  
The EFSA Journal (2006) 316 to 318, 1-10.  
The EFSA Journal (2006) 395 to 401, 1-21.  
<sup>(2)</sup> OJ L 302, 19.11.2005, p. 35.  
<sup>(3)</sup> The EFSA Journal (2006) 332, 1-9.

<sup>(4)</sup> The EFSA Journal (2005) 244, 1-18.  
The EFSA Journal (2005) 245, 1-14.  
The EFSA Journal (2005) 243, 1-20.  
The EFSA Journal (2005) 242, 1-17.  
The EFSA Journal (2005) 241, 1-14.  
<sup>(5)</sup> OJ L 372, 31.12.1985, p. 14.

(b) paragraph 4 is replaced by the following:

‘4. Without prejudice to paragraph 2(c), this Directive shall not apply to materials and articles composed of two or more layers, one or more of which does not consist exclusively of plastics, even if the one intended to come into direct contact with foodstuffs does consist exclusively of plastics.’

2. The following Article 1a is inserted:

‘Article 1a

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

- (a) “plastic multi-layer material or article” means a plastic material or article composed of two or more layers of materials, each consisting exclusively of plastics, which are bound together by means of adhesives or by other means;
- (b) “plastic functional barrier” means a barrier consisting of one or more layers of plastics which ensures that the finished material or article complies with Article 3 of Regulation (EC) No 1935/2004 of the European Parliament and of the Council (\*) and with this Directive;
- (c) “non-fatty foods” means foods for which in migration testing simulants other than simulant D are laid down in Directive 85/572/EEC.

(\*) OJ L 338, 13.11.2004, p. 4.’

3. Article 2 is replaced by the following:

‘Article 2

1. Plastic materials and articles shall not transfer their constituents to foodstuffs in quantities exceeding 60 milligrams of the constituents released per kilogram of foodstuff or food simulant (mg/kg) (overall migration limit).

However, this limit shall be 10 milligrams per square decimetre of surface area of material or article (mg/dm<sup>2</sup>) in the case of the following:

- (a) articles which are containers or are comparable to containers or which can be filled, with a capacity of less than 500 millilitres (ml) or more than 10 litres (l);

(b) sheet, film or other material or articles which cannot be filled or for which it is impracticable to estimate the relationship between the surface area of such material or article and the quantity of food in contact therewith.

2. For plastic materials and articles intended to be brought into contact with or already in contact with food intended for infants and young children, as defined by Commission Directives 91/321/EEC (\*) and 96/5/EC (\*\*), the overall migration limit shall always be 60 mg/kg.

(\*) OJ L 175, 4.7.1991, p. 35.

(\*\*) OJ L 49, 28.2.1996, p. 17.’

4. In Article 4(2), the date of ‘1 July 2006’ is replaced by ‘1 April 2008’.

5. The following Articles 4c, 4d and 4e are inserted:

‘Article 4c

For the use of additives for the manufacture of plastic layers or plastic coatings in lids referred to in Article 1(2)(c), the following rules shall apply:

- (a) for the additives listed in Annex III, the restrictions and/or specifications on their use set out in that Annex shall apply, without prejudice to Article 4(2);
- (b) by way of derogation from Article 4(1) and Article 4a(1) and (5), additives not listed in Annex III may continue to be used, until further review, subject to national law;

(c) by way of derogation from Article 4b Member States may continue to authorise additives for the manufacture of plastic layers or plastic coatings in lids referred to in Article 1(2)(c) at national level.

Article 4d

For the use of additives exclusively acting as polymerisation production aids which are not intended to remain in the finished article (hereinafter PPAs), for the manufacture of plastic materials and articles, the following rules shall apply:

- (a) for the PPAs listed in Annex III, the restrictions and/or specifications on their use set out in Annex III shall apply, without prejudice to Article 4(2);

(b) by way of derogation from Article 4(1) and Article 4a(1) and (5), the PPAs not listed in Annex III may continue to be used, until further review, subject to national law;

(c) by way of derogation from Article 4b, Member States may continue to authorise PPAs at national level.

#### Article 4e

The use of azodicarbonamide, Ref. No 36640 (CAS No 000123-77-3) in the manufacture of plastic materials and articles is prohibited.'

6. In Article 5a paragraph 2 is replaced by the following:

'2. At the marketing stages other than the retail stages, plastic materials and articles which are intended to be placed in contact with foodstuffs and which contain additives referred to in paragraph 1 shall be accompanied by a written declaration containing the information referred to in Article 9.'

7. In Article 7 the following paragraph is added:

'For plastic materials and articles intended to be brought into contact with or already in contact with food for infants and young children, as defined by Directives 91/321/EEC and 96/5/EC, the SMLs shall always be applied as mg/kg.'

8. The following Article 7a is inserted:

#### 'Article 7a

1. In a plastic multi-layer material or article, the composition of each plastic layer shall comply with this Directive.

2. By way of derogation from paragraph 1, a layer which is not in direct contact with food and is separated from the food by a plastic functional barrier, may, provided that the finished material or article complies with the specific and overall migration limits specified in this Directive:

(a) not comply with the restrictions and specifications set in this Directive,

(b) be manufactured with substances other than those included in this Directive or in the national lists concerning the plastic materials and articles intended to come into contact with food.

3. The migration of the substances referred to in paragraph 2(b) into food or simulant shall not exceed 0,01 mg/kg, measured with statistical certainty by a method of analysis in accordance with Article 11 of Regulation (EC) No 882/2004 of the European Parliament and of the Council (\*). This limit shall always be expressed as concentration in foods or simulants. It shall apply to a group of compounds, if they are structurally and toxicologically related, in particular isomers or compounds with the same relevant functional group, and shall include possible set-off transfer.

4. The substances referred to in paragraph 2(b) shall not belong to either of the following categories:

(a) substances classified as proved or suspect "carcinogenic", "mutagenic" or "toxic to reproduction" substances in Annex I to Council Directive 67/548/EEC (\*\*);

(b) substances classified under the self-responsibility criteria as 'carcinogenic', 'mutagenic' or 'toxic to reproduction' according to the rules of Annex VI to Directive 67/548/EEC.

(\*) OJ L 165, 30.4.2004, p. 1, as corrected by OJ L 191, 28.5.2004, p. 1.

(\*\*) OJ 196, 16.8.1967, p. 1.'

9. In Article 8 the following paragraph 5 is added:

'5. Notwithstanding paragraph 1, for phthalates (Ref. No 74640, 74880, 74560, 75100, 75105) referred to in Annex III Section B, the verification of the SML shall only be performed in food simulants. However, verification of the SML may be performed in food where the food has not already been in contact with the material or article and is pre-tested for the phthalate and the level is not statistically significant or greater than or equal to the limit of quantification.'

10. Article 9 is replaced by the following:

#### 'Article 9

1. At the marketing stages other than the retail stage, plastic materials and articles as well as the substances intended for the manufacturing of those materials and articles, shall be accompanied by a written declaration in accordance with Article 16 of Regulation (EC) No 1935/2004.

2. The declaration referred to in paragraph 1 shall be issued by the business operator and shall contain the information laid down in Annex VIa.

3. Appropriate documentation to demonstrate that the materials and articles as well as the substances intended for the manufacturing of those materials and articles comply with the requirements of this Directive shall be made available by the business operator to the national competent authorities on request. That documentation shall contain the conditions and results of testing, calculations, other analysis, and evidence on the safety or reasoning demonstrating compliance.'

11. Annexes I, II and III are amended in accordance with Annexes I, II and III to this Directive.
12. The text in Annex IV to this Directive is inserted as Annex IVa.
13. Annexes V and VI are amended in accordance with Annexes V and VI to this Directive.
14. The text in Annex VII to this Directive is inserted as Annex VIa.

#### Article 2

The Annex to Directive 85/572/EEC is amended in accordance with Annex VIII to this Directive.

#### Article 3

1. Member States shall adopt and publish, by 1 April 2008 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

They shall apply those provisions in such a way as to:

- (a) permit the trade in and use of plastic materials and articles intended to come into contact with food and complying with Directive 2002/72/EC, as amended by this Directive, from 1 April 2008;
- (b) prohibit the manufacture and importation into the Community of lids containing a gasket which do not comply with restrictions and specifications for Ref. No 30340; 30401; 36640; 56800; 76815; 76866; 88640 and 93760 laid down in Directive 2002/72/EC as amended by this Directive from 1 June 2008;
- (c) prohibit the manufacture and importation into the Community of plastic materials and articles intended to come into contact with food which do not comply with restrictions and specifications for phthalates Ref. No 74560; 74640; 74880; 75100; 75105 laid down in Directive 2002/72/EC as amended by this Directive from 1 June 2008;
- (d) without prejudice to point (b) and (c), prohibit the manufacture and importation into the Community of plastic materials and articles intended to come into contact with food which do not comply with Directive 2002/72/EC as amended by this Directive from 1 April 2009.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 4

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

#### Article 5

This Directive is addressed to the Member States.

Done at Brussels, 30 March 2007.

For the Commission  
Markos KYPRIANOU  
Member of the Commission



## ANNEX I

Annex I to Directive 2002/72/EC is amended as follows:

(1) The following points 2a and 2b are inserted:

‘2a. Correction of specific migration in foods containing more than 20 % fat by the Fat Reduction Factor (FRF):

“Fat Reduction Factor” (FRF) is a factor between 1 and 5 by which measured migration of lipophilic substances into a fatty food or simulant D and its substitutes shall be divided before comparison with the specific migration limits.

*General rules*

Substances considered “lipophilic” for the application of the FRF are listed in Annex IVa. The specific migration of lipophilic substances in mg/kg (M) shall be corrected by the FRF variable between 1 and 5 ( $M_{FRF}$ ). The following equations shall be applied before comparison with the legal limit:

$$M_{FRF} = M/FRF$$

and

$$FRF = (\text{g fat in food/kg of food})/200 = (\% \text{ fat} \times 5)/100$$

This correction by the FRF is not applicable in the following cases:

- (a) when the material or article is or is intended to be brought in contact with food containing less than 20 % fat;
- (b) when the material or article is or is intended to be brought in contact with food intended for infants and young children as defined by Directives 91/321/EEC and 96/5/EC;
- (c) for substances in the Community lists in Annexes II and III having a restriction in column (4) SML= ND or non-listed substances used behind a plastic functional barrier with a migration limit of 0,01 mg/kg;
- (d) for materials and articles for which it is impracticable to estimate the relationship between the surface area and the quantity of food in contact therewith, for example due to their shape or use, and the migration is calculated using the conventional surface area/volume conversion factor of 6 dm<sup>2</sup>/kg.

This correction by the FRF is applicable under certain conditions in the following case:

For containers and other fillable articles with a capacity of less than 500 millilitres or more than 10 litres and for sheets and films in contact with foods containing more than 20 % fat, either the migration is calculated as concentration in the food or food simulant (mg/kg) and corrected by the FRF, or it is re-calculated as mg/dm<sup>2</sup> without applying the FRF. If one of the two values is below the SML, the material or article shall be considered in compliance.

The application of the FRF shall not lead to a specific migration exceeding the overall migration limit.

2b. Correction of specific migration in food simulant D:

The specific migration of lipophilic substances into simulant D and its substitutes shall be corrected by the following factors:

- (a) the reduction factor referred to in point 3 of the Annex to Directive 85/572/EEC, hereinafter termed simulant D Reduction Factor (DRF).

The DRF may not be applicable when the specific migration into simulant D is higher than 80 % of the content of the substance in the finished material or article (for example thin films). Scientific or experimental evidence (for example testing with the most critical foods) is required to determine whether the DRF is applicable. It is also not applicable for substances in the Community lists having a restriction in column (4) SML = ND or non-listed substances used behind a plastic functional barrier with a migration limit of 0,01 mg/kg.

- (b) the FRF is applicable to migration into simulants, provided the fat content of the food to be packed is known and the requirements mentioned in point 2a are fulfilled.
  - (c) the Total Reduction Factor (TRF) is the factor, with a maximum value of 5, by which a measured specific migration into simulant D or a substitute shall be divided before comparison with the legal limit. It is obtained by multiplying the DRF by the FRF, when both factors are applicable.'
- (2) The following point 5a is inserted:
- '5a. Caps, lids, gaskets, stoppers and similar sealing articles:
- (a) If the intended use is known, such articles shall be tested by applying them to the containers for which they are intended under conditions of closure corresponding to the normal or foreseeable use. It is assumed that these articles are in contact with a quantity of food filling the container. The results shall be expressed in mg/kg or mg/dm<sup>2</sup> in accordance to the rules of Articles 2 and 7 taking into account the whole contact surface of sealing article and container.
  - (b) If the intended use of these articles is unknown, such articles shall be tested in a separate test and the result be expressed in mg/article. The value obtained shall be added, if appropriate, to the quantity migrated from the container for which it is intended to be used.'
-

## ANNEX II

Annex II to Directive 2002/72/EC is amended as follows:

(1) Section A is amended as follows:

(a) the following monomers and other starting substances are inserted, in the appropriate numerical order:

Ref. No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
'15267	000080-08-0	4,4'-Diaminodiphenyl sulphone	SML = 5 mg/kg
21970	000923-02-4	N-Methylolmethacrylamide	SML = 0,05 mg/kg
24886	046728-75-0	5-Sulphoisophthalic acid, mono-lithium salt	SML = 5 mg/kg and for lithium SML(T) = 0,6 mg/kg <sup>(8)</sup> (expressed as lithium)

(b) for the following monomers and other starting substances, the content of the column 4 'Restrictions and/or specifications' is replaced by the following:

Ref. No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
'12786	000919-30-2	3-Aminopropyltriethoxysilane	Residual extractable content of 3-aminopropyltriethoxysilane to be less than 3 mg/kg filler when used for the reactive surface treatment of inorganic fillers and SML = 0,05 mg/kg when used for the surface treatment of materials and articles.
16450	000646-06-0	1,3-Dioxolane	SML = 5 mg/kg
25900	000110-88-3	Trioxane	SML = 5 mg/kg'

(2) In section B, the following monomers and other starting substances are deleted:

Ref. No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
'21970	000923-02-4	N-Methylolmethacrylamide'	

## ANNEX III

Annex III to Directive 2002/72/EC is amended as follows:

(1) Section A is amended as follows:

(a) the following additives are inserted in the appropriate numerical order:

Ref. No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
'38885	002725-22-6	2,4-Bis(2,4-dimethylphenyl)-6-(2-hydroxy-4-n-octyloxyphenyl)-1,3,5-triazine	SML = 0,05 mg/kg. For aqueous foods only.
42080	001333-86-4	Carbon black	In compliance with the specifications laid down in Annex V.
45705	166412-78-8	1,2-cyclohexanedicarboxylic acid, diisononyl ester	
62020	007620-77-1	12-Hydroxystearic acid, lithium salt	SML(T) = 0,6 mg/kg <sup>(8)</sup> (expressed as lithium)
67180	—	Mixture of (50 % w/w) phthalic acid n-decyl n-octyl ester, (25 % w/w) phthalic acid di-n-decyl ester, (25 % w/w) phthalic acid di-n-octyl ester.	SML = 5 mg/kg <sup>(1)</sup>
71960	003825-26-1	Perfluorooctanoic acid, ammonium salt	Only to be used in repeated use articles, sintered at high temperatures.
74560	000085-68-7	Phthalic acid, benzyl butyl ester	To be used only as: (a) plasticizer in repeated use materials and articles; (b) plasticizer in single-use materials and articles contacting non-fatty foods except for infant formulae and follow-on formulae as defined by Directive 91/321/EEC and products according to Directive 96/5/EC; (c) technical support agent in concentrations up to 0,1 % in the final product. SML = 30 mg/kg food simulant.
74640	000117-81-7	Phthalic acid, bis (2-ethylhexyl) ester	To be used only as: (a) plasticizer in repeated use materials and articles contacting non-fatty foods; (b) technical support agent in concentrations up to 0,1 % in the final product. SML = 1,5 mg/kg food simulant.

(1)	(2)	(3)	(4)
74880	000084-74-2	Phthalic acid, dibutyl ester	To be used only as: (a) plasticizer in repeated use materials and articles contacting non-fatty foods; (b) technical support agent in polyolefines in concentrations up to 0,05 % in the final product. SML = 0,3 mg/kg food simulant.
75100	068515-48-0 028553-12-0	Phthalic acid, diesters with primary, saturated C <sub>8</sub> -C <sub>10</sub> branched alcohols, more than 60 % C <sub>9</sub> .	To be used only as: (a) plasticizer in repeated use materials and articles; (b) plasticizer in single-use materials and articles contacting non-fatty foods except for infant formulae and follow-on formulae as defined by Directive 91/321/EEC and products according to Directive 96/5/EC; (c) technical support agent in concentrations up to 0,1 % in the final product. SML(T) = 9 mg/kg food simulant <sup>(42)</sup> .
75105	068515-49-1 026761-40-0	Phthalic acid, diesters with primary, saturated C <sub>9</sub> -C <sub>11</sub> alcohols more than 90 % C <sub>10</sub>	To be used only as: (a) plasticizer in repeated use materials and articles; (b) plasticizer in single-use materials and articles contacting non-fatty foods except for infant formulae and follow-on formulae as defined by Directive 91/321/EEC and products according to Directive 96/5/EC; (c) technical support agent in concentrations up to 0,1 % in the final product. SML(T) = 9 mg/kg food simulant <sup>(42)</sup> .
79920	009003-11-6 106392-12-5	Poly(ethylene propylene) glycol	
81500	9003-39-8	Polyvinylpyrrolidone	In compliance with the specifications laid down in Annex V.
93760	000077-90-7	Tri-n-butyl acetyl citrate	
95020	6846-50-0	2,2,4-Trimethyl-1,3-pentanediol diisobutyrate	SML = 5 mg/kg food. To be used in single-use gloves only.
95420	745070-61-5	1,3,5-tris (2,2-dimethylpropanamido)-benzene	SML = 0,05 mg/kg food.'

- (b) for the following additives, the entries in columns 3 'Name' and 4 'Restrictions and/or specifications' are replaced by the following:

Ref. No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
'43480	064365-11-3	Charcoal, activated	In compliance with the specifications laid down in Annex V.
45200	001335-23-5	Copper iodide	SML(T) = 5 mg/kg <sup>(7)</sup> (expressed as copper) and SML = 1 mg/kg <sup>(11)</sup> (expressed as iodine)
76845	031831-53-5	Polyester of 1,4-butanediol with caprolactone	The restriction for Ref. No 14260 and Ref. No 13720 shall be respected. In compliance with the specifications laid down in Annex V.
81760	—	Powders, flakes and fibres of brass, bronze, copper, stainless steel, tin and alloys of copper, tin and iron	SML(T) = 5 mg/kg <sup>(7)</sup> (expressed as copper); SML = 48 mg/kg (expressed as iron)
88640	008013-07-8	Soybean oil, epoxidised	SML = 60 mg/kg. However in the case of PVC gaskets used to seal glass jars containing infant formulae and follow-on formulae as defined by Directive 91/321/EEC or containing processed cereal-based foods and baby foods for infants and young children as defined by Directive 96/5/EC, the SML is lowered to 30 mg/kg.  In compliance with the specifications laid down in Annex V.'

- (c) the following additive is deleted:

Ref. No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
'35760	001309-64-4	Antimony trioxide	SML = 0,04 mg/kg <sup>(39)</sup> (expressed as antimony).'

- (2) Section B is amended as follows:

- (a) the following additives are inserted, in the appropriate numerical order:

Ref. No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
'35760	001309-64-4	antimony trioxide	SML = 0,04 mg/kg <sup>(39)</sup> (expressed as antimony)
47500	153250-52-3	N,N'-Dicyclohexyl-2,6-naphthalene dicarboxamide	SML = 5 mg/kg.

(1)	(2)	(3)	(4)
72081/10	—	Petroleum hydrocarbon resins (hydrogenated)	SML = 5 mg/kg <sup>(1)</sup> and in compliance with the specifications laid down in Annex V
93970	—	Tricyclodecanedimethanol bis(hexahydrophthalate)	SML = 0,05 mg/kg.'

(b) for the following additives, the entries in columns 3 'Name' and 4 'Restrictions and/or specifications' are replaced by the following:

Ref. No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
'47600	084030-61-5	Di-n-dodecyltin bis(isooctyl mercaptoacetate)	SML(T) = 0,05 mg/kg food <sup>(41)</sup> (as sum of mono-n-dodecyltin tris(isooctyl mercaptoacetate), di-n- dodecyltin bis(isooctyl mercaptoacetate), mono-dodecyltin trichloride and di-dodecyltin dichloride) expressed as the sum of mono- and di-dodecyltin chloride
67360	067649-65-4	Mono-n-dodecyltin tris(isooctyl mercaptoacetate)	SML(T) = 0,05 mg/kg food <sup>(41)</sup> (as sum of mono-n-dodecyltin tris(isooctyl mercaptoacetate), di-n- dodecyltin bis(isooctyl mercaptoacetate), mono-dodecyltin trichloride and di-dodecyltin dichloride) expressed as the sum of mono- and di-dodecyltin chloride'

(c) The following additives are deleted:

Ref. No	CAS No	Name	Restrictions and/or specifications
(1)	(2)	(3)	(4)
'67180	—	Mixture of (50 % w/w) phthalic acid n-decyl n-octyl ester, (25 % w/w) phthalic acid di-n-decyl ester, (25 % w/w) phthalic acid di-n- octyl ester.	SML = 5 mg/kg <sup>(1)</sup>
76681	—	Polycyclopentadiene, hydrogenated	SML = 5 mg/kg <sup>(1)</sup>

## ANNEX IV

## ANNEX IVa

## LIPOPHILIC SUBSTANCES FOR WHICH THE FRF APPLIES

Ref. No	CAS No	Name
31520	061167-58-6	Acrylic acid, 2-tert-butyl-6-(3-tert-butyl-2-hydroxy-5-methylbenzyl)-4-methylphenyl ester
31530	123968-25-2	Acrylic acid, 2,4-di-tert-pentyl-6-[1-(3,5-di-tert-pentyl-2-hydroxyphenyl)ethyl] phenyl ester
31920	000103-23-1	Adipic acid, bis(2-ethylhexyl) ester
38240	000119-61-9	Benzophenone
38515	001533-45-5	4,4'-Bis(2-benzoxazolyl)stilbene
38560	007128-64-5	2,5-Bis(5-tert-butyl-2-benzoxazolyl)thiophene
38700	063397-60-4	Bis(2-carbobutoxyethyl)tin-bis(isooctyl mercaptoacetate)
38800	032687-78-8	N,N'-Bis(3-(3,5-di-tert-butyl-4-hydroxyphenyl)propionyl)hydrazide
38810	080693-00-1	Bis(2,6-di-tert-butyl-4-methylphenyl)pentaerythritol diphosphite
38820	026741-53-7	Bis(2,4-di-tert-butylphenyl)pentaerythritol diphosphite
38840	154862-43-8	Bis(2,4-dicumylphenyl)pentaerythritoldiphosphite
39060	035958-30-6	1,1-Bis(2-hydroxy-3,5-di-tert-butylphenyl)ethane
39925	129228-21-3	3,3-Bis(methoxymethyl)-2,5-dimethylhexane
40000	000991-84-4	2,4-Bis(octylmercapto)-6-(4-hydroxy-3,5-di-tert-butylanilino)-1,3,5-triazine
40020	110553-27-0	2,4-Bis(octylthiomethyl)-6-methylphenol
40800	013003-12-8	4,4'-Butylidene-bis(6-tert-butyl-3-methylphenyl-ditridecyl phosphite)
42000	063438-80-2	(2-Carbobutoxyethyl)tin-tris(isooctyl mercaptoacetate)
45450	068610-51-5	p-Cresol-dicyclopentadiene-isobutylene, copolymer
45705	166412-78-8	1,2-cyclohexanedicarboxylic acid, diisononyl ester
46720	004130-42-1	2,6-Di-tert-butyl-4-ethylphenol
47540	027458-90-8	Di-tert-dodecyl disulphide
47600	084030-61-5	Di-n-dodecyltin bis(isooctyl mercaptoacetate)
48800	000097-23-4	2,2'-Dihydroxy-5,5'-dichlorodiphenylmethane
48880	000131-53-3	2,2'-Dihydroxy-4-methoxybenzophenone
49485	134701-20-5	2,4-Dimethyl-6-(1-methylpentadecyl)-phenol
49840	002500-88-1	Diocetadecyl disulphide
51680	000102-08-9	N,N'-Diphenylthiourea
52320	052047-59-3	2-(4-Dodecylphenyl)indole



Ref. No	CAS No	Name
53200	023949-66-8	2-Ethoxy-2'-ethyloxanilide
54300	118337-09-0	2,2'-Ethylidenebis(4,6-di-tert-butyl phenyl) fluorophosphonite
59120	023128-74-7	1,6-Hexamethylene-bis(3-(3,5-di-tert-butyl-4-hydroxyphenyl)propionamide)
59200	035074-77-2	1,6-Hexamethylene-bis(3-(3,5-di-tert-butyl-4-hydroxyphenyl)propionate)
60320	070321-86-7	2-[2-Hydroxy-3,5-bis(1,1-dimethylbenzyl)phenyl]benzotriazole
60400	003896-11-5	2-(2'-Hydroxy-3'-tert-butyl-5'-methylphenyl)-5-chlorobenzotriazole
60480	003864-99-1	2-(2'-Hydroxy-3,5'-di-tert-butylphenyl)-5-chlorobenzotriazole
61280	003293-97-8	2-Hydroxy-4-n-hexyloxybenzophenone
61360	000131-57-7	2-Hydroxy-4-methoxybenzophenone
61600	001843-05-6	2-Hydroxy-4-n-octyloxybenzophenone
66360	085209-91-2	2,2'-Methylene bis(4,6-di-tert-butylphenyl) sodium phosphate
66400	000088-24-4	2,2'-Methylene bis(4-ethyl-6-tert-butylphenol)
66480	000119-47-1	2,2'-Methylene bis(4-methyl-6-tert-butylphenol)
66560	004066-02-8	2,2'-Methylene bis(4-methyl-6-cyclohexylphenol)
66580	000077-62-3	2,2'-Methylene bis(4-methyl-6-(1-methyl-cyclohexyl) phenol)
68145	080410-33-9	2,2',2'-Nitrilo[triethyl tris(3,3',5,5'-tetra-tert-butyl-1,1'-bi-phenyl-2,2'-diyl)phosphite]
68320	002082-79-3	Octadecyl 3-(3,5-di-tert-butyl-4-hydroxyphenyl)propionate
68400	010094-45-8	Octadecylceramide
69840	016260-09-6	Oleylpalmitamide
71670	178671-58-4	Pentaerythritol tetrakis (2-cyano-3,3-diphenylacrylate)
72081/10	—	Petroleum Hydrocarbon Resins (hydrogenated)
72160	000948-65-2	2-Phenylindole
72800	001241-94-7	Phosphoric acid, diphenyl 2-ethylhexyl ester
73160	—	Phosphoric acid, mono- and di-n-alkyl (C <sub>16</sub> and C <sub>18</sub> ) esters
74010	145650-60-8	Phosphorous acid, bis(2,4-di-tert-butyl-6-methylphenyl) ethyl ester
74400	—	Phosphorous acid, tris(nonyl- and/or dinonylphenyl) ester
76866	—	Polyesters of 1,2-propanediol and/or 1,3- and/or 1,4-butanediol and/or polypropyleneglycol with adipic acid, also end-capped with acetic acid or fatty acids C <sub>12</sub> -C <sub>18</sub> or n-octanol and/or n-decanol
77440	—	Polyethyleneglycol diricinoleate
78320	009004-97-1	Polyethyleneglycol monoricinoleate

Ref. No	CAS No	Name
81200	071878-19-8	Poly[6-[(1,1,3,3-tetramethylbutyl)amino]-1,3,5-triazine-2,4-diyl]-[(2,2,6,6-tetramethyl-4-piperidyl)imino]hexamethylene[(2,2,6,6-tetramethyl-4-piperidyl)imino]
83599	068442-12-6	Reaction products of oleic acid, 2-mercaptoethyl ester, with dichlorodimethyltin, sodium sulphide and trichloromethyltin
83700	000141-22-0	Ricinoleic acid
84800	000087-18-3	Salicylic acid, 4-tert-butylphenyl ester
92320	—	Tetradecyl-polyethyleneglycol(EO=3-8) ether of glycolic acid
92560	038613-77-3	Tetrakis(2,4-di-tert-butyl-phenyl)-4,4'-biphenylene diphosphonite
92700	078301-43-6	2,2,4,4-Tetramethyl-20-(2,3-epoxypropyl)-7-oxa-3,20-diazadispiro[5.1.11.2]-heneicosan-21-one, polymer
92800	000096-69-5	4,4'-Thiobis(6-tert-butyl-3-methylphenol)
92880	041484-35-9	Thiodiethanol bis(3-(3,5-di-tert-butyl-4-hydroxy phenyl) propionate)
93120	000123-28-4	Thiodipropionic acid, didodecyl ester
93280	000693-36-7	Thiodipropionic acid, dioctadecyl ester
95270	161717-32-4	2,4,6-Tris(tert-butyl)phenyl-2-butyl-2-ethyl-1,3-propanediol phosphite
95280	040601-76-1	1,3,5-Tris(4-tert-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6(1H,3H,5H)-trione
95360	027676-62-6	1,3,5-Tris(3,5-di-tert-butyl-4-hydroxybenzyl)-1,3,5-triazine-2,4,6(1H,3H,5H)-trione
95600	001843-03-4	1,1,3-Tris(2-methyl-4-hydroxy-5-tert-butylphenyl) butane'

## ANNEX V

Annex V to Directive 2002/72/EC is amended as follows:

(1) Part A is replaced by the following:

**Part A: General specifications**

Plastic material and articles shall not release primary aromatic amines in a detectable quantity (DL = 0,01 mg/kg of food or food simulant). The migration of the primary aromatic amines appearing in the lists in Annex II and III is excluded from this restriction.'

(2) In Part B, the following new specifications are inserted, in the appropriate numerical order:

Ref. No	OTHER SPECIFICATIONS
'42080	Carbon black <i>Specifications:</i> — Toluene extractables: maximum 0,1 %, determined according to ISO method 6209. — UV absorption of cyclohexane extract at 386 nm: < 0,02 AU for a 1 cm cell or < 0,1 AU for a 5 cm cell, determined according to a generally recognised method of analysis. — Benzo(a)pyrene content: max 0,25 mg/kg carbon black. — Maximum use level of carbon black in the polymer: 2,5 % w/w
72081/10	Petroleum hydrocarbon resins (hydrogenated) <i>Specifications:</i> Petroleum hydrocarbon resins, hydrogenated are produced by the catalytic or thermal polymerisation of dienes and olefins of the aliphatic, alicyclic and/or monobenzenoid arylalkene types from distillates of cracked petroleum stocks with a boiling range not greater than 220 °C, as well as the pure monomers found in these distillation streams, subsequently followed by distillation, hydrogenation and additional processing. <i>Properties:</i> Viscosity: > 3 Pa.s at 120 °C. Softening point: > 95 °C as determined by ASTM Method E 28-67. Bromine number: < 40 (ASTM D1159) The colour of a 50 % solution in toluene < 11 on the Gardner scale Residual aromatic monomer ≤ 50 ppm
76845	Polyester of 1,4-butanediol with caprolactone MW fraction < 1 000 is less than 0,5 % (w/w)
81500	Polyvinylpyrrolidone The substance shall meet the purity criteria established in Commission Directive 96/77/EC (*)
88640	Soybean oil, epoxidized Oxirane < 8 %, iodine number < 6

(\*) OJ L 339, 30.12.1996, p. 1.'

## ANNEX VI

Annex VI to Directive 2002/72/EC is amended as follows:

(1) Note <sup>(8)</sup> is replaced by the following:

<sup>(8)</sup> SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Ref. Nos: 24886, 38000, 42400, 62020, 64320, 66350, 67896, 73040, 85760, 85840, 85920 and 95725.'

(2) The following notes 41 and 42 are added:

<sup>(41)</sup> SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Ref. Nos: 47600, 67360.

<sup>(42)</sup> SML(T) in this specific case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances mentioned as Ref. Nos: 75100 and 75105.'

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## ANNEX VII

## ANNEX VIa

**DECLARATION OF COMPLIANCE**

The written declaration referred to in Article 9 shall contain the following information:

- (1) the identity and address of the business operator which manufactures or imports the plastic materials or articles or the substances intended for the manufacturing of those materials and articles;
- (2) the identity of the materials, the articles or the substances intended for the manufacturing of those materials and articles;
- (3) the date of the declaration;
- (4) confirmation that the plastic materials or articles meet relevant requirements laid down in this Directive and Regulation (EC) No 1935/2004;
- (5) adequate information relative to the substances used for which restrictions and/or specifications are in place under this Directive to allow the downstream business operators to ensure compliance with those restrictions;
- (6) adequate information relative to the substances which are subject to a restriction in food, obtained by experimental data or theoretical calculation about the level of their specific migration and, where appropriate, purity criteria in accordance with Directives 95/31/EC, 95/45/EC and 96/77/EC to enable the user of these materials or articles to comply with the relevant Community provisions or, in their absence, with national provisions applicable to food;
- (7) specifications on the use of the material or article, such as:
  - (i) type or types of food with which it is intended to be put in contact;
  - (ii) time and temperature of treatment and storage in contact with the food;
  - (iii) ratio of food contact surface area to volume used to establish the compliance of the material or article;
- (8) when a plastic functional barrier is used in a plastic multi-layer material or article, the confirmation that the material or article complies with the requirements of Article 7a(2), (3) and 4 of this Directive.

The written declaration shall permit an easy identification of the materials, articles or substances for which it is issued and shall be renewed when substantial changes in the production bring about changes in the migration or when new scientific data are available.'

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## ANNEX VIII

The Annex to Directive 85/572/EEC is amended as follows:

(1) Point 3 is replaced by the following:

'3. When "X" is followed by an oblique stroke and a figure, the result of the migration tests should be divided by the figure indicated. In the case of certain types of fatty food, this conventional figure, known as "Simulant D Reduction Factor" (DRF), is used to take account of the greater extractive capacity of the simulant compared to the food.'

(2) The following point 4a is inserted:

'4a. Where the letter (b) is shown in brackets after the "X", the indicated test shall be carried out with ethanol 50 % (v/v).'

(3) In the table, Section 07 is replaced by the following:

'07	<b>Milk products</b>				
07.01	Milk:				
	A. Whole				X(b)
	B. Partly dried				X(b)
	C. Skimmed or partly skimmed				X(b)
	D. Dried				
07.02	Fermented milk such as yoghurt, buttermilk and similar products		X		X(b)
07.03	Cream and sour cream		X(a)		X(b)
07.04	Cheeses:				
	A. Whole, with non-edible rind				
	B. All others	X(a)	X(a)		X/3*
07.05	Rennet				
	A. In liquid or viscous form	X(a)	X(a)		
	B. Powdered or dried'				

## II

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

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 26 September 2006

**on State aid C 42/2005 (ex NN 66/2005; ex N 195/2005) implemented by the Slovak Republic for Konas, s.r.o.**

(notified under document number C(2006) 4205)

(Only the Slovak version is authentic)

(Text with EEA relevance)

(2007/204/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to the provision cited above <sup>(1)</sup> and having regard to their comments,

Whereas:

in contravention of Article 88(3) of the EC Treaty. The aid was therefore classified as unlawful aid and given a new case number (NN 66/2005).

(3) By letter of 9 November 2005, the Commission informed Slovakia that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(4) The Commission decision to initiate the procedure laid down in Article 88(2) of the EC Treaty was published in the *Official Journal of the European Union* <sup>(2)</sup>. The Commission invited interested parties to submit their comments on the measure.

## I. PROCEDURE

(1) By letter of 11 April 2005, registered as received on 19 April 2005, Slovakia notified the Commission that it intended to grant restructuring aid to the company Konas, s.r.o. It provided additional information by letters of 30 June 2005, registered as received on 12 July 2005, and of 5 September 2005, registered as received on 8 September 2005, replying to the Commission's letters of 31 May 2005 and 28 July 2005 respectively.

(2) In the course of this Exchange of Letters it became apparent that the aid in question had been implemented

(5) The Slovak authorities submitted their observations by letter of 13 December 2005, registered as received on 20 December 2005. Slovakia submitted additional information by letter of 3 January 2006, registered as received on 10 January 2006. The Commission received comments from one interested party (the recipient) by letter of 30 November 2005, registered as received on 6 December 2005. It forwarded them to Slovakia, which was given the opportunity to react and did so by sending its own comments by letter dated 9 March 2006, registered as received on 15 March 2006.

<sup>(1)</sup> OJ C 323, 20.12.2005, p. 25.

<sup>(2)</sup> See footnote 1.

## II. DETAILED DESCRIPTION OF THE AID

### 1. Relevant undertaking

- (6) The recipient of the financial support is Konas, s.r.o. (hereinafter Konas), a manufacturer of machinery and equipment operating principally in four sectors: shaping and press tools, single-purpose machines, protection shields and other mechanical engineering products. The company is situated in a region eligible for regional aid under Article 87(3)(a) of the EC Treaty.
- (7) According to the information provided by the Slovak authorities, a number of domestic competitors and competitors elsewhere in the European Union operate in all these sectors. The company sees possibilities for exports in the shaping tools segment.
- (8) Konas employs 37 people. Its turnover was SKK 19 million (EUR 500 000 <sup>(3)</sup>) in 2004 and SKK 15 million (EUR 395 000) in the first three quarters of 2005. According to the Slovak authorities, the recipient fulfils the criteria of a small enterprise.

### 2. Applicable national legislation

- (9) The measure in question comprises a write-off of a tax debt by the Lučenec Tax Office (tax office) under what is known as an arrangement with creditors. This procedure is governed by Act No 328/91 on Bankruptcy and Arrangements with Creditors (Bankruptcy Act).
- (10) Arrangement with creditors (arrangement or arrangement procedure) is a court-supervised procedure which, like the bankruptcy procedure, aims at settling the financial situation of indebted companies <sup>(4)</sup>. Under the bankruptcy procedure, the company ceases to exist and either its assets are sold to a new owner or the company is liquidated. In contrast, under the arrangement procedure, the indebted company continues its business without change of ownership.
- (11) The arrangement procedure is initiated by the indebted company. The aim is to reach an agreement with the

creditors (agreement) whereby the indebted company pays off part of its debt and the remainder is written off. The agreement has to be approved by the supervising court.

- (12) Creditors whose receivables are secured, e.g. by means of a mortgage, act as separate creditors. For the arrangement proposal to be accepted, all the separate creditors have to vote in favour, whereas for other creditors a qualified majority suffices. Separate creditors vote individually and have a right to veto the proposal.
- (13) Separate creditors have a privileged position also in the bankruptcy procedure. The proceeds from the sale of the secured assets in the bankruptcy procedure are meant to be used exclusively to satisfy the claims of the separate creditors. If the claims of the separate creditors cannot all be met from this sale, the outstanding amounts are incorporated into the second group with the claims of the other creditors. In the second group, the creditors are satisfied proportionally.
- (14) Pursuant to the Bankruptcy Act, the company applying for an arrangement with creditors has to submit to the supervising court a list of measures for its reorganisation and for the ongoing financing of its activity after the arrangement.
- (15) Act No 511/92 on the Administration of Taxes and Fees and Changes to the System of Local Financial Authorities (Tax Administration Act) governs the tax execution procedure, the aim of which is to satisfy the State's tax claims through direct sale of real estate, movable assets or the firm as a whole.

### 3. Disputed measure

- (16) Konas requested the supervising court to commence an arrangement procedure on 15 July 2003, which the court did by a decision of 25 March 2004. The creditors met on 8 June 2004 and agreed to the restructuring of their claims as proposed by Konas. The court confirmed the creditors' agreement by a decision of 25 June 2004, which entered into force on 2 August 2004. The court formally ended the arrangement procedure by a decision of 20 October 2004. It should, however, be noted that the tax office has suspended the write-off pending the procedure before the Commission.

<sup>(3)</sup> The exchange rate used is only approximate (EUR 1 = SKK 38) and the figures in euro are included only for information purposes.

<sup>(4)</sup> A company becomes indebted when it has several creditors and is not able to settle its obligations within 30 days from maturity.



- (17) The creditors agreed with Konas on the following arrangement: 13,3 % of the debt would be repaid by Konas within 90 days of the entry into force of the creditors' agreement and the remaining 86,7 % of the debt would be forgone by the creditors. The claims of all the creditors were treated on equal terms. The claims of the tax office included in the arrangement procedure amounted to SKK 11 223 459 (EUR 295 000) and comprised VAT accrued over the period between the third quarter of 1995 and the end of 1997 and in respect of several months in 1998 and 1999. The tax office, as the sole public creditor, agreed to write off SKK 9 730 739 (EUR 256 000). The actual amounts per creditor are shown in the following table:

Table 1

**Konas debt arrangement (in SKK)**

Creditor		Debt before the arrangement	Debt after the arrangement (*)	Amount written off
Public	Tax office	11 223 459	1 492 720	9 730 739
Other	4 creditors	827 437	110 049	717 388
Total		12 050 896	1 602 769	10 448 127

(\*) The amount that Konas is obliged to pay back to its creditors.

- (18) The Slovak authorities confirmed that, under the arrangement in respect of both its public and its private creditors, Konas had fulfilled its obligations within the time limit laid down in the creditors' agreement.
- (19) In the arrangement procedure the tax office acted as a separate creditor and, as such, voted separately in favour of the arrangement. The privileged position of the tax office was due to the fact that its receivables included in the arrangement procedure, which amounted to SKK 10 147 939 (EUR 267 051), were secured by means of a mortgage on the assets of Konas. All the other creditors voted in favour of the proposed arrangement. Their receivables were common trade receivables not secured in any manner.

**4. Restructuring**

- (20) With its request for the arrangement procedure addressed to the supervising court, Konas also submitted a two-part plan comprising: (a) a financial analysis of the company and organisational measures, and (b) measures to restore the company's financial stability.
- (21) In the plan, the company first described its financial situation, claiming that, although it was still indebted, its financial situation had been stabilised in the years preceding the request for an arrangement. It then concluded that its short-term receivables and cash would be sufficient to cover the debt remaining to be paid under the arrangement. The company described its

organisational measures as follows: creation of reserves for an amount equal to the debt still to be paid under the arrangement; management of cash flow during the arrangement procedure so as to avoid inefficient expenditure, especially for energy and materials; regular payment of taxes and other public obligations; intensification of marketing activities; increase of sales to the most profitable customers; workforce review; limitation of expenditure for social purposes during the arrangement procedure; better use of existing plant; and energy consumption and cost reductions.

- (22) The costs of financial restructuring amounted to SKK 12 050 896 (EUR 317 000), the debt that Konas restructured through the arrangement. In its plan Konas proposed to finance the remaining debt of SKK 1 602 769 (EUR 42 000) through short-term receivables (SKK 1 323 259 or EUR 35 000) and available cash (SKK 2 246 419 or EUR 59 000).
- (23) According to the Slovak authorities, between 1998 and 2000 the tax office issued eight execution orders in exercise of its powers under the Tax Administration Act. In April 2004 the tax office issued a list of Konas's debts outstanding at the time of the arrangement procedure.
- (24) The Slovak authorities confirmed that, pending the procedure before the European Commission, they had suspended the debt write-off agreed under the arrangement procedure.

### III. DECISION TO INITIATE THE PROCEDURE OF ARTICLE 88(2) OF THE EC TREATY

(25) In its decision to initiate the procedure of Article 88(2) of the EC Treaty, the Commission raised doubts as to whether the disputed write-off had no State aid element. Specifically, it considered that the behaviour of the tax office in the arrangement procedure did not meet the market economy creditor test. In particular, it found that the tax office was in a situation legally different from the other creditors as it possessed secured claims and had the possibility to initiate the tax execution procedure. It doubted that the arrangement procedure led to the best possible outcome for the State as a creditor of Konas when compared with the bankruptcy procedure or the tax execution procedure.

(26) The Commission then raised doubts as to the compatibility with the common market of the disputed aid as restructuring aid. It doubted that the two main conditions were fulfilled: existence of a restructuring plan ensuring a return to long-term viability within a reasonable timeframe and limitation of the aid to the minimum necessary.

### IV. COMMENTS FROM INTERESTED PARTIES

(27) On the facts of the case, the recipient submitted that the book value of the assets pledged in favour of the tax office was SKK 3 254 000 on 31 December 2003 and SKK 3 001 000 on 31 December 2004. The assets in question were the only real estate owned by the recipient; all production was carried out in this building.

(28) In its comments the recipient submitted that, according to the Slovak legislation in force at the time of the arrangement, the present measure was not a State aid measure but an act of voluntary agreement with the creditors. Should the Commission conclude otherwise, Konas would be discriminated against, when compared with other cases where companies had applied for an arrangement before the accession of Slovakia to the EU and the resulting debt write-off had not been deemed to be State aid. The recipient adds that, even after accession, the national legislation was not in line with EU law and therefore, however diligent it had been, it could not have known that reaching an arrangement with its creditors required additional conditions to be fulfilled.

(29) The recipient further submitted that the accrued tax debt resulted mainly from unclear legislation.

(30) The recipient claimed that the tax office's assessment of Konas's situation went beyond what was included in the plan submitted to the court in the arrangement procedure.

### V. COMMENTS FROM THE SLOVAK REPUBLIC

(31) In their reply to the opening of the formal investigation, the Slovak authorities submitted that State aid would be granted only if the tax receivable were written off in the State's accounts.

(32) The Slovak authorities submitted that the tax office, when agreeing to the arrangement proposed by Konas, had taken into account the following factors, some of which, it is suggested, would also be borne in mind by a market economy creditor. First, the book value of the pledged real estate was, at the time of the arrangement, only SKK 3,2 million, although the secured receivables amounted to SKK 10,1 million. Second, the bankruptcy procedure tends to be rather lengthy and the sale of assets in the region in question is very problematic. As regards the statistics, the yield obtained from bankruptcy by the tax authorities between 1997 and 2005 is claimed to average only 7%. Third, the tax office took into account the impact of the liquidation of Konas on regional unemployment (around 40% at the time of the arrangement), bearing in mind not only redundancies at Konas but also at another company in the region which is dependent on Konas and employs some 400 people. Finally, the tax office took into account the expected future tax revenue.

(33) As to the tax execution procedure, the Slovak authorities confirmed that between 1998 and 2000 the tax office issued eight execution orders against Konas and decreased the company's tax debt by SKK 8 106 672,42 to SKK 11 223 459, which was included in the arrangement procedure in 2004. Since 2001, Konas has paid all its taxes regularly and on time.

(34) The Slovak authorities do not dispute that the present measure constitutes State aid. Their claim is that this aid is compatible with the common market as restructuring aid.

(35) The Slovak authorities do not dispute the Commission's conclusion that the write-off of the debt under the arrangement procedure was not made conditional upon the implementation of the plan submitted by Konas to

the supervising court pursuant to the Bankruptcy Act. They have, however, sent to the Commission a document from January 2005 entitled 'Evaluation of the company on the date of the arrangement' (the evaluation), which had been prepared by Konas and submitted to the tax office. The Slovak authorities contend that this evaluation of the company would allow the Commission to assess whether the aid had been limited to the strict minimum necessary.

(36) The evaluation first describes the activity of Konas since it was set up in 1992 and includes information on turnover and operating results between 1993 and 2003.

(37) According to the evaluation, the reason for Konas's difficulties was high credit exposure linked to production start-up in 1993 which the volume of production was not able to cover. Between 1994 and 1996 Konas accumulated debt, in particular towards the tax office, which was then partly collected by execution and

partly carried over until it was eventually partly repaid and partly written off under the arrangement procedure.

(38) The evaluation then includes a short market analysis where it examines the competitive environment in all the sectors in which Konas is active<sup>(5)</sup>. It describes the position and prospects of Konas in each of these sectors and concludes that there is particular growth potential in the production of tools, protection shields and other mechanical engineering products. In contrast, it proposes cutting back production of single-purpose machinery and small-scale made-to-order production (production of unavailable spare parts, emergency repairs). The prospects for greater demand for the company's products lie in the development of the automobile industry in Slovakia and in the clear signs of greater interest on the part of EU companies, bolstered by Slovakia's EU accession. Konas sees itself competitive with its know-how in respect of technologies that have development potential.

(39) The evaluation further describes Konas's capacity as being under-utilised, a problem that should be addressed by investment in a computerised milling machine. The measures to be adopted between 2004 and 2008 are set out in the following table, together with the financial restructuring undertaken.

Table 2

**Restructuring measures according to the evaluation (in SKK)**

Measure		Implementation	Cost	Financing
Marketing		2005	500 000	Konas resources
Development of technologies	Wire cutting	2004	1 500 000	Konas resources
	NC milling	2006	4 000 000	Loan
	Sparking	2007	2 500 000	Loan
	NC lathing	2008	1 500 000	Loan
Organisation	Client management IT system	2005	500 000	Konas resources
Training of young workers		2007	500 000	Konas resources
Financial restructuring	Repayment of debt	2004	1 602 769	Konas resources, cash
	Write-off	2004		
	— by the State		9 730 739	State resources
	— by other creditors		717 388	External resources
Total			23 050 896	

<sup>(5)</sup> The Commission had already been provided with this information by the Slovak authorities before it adopted the decision to open the formal investigation procedure (see paragraph 4 of that decision).

- (40) Finally, the evaluation contains a forecast of Konas's operating results for the period 2005 to 2009, showing that the above measures should contribute to higher profitability. Turnover should grow by 10 % a year as of 2005.
- (41) According to the Slovak authorities, the evaluation dates from January 2005. It is clear that the evaluation was prepared to assess Konas's situation before the arrangement and to analyse its prospects after the arrangement.
- (42) As to the question of whether the aid was limited to the minimum necessary, the Slovak authorities confirmed that on 31 March 2004 Konas had SKK 3,9 million in cash, which was needed to cover wages (SKK 730 000), the obligations towards the creditors participating in the arrangement (SKK 1 602 769) and the arrangement procedure fees (SKK 140 000).
- (43) As some of the relevant events in the present case took place before the accession of the Slovak Republic to the European Union on 1 May 2004, the Commission first has to determine whether it is competent to act with regard to the disputed measure.
- (44) Measures that were put into effect before accession and are no longer applicable after accession cannot be examined by the Commission either under what is known as the interim mechanism procedure, governed by Annex IV, point 3 of the Accession Treaty, or under the procedures laid down in Article 88 of the EC Treaty. Neither the Accession Treaty nor the EC Treaty requires or empowers the Commission to review such measures.
- (45) However, measures put into effect after accession do fall within the field of competence of the Commission under the EC Treaty. In order to determine the moment when a certain measure was put into effect, the relevant criterion is the legally binding act by which the competent national authority undertakes to grant aid <sup>(6)</sup>.
- (46) The decision of the competent authority to write off some of the claims was taken on 8 June 2004, when the tax office agreed with the arrangement proposed by Konas, i.e. after accession.
- (47) Accordingly, the question of whether the measure is applicable after accession no longer arises.
- (48) The Commission therefore concludes that it is competent to assess the disputed measure pursuant to Article 88 of the EC Treaty.

## 2. State aid within the meaning of Article 87(1) of the EC Treaty

- (49) Article 87(1) of the EC Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between Member States is incompatible with the common market.
- (50) Writing off a debt towards a public authority such as a tax office involves State resources. Since it benefits an individual undertaking, the measure is selective. The company is active in the production of industrial machinery and equipment, a sector in which trade exists between Member States.
- (51) In the decision to initiate the procedure of Article 88(2) of the EC Treaty, the Commission raised doubts as to whether the measure distorted or threatened to distort competition by conferring on the recipient an advantage that it would normally not be able to obtain on the market. In other words, the Commission had doubts as to whether the State had behaved as a market economy creditor in relation to Konas.
- (52) It was established that the agreement contained the same debt arrangement conditions for both the private creditors and the tax office: 13,3 % of the debt was to be paid to the creditors within a prescribed period, a requirement with which the recipient complied. The remaining 86,7 % was written off.
- (53) However, prior to the arrangement, the tax office was in a legally and economically more advantageous position than the private creditors. It therefore needs to be examined in detail whether the tax office used all the means at its disposal to obtain the highest possible repayment of its receivables, as a market economy creditor would do.

<sup>(6)</sup> Case T-109/01 *Fleuren Compost v Commission* [2004] ECR II 127, paragraph 74.

- (54) The Slovak authorities submit that, in their view, the measure constitutes State aid. They acknowledge that, at the time of the arrangement, the question of State aid was simply not considered. The recipient, for its part, argues that the measure is an act of voluntary agreement between creditors and not State aid.
- (55) The Commission cannot accept the argument that the arrangement procedure and the procedure for granting State aid cannot overlap <sup>(7)</sup>. It is not the purpose or the form of the action on the part of the State but its result that determines whether a given action involving State resources confers on a company an advantage that it otherwise would not obtain on the market.
- (56) Similarly, the Commission cannot accept the recipient's argument that, however diligent it had been, the company could not have known that the write-off might constitute State aid. The EU rules on State aid were applicable in Slovakia in the form of State Aid Act No 231/1999. In their reply to the recipient's comments, the Slovak authorities rightly pointed out that assessing whether the measure in question constituted State aid was not a matter for the tax office but fell within the remit of the State Aid Office before accession and within that of the Commission after accession.
- (57) The Commission's doubts set out in the decision to initiate the procedure of Article 88(2) of the EC Treaty as to whether the market economy creditor test was met have not been allayed.
- (58) First, the tax office, unlike the private creditors, was entitled to initiate tax execution on its own initiative through the sale of real estate, machinery or the firm as a whole.
- (59) In fact, the tax office had recourse to this legal instrument on a number of occasions to enforce its claims against Konas (see recital 33), and Konas's debt towards the tax office was considerably reduced between 1998 and 2000. In their reply to the decision to initiate the procedure of Article 88(2) of the EC Treaty, the Slovak authorities submitted that the tax office did not issue any further execution orders after 2001 because Konas was complying with its tax obligations regularly and on time. It is not clear, however, for what reason the tax office suspended tax execution with regard to Konas's pre-2001 debt. This debt from previous years was eventually included in the arrangement procedure in 2003.
- (60) Moreover, the Commission notes that, according to the information provided by the Slovak authorities in their comments on the decision to initiate the procedure of Article 88(2) of the EC Treaty, the book value of the pledged real estate (SKK 3,2 million) did not correspond to the level of the receivables secured by this pledge (SKK 10,1 million). This means that the securities required by the State were insufficient.
- (61) It is established case-law that a continuous absence of enforcement on the part of the State of obligations arising from tax and social security legislation might *in itself* create an advantage by mitigating the burden that the recipient should normally bear <sup>(8)</sup>. It indeed appears that the tax office's non-enforcement of Konas's tax obligations, combined with manifestly insufficient security for the State's receivables over a period of two years (2001 to 2002), constituted State aid. As these events took place before the date of accession and were not applicable thereafter, the Commission is not competent to assess the compatibility of the action in question with the common market. However, if the earlier non-enforcement already constituted State aid, the market economy creditor principle can no longer be referred to once the debt is later (partly) written off.
- (62) Under the tax execution procedure, a tax office can directly sell the assets (receivables and other current assets, movable assets, real estate) of the debtor. At the time of the arrangement, the recipient had cash of SKK 3,9 million <sup>(9)</sup>. The value of the recipient's cash alone would have exceeded the tax office's yield from the arrangement (SKK 1,5 million). In addition, the recipient had short-term receivables with a book value of SKK 1,4 million and real estate with a book value of SKK 3 million.
- (63) Lastly, unlike bankruptcy proceedings, tax execution would not involve administrative fees. Since it is a procedure that is initiated and controlled by the tax office itself, it can be assumed that it would be conducted in a speedy manner.

<sup>(7)</sup> Case T-152/99 *Hamsa v Commission*, p. 158: Article 87(1) of the EC Treaty does not distinguish between State intervention measures by reference to their causes or aims, but defines them in relation to their effects.

<sup>(8)</sup> Case C-256/97, *DM Transport*.

<sup>(9)</sup> Balance sheet on 24 March 2004, one day before the supervisory court issued the decision permitting the initiation of the arrangement procedure.

- (64) The Commission does not have sufficient information to be able to assess what the yield would be from the sale of the assets under bankruptcy proceedings in the event of the recipient being liquidated. To the Commission's knowledge, neither Konas nor the tax office considered the option of bankruptcy, which is why no further calculations were made in this respect.
- (65) The Commission therefore concludes that, if nothing else, tax execution against the recipient's assets would have produced a higher yield than the arrangement.
- (66) Finally, the Commission notes that it is established case-law<sup>(10)</sup> that socio-economic factors, such as regional employment and expected future tax revenue, are excluded from the market economy creditor test. The tax office cannot be compared to a commercial partner, such as a supplier who is a creditor of the recipient. It is important to note that the receivables of a supplier and those of the State are fundamentally different in nature. Since the relationship between the supplier and the insolvent firm has a contractual basis, exceptionally the supplier may genuinely suffer from the loss of the business partner. If the insolvent company were liquidated, the supplier would have to find a new client or conclude a contract with the new owner. The greater the supplier's dependency on the insolvent company, the higher the risk involved. In contrast, the relationship between the State and the insolvent firm is based on public law and is, therefore, not dependent on the will of the parties. Any new owner who took over the assets of the liquidated firm would automatically be obliged to pay taxes. Furthermore, the State is never dependent on a single taxpayer. Finally and most importantly, when levying taxes, the State is not profit-driven and does not act on a commercial basis or on commercial considerations. The analogy with a business partner is therefore not well-founded.
- (67) The Commission therefore concludes that the loss of future taxes cannot be taken into account when applying the market economy creditor principle.
- (68) On the basis of the above evidence, the Commission concludes that in the present case the market economy creditor test was not met and the State conferred on the recipient an advantage that it would not have been able to obtain from the market.
- (69) The Commission therefore concludes that the measure in question constitutes State aid within the meaning of Article 87(1) of the EC Treaty.
- (70) The State aid granted to the recipient comprises the amount of the debt written off by the tax office under the arrangement procedure, which is SKK 9 730 739 (EUR 256 000).
- 3. Compatibility of aid: Derogation under Article 87(3) of the EC Treaty**
- (71) The primary objective of the measure is to assist a company in difficulty. In such cases, it is possible to apply the exemption laid down in Article 87(3)(c) of the EC Treaty provided that the relevant conditions are met; under the exemption, State aid may be granted to facilitate the development of certain economic activities provided that it does not adversely affect trading conditions to an extent contrary to the common interest.
- (72) Rescue and restructuring aid to ailing companies is currently governed by the Community guidelines on State aid for rescuing and restructuring firms in difficulty<sup>(11)</sup> (the New Guidelines), which replaced the previous text adopted in 1999<sup>(12)</sup> (the 1999 Guidelines).
- (73) Under their transitional provisions, the New Guidelines apply to the assessment of any rescue or restructuring aid granted without the authorisation of the Commission (unlawful aid) where some or all of the aid is granted after 1 October 2004, the date of publication of the New Guidelines in the *Official Journal of the European Union* (point 104, first subparagraph). Aid unlawfully granted before 1 October 2004 is to be assessed on the basis of the guidelines applicable at the time when it was granted (point 104, second subparagraph).
- (74) The Commission notes that the tax office's approval of the arrangement was issued on 8 June 2004 and took effect on 2 August 2004. Therefore, the aid was unlawfully granted before 1 October 2004. This means that the applicable guidelines are the 1999 Guidelines in force at the time when the aid was granted.

<sup>(10)</sup> See *mutatis mutandis* Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission*, pp. 21 and 22; Case T-198/01 *Technische Glaswerke Ilmenau GmbH*, pp. 106 to 108.

<sup>(11)</sup> OJ C 244, 1.10.2004, p. 2.

<sup>(12)</sup> OJ C 288, 9.10.1999, p. 2.

(75) The Commission takes note that the recipient is a small enterprise within the meaning of Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises <sup>(13)</sup>.

### 3.1. Eligibility of the firm

(76) Under point 5(c) of the 1999 Guidelines, a firm is regarded as being in difficulty where it fulfils the criteria under domestic law for being the subject of collective insolvency proceedings.

(77) The recipient was a party to an arrangement procedure, which is one of the options available for insolvent companies under the Bankruptcy Act. The recipient is therefore eligible for restructuring aid.

### 3.2. Restructuring aid

(78) In its decision to initiate the procedure of Article 88(2) of the EC Treaty, the Commission raised doubts as to whether the aid was compatible as restructuring aid within the meaning of the 1999 Guidelines on the grounds described in Part III above.

#### 3.2.1. Return to long-term viability

(79) According to the 1999 Guidelines, the granting of restructuring aid must be tied to and conditional on implementation of a feasible and coherent restructuring plan to restore the firm's long-term viability. The Member State commits itself to this plan, which must be endorsed by the Commission. Failure by the company to implement the plan is regarded as misuse of aid.

(80) In substance, the restructuring plan must be such as to enable the recipient to restore its long-term viability within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. It should describe the circumstances that led to the recipient's difficulties and identify appropriate measures to address these difficulties. The restructuring measures may not be limited to financial aid designed to make good debts and past losses without tackling the underlying reasons for the difficulties.

(81) In its decision to initiate the procedure of Article 88(2) of the EC Treaty, the Commission expressed doubts that the tax office had made its decision to write off Konas's debt

conditional on implementation of a restructuring plan of the type described in paragraph 80. These doubts have not been allayed. Formally speaking, the tax office as the granting authority did not have any obligation or competence to evaluate the list of measures addressed by Konas to the supervising court (see recital 20) under the arrangement procedure or to make the write-off of its receivables conditional on duly monitored implementation of these measures. There is no direct link between the granting of the aid by the tax office and the measures proposed by the recipient. The Commission therefore concludes that the first formal condition was not met.

(82) However, after the opening of the formal investigation procedure, the Slovak authorities submitted an evaluation of the company as described in recital 35. The evaluation clearly addresses the situation of Konas at the time of the arrangement with its creditors. It describes the circumstances that led to the recipient's difficulties and identifies measures to address these difficulties.

(83) The restructuring is not limited to debt restructuring. The recipient plans to undertake investments in new technologies and IT and to implement forward-looking measures in the area of training and marketing. The evaluation analyses the position and prospects of Konas on the specific market segments in which it is active.

(84) Unlike the list of measures submitted to the court under the arrangement procedure, the evaluation contains the elements required for a restructuring plan under the 1999 Guidelines. The Commission considers the evaluation to be essentially a restructuring plan for the period 2004 to 2008; it is designed to restore the long-term viability of Konas and is appropriate in view of the size of the recipient. The financial restructuring in the form of the arrangement with the creditors is the first step in this restructuring. Konas's main problem was the debt incurred in the second half of the 1990s. Since 2001, Konas has been paying its current liabilities under public law correctly and in due time. The Commission has no reason to doubt Konas's ability to restore its long-term viability after the measures included in the evaluation, including the debt restructuring, are implemented.

(85) The Commission notes that, formally speaking, the evaluation was not produced until after the arrangement with creditors had been secured. Nevertheless, it is obvious that the evaluation was directly linked to the arrangement procedure. It was submitted to the tax office before the notification of the measure to the Commission, at a time when the Slovak authorities believed that it would constitute State aid only if the tax receivables were written off from the State's accounts. It nonetheless remains the case that the aid was not formally made conditional on implementation of the plan by the tax office as the granting authority.

<sup>(13)</sup> OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 1976/2006 (OJ L 368, 23.12.2006, p. 85).

(86) The Commission considers that, by way of an exception in this specific case, this formal defect can be remedied. This exception is justified firstly in accordance with point 55 of the 1999 Guidelines, which states that the conditions for granting aid for restructuring may be applied less strictly in the case of small businesses, such as the recipient. Second, the exception is permissible because, even though the aid had already been granted, it had not yet been paid out to the recipient (debt write-off requires an additional administrative act on the part of the tax office; see recital 16). Consequently, in accordance with Article 7(4) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(14)</sup>, the Commission has decided to attach the following conditions to this Decision.

(87) Firstly, the Slovak authorities are to ensure that the evaluation is properly implemented. Secondly, they are to inform the Commission as to how they will ensure that the evaluation is implemented. Finally, they are not to disburse the aid (i.e. write off the receivables in the tax office's accounts) until they have notified the Commission of their undertaking to ensure that the evaluation is implemented and how they intend to do so.

### 3.2.2. Aid limited to the strict minimum

(88) Under point 40 of the 1999 Guidelines, the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken in light of the existing financial resources of the recipient. The recipient is expected to make a significant contribution to the restructuring from its own resources.

(89) In its decision to initiate the procedure of Article 88(2) of the EC Treaty, the Commission expressed doubts as to whether this criterion was met. These doubts have been allayed in view of the information on the restructuring of the recipient contained in the evaluation.

(90) According to the evaluation, the restructuring costs amount to SKK 23 050 896. The restructuring was financed partly through a cash contribution by Konas (payment of the debt of SKK 1 602 769 outstanding after the arrangement) and partly through bank loans with no State aid element totalling SKK 8 million. These contributions clearly constitute own resources of the recipient and external resources with no State aid element and cover about 42 % of the restructuring costs. The Commission does not need to determine whether the other sources of financing for the restruc-

turing of Konas (described as resources of Konas in the evaluation, see Table 2 in recital 39) constitute a real and actual contribution to the restructuring costs.

(91) The 1999 Guidelines did not contain any thresholds indicating when the own contribution of the recipient is considered to be significant.

(92) In view of its practice in applying the 1999 Guidelines and the change in its policy in this respect towards the introduction of thresholds under the New Guidelines<sup>(15)</sup>, the Commission considers that the contribution of 42 % can be termed significant and that the aid was limited to the minimum necessary.

### 3.2.3. Limitation of undue distortion of competition

(93) For the sake of completeness, the Commission notes that, in accordance with point 55 of the 1999 Guidelines, the granting of restructuring aid to small enterprises is not usually linked to compensatory measures. The distortion of competition caused by the aid at issue is limited and compensatory measures are, therefore, not required.

## VII. CONCLUSION

(94) The Commission finds that the Slovak Republic unlawfully granted the write-off of Konas's tax debt in breach of Article 88(3) of the EC Treaty. This aid is nevertheless compatible with the common market as restructuring aid, provided that its payment is made conditional on the implementation of the restructuring plan,

HAS ADOPTED THIS DECISION:

### Article 1

The State aid which the Slovak Republic has implemented for Konas, amounting to SKK 9 730 739, is compatible with the common market, subject to the conditions set out in Article 2.

### Article 2

1. The Slovak Republic shall take all necessary measures to ensure that Konas's restructuring plan is properly implemented.

2. The Slovak authorities shall inform the Commission on how they will ensure that the restructuring plan is implemented.

<sup>(14)</sup> OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

<sup>(15)</sup> The threshold for small enterprises under the New Guidelines is at least 25 %.



3. They shall not grant the aid until they have informed the Commission of their undertaking to ensure that the restructuring plan is implemented and how they will do so.

*Article 3*

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

*Article 4*

This Decision is addressed to the Slovak Republic.

Done at Brussels, 26 September 2006.

*For the Commission*  
Neelie KROES  
*Member of the Commission*

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## COMMISSION DECISION

of 22 March 2007

**establishing a common format for the first report of Member States on the implementation of Directive 2004/42/EC of the European Parliament and the Council concerning the limitation of emissions of certain volatile organic compounds***(notified under document number C(2007) 1236)***(Text with EEA relevance)**

(2007/205/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2004/42/EC of 21 April 2004 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC <sup>(1)</sup>, and in particular Article 7 thereof,

Whereas:

- (1) Pursuant to Directive 2004/42/EC, Member States are required to establish monitoring programmes in order to verify compliance with the provisions of that Directive and to report the results of their monitoring programmes and the categories and quantities of products licensed according to Article 3(3) of that Directive on the basis of a common format drafted by the Commission.
- (2) Pursuant to Article 7 of Directive 2004/42/EC in connexion with Annex I thereto, Member States shall prepare and submit to the Commission the first report on the implementation of that Directive by 30 June 2008 at the latest.

- (3) A common format for that first report that should cover the period from 1 January to 31 December 2007 should be therefore established.

- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee referred to in Article 12(2) of Directive 2004/42/EC,

HAS ADOPTED THIS DECISION:

*Article 1*

For the purposes of drawing up the report to be submitted to the Commission pursuant to Article 7 of Directive 2004/42/EC, and covering the period from 1 January until 31 December 2007, Member States shall use the format set out in the Annex to this Decision.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 22 March 2007.

*For the Commission*  
Stavros DIMAS  
*Member of the Commission*

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<sup>(1)</sup> OJ L 143, 30.4.2004, p. 87.

## ANNEX

**COMMON FORMAT FOR SUBMISSION OF THE FIRST REPORT ON THE IMPLEMENTATION OF DIRECTIVE  
2004/42/EC FOR THE PERIOD FROM 1 JANUARY UNTIL 31 DECEMBER 2007**

**1. General Information and administrative arrangements**

1.1. Authority responsible for the present report:

Name	
Address	
Contact person	
E-mail	
Phone	

1.2. In the framework of the implementation of Directive 2004/42/EC, please indicate the authority or authorities designated pursuant to Article 5 of that Directive and responsible for:

- (1) establishing, coordinating and managing the monitoring programme (at national level);
- (2) carrying out inspections and checks in the field (at regional and/or local level);
- (3) enforcing the requirements of that Directive in the case of infringements.

**2. Monitoring Programme (Article 6 of Directive 2004/42/EC)**

2.1. If a written version of the national monitoring program is available, please provide a copy of it in the annex to the report.

2.2. Please briefly describe the programme established to monitor and verify compliance with Directive 2004/42/EC with particular reference to the following elements:

- (1) the VOC limit values set out in Annex II to that Directive;
- (2) the labelling requirements laid down in Article 4 of that Directive.

2.3. Please indicate, whether inspections are carried out on the following operators:

- (1) manufacturers of products covered by Directive 2004/42/EC;
- (2) importers of products covered by Directive 2004/42/EC;
- (3) wholesalers, retailers, professional end-users of regulated products or other operators, including for instance vehicle refinishing installations no longer covered by Council Directive 1999/13/EC <sup>(1)</sup>.

Further, if those inspections are carried out please briefly describe:

- (1) types of inspections carried out (on-site visits, sampling and product analyses, verifying stocks and sales data, checks on labelling, others);

<sup>(1)</sup> OJ L 85, 29.3.1999, p. 1.

(2) frequency of inspections carried out (systematic annual inspections, inspections limited to the most important producers/importers, random inspections, others).

- 2.4. Please indicate the number of enterprises involved in the production and distribution of products that were inspected in 2007, and, if possible, the number of inspections planned for 2008 preferably by completing the following table. If available, please also indicate an estimate of the total number of actors involved in the production and distribution of products and the total quantities of products concerned (produced and distributed in 2007 in respective Member State):

Type of operators	Total number of existing operators	Number of operators inspected in 2007	Total quantity of products covered by Directive 2004/42/EC (kg)	Inspections planned in 2008
Manufacturers				
Importers				
Others				

- 2.5. How do the competent authorities verify that compliance has been established using the reference measurement methods described in Annex III to Directive 2004/42/EC?
- 2.6. If several authorities are involved in the implementation of Directive 2004/42/EC (refer to point 1.2 above), please indicate the measures taken to ensure the most uniform possible implementation of that Directive throughout the whole territory.
- 2.7. What are the rules on penalties applicable to infringement of the national provisions adopted pursuant to Article 10 of Directive 2004/42/EC?
- 2.8. If possible, please provide an estimate of the total number of staff involved in monitoring and control, their qualifications as well as the estimated monitoring costs in EUR per year (personnel, sampling and analysing, checks on labelling, enforcement, other costs).

**3. Key results of the monitoring programme carried out in 2007 (Article 7 of Directive 2004/42/EC)**

- 3.1. As compared to the total number of checks carried out, how many incidents of non-compliance (in %) with the VOC limits in Annex II to Directive 2004/42/EC were identified in 2007? If possible, please indicate:

(1) categories of the product concerned in accordance with that Annex;

(2) quantities of products which did not comply with those limits.

- 3.2. As compared to the total number of checks carried out, how many incidents of non-compliance (in %) with the labelling obligations laid down in Article 4 of Directive 2004/42/EC were identified in 2007? If possible please make a distinction between the following categories:

(1) products which do not comply with requirements concerning labelling and VOC contents:

(2) products complying with requirements concerning VOC contents but not with labelling requirements:

- 3.3. In cases of non-compliance, what actions have subsequently been taken in order to ensure compliance with Directive 2004/42/EC?

**4. Exemptions granted pursuant to Article 3(2) of Directive 2004/42/EC**

- 4.1. How has the derogation regime provided for in Article 3(2) of Directive 2004/42/EC been established?
- 4.2. What control system has been set up to ensure that products covered by the derogation under Article 3(2) of Directive 2004/42/EC are not sold and used by installations which are neither authorised nor registered in accordance with Article 3 or 4 of Directive 1999/13/EC?
- 4.3. If available, please provide an estimate of the quantity of exempted products (according to the classification listed in Annex 1 to Directive 2004/42/EC) in 2007.

**5. Individual licences granted pursuant to Article 3(3) of Directive 2004/42/EC**

- 5.1. Have you made use of the possibility of granting individual licenses provided for in Article 3(3) of Directive 2004/42/EC?
- 5.2. If yes, please briefly describe the operation of the system established to grant individual licenses:
- (1) Which authorities are in charge of issuing individual licenses?
- (2) Which authorities are in charge of designating the buildings and/or vintage vehicles of particular historical and cultural value?
- (3) According to which criteria has particular historical and cultural value been established?
- (4) If possible, please provide an estimate of the number of buildings and/or vintage vehicles which have been designated by the competent authorities as being of particular historical and cultural value?
- (5) How is it ensured that the products in question are
- (a) sold only in 'strictly limited' quantities;
- (b) used only for the purpose of restoration and maintenance of designated buildings and/or vehicles?
- (6) Please describe the categories and quantities of products licensed according to Article 3(3) of Directive 2004/42/EC, preferably using the following table:

Categories	Correspondence with Annex I to Directive 2004/42/EC	Quantities of 'ready-to-use' product for which a license has been granted (kg)
Category 1		
Category 2 etc.		

**6. Other relevant information**

- 6.1. What were the main difficulties encountered in setting and implementing the monitoring programme, including problems with implementation of the Directive or administrative problems encountered in implementation of a concrete monitoring programme? How were those difficulties overcome?
- 6.2. Please provide any additional relevant comments, suggestions or information in relation with the implementation of Directive 2004/42/EC.

**COMMISSION DECISION****of 29 March 2007****declaring operational the Regional Advisory Council for the High Seas/Long Distance Fleet under the Common Fisheries Policy**

(2007/206/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Germany, Estonia, Spain, France, Ireland, Italy, Lithuania, the Netherlands, Poland, Portugal and United Kingdom.

Having regard to the Treaty establishing the European Community,

- (4) As required by Article 3(2) of Decision 2004/585/EC, the Member States concerned determined whether the application concerning the Regional Advisory Council for the High Seas/Long Distance Fleet was in conformity with the provisions laid down in that Decision. On 7 November 2006, the Member States concerned transmitted a recommendation on that Regional Advisory Council to the Commission.

Having regard to Council Decision 2004/585/EC of 19 July 2004 establishing Regional Advisory Councils under the Common Fisheries Policy <sup>(1)</sup>, and in particular Article 3(3) thereof,

Having regard to the recommendation transmitted by Spain on 7 November 2006 on behalf of Denmark, Germany, Estonia, Spain, France, Ireland, Italy, Lithuania, the Netherlands, Poland, Portugal and United Kingdom,

- (5) The Commission has evaluated the application by the interested parties and the recommendation in the light of Decision 2004/585/EC and the aims and principles of the Common Fisheries Policy, and considers that the Regional Advisory Council for the High Seas/Long Distance Fleet is ready to become operational,

Whereas:

- (1) Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy <sup>(2)</sup> and Decision 2004/585/EC provide the framework for the establishment and operation of Regional Advisory Councils.
- (2) Article 2 of Decision 2004/585/EC establishes a Regional Advisory Council to cover the High Seas/Long Distance Fleet in all non-EC waters.
- (3) In accordance with Article 3(1) of Decision 2004/585/EC, representatives of the fisheries sector and other interests groups submitted a request concerning the operation of that Regional Advisory Council to Denmark,

HAS DECIDED AS FOLLOWS:

*Sole Article*

The Regional Advisory Council for the High Seas/Long Distance Fleet, established by Article 2(1)(g) of Decision 2004/585/EC, shall be operational as from 30 March 2007.

Done at Brussels, 29 March 2007.

*For the Commission*  
Joe BORG  
*Member of the Commission*

<sup>(1)</sup> OJ L 256, 3.8.2004, p. 17.

<sup>(2)</sup> OJ L 358, 31.12.2002, p. 59.

**CORRIGENDA**

**Corrigendum to Commission Decision 2006/635/Euratom of 4 April 2006 on the conclusion, by way of signature, of and Agreement for Co-operation in the Peaceful Uses Nuclear Energy between the European Atomic Energy Community (Euratom) and the Cabinet of Ministers of Ukraine**

*(Official Journal of the European Union L 261 of 22 September 2006)*

On the cover in the contents and on page 26 in the title and the signature:

*for:* '4 April 2006',

*read:* '4 April 2005'.

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