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⁽¹⁾ Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COMMISSION REGULATION (EC) No 1510/2007

of 19 December 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⁽¹⁾, 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 20 December 2007.

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

Done at Brussels, 19 December 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 756/2007 (OJ L 172, 30.6.2007, p. 41).

ANNEX

to Commission Regulation of 19 December 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables

| (EUR/100 kg) | | |
|---|-----------------------------------|-----------------------|
| CN code | Third country code ⁽¹⁾ | Standard import value |
| 0702 00 00 | IL | 191,0 |
| | MA | 97,9 |
| | TN | 157,6 |
| | TR | 116,2 |
| | ZZ | 140,7 |
| 0707 00 05 | JO | 237,0 |
| | MA | 57,0 |
| | TR | 86,3 |
| | ZZ | 126,8 |
| 0709 90 70 | MA | 74,3 |
| | TR | 106,5 |
| | ZZ | 90,4 |
| 0709 90 80 | EG | 290,4 |
| | ZZ | 290,4 |
| 0805 10 20 | AR | 36,7 |
| | MA | 76,3 |
| | TR | 81,0 |
| | ZA | 38,1 |
| | ZW | 28,6 |
| | ZZ | 52,1 |
| 0805 20 10 | MA | 72,4 |
| | ZZ | 72,4 |
| 0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90 | HR | 15,2 |
| | IL | 66,8 |
| | TR | 75,2 |
| | ZZ | 52,4 |
| 0805 50 10 | EG | 49,3 |
| | MA | 119,9 |
| | TR | 102,7 |
| | ZZ | 90,6 |
| 0808 10 80 | CA | 86,7 |
| | CN | 87,6 |
| | MK | 29,7 |
| | US | 77,3 |
| | ZZ | 70,3 |
| 0808 20 50 | AR | 71,1 |
| | CN | 44,6 |
| | US | 122,8 |
| | ZZ | 79,5 |

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

COMMISSION REGULATION (EC) No 1511/2007**of 19 December 2007****on the issuing of import licences for applications lodged during the first seven days of December 2007 under the tariff quota opened by Regulation (EC) No 1385/2007 for poultrymeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EC) No 1385/2007 of 26 November 2007 laying down detailed rules for the application of Council Regulation (EC) No 774/94 as regards the opening and procedure for administering certain Community tariff quotas in the poultrymeat sector ⁽³⁾, and in particular Article 5(6) thereof,

Whereas:

(1) The applications for import licences lodged under certain quotas during the first seven days of December 2007 for the subperiod 1 January to 31 March 2008 relate to quantities exceeding those available. The quantities for

which licences may be issued should therefore be determined by setting the allocation coefficient by which the quantities applied for are to be multiplied.

(2) The applications for import licences lodged under certain quotas during the first seven days of December 2007 for the subperiod 1 January to 31 March 2008 do not cover the total available. The quantities for which applications have not been lodged should therefore be determined, and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities for which import licence applications have been lodged for the subperiod 1 January to 31 March 2008 under Regulation (EC) No 1385/2007 shall be multiplied by the allocation coefficients set out in the Annex to this Regulation.

2. The quantities for which applications have not been lodged, to be added to the quantity fixed for the subperiod 1 April to 30 June 2008, shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 20 December 2007.

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

Done at Brussels, 19 December 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 282, 1.11.1975, p. 77. Regulation as last amended by Regulation (EC) No 679/2006 (OJ L 119, 4.5.2006, p. 1). Regulation (EEC) No 2777/75 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 238, 1.9.2006, p. 13. Regulation as amended by Regulation (EC) No 289/2007 (OJ L 78, 17.3.2007, p. 17).

⁽³⁾ OJ L 309, 27.11.2007, p. 47.

ANNEX

| Group No | Serial No | Allocation coefficient for import licence applications lodged for the subperiod 1.1.2008-31.3.2008 (%) | Quantities not applied for, to be added to the quantity for the subperiod 1.4.2008-30.6.2008 (kg) |
|----------|-----------|--|---|
| 1 | 09.4410 | 1,077885 | — |
| 2 | 09.4411 | (¹) | 1 275 000 |
| 3 | 09.4412 | 1,095290 | — |
| 4 | 09.4420 | 1,474926 | — |
| 5 | 09.4421 | 2,293577 | — |
| 6 | 09.4422 | 1,644736 | — |

(¹) Not applicable: no licence application has been sent to the Commission.

COMMISSION REGULATION (EC) No 1512/2007**of 19 December 2007****on the issuing of import licences for applications lodged during the first seven days of December 2007 under the tariff quota opened by Regulation (EC) No 1384/2007 for poultrymeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EC) No 1384/2007 of 26 November 2007 laying down detailed rules for the application of Council Regulation (EC) No 2398/96 as regards the opening and providing for the administration of certain quotas for imports into the Community of poultrymeat products originating in Israel ⁽³⁾, and in particular Article 5(5) thereof,

Whereas:

(1) The applications for import licences lodged (under the quota bearing the serial number 09.4092) during the first seven days of December 2007 for the subperiod 1 January to 31 March 2008 relate to quantities exceeding those available. The quantities for which

licences may be issued should therefore be determined by setting the allocation coefficient by which the quantities applied for are to be multiplied.

(2) The applications for import licences lodged (under the quota bearing the serial number 09.4091) during the first seven days of December 2007 for the subperiod 1 January to 31 March 2008 do not cover the total quantities available. The quantities for which applications have not been lodged should therefore be determined, and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities for which import licence applications have been lodged for the subperiod 1 January to 31 March 2008 under Regulation (EC) No 1384/2007 shall be multiplied by the allocation coefficients set out in the Annex to this Regulation.

2. The quantities for which applications have not been lodged, to be added to the quantity fixed for the subperiod 1 April to 30 June 2008, shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 20 December 2007.

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

Done at Brussels, 19 December 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 282, 1.11.1975, p. 77. Regulation as last amended by Regulation (EC) No 679/2006 (OJ L 119, 4.5.2006, p. 1).

⁽²⁾ OJ L 238, 1.9.2006, p. 13. Regulation as amended by Regulation (EC) No 289/2007 (OJ L 78, 17.3.2007, p. 17). Regulation (EEC) No 2777/75 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽³⁾ OJ L 309, 27.11.2007, p. 40.

ANNEX

| Group No | Serial No | Allocation coefficient for import licence applications lodged for the subperiod 1.1.2008-31.3.2008 (%) | Quantities not applied for, to be added to the quantity for the subperiod 1.4.2008-30.6.2008 (kg) |
|----------|-----------|--|---|
| IL1 | 09.4092 | 3,012048 | — |
| IL2 | 09.4091 | (¹) | 140 000 |

(¹) Not applicable: no licence application has been sent to the Commission.

COMMISSION REGULATION (EC) No 1513/2007**of 19 December 2007****on the issuing of import licences for applications lodged during the first seven days of December 2007 under the tariff quota opened by Regulation (EC) No 1383/2007 for poultrymeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1383/2007 of 26 November 2007 laying down detailed rules for the application of Council Regulation (EC) No 779/98 as regards opening and providing for the administration of certain quotas for imports into the Community of poultrymeat products originating in Turkey ⁽²⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) Regulation (EC) No 1383/2007 has opened tariff quotas for imports of poultrymeat products.

- (2) The applications for import licences lodged during the first seven days of December 2007 for the subperiod 1 January to 31 March 2008 do not cover the total quantity available. The quantities for which applications have not been lodged should therefore be determined, and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications pursuant to Regulation (EC) No 1383/2007 under the quota bearing the serial number 09.4103 have not been lodged, to be added to subperiod 1 April to 30 June 2008, shall be 250 000 kg.

Article 2

This Regulation shall enter into force on 20 December 2007.

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

Done at Brussels, 19 December 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 282, 1.11.1975, p. 77. Regulation as last amended by Regulation (EC) No 679/2006 (OJ L 119, 4.5.2006, p. 1). Regulation (EEC) No 2777/75 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 309, 27.11.2007, p. 34.

COMMISSION REGULATION (EC) No 1514/2007**of 19 December 2007****on the issuing of import licences for applications lodged during the first seven days of December 2007 under the tariff quota opened by Regulation (EC) No 1382/2007 for pigmeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1382/2007 of 26 November 2007 laying down detailed rules for the application of Council Regulation (EC) No 774/94 concerning the import arrangements for pigmeat ⁽²⁾, and in particular Article 5(6) thereof,

Whereas:

- (1) Regulation (EC) No 1382/2007 has opened tariff quotas for the import of pigmeat products.
- (2) The applications for import licences lodged during the first seven days of December 2007 for the subperiod

1 January to 31 March 2008 do not cover the total quantity available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications covered by the quota bearing the serial number 09.4046 have not been lodged under Regulation (EC) No 1382/2007, to be added to the subperiod from 1 April to 30 June 2008, shall be 1 750 000 kg.

Article 2

This Regulation shall enter into force on 20 December 2007.

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

Done at Brussels, 19 December 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 282, 1.11.1975, p. 1. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2). Regulation (EEC) No 2759/75 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 309, 27.11.2007, p. 28.

COMMISSION REGULATION (EC) No 1515/2007**of 19 December 2007****on the issuing of import licences for applications lodged during the first seven days of December 2007 under the tariff quota opened by Regulation (EC) No 1399/2007 for meat products originating in Switzerland**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1399/2007 of 28 November 2007 opening and providing for the administration of a tariff quota for sausages and certain meat products originating in Switzerland ⁽²⁾ and in particular Article 5(5) thereof,

Whereas:

(1) Regulation (EC) No 1399/2007 has opened tariff quotas for the import of certain meat products.

(2) The applications for import licences lodged during the first seven days of December 2007 for the subperiod 1 January to 31 March 2008 do not cover the total quantity available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications under the quota bearing the serial number 09.4180 have not been lodged pursuant to Regulation (EC) No 1399/2007, to be added to the subperiod 1 April to 30 June 2008, shall be 475 000 kg.

Article 2

This Regulation shall enter into force on 20 December 2007.

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

Done at Brussels, 19 December 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 282, 1.11.1975, p. 1. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2). Regulation (EEC) No 2759/75 will be replaced by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1) as from 1 July 2008.

⁽²⁾ OJ L 311, 29.11.2007, p. 7.

COMMISSION REGULATION (EC) No 1516/2007**of 19 December 2007****establishing, pursuant to Regulation (EC) No 842/2006 of the European Parliament and of the Council, standard leakage checking requirements for stationary refrigeration, air conditioning and heat pump equipment containing certain fluorinated greenhouse gases****(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 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases ⁽¹⁾, and in particular Article 3(7) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 842/2006, records for refrigeration, air conditioning and heat pump equipment shall contain certain information. In order to ensure the effective implementation of Regulation (EC) No 842/2006, it is appropriate to provide for further information to be indicated in the equipment records.
- (2) Information on the fluorinated greenhouse gas charge should be included in the equipment records. Where the fluorinated greenhouse gas charge is unknown, the operator of the equipment concerned should ensure that certified personnel determine that charge in order to facilitate the leakage checking.
- (3) Before the leakage check is carried out, certified personnel should carefully go through the information contained in the equipment records to determine any previous issues and consult previous reports.
- (4) In order to ensure an efficient leakage control, the leakage checks should focus on those parts of the equipment which are most likely to leak.
- (5) Leakage checks should be carried out using direct or indirect measuring methods. Direct measuring methods identify leakage by the use of detection devices which can determine whether the fluorinated greenhouse gas charge is escaping from the system. Indirect measuring methods are based on the identification of abnormal performance in the system and on the analysis of relevant parameters.
- (6) Indirect measuring methods should be applied in cases where the leakage develops very slowly and where the equipment is placed in a well ventilated environment making it difficult to detect fluorinated greenhouse gases escaping from the system in the air. Direct measuring methods are necessary to identify the exact location of the leakage. The decision on the measuring method to be used should be taken by certified personnel who have the necessary training and experience to determine the most appropriate measuring method on a case by case basis.
- (7) Where there is a presumption of a leakage it should be followed up by a check to identify and to repair it.
- (8) In order to ensure the safety of the system repaired, the follow-up check provided for in Regulation (EC) No 842/2006 should focus on the parts of the system where leakage has been detected and on the adjacent parts.
- (9) Defective installation of new systems constitutes a significant risk of leakage. Therefore, newly installed systems should be checked for leakage immediately after they have been put into service.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 18(1) of Regulation (EC) No 2037/2000 of the European Parliament and of the Council ⁽²⁾,

HAS ADOPTED THIS REGULATION:

*Article 1***Subject matter and scope**

This Regulation establishes, pursuant to Regulation (EC) No 842/2006, the standard leakage checking requirements for working and temporarily out of operation stationary refrigeration, air conditioning and heat pump equipment containing 3 kg or more of fluorinated greenhouse gases.

⁽¹⁾ OJ L 161, 14.6.2006, p. 1.

⁽²⁾ OJ L 244, 29.9.2000, p. 1. Regulation as last amended by Commission Decision 2007/540/EC (OJ L 198, 31.7.2007, p. 35).

This Regulation shall not apply to equipment with hermetically sealed systems, which are labelled as such and contain less than 6 kg of fluorinated greenhouse gases.

Article 2

Equipment records

1. The operator shall indicate his name, postal address and telephone number in the records referred to in Article 3(6) of Regulation (EC) No 842/2006, hereinafter 'equipment records'.

2. The fluorinated greenhouse gas charge for the refrigeration, air conditioning or heat pump equipment shall be indicated in the equipment records.

3. Where the fluorinated greenhouse gas charge for refrigeration, air conditioning or heat pump equipment is not indicated in the manufacturer's technical specifications or on the label of that system, the operator shall ensure that it is determined by certified personnel.

4. Where the cause of the leakage has been identified, it shall be indicated in the equipment records.

Article 3

Checking equipment records

1. Before carrying out leakage checks, certified personnel shall check the equipment records.

2. Special attention shall be paid to relevant information on any repeating issues and problem areas.

Article 4

Systematic checks

The following parts of the refrigeration, air conditioning or heat pump equipment shall be systematically checked:

1. joints;
2. valves including stems;
3. seals, including seals on replaceable driers and filters;
4. parts of the system subject to vibration;
5. connections to safety or operational devices.

Article 5

Choice of measuring method

1. Certified personnel shall apply a direct measuring method as specified in Article 6 or an indirect measuring method as

specified in Article 7 when carrying out a leakage check in relation to refrigeration, air conditioning or heat pump equipment.

2. Direct measuring methods may always be applied.

3. Indirect measuring methods shall only be applied where the parameters of the equipment to be analysed, referred to in Article 7(1), give reliable information on the fluorinated greenhouse gas charge indicated in the records of the equipment and the likelihood of leakage.

Article 6

Direct measuring methods

1. To identify leakage, certified personnel shall use one or more of the following direct measuring methods:

(a) check of circuits and components representing a risk of leakage with gas detection devices adapted to the refrigerant in the system;

(b) application of ultraviolet (UV) detection fluid or suitable dye in the circuit;

(c) proprietary bubble solutions/soapsuds.

2. Gas detection devices referred to in paragraph 1(a) shall be checked every 12 months to ensure their proper functioning. The sensitivity of portable gas detection devices shall be at least five grams per year.

3. The application of UV detection fluid or suitable dye in the refrigeration circuit shall only be undertaken if the manufacturer of the equipment has approved that such detection methods are technically possible. The method shall only be undertaken by personnel certified to undertake activities which entail breaking into the refrigeration circuit containing fluorinated greenhouse gases.

4. Where the methods specified in paragraph 1 of this Article do not identify a leakage and the parts referred to in Article 4 show no sign of leakage, and the certified personnel deems that there is a leak, he shall inspect other parts of the equipment.

5. Prior to pressure testing with Oxygen-Free-Nitrogen (OFN) or another suitable pressure testing gas to check for leakage, fluorinated greenhouse gases shall be recovered from the whole system by personnel certified to recover fluorinated greenhouse gases from the specific type of equipment.

*Article 7***Indirect measuring methods**

1. To identify a leakage, certified personnel shall carry out a visual and manual check of the equipment and analyse one or more of the following parameters:

- (a) pressure;
- (b) temperature;
- (c) compressor current;
- (d) liquid levels;
- (e) recharge volume.

2. Any presumption of fluorinated greenhouse gas leakage shall be followed by an examination for leakage using a direct method as specified in Article 6.

3. One or more of the following situations shall constitute a presumption of leakage:

- (a) a fixed leakage detection system indicates leakage;
- (b) the equipment produces abnormal noises or vibration or ice formation or insufficient cooling capacity;
- (c) indications of corrosion, oil leaks and component or material damage at possible leakage points;
- (d) indications of leakage from sight glasses or level indicators or other visual aids;
- (e) indications of damage in safety switches, pressure switches, gauges and sensor connections;
- (f) deviations from normal operational conditions indicated by the parameters analysed, including readings from real time electronic systems;
- (g) other signs indicating refrigerant charge loss.

*Article 8***Repair of leakage**

1. The operator shall ensure that the repair is carried out by personnel certified to undertake that specific activity.

Prior to repair, a pump-down or recovery shall be carried out, where necessary.

2. The operator shall ensure that a leakage test with Oxygen Free Nitrogen (OFN) or another suitable pressure testing and drying gas is carried out where necessary, followed by evacuation, recharge and leakage-test.

Prior to pressure testing with Oxygen-Free-Nitrogen (OFN) or another suitable pressure testing gas, fluorinated greenhouse gases shall be recovered from the whole application where necessary.

3. The cause of the leakage shall be identified as far as possible, to avoid recurrence.

*Article 9***Follow-up check**

Certified personnel shall, when carrying out the follow-up check referred to in the second subparagraph of Article 3(2) of Regulation (EC) No 842/2006, focus on those areas where leakages have been found and repaired as well as on adjacent areas in cases where stress has been applied during the repair.

*Article 10***Requirements for newly commissioned equipment**

Newly installed equipment shall be checked for leakage immediately after they have been put into service.

*Article 11***Entry into force**

This Regulation shall enter into force on the 20th 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, 19 December 2007.

For the Commission

Stavros DIMAS

Member of the Commission

COMMISSION REGULATION (EC) No 1517/2007**of 19 December 2007****amending Annex III to Council Regulation (EEC) No 2092/91 as regards the derogation relating to the separation of organic and non-organic feed production lines**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs⁽¹⁾ and in particular the second indent of Article 13 thereof,

Whereas:

- (1) The second paragraph of point 3 of Part E of Annex III to Regulation (EEC) No 2092/91 provides for a derogation from the obligation for all equipment used in units preparing compound feedingstuffs covered by Council Regulation (EEC) No 2092/91 to be completely separated from equipment used for preparing compound feedingstuffs not covered by that Regulation. This derogation expires on 31 December 2007.
- (2) Experience shows that this derogation is broadly applied by the operators. The use of the same production line for organic and non-organic feedingstuffs production separated in time requires the application of appropriate cleaning measures to guarantee the integrity of organic feedingstuffs production. Evidence has been provided that such measures, when rigorously applied under strict control, can be effective.

- (3) Article 18 of Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91⁽²⁾ provides for the production of processed organic feed to be separated from production of processed non-organic feed either in time or space.
- (4) It is therefore appropriate to prolong the derogation until Regulation (EC) No 834/2007 enters into application from 1 January 2009.
- (5) Regulation (EEC) No 2092/91 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 14 of Regulation (EEC) No 2092/91,

HAS ADOPTED THIS REGULATION:

Article 1

In Part E of Annex III to Regulation (EEC) No 2092/91, in the second paragraph of point 3 the date '31 December 2007' is replaced by the date '31 December 2008':

Article 2

This Regulation shall enter into force on the seventh day following that of 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, 19 December 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

⁽¹⁾ OJ L 198, 22.7.1991, p. 1. Regulation as last amended by Commission Regulation (EC) 1319/2007 (OJ L 293, 10.11.2007, p. 3).

⁽²⁾ OJ L 189, 20.7.2007, p. 1.

COMMISSION REGULATION (EC) No 1518/2007

of 19 December 2007

opening and providing for the administration of a tariff quota for vermouth

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ⁽¹⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) The Agreement in the form of an Exchange of Letters between the European Community and the Argentine Republic relating to the modification of concessions in the schedules of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in the course of accession to the European Community ⁽²⁾, approved by Council Decision 2006/930/EC ⁽³⁾, provides for the opening of tariff rate quota (*erga omnes*) for vermouth. This quota must be opened.
- (2) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽⁴⁾ sets the management rules for tariff quotas designed to be used following the chronological order of dates of acceptance of customs declarations. It is appropriate to provide that the tariff quota opened by this Regulation is to be managed in accordance with those rules.

- (3) In accordance with the commitments taken by the Community pursuant to the Agreement in the form of an Exchange of Letters, this Regulation should apply from 1 January 2007.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I,

HAS ADOPTED THIS REGULATION:

Article 1

An annual tariff rate quota (order number 09.0098) of 13 810 hl (*erga omnes*) is opened for the release for free circulation in the Community of vermouth and other wine of fresh grapes flavoured with plants or aromatic substances, of an actual alcoholic strength by volume of 18 % vol or less, in containers holding more than 2 litres, tariff item number 2205 90 10, in quota rate 7 EUR/hl.

Article 2

The annual tariff quota referred to in Article 1 shall be administered by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 3

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

It shall apply from 1 January 2007.

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

Done at Brussels, 19 December 2007.

For the Commission
Günter VERHEUGEN
Vice-President

⁽¹⁾ OJ L 318, 20.12.1993, p. 18. Regulation as last amended by Regulation (EC) No 2580/2000 (OJ L 298, 25.11.2000, p. 5).

⁽²⁾ OJ L 355, 15.12.2006, p. 92.

⁽³⁾ OJ L 355, 15.12.2006, p. 91.

⁽⁴⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).

COMMISSION REGULATION (EC) No 1519/2007

of 19 December 2007

amending Regulations (EC) No 2430/1999, (EC) No 418/2001 and (EC) No 162/2003 as regards the terms of the authorisation of certain additives in feedingstuffs belonging to the group of coccidiostats and other medicinal substances

(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

(1) Article 13(3) of Regulation (EC) No 1831/2003 provides for the possibility of changing the terms of authorisation of an additive further to an application from the holder of the authorisation.

(2) The use of the additive diclazuril 0,5 g/100 g (Clinacox 0,5 % Premix), diclazuril 0,2 g/100 g (Clinacox 0,2 % Premix), belonging to the group of 'Coccidiostats and other medicinal substances' was authorised for 10 years for chickens for fattening by Commission Regulation (EC) No 2430/1999⁽²⁾. The authorisation was linked to the person responsible for putting the additive into circulation.

(3) The use of the additive diclazuril 0,5 g/100 g (Clinacox 0,5 % Premix), diclazuril 0,2 g/100 g (Clinacox 0,2 % Premix) belonging to the group of 'Coccidiostats and other medicinal substances' was authorised for 10 years for turkeys for fattening by Commission Regulation (EC) No 418/2001⁽³⁾. The authorisation was linked to the person responsible for putting the additive into circulation.

(4) The use of the additive diclazuril 0,5 g/100 g (Clinacox 0,5 % Premix), diclazuril 0,2 g/100 g (Clinacox 0,2 %

Premix) belonging to the group of 'Coccidiostats and other medicinal substances' was authorised for 10 years for chickens reared for laying by Commission Regulation (EC) No 162/2003⁽⁴⁾. The authorisation was linked to the person responsible for putting the additive into circulation.

(5) The holder of the authorisations, Janssen Animal Health BVBA, has submitted an application under Article 13(3) of Regulation (EC) No 1831/2003 proposing to change the name of the person responsible for putting into circulation the additives referred to in recitals 2 to 4 of this Regulation. With the application they have submitted data showing that the marketing rights for those additives have been transferred to Janssen Pharmaceutica NV, its Belgian parent company, with effect from 2 July 2007.

(6) Assigning the authorisation of an additive linked to a person responsible for putting it into circulation to another person is based on a purely administrative procedure and did not entail a fresh assessment of the additives. The European Food Safety Authority was informed of the application.

(7) To allow Janssen Pharmaceutica NV to exploit its ownership rights from 2 July 2007 on, it is necessary to change the name of the person responsible for putting the additives into circulation, with effect from 2 July 2007. Therefore, it is necessary for this Regulation to apply retroactively.

(8) Regulations (EC) No 2430/1999, (EC) No 418/2001 and (EC) No 162/2003 should therefore be amended accordingly.

(9) It is appropriate to provide for a transitional period during which existing stocks may be used up.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

⁽¹⁾ OJ L 268, 18.10.2003, p. 29. Regulation as amended by Commission Regulation (EC) No 378/2005 (OJ L 59, 5.3.2005, p. 8).

⁽²⁾ OJ L 296, 17.11.1999, p. 3. Regulation as amended by Regulation (EC) No 249/2006 (OJ L 42, 14.2.2006, p. 22).

⁽³⁾ OJ L 62, 2.3.2001, p. 3.

⁽⁴⁾ OJ L 26, 31.1.2003, p. 3.

HAS ADOPTED THIS REGULATION:

Article 1

1. In Annex I to Regulation (EC) No 2430/1999, in column 2 of the entry for E 771, the words 'Janssen Animal Health BVBA' are replaced by the words 'Janssen Pharmaceutica NV'.
2. In Annex III to Regulation (EC) No 418/2001, in column 2 of the entry for E 771, the words 'Janssen Animal Health BVBA' are replaced by the words 'Janssen Pharmaceutica NV'.
3. In the Annex to Regulation (EC) No 162/2003, in column 2 of the entry for E 771, the words 'Janssen Animal Health BVBA' are replaced by the words 'Janssen Pharmaceutica NV'.

Article 2

Existing stocks which are in conformity with the provisions applicable before the entry into force of this Regulation may continue to be placed on the market and used until 30 April 2008.

Article 3

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

It shall apply from 2 July 2007.

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

Done at Brussels, 19 December 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

COMMISSION REGULATION (EC) No 1520/2007
of 19 December 2007
concerning the permanent authorisation of certain additives in feedingstuffs
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs ⁽¹⁾, and in particular Articles 3, 9d(1) and thereof,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽²⁾, and in particular Article 25 thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition.
- (2) Article 25 of Regulation (EC) No 1831/2003 lays down transitional measures for applications for the authorisation of feed additives submitted in accordance with Directive 70/524/EEC before the date of application of Regulation (EC) No 1831/2003.
- (3) The applications for the authorisation of the additives listed in the Annexes to this Regulation were submitted before the date of application of Regulation (EC) No 1831/2003.
- (4) Initial comments on those applications, as provided for in Article 4(4) of Directive 70/524/EEC, were forwarded to the Commission before the date of application of Regulation (EC) No 1831/2003. Those applications are therefore to continue to be treated in accordance with Article 4 of Directive 70/524/EEC.
- (5) The use of the microorganism preparation of *Saccharomyces cerevisiae* (MUCL 39885) was provisionally authorised for the first time for dairy cows by

Commission Regulation (EC) No 879/2004 ⁽³⁾. New data were submitted in support of an application for authorisation without a time limit of that microorganism preparation for dairy cows. The assessment shows that the conditions laid down in Article 3a of Directive 70/524/EEC for such authorisation are satisfied. Accordingly, the use of that microorganism preparation, as specified in Annex I to this Regulation, should be authorised without a time limit.

- (6) The use of the microorganism preparation of *Enterococcus faecium* (DSM 10663/NCIMB 10415) was provisionally authorised for the first time for turkeys for fattening by Commission Regulation (EC) No 1801/2003 ⁽⁴⁾. New data were submitted in support of an application for authorisation without a time limit of that microorganism preparation. The assessment shows that the conditions laid down in Article 3a of Directive 70/524/EEC for such authorisation are satisfied. Accordingly, the use of that microorganism preparation, as specified in Annex II to this Regulation, should be authorised without a time limit.
- (7) The use of the microorganism preparation of *Enterococcus faecium* (DSM 10663/NCIMB 10415) was provisionally authorised for the first time for dogs by Commission Regulation (EC) No 1288/2004 ⁽⁵⁾. New data were submitted in support of an application for authorisation without a time limit of that microorganism preparation. The assessment shows that the conditions laid down in Article 3a of Directive 70/524/EEC for such authorisation are satisfied. Accordingly, the use of that microorganism preparation, as specified in Annex III to this Regulation, should be authorised without a time limit.
- (8) The use of the microorganism preparation of *Lactobacillus acidophilus* (D2/CSL CECT 4529) was provisionally authorised for the first time for laying hens by Commission Regulation (EC) No 2154/2003 ⁽⁶⁾. New data were submitted in support of an application for authorisation without a time limit of that microorganism preparation. The assessment shows that the conditions laid down in Article 3a of Directive 70/524/EEC for such authorisation are satisfied. Accordingly, the use of that microorganism preparation, as specified in Annex IV to this Regulation, should be authorised without a time limit.

⁽¹⁾ OJ L 270, 14.12.1970, p. 1. Directive as last amended by Commission Regulation (EC) No 1800/2004 (OJ L 317, 16.10.2004, p. 37).

⁽²⁾ OJ L 268, 18.10.2003, p. 29. Regulation as amended by Commission Regulation (EC) No 378/2005 (OJ L 59, 5.3.2005, p. 8).

⁽³⁾ OJ L 162, 30.4.2004, p. 65.

⁽⁴⁾ OJ L 264, 15.10.2003, p. 16.

⁽⁵⁾ OJ L 243, 15.7.2004, p. 10. Regulation as amended by Regulation (EC) No 1812/2005 (OJ L 291, 5.11.2005, p. 18).

⁽⁶⁾ OJ L 324, 11.12.2003, p. 11.

- (9) The use of the enzyme preparation of endo-1,4-beta-glucanase, EC 3.2.1.4 produced by *Trichoderma longibrachiatum* (IMI SD 142) was provisionally authorised for the first time for piglets by Commission Regulation (EC) No 1436/98 ⁽¹⁾. New data were submitted in support of an application for authorisation without a time limit of that enzyme preparation. The assessment shows that the conditions laid down in Article 3a of Directive 70/524/EEC for such authorisation are satisfied. Accordingly, the use of that enzyme preparation, as specified in Annex V to this Regulation, should be authorised without a time limit.
- (10) The assessment of these applications shows that certain procedures should be required to protect workers from exposure to the additives set out in the Annexes. Such protection should be assured by the application of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ⁽²⁾.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation belonging to the group 'Microorganisms', as specified in Annex I, is authorised without a time limit as an additive in animal nutrition under the conditions laid down in that Annex.

Article 2

The preparation belonging to the group 'Microorganisms', as specified in Annex II, is authorised without a time limit as an additive in animal nutrition under the conditions laid down in that Annex.

Article 3

The preparation belonging to the group 'Microorganisms', as specified in Annex III, is authorised without a time limit as an additive in animal nutrition under the conditions laid down in that Annex.

Article 4

The preparation belonging to the group 'Microorganisms', as specified in Annex IV, is authorised without a time limit as an additive in animal nutrition under the conditions laid down in that Annex.

Article 5

The preparation belonging to the group 'Enzymes', as specified in Annex V, is authorised without a time limit as an additive in animal nutrition under the conditions laid down in that Annex.

Article 6

This Regulation shall enter into force on the 20th 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, 19 December 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

⁽¹⁾ OJ L 191, 7.7.1998, p. 15.

⁽²⁾ OJ L 183, 29.6.1989, p. 1. Directive as last amended by Directive 2007/30/EC of the European Parliament and of the Council (OJ L 165, 27.6.2007, p. 21).

ANNEX I

| EC No | Additive | Chemical formula, description | Species or category of animal | Maximum age | Minimum content | Maximum content | Other provisions | End of period of authorisation |
|------------------------|---|---|-------------------------------|-------------|----------------------------------|--------------------|--|--------------------------------|
| | | | | | CFU/kg of complete feedingsstuff | | | |
| Micro-organisms | | | | | | | | |
| E 1710 | <i>Saccharomyces cerevisiae</i> MUCL 39885 | Preparation of <i>Saccharomyces cerevisiae</i> containing a minimum of: Powder, spheric and oval granulated forms: 1×10^9 CFU/g additive | Dairy cows | — | $1,23 \times 10^9$ | $2,33 \times 10^9$ | 1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. 2. The quantity of <i>Saccharomyces cerevisiae</i> in the daily ration must not exceed $8,4 \times 10^6$ CFU per 100 kg. Body weight till 600 kg. Over 600 kg add $0,9 \times 10^9$ CFU for each additional 100 kg body weight. | Without a time limit |

ANNEX II

| EC No | Additive | Chemical formula, description | Species or category of animal | Maximum age | Minimum content | Maximum content | Other provisions | End of period of authorisation |
|-----------------------|--|--|-------------------------------|-------------|----------------------------------|-----------------------|--|--------------------------------|
| | | | | | CFU/kg of complete feedingsstuff | | | |
| Microorganisms | | | | | | | | |
| E 1707 | <i>Enterococcus faecium</i> DSM 10663/ NCIMB 10415 | Preparation of <i>Enterococcus faecium</i> containing a minimum of: Powder and granulated form: 3,5 × 10 ¹⁰ CFU/g additive Coated form: 2,0 × 10 ¹⁰ CFU/g additive Liquid form: 1 × 10 ¹⁰ CFU/ml additive | Turkeys for fattening | — | 1 × 10 ⁷ | 1,0 × 10 ⁹ | 1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting. 2. May be used in compound feed containing the permitted cocci-diostats: diclazuril, halofuginone, lasalocid sodium, maduramicin ammonium monensin sodium, robenidime. | Without a time limit |

ANNEX III

| EC No | Additive | Chemical formula, description | Species or category of animal | Maximum age | Minimum content CFU/kg of complete feedingsstuff | Maximum content | Other provisions | End of period of authorisation |
|-----------------------|--|--|-------------------------------|-------------|---|----------------------|---|--------------------------------|
| | | | | | | | | |
| Microorganisms | | | | | | | | |
| E 1707 | <i>Enterococcus faecium</i> DSM 10663/ NCIMB 10415 | Preparation of <i>Enterococcus faecium</i> containing a minimum of: Powder and granulated form: $3,5 \times 10^{10}$ CFU/g additive Coated form: $2,0 \times 10^{10}$ CFU/g additive Liquid form: 1×10^{10} CFU/ml additive | Dogs | — | 1×10^9 | $3,5 \times 10^{10}$ | In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting. | Without a time limit |

ANNEX IV

| EC No | Additive | Chemical formula, description | Species or category of animal | Maximum age | Minimum content CFU/kg of complete feedingsstuff | | Maximum content | Other provisions | End of period of authorisation |
|-----------------------|---|---|-------------------------------|-------------|---|---------------------|---------------------|--|--------------------------------|
| | | | | | Minimum content | Maximum content | | | |
| Microorganisms | | | | | | | | | |
| E 1715 | <i>Lactobacillus acidophilus</i> D2/CSL CECT 4529 | Preparation of <i>Lactobacillus acidophilus</i> containing minimum of: 50 × 10 ⁹ CFU/g additive | Laying hens | — | 1 × 10 ⁹ | 1 × 10 ⁹ | 1 × 10 ⁹ | In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. | Without time limit |

ANNEX V

| EC No | Additive | Chemical formula, description | Species or category of animal | Maximum age | Minimum content | Maximum content | Other provisions | End of period of authorisation |
|--------|---------------------------------------|--|-------------------------------|-------------|--|-----------------|---|--------------------------------|
| | | | | | Units of activity/kg of complete feedstuff | | | |
| E 1616 | Endo-1,4-beta-glucanase EC 3.2.1.4 | Preparation of endo-1,4-beta-glucanase produced by <i>Trichoderma longibrachiatum</i> (IMI SD 142) having a minimum activity of: Solid form: 2 000 CU (*)/g Liquid form: 2 000 CU/ml | Piglets (weaned) | — | 350 CU | — | 1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. 2. Recommended dose per kg of complete feedstuff: 350-1 000 CU. 3. For use in compound feed rich in non-starch polysaccharides (mainly beta-glucans), e.g. containing more than 40 % barley. 4. For use in weaned piglets up to approximately 35 kg. | Without a time limit |

(*) 1 CU is the amount of enzyme which liberates 0,128 micromoles of reducing sugars (glucose equivalents) from barley beta-glucan per minute at pH 4,5 and 30 °C.

COMMISSION REGULATION (EC) No 1521/2007
of 19 December 2007
concerning the authorisation of a new use of *Enterococcus faecium* DSM 7134 (Bonvital) as a feed additive

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

No 521/2005 ⁽⁴⁾ and for ten years (Bonvital) for piglets (weaned) and pigs for fattening by Commission Regulation (EC) No 538/2007 ⁽⁵⁾.

Having regard to the Treaty establishing the European Community,

- (5) New data were submitted in support of the application for authorisation for sows. The European Food Safety Authority (the Authority) concluded in its opinion of 10 July 2007 that the preparation *Enterococcus faecium* DSM 7134 (Bonvital) does not have an adverse effect on animal health, human health or the environment ⁽⁶⁾. It further concluded that this preparation does not present any other risk which would, in accordance with Article 5(2) of Regulation (EC) No 1831/2003, exclude authorisation for this additional animal category. According to this opinion, the use of this preparation is efficacious in improving the performance parameters of sows. The Authority does not consider that there is a need for the specific requirements of post market monitoring. This opinion also verified the report on the method of analysis of feed additive in feed submitted by the Community Reference Laboratory set up by Regulation (EC) No 1831/2003.

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003, an application was submitted for the authorisation of the preparation set out in the Annex to this Regulation. This application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) The application concerns the authorisation of a new use of the preparation *Enterococcus faecium* DSM 7134 (Bonvital), as a feed additive for sows, to be classified in the additive category 'zootechnical additives'.
- (4) The use of the preparation *Enterococcus faecium* DSM 7134 was authorised provisionally for piglets and pigs for fattening by Commission Regulation (EC) No 666/2003 ⁽²⁾, provisionally for sows by Commission Regulation (EC) No 2154/2003 ⁽³⁾, provisionally for chickens for fattening by Commission Regulation (EC)

- (6) The assessment of this preparation shows that the conditions for authorisation, provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this preparation should be authorised, as specified in the Annex to this Regulation.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'zootechnical additives' and to the functional group 'gut flora stabilisers', is authorised as an additive in animal nutrition subject to the conditions laid down in this Annex.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29. Regulation as amended by Commission Regulation (EC) No 378/2005 (OJ L 59, 5.3.2005, p. 8).

⁽²⁾ OJ L 96, 12.4.2003, p. 11.

⁽³⁾ OJ L 324, 11.12.2003, p. 11.

⁽⁴⁾ OJ L 84, 2.4.2005, p. 3. Regulation as amended by Regulation (EC) No 1812/2005 (OJ L 291, 5.11.2005, p. 18).

⁽⁵⁾ OJ L 128, 16.5.2007, p. 16.

⁽⁶⁾ Opinion of the Scientific Panel on Additives and Products or Substances used in Animal Feed on the safety and efficacy of the product 'Bonvital', a preparation of *Enterococcus faecium* as a feed additive for sows. Adopted on 10 July 2007. The EFSA Journal (2007) 521, p. 1-8.

Article 2

This Regulation shall enter into force on the 20th 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, 19 December 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

ANNEX

| Identification number of the additive | Name of the holder of the authorisation | Additive (Trade name) | Composition, chemical formula, description, analytical method | Species or category of animal | Maximum age | Minimum content | | Maximum content | Other provisions | End of period of authorisation |
|--|---|---|--|-------------------------------|-------------|--|-----------------|-----------------|--|--------------------------------|
| | | | | | | CFU/kg of complete feedingsstuff with a moisture content of 12 % | | | | |
| Category of zootechnical additives. Functional group: gut flora stabilisers | | | | | | | | | | |
| 4b1841 | Lactosan Starterkulturen GmbH & Co KG | <i>Enterococcus faecium</i> DSM 7134 (Bonvital) | Additive composition: Preparation of <i>Enterococcus faecium</i> DSM 7134 containing a minimum of: Powder: 1×10^{10} CFU/g of additive Granules (microencapsulated): 1×10^{10} CFU/g of additive Characterisation of the active substance: <i>Enterococcus faecium</i> DSM 7134 Analytical method (1): Enumeration: spread plate method using bile esculin azide agar and identification: pulsed field gel electrophoresis (PFGE) | Sows | — | $0,5 \times 10^9$ | 1×10^9 | | 1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. 2. Introduction into the sows' diet from day 90 of pregnancy to the end of lactation. | 9.1.2018 |

(1) Details of the analytical methods are available at the following address of the Community Reference Laboratory: www.irmm.jrc.be/crl-feed-additives

COMMISSION REGULATION (EC) No 1522/2007

of 19 December 2007

amending Regulation (EC) No 795/2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 ⁽¹⁾, and in particular Article 54(5) and Article 145 (d) and (d)(d) thereof,

Whereas:

- (1) Commission Regulation (EC) No 795/2004 ⁽²⁾ introduces the implementing rules for the single payment scheme as from 2005.
- (2) Regulation (EC) No 1782/2003 as amended by Regulation (EC) No 1182/2007 ⁽³⁾, which lays down specific rules as regards the fruit and vegetable sector, defines the rules for the decoupled support and the integration of the support for fruit and vegetables into the single payment scheme. The related detailed rules should therefore be adopted. Those detailed rules should follow the same lines as those already laid down in Regulation (EC) No 795/2004 with regard to olive oil, tobacco, cotton, hops, sugar beet, cane, chicory and banana.
- (3) Article 2 of Regulation (EC) No 795/2004 should be further articulated as regards the definition of nurseries.
- (4) Article 21 of Regulation (EC) No 795/2004 provides for the detailed rules for farmers who made investments in production capacity or who leased parcels on a long-term basis. Those provisions need to be adapted in order to take into account the special situation of farmers in the fruit and vegetable sector who made

such investments or entered into such long-term lease-contracts before the entry into force of Regulation (EC) No 1182/2007.

- (5) Member States which have acceded to the Community as from 1 May 2004 have established an identification system for agricultural parcels in compliance with Article 20 of Regulation (EC) No 1782/2003. When switching from the old to the new identification system, the features or certain parcels as existing in 2003 may not have been accurately reflected in the new identification system due to technical difficulties. In order to facilitate the implementation of the definition of 'hectare eligible for set-aside entitlement' as referred to in Article 54(2) of that Regulation in this context in all those Member States, they should be authorised to derogate, without prejudice to Article 33 of Regulation (EC) No 795/2004, from the reference to the date provided for the area aid applications for 2003 fixed in first subparagraph of that Article 54(2) provided that they ensure that the total agricultural area eligible to set-aside entitlements will not be increased. Article 32 of Regulation (EC) No 795/2004 should be amended accordingly. Given that some of those Member States have implemented the Single Payment Scheme as from 1 January 2007, this derogation should apply as from that date.
- (6) For farmers who have already been allocated, bought or received payment entitlements by the last date for applying for the establishment of payment entitlements for the year of the determination of the amounts and eligible hectares as referred to in point M of Annex VII to Regulation (EC) No 1782/2003, the value and number of their payment entitlements should be recalculated as a result of the reference amounts and hectares derived from the integration of the fruit and vegetable sector. Set-aside payment entitlements and entitlements subject to special conditions should not be taken into account in this calculation.
- (7) In accordance with Article 42(1) of Regulation (EC) No 1782/2003, the national reserve has to be replenished by a linear reduction of all the reference amounts. Rules need to be established to clarify how Member States have to proceed with regard to the integration of the reference amount for fruit and vegetables into the replenishment of the national reserve.
- (8) Member States that apply the regional model established in Article 59(1) and (3) of Regulation (EC) No 1782/2003, should be empowered to fix the number of payment entitlements per farmer resulting from the integration of fruit and vegetable hectares.

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 1276/2007 (OJ L 284, 30.10.2007, p. 11).

⁽²⁾ OJ L 141, 30.4.2004, p. 1. Regulation as last amended by Regulation (EC) No 608/2007 (OJ L 141, 2.6.2007, p. 31).

⁽³⁾ OJ L 273, 17.10.2007, p. 1.

- (9) The date for the communication by Member States of information to the Commission regarding the options provided for in Article 51 of Regulation (EC) No 1782/2003 should be established.
- (10) Regulation (EC) No 795/2004 should therefore be amended accordingly.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 795/2004 is amended as follows:

1. Article 2 is amended as follows:

(a) Point (c) is replaced by the following:

‘(c) “permanent crops” shall mean non-rotational crops other than permanent pasture that occupy the land for five years or longer and yield repeated harvests, including nurseries, and short rotation coppice (CN code ex 0602 90 41), with the exception of multiannual crops and nurseries of multiannual crops’;

(b) After point (k), the following point is added:

‘(l) “Nurseries” are those as defined in point G/5 of Annex I to Commission Decision 2000/115/EC (*) relating to the definitions of the characteristics, the list of agricultural products, the exceptions to the definitions and the regions and districts regarding the surveys on the structure of agricultural holdings.

(*) OJ L 38, 12.2.2000, p. 1’;

2. Article 21 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘For the investments in the fruit and vegetable sector the date referred to in the first subparagraph shall be 1 November 2007.’;

(b) in paragraph 2, the following subparagraph is added:

‘For the investments in the fruit and vegetable sector the date referred to in the first subparagraph shall be 1 November 2007.’;

(c) in paragraph 4, the following subparagraph is added:

‘For the long-term leases in the fruit and vegetable sector the date referred to in the first subparagraph shall be 1 November 2007.’;

3. in Article 32(4), the following subparagraph is added:

‘Without prejudice to Article 33 of this Regulation, in the case where the new Member States within the meaning of Article 2(g) of Regulation (EC) No 1782/2003 have encountered technical difficulties to determine the limits of certain agricultural parcels as a consequence of the transition from the parcel identification system existing at the date referred to in Article 54(2) of that Regulation to the identification system for agricultural parcels referred to in Article 20 of that Regulation, they may derogate from the first subparagraph of paragraph 2 of Article 54 of Regulation (EC) No 1782/2003 in order to fix the reference to the date provided for the area aid applications for 2003 at 30 June 2006. They shall take action to prevent any significant increase in the total area eligible to set-aside entitlements. However Bulgaria and Romania may fix that date at 30 June 2007.’;

4. the following Chapter 6c is inserted before Chapter 7:

‘CHAPTER 6 C

INTEGRATION OF THE FRUIT AND VEGETABLE SECTOR IN THE SINGLE PAYMENT SCHEME

Article 48f

General rules

1. For the purposes of the establishment of the amount and the determination of payment entitlements in the framework of the integration of the fruit and vegetable sector in the single payment scheme, Articles 37 and 43 of Regulation (EC) No 1782/2003 shall apply subject to the rules established in Article 48g of this Regulation and, in case the Member State has made use of the option provided for in Article 59 of Regulation (EC) No 1782/2003, in Article 48h of this Regulation.

2. Without prejudice of Article 12(1) of Regulation (EC) No 795/2004, for allocating payments entitlements deriving from the integration of fruits and vegetables sector in the single payment scheme, Member States may proceed to the identification of the eligible farmers as from 1 January 2008.

3. As the case may be, Article 41(2) of Regulation (EC) No 1782/2003 shall apply to the value of all the payment entitlements existing before the integration of fruit and vegetable support and to the reference amounts calculated for fruit and vegetable support.

4. The percentage of reduction fixed by the Member State in accordance with Article 42(1) of Regulation (EC) No 1782/2003 shall apply to the reference amounts corresponding to fruit and vegetable products integrated in the single payment scheme.

5. The five-year period provided for in Article 42(8) of Regulation (EC) No 1782/2003 shall not restart for the payment entitlements coming from the national reserve whose amount has been recalculated or increased in accordance with Articles 48g and 48h of this Regulation.

6. For the purpose of the application of Article 7(1), Articles 12 to 17, Article 20 and Article 27 of this Regulation in relation to the fruit and vegetable sector, the first year of application of the single payment scheme shall be the year of the determination by the Member State of the amounts and eligible hectares as referred to in point M of Annex VII to Regulation (EC) No 1782/2003, taking account of the optional transitional three years' period referred to in the third paragraph of that point.

Article 48g

Specific rules

1. If the farmer does not own payment entitlements or only owns set-aside entitlements or entitlements subject to special conditions by the last date for applying for the establishment of payment entitlements fixed in accordance with Article 12 of this Regulation, he shall receive payment entitlements calculated in accordance with Articles 37 and 43 of Regulation (EC) No 1782/2003 for fruit and vegetable.

The first subparagraph shall also apply when the farmer has leased in payment entitlements between the first year of the application of the single payment scheme and the year of the integration of the fruit and vegetable sector.

2. If the farmer has been allocated or has bought or received payment entitlements by the last date for applying for the establishment of payment entitlements fixed in accordance with Article 12 of this Regulation, the value and number of the payment entitlements he owns shall be recalculated as follows:

- (a) the number of payment entitlements shall be equal to the number of payment entitlements he owns, increased by the number of hectares established in accordance with Article 43 of Regulation (EC) No 1782/2003 for fruit and vegetables, ware potatoes and nurseries;
- (b) the value shall be obtained by dividing the sum of the value of the payment entitlements he owns and the reference amount calculated in accordance with Article 37 of Regulation (EC) No 1782/2003 for fruit and veg-

etables by the number established in accordance with point (a) of this paragraph.

Set-aside payment entitlements and payment entitlements subject to special conditions shall not be taken into account in the calculation referred to in this paragraph.

3. Payment entitlements leased out before the date for lodging an application under the single payment scheme fixed in accordance with Article 12 shall be taken into account in the calculation referred to in paragraph 2. However, payment entitlements leased out via a contractual clause as referred to in Article 27 before 15 May 2004 shall be taken into account in the calculation referred to in paragraph 2 of this Article only if the lease conditions may be adjusted.

Article 48h

Regional implementation

1. Where a Member State has made use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, farmers shall receive a number of payment entitlements equal to the number of new eligible hectares under fruit and vegetables, ware potatoes and nurseries, pursuant to Article 59(4) of that Regulation.

The value of the payment entitlements is calculated in accordance with paragraphs 2 and 3 of Article 59 and paragraph 3 of Article 63 of that Regulation.

The first year of application pursuant to Article 59(4) of that Regulation shall be 2008.

2. By way of derogation from the first subparagraph of paragraph 1, Member States may establish the additional number of entitlements per farmer on the basis of objective criteria in accordance with point M of Annex VII to Regulation (EC) No 1782/2003 for fruit and vegetables, ware potatoes and nurseries.;

5. the following Article 49b is inserted before Article 50:

'Article 49b

Integration of fruits and vegetables

Member States shall communicate to the Commission, by 1 November 2008 at the latest, the decision they have taken as regards the options provided for in Article 51 of Regulation (EC) No 1782/2003, broken down by product, year and, where appropriate, regions.'

Article 2

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

It shall apply from 1 January 2008. However, Article 1(3) shall apply as from 1 January 2007.

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

Done at Brussels, 19 December 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

DIRECTIVES

DIRECTIVE 2007/66/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 11 December 2007****amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) Council Directives 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts ⁽⁴⁾ and 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of

entities operating in the water, energy, transport and telecommunications sectors ⁽⁵⁾ concern the review procedures with regard to contracts awarded by contracting authorities as referred to in Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽⁶⁾ and contracting entities as referred to in Article 2 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽⁷⁾. Directives 89/665/EEC and 92/13/EEC are intended to ensure the effective application of Directives 2004/18/EC and 2004/17/EC.

(2) Directives 89/665/EEC and 92/13/EEC therefore apply only to contracts falling within the scope of Directives 2004/18/EC and 2004/17/EC as interpreted by the Court of Justice of the European Communities, whatever competitive procedure or means of calling for competition is used, including design contests, qualification systems and dynamic purchasing systems. According to the case law of the Court of Justice, the Member States should ensure that effective and rapid remedies are available against decisions taken by contracting authorities and contracting entities as to whether a particular contract falls within the personal and material scope of Directives 2004/18/EC and 2004/17/EC.

(3) Consultations of the interested parties and the case law of the Court of Justice have revealed a certain number of weaknesses in the review mechanisms in the Member States. As a result of these weaknesses, the mechanisms

⁽¹⁾ OJ C 93, 27.4.2007, p. 16.

⁽²⁾ OJ C 146, 30.6.2007, p. 69.

⁽³⁾ Opinion of the European Parliament of 21 June 2007 (not yet published in the Official Journal) and Council Decision of 15 November 2007.

⁽⁴⁾ OJ L 395, 30.12.1989, p. 33. Directive as amended by Directive 92/50/EEC (OJ L 209, 24.7.1992, p. 1).

⁽⁵⁾ OJ L 76, 23.3.1992, p. 14. Directive as last amended by Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).

⁽⁶⁾ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Directive 2006/97/EC.

⁽⁷⁾ OJ L 134, 30.4.2004, p. 1. Directive as last amended by Directive 2006/97/EC.

established by Directives 89/665/EEC and 92/13/EEC do not always make it possible to ensure compliance with Community law, especially at a time when infringements can still be corrected. Consequently, the guarantees of transparency and non-discrimination sought by those Directives should be strengthened to ensure that the Community as a whole fully benefit from the positive effects of the modernisation and simplification of the rules on public procurement achieved by Directives 2004/18/EC and 2004/17/EC. Directives 89/665/EEC and 92/13/EEC should therefore be amended by adding the essential clarifications which will allow the results intended by the Community legislature to be attained.

- (4) The weaknesses which were noted include in particular the absence of a period allowing an effective review between the decision to award a contract and the conclusion of the contract in question. This sometimes results in contracting authorities and contracting entities who wish to make irreversible the consequences of the disputed award decision proceeding very quickly to the signature of the contract. In order to remedy this weakness, which is a serious obstacle to effective judicial protection for the tenderers concerned, namely those tenderers who have not yet been definitively excluded, it is necessary to provide for a minimum standstill period during which the conclusion of the contract in question is suspended, irrespective of whether conclusion occurs at the time of signature of the contract or not.
- (5) The duration of the minimum standstill period should take into account different means of communication. If rapid means of communication are used, a shorter period can be provided for than if other means of communication are used. This Directive only provides for minimum standstill periods. Member States are free to introduce or to maintain periods which exceed those minimum periods. Member States are also free to decide which period should apply, if different means of communication are used cumulatively.
- (6) The standstill period should give the tenderers concerned sufficient time to examine the contract award decision and to assess whether it is appropriate to initiate a review procedure. When the award decision is notified to them, the tenderers concerned should be given the relevant information which is essential for them to seek effective review. The same applies accordingly to candidates to the extent that the contracting authority or contracting entity has not made available in due time information about the rejection of their application.
- (7) Such relevant information includes, in particular, a summary of the relevant reasons as set out in Article 41 of Directive 2004/18/EC and Article 49 of Directive

2004/17/EC. As the duration of the standstill period varies from one Member State to another, it is also important that the tenderers and candidates concerned should be informed of the effective period available to them to bring review proceedings.

- (8) This type of minimum standstill period is not intended to apply if Directive 2004/18/EC or Directive 2004/17/EC does not require prior publication of a contract notice in the *Official Journal of the European Union*, in particular in cases of extreme urgency as provided for in Article 31(1)(c) of Directive 2004/18/EC or Article 40(3)(d) of Directive 2004/17/EC. In those cases it is sufficient to provide for effective review procedures after the conclusion of the contract. Similarly, a standstill period is not necessary if the only tenderer concerned is the one who is awarded the contract and there are no candidates concerned. In this case there is no other person remaining in the tendering procedure with an interest in receiving the notification and in benefiting from a standstill period to allow for effective review.
- (9) Finally, in cases of contracts based on a framework agreement or a dynamic purchasing system, a mandatory standstill period could have an impact on the efficiency gains intended by those tendering procedures. Member States should be able therefore, instead of introducing a mandatory standstill period, to provide for ineffectiveness as an effective sanction in accordance with Article 2d of both Directives 89/665/EEC and 92/13/EEC for infringements of the second indent of the second subparagraph of Article 32(4) and of Article 33(5) and (6) of Directive 2004/18/EC, and of Article 15(5) and (6) of Directive 2004/17/EC.
- (10) In the cases referred to in Article 40(3)(i) of Directive 2004/17/EC, contracts based on a framework agreement do not require prior publication of a contract notice in the *Official Journal of the European Union*. In those cases a standstill period should not be mandatory.
- (11) When a Member State requires a person intending to use a review procedure to inform the contracting authority or contracting entity of that intention, it is necessary to make it clear that this should not affect the standstill period or any other period to apply for review. Furthermore, when a Member State requires that the person concerned has first sought a review with the contracting authority or contracting entity, it is necessary that this person should have a reasonable minimum period within which to refer to the competent review body before the conclusion of the contract, in the event that that person should wish to challenge the reply or lack of reply from the contracting authority or contracting entity.

- (12) Seeking review shortly before the end of the minimum standstill period should not have the effect of depriving the body responsible for review procedures of the minimum time needed to act, in particular to extend the standstill period for the conclusion of the contract. It is thus necessary to provide for an independent minimum standstill period that should not end before the review body has taken a decision on the application. This should not prevent the review body from making a prior assessment of whether the review as such is admissible. Member States may provide that this period shall end either when the review body has taken a decision on the application for interim measures, including on a further suspension of the conclusion of the contract, or when the review body has taken a decision on the merits of the case, in particular on the application for the setting aside of an unlawful decision.
- (13) In order to combat the illegal direct award of contracts, which the Court of Justice has called the most serious breach of Community law in the field of public procurement on the part of a contracting authority or contracting entity, there should be provision for effective, proportionate and dissuasive sanctions. Therefore a contract resulting from an illegal direct award should in principle be considered ineffective. The ineffectiveness should not be automatic but should be ascertained by or should be the result of a decision of an independent review body.
- (14) Ineffectiveness is the most effective way to restore competition and to create new business opportunities for those economic operators which have been deprived illegally of their opportunity to compete. Direct awards within the meaning of this Directive should include all contract awards made without prior publication of a contract notice in the *Official Journal of the European Union* within the meaning of Directive 2004/18/EC. This corresponds to a procedure without prior call for competition within the meaning of Directive 2004/17/EC.
- (15) Possible justifications for a direct award within the meaning of this Directive may include the exemptions in Articles 10 to 18 of Directive 2004/18/EC, the application of Article 31, Article 61 or Article 68 of Directive 2004/18/EC, the award of a service contract in accordance with Article 21 of Directive 2004/18/EC or a lawful 'in-house' contract award following the interpretation of the Court of Justice.
- (16) The same applies to contracts which meet the conditions for an exclusion or special arrangements in accordance with Article 5(2), Articles 18 to 26, Articles 29 and 30 or Article 62 of Directive 2004/17/EC, to cases involving the application of Article 40(3) of Directive 2004/17/EC or to the award of a service contract in accordance with Article 32 of Directive 2004/17/EC.
- (17) A review procedure should be available at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.
- (18) In order to prevent serious infringements of the standstill obligation and automatic suspension, which are prerequisites for effective review, effective sanctions should apply. Contracts that are concluded in breach of the standstill period or automatic suspension should therefore be considered ineffective in principle if they are combined with infringements of Directive 2004/18/EC or Directive 2004/17/EC to the extent that those infringements have affected the chances of the tenderer applying for review to obtain the contract.
- (19) In the case of other infringements of formal requirements, Member States might consider the principle of ineffectiveness to be inappropriate. In those cases Member States should have the flexibility to provide for alternative penalties. Alternative penalties should be limited to the imposition of fines to be paid to a body independent of the contracting authority or entity or to a shortening of the duration of the contract. It is for Member States to determine the details of alternative penalties and the rules of their application.
- (20) This Directive should not exclude the application of stricter sanctions in accordance with national law.
- (21) The objective to be achieved where Member States lay down the rules which ensure that a contract shall be considered ineffective is that the rights and obligations of the parties under the contract should cease to be enforced and performed. The consequences resulting from a contract being considered ineffective should be determined by national law. National law may therefore, for example, provide for the retroactive cancellation of all contractual obligations (*ex tunc*) or conversely limit the scope of the cancellation to those obligations which would still have to be performed (*ex nunc*). This should not lead to the absence of forceful penalties if the obligations deriving from a contract have already been fulfilled either entirely or almost entirely. In such cases Member States should provide for alternative penalties as well, taking into account the extent to which a contract remains in force in accordance with national law. Similarly, the consequences concerning the possible recovery of any sums which may have been paid, as well as all other forms of possible restitution, including restitution in value where restitution in kind is not possible, are to be determined by national law.

- (22) However, in order to ensure the proportionality of the sanctions applied, Member States may grant the body responsible for review procedures the possibility of not jeopardising the contract or of recognising some or all of its temporal effects, when the exceptional circumstances of the case concerned require certain overriding reasons relating to a general interest to be respected. In those cases alternative penalties should be applied instead. The review body independent of the contracting authority or contracting entity should examine all relevant aspects in order to establish whether overriding reasons relating to a general interest require that the effects of the contract should be maintained.
- (23) In exceptional cases the use of the negotiated procedure without publication of a contract notice within the meaning of Article 31 of Directive 2004/18/EC or Article 40(3) of Directive 2004/17/EC is permitted immediately after the cancellation of the contract. If in those cases, for technical or other compelling reasons, the remaining contractual obligations can, at that stage, only be performed by the economic operator which has been awarded the contract, the application of overriding reasons might be justified.
- (24) Economic interests in the effectiveness of a contract may only be considered as overriding reasons if in exceptional circumstances ineffectiveness would lead to disproportionate consequences. However, economic interests directly linked to the contract concerned should not constitute overriding reasons.
- (25) Furthermore, the need to ensure over time the legal certainty of decisions taken by contracting authorities and contracting entities requires the establishment of a reasonable minimum period of limitation on reviews seeking to establish that the contract is ineffective.
- (26) In order to avoid legal uncertainty which may result from ineffectiveness, Member States should provide for an exemption from any finding of ineffectiveness in cases where the contracting authority or contracting entity considers that the direct award of any contract without prior publication of a contract notice in the *Official Journal of the European Union* is permissible in accordance with Directives 2004/18/EC and 2004/17/EC and has applied a minimum standstill period allowing for effective remedies. The voluntary publication which triggers this standstill period does not imply any extension of obligations deriving from Directive 2004/18/EC or Directive 2004/17/EC.
- (27) As this Directive strengthens national review procedures, especially in cases of an illegal direct award, economic operators should be encouraged to make use of these new mechanisms. For reasons of legal certainty the enforceability of the ineffectiveness of a contract is limited to a certain period. The effectiveness of these time limits should be respected.
- (28) Strengthening the effectiveness of national review procedures should encourage those concerned to make greater use of the possibilities for review by way of interlocutory procedure before the conclusion of a contract. In those circumstances, the corrective mechanism should be refocused on serious infringements of Community law on public procurement.
- (29) The voluntary attestation system provided for by Directive 92/13/EEC, whereby contracting entities have the possibility of having the conformity of their award procedures established through periodic examinations, has been virtually unused. It cannot thus achieve its objective of preventing a significant number of infringements of Community law on public procurement. On the other hand, the requirement imposed on Member States by Directive 92/13/EEC to ensure the permanent availability of bodies accredited for this purpose can represent an administrative maintenance cost which is no longer justified in the light of the lack of real demand by contracting entities. For these reasons, the attestation system should be abolished.
- (30) Similarly, the conciliation mechanism provided for by Directive 92/13/EEC has not elicited any real interest from economic operators. This is due both to the fact that it does not of itself make it possible to obtain binding interim measures likely to prevent in time the illegal conclusion of a contract, and also to its nature, which is not readily compatible with observance of the particularly short deadlines applicable to reviews seeking interim measures and the setting aside of decisions taken unlawfully. In addition, the potential effectiveness of the conciliation mechanism has been weakened further by the difficulties encountered in establishing a complete and sufficiently wide list of independent conciliators in each Member State, available at any time and capable of dealing with conciliation requests at very short notice. For these reasons, the conciliation mechanism should be abolished.
- (31) The Commission should be entitled to request Member States to provide it with information on the operation of national review procedures proportionate to the objective pursued by involving the Advisory Committee for Public Contracts in determining the extent and nature of such information. Indeed, only by making such information available will it be possible to assess correctly the effects of the changes introduced by this Directive at the end of a significant period of implementation.

(32) The Commission should review progress made in the Member States and report to the European Parliament and to the Council on the effectiveness of this Directive no later than three years after its deadline for implementation.

(33) The measures necessary for the implementation of Directives 89/665/EEC and 92/13/EEC should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

(34) Since, for the reasons stated above, the objective of this Directive, namely improving the effectiveness of review procedures concerning the award of contracts falling within the scope of Directives 2004/18/EC and 2004/17/EC, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective, while respecting the principle of the procedural autonomy of the Member States.

(35) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽²⁾, Member States should draw up, for themselves and in the interests of the Community, their own tables illustrating the correlation between this Directive and the transposition measures, and make them public.

(36) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to an effective remedy and to a fair hearing, in accordance with the first and second subparagraphs of Article 47 of the Charter.

(37) Directives 89/665/EEC and 92/13/EEC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 89/665/EEC

Directive 89/665/EEC is hereby amended as follows:

1. Articles 1 and 2 shall be replaced by the following:

'Article 1

Scope and availability of review procedures

1. This Directive applies to contracts referred to in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (*), unless such contracts are excluded in accordance with Articles 10 to 18 of that Directive.

Contracts within the meaning of this Directive include public contracts, framework agreements, public works concessions and dynamic purchasing systems.

Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/18/EC, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of public procurement or national rules transposing that law.

2. Member States shall ensure that there is no discrimination between undertakings claiming harm in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.

3. Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

4. Member States may require that the person wishing to use a review procedure has notified the contracting authority of the alleged infringement and of his intention to seek review, provided that this does not affect the standstill period in accordance with Article 2a(2) or any other time limits for applying for review in accordance with Article 2c.

5. Member States may require that the person concerned first seek review with the contracting authority. In that case, Member States shall ensure that the submission of such an application for review results in immediate suspension of the possibility to conclude the contract.

Member States shall decide on the appropriate means of communication, including fax or electronic means, to be used for the application for review provided for in the first subparagraph.

The suspension referred to in the first subparagraph shall not end before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contracting authority has sent a reply if fax or electronic means are used, or, if other means of communication are used, before the expiry of either at least 15 calendar days with effect from the day following the date on which the contracting authority has sent a reply, or at least 10 calendar days with effect from the day following the date of the receipt of a reply.

Article 2

Requirements for review procedures

1. Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for powers to:

(a) take, at the earliest opportunity and by way of interlocutory procedures, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a public contract or the implementation of any decision taken by the contracting authority;

(b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;

(c) award damages to persons harmed by an infringement.

2. The powers specified in paragraph 1 and Articles 2d and 2e may be conferred on separate bodies responsible for different aspects of the review procedure.

3. When a body of first instance, which is independent of the contracting authority, reviews a contract award decision, Member States shall ensure that the contracting authority cannot conclude the contract before the review body has made a decision on the application either for interim measures or for review. The suspension shall end no earlier than the expiry of the standstill period referred to in Article 2a(2) and Article 2d(4) and (5).

4. Except where provided for in paragraph 3 and Article 1(5), review procedures need not necessarily have an automatic suspensive effect on the contract award procedures to which they relate.

5. Member States may provide that the body responsible for review procedures may take into account the probable consequences of interim measures for all interests likely to be harmed, as well as the public interest, and may decide not to grant such measures when their negative consequences could exceed their benefits.

A decision not to grant interim measures shall not prejudice any other claim of the person seeking such measures.

6. Member States may provide that where damages are claimed on the grounds that a decision was taken unlawfully, the contested decision must first be set aside by a body having the necessary powers.

7. Except where provided for in Articles 2d to 2f, the effects of the exercise of the powers referred to in paragraph 1 of this Article on a contract concluded subsequent to its award shall be determined by national law.

Furthermore, except where a decision must be set aside prior to the award of damages, a Member State may provide that, after the conclusion of a contract in accordance with Article 1(5), paragraph 3 of this Article or Articles 2a to 2f, the powers of the body responsible for review procedures shall be limited to awarding damages to any person harmed by an infringement.

8. Member States shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.

9. Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made to guarantee procedures whereby any allegedly illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 234 of the Treaty and independent of both the contracting authority and the review body.

The members of such an independent body shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office, and their removal. At least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary. The independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by each Member State, be legally binding.

(*) OJ L 134, 30.4.2004, p. 114. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).;

2. the following articles shall be inserted:

‘Article 2a

Standstill period

1. The Member States shall ensure that the persons referred to in Article 1(3) have sufficient time for effective review of the contract award decisions taken by contracting authorities, by adopting the necessary provisions respecting the minimum conditions set out in paragraph 2 of this Article and in Article 2c.

2. A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2004/18/EC before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with

effect from the day following the date of the receipt of the contract award decision.

Tenderers shall be deemed to be concerned if they have not yet been definitively excluded. An exclusion is definitive if it has been notified to the tenderers concerned and has either been considered lawful by an independent review body or can no longer be subject to a review procedure.

Candidates shall be deemed to be concerned if the contracting authority has not made available information about the rejection of their application before the notification of the contract award decision to the tenderers concerned.

The communication of the award decision to each tenderer and candidate concerned shall be accompanied by the following:

- a summary of the relevant reasons as set out in Article 41(2) of Directive 2004/18/EC, subject to the provisions of Article 41(3) of that Directive, and,
- a precise statement of the exact standstill period applicable pursuant to the provisions of national law transposing this paragraph.

Article 2b

Derogations from the standstill period

Member States may provide that the periods referred to in Article 2a(2) of this Directive do not apply in the following cases:

- (a) if Directive 2004/18/EC does not require prior publication of a contract notice in the *Official Journal of the European Union*;
- (b) if the only tenderer concerned within the meaning of Article 2a(2) of this Directive is the one who is awarded the contract and there are no candidates concerned;
- (c) in the case of a contract based on a framework agreement as provided for in Article 32 of Directive 2004/18/EC and in the case of a specific contract based on a dynamic purchasing system as provided for in Article 33 of that Directive.

If this derogation is invoked, Member States shall ensure that the contract is ineffective in accordance with Articles 2d and 2f of this Directive where:

- there is an infringement of the second indent of the second subparagraph of Article 32(4) or of Article 33(5) or (6) of Directive 2004/18/EC, and,
- the contract value is estimated to be equal to or to exceed the thresholds set out in Article 7 of Directive 2004/18/EC.

Article 2c

Time limits for applying for review

Where a Member State provides that any application for review of a contracting authority's decision taken in the context of, or in relation to, a contract award procedure falling within the scope of Directive 2004/18/EC must be made before the expiry of a specified period, this period shall be at least 10 calendar days with effect from the day following the date on which the contracting authority's decision is sent to the tenderer or candidate if fax or electronic means are used or, if other means of communication are used, this period shall be either at least 15 calendar days with effect from the day following the date on which the contracting authority's decision is sent to the tenderer or candidate or at least 10 calendar days with effect from the day following the date of the receipt of the contracting authority's decision. The communication of the contracting authority's decision to each tenderer or candidate shall be accompanied by a summary of the relevant reasons. In the case of an application for review concerning decisions referred to in Article 2(1)(b) of this Directive that are not subject to a specific notification, the time period shall be at least 10 calendar days from the date of the publication of the decision concerned.

Article 2d

Ineffectiveness

1. Member States shall ensure that a contract is considered ineffective by a review body independent of the contracting authority or that its ineffectiveness is the result of a decision of such a review body in any of the following cases:

- (a) if the contracting authority has awarded a contract without prior publication of a contract notice in the *Official Journal of the European Union* without this being permissible in accordance with Directive 2004/18/EC;

- (b) in case of an infringement of Article 1(5), Article 2(3) or Article 2a(2) of this Directive, if this infringement has deprived the tenderer applying for review of the possibility to pursue pre-contractual remedies where such an infringement is combined with an infringement of Directive 2004/18/EC, if that infringement has affected the chances of the tenderer applying for a review to obtain the contract;

- (c) in the cases referred to in the second subparagraph of Article 2b(c) of this Directive, if Member States have invoked the derogation from the standstill period for contracts based on a framework agreement and a dynamic purchasing system.

2. The consequences of a contract being considered ineffective shall be provided for by national law.

National law may provide for the retroactive cancellation of all contractual obligations or limit the scope of the cancellation to those obligations which still have to be performed. In the latter case, Member States shall provide for the application of other penalties within the meaning of Article 2e(2).

3. Member States may provide that the review body independent of the contracting authority may not consider a contract ineffective, even though it has been awarded illegally on the grounds mentioned in paragraph 1, if the review body finds, after having examined all relevant aspects, that overriding reasons relating to a general interest require that the effects of the contract should be maintained. In this case, Member States shall provide for alternative penalties within the meaning of Article 2e(2), which shall be applied instead.

Economic interests in the effectiveness of the contract may only be considered as overriding reasons if in exceptional circumstances ineffectiveness would lead to disproportionate consequences.

However, economic interests directly linked to the contract concerned shall not constitute overriding reasons relating to a general interest. Economic interests directly linked to the contract include, inter alia, the costs resulting from the delay in the execution of the contract, the costs resulting from the launching of a new procurement procedure, the costs resulting from the change of the economic operator performing the contract and the costs of legal obligations resulting from the ineffectiveness.

4. The Member States shall provide that paragraph 1(a) of this Article does not apply where:

- the contracting authority considers that the award of a contract without prior publication of a contract notice in the *Official Journal of the European Union* is permissible in accordance with Directive 2004/18/EC,
- the contracting authority has published in the *Official Journal of the European Union* a notice as described in Article 3a of this Directive expressing its intention to conclude the contract, and,
- the contract has not been concluded before the expiry of a period of at least 10 calendar days with effect from the day following the date of the publication of this notice.

5. The Member States shall provide that paragraph 1(c) of this Article does not apply where:

- the contracting authority considers that the award of a contract is in accordance with the second indent of the second subparagraph of Article 32(4) or with Article 33(5) and (6) of Directive 2004/18/EC,
- the contracting authority has sent a contract award decision, together with a summary of reasons as referred to in the first indent of the fourth subparagraph of Article 2a(2) of this Directive, to the tenderers concerned, and,
- the contract has not been concluded before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers concerned if fax or electronic means are used or, if other means of communications are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.

Article 2e

Infringements of this Directive and alternative penalties

1. In the case of an infringement of Article 1(5), Article 2(3) or Article 2a(2) which is not covered by Article 2d(1)(b), Member States shall provide for ineffectiveness in accordance with Article 2d(1) to (3), or for alternative penalties. Member States may provide that the review body independent of the contracting authority shall decide, after

having assessed all relevant aspects, whether the contract should be considered ineffective or whether alternative penalties should be imposed.

2. Alternative penalties must be effective, proportionate and dissuasive. Alternative penalties shall be:

- the imposition of fines on the contracting authority; or,
- the shortening of the duration of the contract.

Member States may confer on the review body broad discretion to take into account all the relevant factors, including the seriousness of the infringement, the behaviour of the contracting authority and, in the cases referred to in Article 2d(2), the extent to which the contract remains in force.

The award of damages does not constitute an appropriate penalty for the purposes of this paragraph.

Article 2f

Time limits

1. Member States may provide that the application for review in accordance with Article 2d(1) must be made:

(a) before the expiry of at least 30 calendar days with effect from the day following the date on which:

- the contracting authority published a contract award notice in accordance with Articles 35(4), 36 and 37 of Directive 2004/18/EC, provided that this notice includes justification of the decision of the contracting authority to award the contract without prior publication of a contract notice in the *Official Journal of the European Union*, or

- the contracting authority informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 41(2) of Directive 2004/18/EC, subject to the provisions of Article 41(3) of that Directive. This option also applies to the cases referred to in Article 2b(c) of this Directive;

(b) and in any case before the expiry of a period of at least six months with effect from the day following the date of the conclusion of the contract.

2. In all other cases, including applications for a review in accordance with Article 2e(1), the time limits for the application for a review shall be determined by national law, subject to the provisions of Article 2c.;

3. Article 3 shall be replaced by the following:

‘Article 3

Corrective mechanism

1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Community law in the field of public procurement has been committed during a contract award procedure falling within the scope of Directive 2004/18/EC.

2. The Commission shall notify the Member State concerned of the reasons which have led it to conclude that a serious infringement has been committed and request its correction by appropriate means.

3. Within 21 calendar days of receipt of the notification referred to in paragraph 2, the Member State concerned shall communicate to the Commission:

(a) its confirmation that the infringement has been corrected;

(b) a reasoned submission as to why no correction has been made; or

(c) a notice to the effect that the contract award procedure has been suspended either by the contracting authority on its own initiative or on the basis of the powers specified in Article 2(1)(a).

4. A reasoned submission communicated pursuant to paragraph 3(b) may rely among other matters on the fact that the alleged infringement is already the subject of judicial or other review proceedings or of a review as referred to in Article 2(9). In such a case, the Member State shall inform the Commission of the result of those proceedings as soon as it becomes known.

5. Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3(c), the Member State shall notify the Commission when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That notification shall

confirm that the alleged infringement has been corrected or include a reasoned submission as to why no correction has been made.;

4. the following articles shall be inserted:

‘Article 3a

Content of a notice for voluntary ex ante transparency

The notice referred to in the second indent of Article 2d(4), the format of which shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 3b(2), shall contain the following information:

(a) the name and contact details of the contracting authority;

(b) a description of the object of the contract;

(c) a justification of the decision of the contracting authority to award the contract without prior publication of a contract notice in the *Official Journal of the European Union*;

(d) the name and contact details of the economic operator in favour of whom a contract award decision has been taken; and

(e) where appropriate, any other information deemed useful by the contracting authority.

Article 3b

Committee procedure

1. The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Article 1 of Council Decision 71/306/EEC of 26 July 1971 (*) (hereinafter referred to as the Committee).

2. Where reference is made to this paragraph, Articles 3 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (**) shall apply, having regard to the provisions of Article 8 thereof.

(*) OJ L 185, 16.8.1971, p. 15. Decision as amended by Decision 77/63/EEC (OJ L 13, 15.1.1977, p. 15).

(**) OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).;

5. Article 4 shall be replaced by the following:

'Article 4

Implementation

1. The Commission may request the Member States, in consultation with the Committee, to provide it with information on the operation of national review procedures.

2. Member States shall communicate to the Commission on an annual basis the text of all decisions, together with the reasons therefor, taken by their review bodies in accordance with Article 2d(3).';

6. the following article shall be inserted:

'Article 4a

Review

No later than 20 December 2012, the Commission shall review the implementation of this Directive and report to the European Parliament and to the Council on its effectiveness, and in particular on the effectiveness of the alternative penalties and time limits.'

Article 2

Amendments to Directive 92/13/EEC

Directive 92/13/EEC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

'Article 1

Scope and availability of review procedures

1. This Directive applies to contracts referred to in Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (*), unless such contracts are excluded in accordance with Article 5(2), Articles 18 to 26, Articles 29 and 30 or Article 62 of that Directive.

Contracts within the meaning of this Directive include supply, works and service contracts, framework agreements and dynamic purchasing systems.

Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive

2004/17/EC, decisions taken by contracting entities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of procurement or national rules transposing that law.

2. Member States shall ensure that there is no discrimination between undertakings likely to make a claim in respect of harm in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.

3. Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.

4. Member States may require that the person wishing to use a review procedure has notified the contracting entity of the alleged infringement and of his intention to seek review, provided that this does not affect the standstill period in accordance with Article 2a(2) or any other time limits for applying for review in accordance with Article 2c.

5. Member States may require that the person concerned first seek review with the contracting entity. In that case, Member States shall ensure that the submission of such an application for review results in immediate suspension of the possibility to conclude the contract.

Member States shall decide on the appropriate means of communication, including fax or electronic means, to be used for the application for review provided for in the first subparagraph.

The suspension referred to in the first subparagraph shall not end before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contracting entity has sent a reply if fax or electronic means are used, or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contracting entity has sent a reply or at least 10 calendar days with effect from the day following the date of the receipt of a reply.

(*) OJ L 134, 30.4.2004, p. 1. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).';

2. Article 2 shall be amended as follows:

(a) the title 'Requirements for review procedures' shall be inserted;

(b) paragraphs 2 to 4 shall be replaced by the following:

'2. The powers specified in paragraph 1 and Articles 2d and 2e may be conferred on separate bodies responsible for different aspects of the review procedure.

3. When a body of first instance, which is independent of the contracting entity, reviews a contract award decision, Member States shall ensure that the contracting entity cannot conclude the contract before the review body has made a decision on the application either for interim measures or for review. The suspension shall end no earlier than the expiry of the standstill period referred to in Article 2a(2) and Article 2d(4) and (5).

3a. Except where provided for in paragraph 3 and Article 1(5), review procedures need not necessarily have an automatic suspensive effect on the contract award procedures to which they relate.

4. Member States may provide that the body responsible for review procedures may take into account the probable consequences of interim measures for all interests likely to be harmed, as well as the public interest, and may decide not to grant such measures when their negative consequences could exceed their benefits.

A decision not to grant interim measures shall not prejudice any other claim of the person seeking such measures.'

(c) paragraph 6 shall be replaced by the following:

'6. Except where provided for in Articles 2d to 2f, the effects of the exercise of the powers referred to in paragraph 1 of this Article on a contract concluded subsequent to its award shall be determined by national law.

Furthermore, except where a decision must be set aside prior to the award of damages, a Member State may

provide that, after the conclusion of a contract in accordance with Article 1(5), paragraph 3 of this Article or Articles 2a to 2f, the powers of the body responsible for review procedures shall be limited to awarding damages to any person harmed by an infringement.'

(d) in the first subparagraph of paragraph 9, the words 'court or tribunal within the meaning of Article 177 of the Treaty' shall be replaced by the words 'court or tribunal within the meaning of Article 234 of the Treaty';

3. the following articles shall be inserted:

'Article 2a

Standstill period

1. The Member States shall ensure that the persons referred to in Article 1(3) have sufficient time for effective review of the contract award decisions taken by contracting entities, by adopting the necessary provisions respecting the minimum conditions set out in paragraph 2 of this Article and in Article 2c.

2. A contract may not be concluded following the decision to award a contract falling within the scope of Directive 2004/17/EC before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned if fax or electronic means are used or, if other means of communication are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers and candidates concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.

Tenderers shall be deemed to be concerned if they have not yet been definitively excluded. An exclusion is definitive if it has been notified to the tenderers concerned and has either been considered lawful by an independent review body or can no longer be subject to a review procedure.

Candidates shall be deemed to be concerned if the contracting entity has not made available information about the rejection of their application before the notification of the contract award decision to the tenderers concerned.

The communication of the award decision to each tenderer and candidate concerned shall be accompanied by the following:

- a summary of the relevant reasons as set out in Article 49(2) of Directive 2004/17/EC, and,
- a precise statement of the exact standstill period applicable pursuant to the provisions of national law transposing this paragraph.

Article 2b

Derogations from the standstill period

Member States may provide that the periods referred to in Article 2a(2) of this Directive do not apply in the following cases:

- (a) if Directive 2004/17/EC does not require prior publication of a notice in the *Official Journal of the European Union*;
- (b) if the only tenderer concerned within the meaning of Article 2a(2) of this Directive is the one who is awarded the contract and there are no candidates concerned;
- (c) in the case of specific contracts based on a dynamic purchasing system as provided for in Article 15 of Directive 2004/17/EC.

If this derogation is invoked, Member States shall ensure that the contract is ineffective in accordance with Articles 2d and 2f of this Directive where:

- there is an infringement of Article 15(5) or (6) of Directive 2004/17/EC, and,
- the contract value is estimated to be equal to or to exceed the thresholds set out in Article 16 of Directive 2004/17/EC.

Article 2c

Time limits for applying for review

Where a Member State provides that any application for review of a contracting entity's decision taken in the context of, or in relation to, a contract award procedure falling within the scope of Directive 2004/17/EC must be made before the expiry of a specified period, this period shall

be at least 10 calendar days with effect from the day following the date on which the contracting entity's decision is sent to the tenderer or candidate if fax or electronic means are used or, if other means of communication are used, this period shall be either at least 15 calendar days with effect from the day following the date on which the contracting entity's decision is sent to the tenderer or candidate or at least 10 calendar days with effect from the day following the date of receipt of the contracting entity's decision. The communication of the contracting entity's decision to each tenderer or candidate shall be accompanied by a summary of the relevant reasons. In the case of an application for a review concerning decisions referred to in Article 2(1)(b) of this Directive that are not subject to a specific notification, the time period shall be at least 10 calendar days from the date of the publication of the decision concerned.

Article 2d

Ineffectiveness

1. Member States shall ensure that a contract is considered ineffective by a review body independent of the contracting entity or that its ineffectiveness is the result of a decision of such a review body in any of the following cases:

- (a) if the contracting entity has awarded a contract without prior publication of a notice in the *Official Journal of the European Union* without this being permissible in accordance with Directive 2004/17/EC;
- (b) in case of an infringement of Article 1(5), Article 2(3) or Article 2a(2) of this Directive, if this infringement has deprived the tenderer applying for review of the possibility to pursue pre-contractual remedies where such an infringement is combined with an infringement of Directive 2004/17/EC, if that infringement has affected the chances of the tenderer applying for a review to obtain the contract;
- (c) in cases referred to in the second subparagraph of Article 2b(c) of this Directive, if Member States have invoked the derogation from the standstill period for contracts based on a dynamic purchasing system.

2. The consequences of a contract being considered ineffective shall be provided for by national law.

National law may provide for the retroactive cancellation of all contractual obligations or limit the scope of the cancellation to those obligations which still have to be performed. In the latter case, Member States shall provide for the application of other penalties within the meaning of Article 2e(2).

3. Member States may provide that the review body independent of the contracting entity may not consider a contract ineffective, even though it has been awarded illegally on the grounds mentioned in paragraph 1, if the review body finds, after having examined all relevant aspects, that overriding reasons relating to a general interest require that the effects of the contract should be maintained. In this case, Member States shall provide for alternative penalties within the meaning of Article 2e(2), which shall be applied instead.

Economic interests in the effectiveness of the contract may only be considered as overriding reasons if in exceptional circumstances ineffectiveness would lead to disproportionate consequences.

However, economic interests directly linked to the contract concerned shall not constitute overriding reasons relating to a general interest. Economic interests directly linked to the contract include, inter alia, the costs resulting from the delay in the execution of the contract, the costs resulting from the launching of a new procurement procedure, the costs resulting from the change of the economic operator performing the contract and the costs of legal obligations resulting from the ineffectiveness.

4. The Member States shall provide that paragraph 1(a) of this Article does not apply where:

— the contracting entity considers that the award of a contract without prior publication of a notice in the *Official Journal of the European Union* is permissible in accordance with Directive 2004/17/EC,

— the contracting entity has published in the *Official Journal of the European Union* a notice as described in Article 3a of this Directive expressing its intention to conclude the contract, and,

— the contract has not been concluded before the expiry of a period of at least 10 calendar days with effect from the day following the date of the publication of this notice.

5. The Member States shall provide that paragraph 1(c) of this Article does not apply where:

— the contracting entity considers that the award of a contract is in accordance with Article 15(5) and (6) of Directive 2004/17/EC,

— the contracting entity has sent a contract award decision, together with a summary of reasons as referred to in the first indent of the fourth subparagraph of Article 2a(2) of this Directive, to the tenderers concerned, and,

— the contract has not been concluded before the expiry of a period of at least 10 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers concerned if fax or electronic means are used or, if other means of communications are used, before the expiry of a period of either at least 15 calendar days with effect from the day following the date on which the contract award decision is sent to the tenderers concerned or at least 10 calendar days with effect from the day following the date of the receipt of the contract award decision.

Article 2e

Infringements of this Directive and alternative penalties

1. In case of an infringement of Article 1(5), Article 2(3) or Article 2a(2) not covered by Article 2d(1)(b), Member States shall provide for ineffectiveness in accordance with Article 2d(1) to (3), or for alternative penalties. Member States may provide that the review body independent of the contracting entity shall decide, after having assessed all relevant aspects, whether the contract should be considered ineffective or whether alternative penalties should be imposed.

2. Alternative penalties must be effective, proportionate and dissuasive. Alternative penalties shall be:

— the imposition of fines on the contracting entity; or,

— the shortening of the duration of the contract.

Member States may confer on the review body broad discretion to take into account all the relevant factors, including the seriousness of the infringement, the behaviour of the contracting entity and, in the cases referred to in Article 2d(2), the extent to which the contract remains in force.

The award of damages does not constitute an appropriate penalty for the purposes of this paragraph.

*Article 2f***Time limits**

1. Member States may provide that the application for review in accordance with Article 2d(1) must be made:

(a) before the expiry of at least 30 calendar days with effect from the day following the date on which:

— the contracting entity published a contract award notice in accordance with Articles 43 and 44 of Directive 2004/17/EC, provided that this notice includes the justification of the decision of the contracting entity to award the contract without prior publication of a notice in the *Official Journal of the European Union*, or

— the contracting entity informed the tenderers and candidates concerned of the conclusion of the contract, provided that this information contains a summary of the relevant reasons as set out in Article 49(2) of Directive 2004/17/EC. This option also applies to the cases referred to in Article 2b(c) of this Directive;

(b) and in any case before the expiry of a period of at least six months with effect from the day following the date of the conclusion of the contract.

2. In all other cases, including applications for a review in accordance with Article 2e(1), the time limits for the application for a review shall be determined by national law, subject to the provisions of Article 2c.;

4. Articles 3 to 7 shall be replaced by the following:

*'Article 3a***Content of a notice for voluntary ex ante transparency**

The notice referred to in the second indent of Article 2d(4), the format of which shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 3b(2), shall contain the following information:

(a) the name and contact details of the contracting entity;

(b) a description of the object of the contract;

(c) a justification of the decision of the contracting entity to award the contract without prior publication of a notice in the *Official Journal of the European Union*;

(d) the name and contact details of the economic operator in favour of whom a contract award decision has been taken; and

(e) where appropriate, any other information deemed useful by the contracting entity.

*Article 3b***Committee procedure**

1. The Commission shall be assisted by the Advisory Committee for Public Contracts set up by Article 1 of Council Decision 71/306/EEC of 26 July 1971 (*) (hereinafter referred to as the Committee).

2. Where reference is made to this paragraph, Articles 3 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (**) shall apply, having regard to the provisions of Article 8 thereof.

(*) OJ L 185, 16.8.1971, p. 15. Decision as amended by Decision 77/63/EEC (OJ L 13, 15.1.1977, p. 15).

(**) OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).;

5. Article 8 shall be replaced by the following:

*'Article 8***Corrective mechanism**

1. The Commission may invoke the procedure provided for in paragraphs 2 to 5 when, prior to a contract being concluded, it considers that a serious infringement of Community law in the field of procurement has been committed during a contract award procedure falling within the scope of Directive 2004/17/EC, or in relation to Article 27(a) of that Directive in the case of contracting entities to which that provision applies.

2. The Commission shall notify the Member State concerned of the reasons which have led it to conclude that a serious infringement has been committed and request its correction by appropriate means.

3. Within 21 calendar days of receipt of the notification referred to in paragraph 2, the Member State concerned shall communicate to the Commission:

(a) its confirmation that the infringement has been corrected;

- (b) a reasoned submission as to why no correction has been made; or
- (c) a notice to the effect that the contract award procedure has been suspended either by the contracting entity on its own initiative or on the basis of the powers specified in Article 2(1)(a).

4. A reasoned submission communicated pursuant to paragraph 3(b) may rely among other matters on the fact that the alleged infringement is already the subject of judicial review proceedings or of a review as referred to in Article 2(9). In such a case, the Member State shall inform the Commission of the result of those proceedings as soon as it becomes known.

5. Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3(c), the Member State concerned shall notify the Commission when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That new notification shall confirm that the alleged infringement has been corrected or include a reasoned submission as to why no correction has been made.’;

6. Articles 9 to 12 shall be replaced by the following:

‘Article 12

Implementation

1. The Commission may request the Member States, in consultation with the Committee, to provide it with information on the operation of national review procedures.
2. Member States shall communicate to the Commission on an annual basis the text of all decisions, together with the reasons therefor, taken by their review bodies in accordance with Article 2d(3).

Article 12a

Review

No later than 20 December 2012, the Commission shall review the implementation of this Directive and report to

the European Parliament and to the Council on its effectiveness, and in particular on the effectiveness of the alternative penalties and time limits.’;

7. the Annex shall be deleted.

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 December 2009. They shall forthwith communicate to the Commission the text of those provisions.

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

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

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 December 2007.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
M. LOBO ANTUNES

II

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

DECISIONS

COMMISSION

COMMISSION DECISION

of 10 December 2007

amending Decisions 2006/687/EC, 2006/875/EC and 2006/876/EC as regards the reallocation of the Community's financial contribution to certain Member States for their programmes for the eradication and monitoring of animal diseases and for checks aimed at the prevention of zoonoses for 2007

(notified under document number C(2007) 5985)

(2007/851/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

the Community's financial contribution for each programme submitted by the Member States.

Having regard to the Treaty establishing the European Community,

(3) Commission Decision 2006/875/EC of 30 November 2006 approving programmes for the eradication and monitoring of animal diseases, of certain TSEs, and for the prevention of zoonoses presented by the Member States for the year 2007⁽³⁾ and Commission Decision 2006/876/EC of 30 November 2006 approving programmes for the eradication and monitoring of animal diseases, of certain TSEs, and for the prevention of zoonoses presented by Bulgaria and Romania for the year 2007 and amending Decision 2006/687/EC set out the maximum amount of the Community's financial contribution for each programme submitted by the Member States.

Having regard to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field⁽¹⁾, and in particular Articles 24(5) and (6), and Articles 29 and 32 thereof,

Whereas:

(1) Decision 90/424/EEC lays down the procedures governing the Community's financial contribution for programmes for the eradication, control and monitoring of animal diseases and zoonoses.

(4) The Commission has assessed the reports forwarded by the Member States on the expenditures of those programmes. The results of that assessment show that certain Member States will not utilise their full allocation for 2007 while others will spend in excess of the allocated amount.

(2) Commission Decision 2006/687/EC of 12 October 2006 on programmes which qualify for a Community financial contribution in 2007 for the eradication and monitoring of certain animal diseases, for the prevention of zoonoses, for the monitoring of TSEs as well as programmes for the eradication of BSE and scrapie⁽²⁾ sets out the proposed rate and maximum amount of

(5) The Community's financial contribution to certain of those programmes therefore needs to be adjusted. It is appropriate to reallocate funding from programmes of Member States, which are not using their full allocation to those that are exceeding it. The reallocation should be based on the most recent information on the expenditure actually incurred by the concerned Member States.

⁽¹⁾ OJ L 224, 18.8.1990, p. 19. Decision as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽²⁾ OJ L 282, 13.10.2006, p. 52. Decision as amended by Decision 2006/876/EC (OJ L 337, 5.12.2006, p. 57).

⁽³⁾ OJ L 337, 5.12.2006, p. 46. Decision as amended by Decision 2007/22/EC (OJ L 7, 12.1.2007, p. 46).

- (6) Decisions 2006/687/EC, 2006/875/EC and 2006/876/EC should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Annexes I to V to Decision 2006/687/EC are amended in accordance with the Annex to this Decision.

Article 2

Decision 2006/875/EC is amended as follows:

1. Article 1 is amended as follows:

(a) Paragraph 2 is amended as follows:

- (i) In point (d), 'EUR 1 200 000' is replaced by 'EUR 790 000';
- (ii) In point (e), 'EUR 1 850 000' is replaced by 'EUR 900 000';
- (iii) In point (g), 'EUR 4 850 000' is replaced by 'EUR 4 100 000';

(b) In paragraph 3, 'EUR 600 000' is replaced by 'EUR 450 000';

2. Article 2(2) is amended as follows:

- (a) In point (a), 'EUR 3 500 000' is replaced by 'EUR 5 500 000';
- (b) In point (b), 'EUR 1 100 000' is replaced by 'EUR 1 950 000';
- (c) In point (c), 'EUR 2 000 000' is replaced by 'EUR 3 000 000';
- (d) In point (d), 'EUR 95 000' is replaced by 'EUR 20 000';
- (e) In point (e), 'EUR 1 600 000' is replaced by 'EUR 1 280 000';

3. Article 3(2) is amended as follows:

- (a) In point (a), 'EUR 3 000 000' is replaced by 'EUR 8 000 000';
- (b) In point (b), 'EUR 2 500 000' is replaced by 'EUR 2 950 000';
- (c) In point (c), 'EUR 1 100 000' is replaced by 'EUR 1 550 000';

4. Article 4(2) is amended as follows:

- (a) In point (b), 'EUR 400 000' is replaced by 'EUR 1 600 000';
- (b) In point (c), 'EUR 35 000' is replaced by 'EUR 85 000';
- (c) In point (e), 'EUR 2 300 000' is replaced by 'EUR 4 800 000';
- (d) In point (f), 'EUR 225 000' is replaced by 'EUR 425 000';

5. Article 5 is amended as follows:

(a) Paragraph 2 is amended as follows:

- (i) In point (a), 'EUR 5 000 000' is replaced by 'EUR 5 900 000';
- (ii) In point (b), 'EUR 200 000' is replaced by 'EUR 570 000';
- (iii) In point (c), 'EUR 4 000 000' is replaced by 'EUR 5 000 000';
- (iv) In point (e), 'EUR 1 600 000' is replaced by 'EUR 1 220 000';

(b) In paragraph 3, 'EUR 650 000' is replaced by 'EUR 200 000';

6. Article 6(2) is amended as follows:

- (a) In point (a), 'EUR 4 900 000' is replaced by 'EUR 8 000 000';
- (b) In point (b), 'EUR 160 000' is replaced by 'EUR 360 000';
- (c) In point (c), 'EUR 1 300 000' is replaced by 'EUR 1 400 000';
- (d) In point (d), 'EUR 600 000' is replaced by 'EUR 1 100 000';

7. Article 7(2) is amended as follows:

- (a) In point (a), 'EUR 660 000' is replaced by 'EUR 550 000';
- (b) In point (c), 'EUR 250 000' is replaced by 'EUR 500 000';
- (c) In point (g), 'EUR 2 000 000' is replaced by 'EUR 960 000';

- (d) In point (h), 'EUR 875 000' is replaced by 'EUR 550 000';
- (e) In point (i), 'EUR 175 000' is replaced by 'EUR 0';
- (f) In point (j), 'EUR 320 000' is replaced by 'EUR 590 000';
- (g) In point (m), 'EUR 60 000' is replaced by 'EUR 110 000';
- (h) In point (q), 'EUR 450 000' is replaced by 'EUR 20 000';
- (i) In point (r), 'EUR 205 000' is replaced by 'EUR 50 000';
8. Article 8(2) is amended as follows:
- (a) In point (a), 'EUR 800 000' is replaced by 'EUR 1 100 000';
- (b) In point (b), 'EUR 500 000' is replaced by 'EUR 650 000';
9. In Article 9(2)(a), 'EUR 250 000' is replaced by 'EUR 350 000';
10. In Article 10(2), 'EUR 120 000' is replaced by 'EUR 350 000';
11. Article 12(2) is amended as follows:
- (a) In point (c), 'EUR 160 000' is replaced by 'EUR 310 000';
- (b) In point (d), 'EUR 243 000' is replaced by 'EUR 460 000';
- (c) In point (j), 'EUR 510 000' is replaced by 'EUR 900 000';
- (d) In point (n), 'EUR 10 000' is replaced by 'EUR 15 000';
- (e) In point (t), 'EUR 121 000' is replaced by 'EUR 46 000';
- (f) In point (x), 'EUR 130 000' is replaced by 'EUR 200 000';
- (g) In point (y), 'EUR 275 000' is replaced by 'EUR 1 125 000';
12. Article 13(2) is amended as follows:
- (a) In point (b), 'EUR 1 059 000' is replaced by 'EUR 1 320 000';
- (b) In point (c), 'EUR 1 680 000' is replaced by 'EUR 1 950 000';
- (c) In point (f), 'EUR 1 827 000' is replaced by 'EUR 1 650 000';
- (d) In point (g), 'EUR 10 237 000' is replaced by 'EUR 9 100 000';
- (e) In point (i), 'EUR 6 755 000' is replaced by 'EUR 6 410 000';
- (f) In point (j), 'EUR 3 375 000' is replaced by 'EUR 3 000 000';
- (g) In point (k), 'EUR 348 000' is replaced by 'EUR 530 000';
- (h) In point (s), 'EUR 3 744 000' is replaced by 'EUR 244 000';
- (i) In point (t), 'EUR 2 115 000' is replaced by 'EUR 2 940 000';
- (j) In point (v), 'EUR 1 088 000' is replaced by 'EUR 610 000';
13. Article 14(2) is amended as follows:
- (a) In point (d), 'EUR 500 000' is replaced by 'EUR 50 000';
- (b) In point (g), 'EUR 713 000' is replaced by 'EUR 413 000';
- (c) In point (i), 'EUR 800 000' is replaced by 'EUR 70 000';
- (d) In point (j), 'EUR 150 000' is replaced by 'EUR 65 000';
- (e) In point (o), 'EUR 328 000' is replaced by 'EUR 530 000';
- (f) In point (p), 'EUR 305 000' is replaced by 'EUR 45 000';
14. Article 15(2) is amended as follows:
- (a) In point (c), 'EUR 927 000' is replaced by 'EUR 827 000';
- (b) In point (e), 'EUR 1 306 000' is replaced by 'EUR 516 000';
- (c) In point (f), 'EUR 5 374 000' is replaced by 'EUR 4 500 000';
- (d) In point (h), 'EUR 629 000' is replaced by 'EUR 279 000';
- (e) In point (i), 'EUR 3 076 000' is replaced by 'EUR 620 000';
- (f) In point (j), 'EUR 2 200 000' is replaced by 'EUR 1 280 000';

- (g) In point (l), 'EUR 332 000' is replaced by 'EUR 232 000';
- (h) In point (o), 'EUR 716 000' is replaced by 'EUR 41 000';
- (i) In point (q), 'EUR 279 000' is replaced by 'EUR 179 000';
- (j) In point (t), 'EUR 9 178 000' is replaced by 'EUR 5 178 000'.
2. In Article 2(2)(a), 'EUR 425 000' is replaced by 'EUR 275 000';
3. In Article 3(2)(a), 'EUR 508 000' is replaced by 'EUR 5 000';
4. Article 4(2) is amended as follows:
- (a) In point (a), 'EUR 23 000' is replaced by 'EUR 88 000';
- (b) In point (b), 'EUR 105 000' is replaced by 'EUR 505 000'.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 10 December 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

Article 3

Decision 2006/876/EC is amended as follows:

1. Article 1(2) is amended as follows:
- (a) In point (a), 'EUR 830 000' is replaced by 'EUR 0';
- (b) In point (b), 'EUR 800 000' is replaced by 'EUR 0';

ANNEX

Annexes I to V to Decision 2006/687/EC are replaced by the following:

‘ANNEX I

List of programmes for the eradication and monitoring of animal diseases as referred to in Article 1(1)

Rate and maximum amount of the Community financial contribution

| Disease | Member State | Rate | Maximum amount (EUR) |
|--|-------------------------------|------|----------------------|
| Aujeszky's disease | Belgium | 50 % | 350 000 |
| | Spain | 50 % | 350 000 |
| Bluetongue | Spain | 50 % | 8 000 000 |
| | France | 50 % | 360 000 |
| | Italy | 50 % | 1 400 000 |
| | Portugal | 50 % | 1 100 000 |
| Bovine brucellosis | Ireland | 50 % | 1 950 000 |
| | Spain | 50 % | 5 500 000 |
| | Italy | 50 % | 3 000 000 |
| | Cyprus | 50 % | 20 000 |
| | Portugal | 50 % | 1 280 000 |
| | United Kingdom ⁽¹⁾ | 50 % | 1 100 000 |
| Bovine tuberculosis | Spain | 50 % | 8 000 000 |
| | Italy | 50 % | 2 950 000 |
| | Poland | 50 % | 1 550 000 |
| | Portugal | 50 % | 450 000 |
| Classical swine fever | Germany | 50 % | 1 100 000 |
| | France | 50 % | 650 000 |
| | Luxembourg | 50 % | 35 000 |
| | Slovenia | 50 % | 25 000 |
| | Slovakia | 50 % | 400 000 |
| Enzootic bovine leucosis | Estonia | 50 % | 20 000 |
| | Italy | 50 % | 1 600 000 |
| | Latvia | 50 % | 85 000 |
| | Lithuania | 50 % | 135 000 |
| | Poland | 50 % | 4 800 000 |
| | Portugal | 50 % | 425 000 |
| Ovine and caprine brucellosis (<i>B. melitensis</i>) | Greece | 50 % | 200 000 |
| | Spain | 50 % | 5 900 000 |
| | France | 50 % | 570 000 |
| | Italy | 50 % | 5 000 000 |
| | Cyprus | 50 % | 120 000 |
| | Portugal | 50 % | 1 220 000 |
| Poseidom ⁽²⁾ | France ⁽³⁾ | 50 % | 50 000 |

| Disease | Member State | Rate | Maximum amount (EUR) |
|-------------------------|---|--|----------------------|
| Rabies | Bulgaria | 50 % | 0 |
| | Czech Republic | 50 % | 490 000 |
| | Germany | 50 % | 850 000 |
| | Estonia | 50 % | 925 000 |
| | Latvia | 50 % | 790 000 |
| | Lithuania | 50 % own territory; 100 % border areas | 450 000 |
| | Hungary | 50 % | 900 000 |
| | Austria | 50 % | 185 000 |
| | Poland | 50 % | 4 100 000 |
| | Romania | 50 % | 0 |
| | Slovenia | 50 % | 375 000 |
| | Slovakia | 50 % | 500 000 |
| | Finland | 50 % | 112 000 |
| | African swine fever/ Classical swine fever | Bulgaria | 50 % |
| Italy | | 50 % | 140 000 |
| Romania | | 50 % | 5 250 000 |
| Swine vesicular disease | Italy | 50 % | 350 000 |
| Avian influenza | Belgium | 50 % | 66 000 |
| | Bulgaria | 50 % | 88 000 |
| | Czech Republic | 50 % | 74 000 |
| | Denmark | 50 % | 310 000 |
| | Germany | 50 % | 460 000 |
| | Estonia | 50 % | 40 000 |
| | Ireland | 50 % | 59 000 |
| | Greece | 50 % | 42 000 |
| | Spain | 50 % | 82 000 |
| | France | 50 % | 280 000 |
| | Italy | 50 % | 900 000 |
| | Cyprus | 50 % | 15 000 |
| | Latvia | 50 % | 15 000 |
| | Lithuania | 50 % | 12 000 |
| | Luxembourg | 50 % | 15 000 |
| | Hungary | 50 % | 110 000 |
| | Malta | 50 % | 5 000 |
| | Netherlands | 50 % | 126 000 |
| | Austria | 50 % | 42 000 |
| | Poland | 50 % | 87 000 |
| | Romania | 50 % | 505 000 |
| | Portugal | 50 % | 46 000 |
| | Slovenia | 50 % | 32 000 |
| | Slovakia | 50 % | 21 000 |
| | Finland | 50 % | 27 000 |
| | Sweden | 50 % | 200 000 |
| | United Kingdom | 50 % | 1 125 000 |
| Total | | | 80 171 000 |

⁽¹⁾ United Kingdom only as regards Northern Ireland.

⁽²⁾ Heartwater, babesiosis and anaplasmosis transmitted by vector insects in the French overseas departments.

⁽³⁾ France only as regards Guadeloupe, Martinique and Réunion.

ANNEX II

List of programmes of checks aimed at the prevention of zoonoses as referred to in Article 2(1)

Rate and maximum amount of the Community financial contribution

| Zoonosis | Member State | Rate | Maximum amount (EUR) |
|------------|----------------|------|----------------------|
| Salmonella | Belgium | 50 % | 550 000 |
| | Bulgaria | 50 % | 5 000 |
| | Czech Republic | 50 % | 330 000 |
| | Denmark | 50 % | 500 000 |
| | Germany | 50 % | 175 000 |
| | Estonia | 50 % | 27 000 |
| | Ireland | 50 % | 0 |
| | Greece | 50 % | 60 000 |
| | Spain | 50 % | 960 000 |
| | France | 50 % | 550 000 |
| | Italy | 50 % | 590 000 |
| | Cyprus | 50 % | 40 000 |
| | Latvia | 50 % | 60 000 |
| | Hungary | 50 % | 110 000 |
| | Netherlands | 50 % | 1 350 000 |
| | Austria | 50 % | 80 000 |
| | Poland | 50 % | 2 000 000 |
| | Portugal | 50 % | 20 000 |
| | Romania | 50 % | 215 000 |
| | Slovakia | 50 % | 50 000 |
| Total | | | 7 672 000 |

ANNEX III

List of programmes for the monitoring of TSEs as referred to in Article 3(1)

Rate and maximum amount of the Community financial contribution

| Disease | Member State | Rate rapid tests and discriminatory tests performed | Maximum amount (EUR) |
|----------------|----------------|---|----------------------|
| TSEs | Belgium | 100 % | 2 084 000 |
| | Czech Republic | 100 % | 1 320 000 |
| | Denmark | 100 % | 1 950 000 |
| | Germany | 100 % | 11 307 000 |
| | Estonia | 100 % | 233 000 |
| | Ireland | 100 % | 6 410 000 |
| | Greece | 100 % | 1 650 000 |
| | Spain | 100 % | 9 100 000 |
| | France | 100 % | 24 815 000 |
| | Italy | 100 % | 3 000 000 |
| | Cyprus | 100 % | 530 000 |
| | Latvia | 100 % | 312 000 |
| | Lithuania | 100 % | 645 000 |
| | Luxembourg | 100 % | 146 000 |
| | Hungary | 100 % | 784 000 |
| | Malta | 100 % | 90 000 |
| | Netherlands | 100 % | 5 112 000 |
| | Austria | 100 % | 1 759 000 |
| | Poland | 100 % | 244 000 |
| | Portugal | 100 % | 2 940 000 |
| Romania | 100 % | 2 370 000 | |
| Slovenia | 100 % | 308 000 | |
| Slovakia | 100 % | 610 000 | |
| Finland | 100 % | 839 000 | |
| Sweden | 100 % | 2 020 000 | |
| United Kingdom | 100 % | 6 781 000 | |
| Total | | | 87 359 000 |

ANNEX IV

List of programmes for the eradication of BSE as referred to in Article 4(1)

Rate and maximum amount of the Community financial contribution

| Disease | Member State | Rate | Maximum amount (EUR) |
|---------|----------------|--------------|----------------------|
| BSE | Belgium | 50 % culling | 50 000 |
| | Czech Republic | 50 % culling | 750 000 |
| | Denmark | 50 % culling | 51 000 |
| | Germany | 50 % culling | 50 000 |
| | Estonia | 50 % culling | 98 000 |
| | Ireland | 50 % culling | 70 000 |
| | Greece | 50 % culling | 750 000 |
| | Spain | 50 % culling | 413 000 |
| | France | 50 % culling | 50 000 |
| | Italy | 50 % culling | 65 000 |
| | Luxembourg | 50 % culling | 100 000 |
| | Netherlands | 50 % culling | 60 000 |
| | Austria | 50 % culling | 48 000 |
| | Poland | 50 % culling | 530 000 |
| | Portugal | 50 % culling | 45 000 |
| | Slovenia | 50 % culling | 25 000 |
| | Slovakia | 50 % culling | 250 000 |
| | Finland | 50 % culling | 25 000 |
| | United Kingdom | 50 % culling | 347 000 |
| Total | | | 3 777 000 |

ANNEX V

List of programmes for the eradication of scrapie as referred to in Article 5(1)

Rate and amount of the Community financial contribution

| Disease | Member State | Rate | Maximum amount (EUR) |
|----------------|-------------------------------|-------------------------------|----------------------|
| Scrapie | Belgium | 50 % culling; 50 % genotyping | 99 000 |
| | Czech Republic | 50 % culling; 50 % genotyping | 107 000 |
| | Germany | 50 % culling; 50 % genotyping | 827 000 |
| | Estonia | 50 % culling; 50 % genotyping | 13 000 |
| | Ireland | 50 % culling; 50 % genotyping | 279 000 |
| | Greece | 50 % culling; 50 % genotyping | 516 000 |
| | Spain | 50 % culling; 50 % genotyping | 4 500 000 |
| | France | 50 % culling; 50 % genotyping | 8 862 000 |
| | Italy | 50 % culling; 50 % genotyping | 620 000 |
| | Cyprus | 50 % culling; 50 % genotyping | 1 280 000 |
| | Luxembourg | 50 % culling; 50 % genotyping | 28 000 |
| | Hungary | 50 % culling; 50 % genotyping | 232 000 |
| | Netherlands | 50 % culling; 50 % genotyping | 543 000 |
| | Austria | 50 % culling; 50 % genotyping | 14 000 |
| | Portugal | 50 % culling; 50 % genotyping | 41 000 |
| | Romania | 50 % culling; 50 % genotyping | 980 000 |
| | Slovenia | 50 % culling; 50 % genotyping | 83 000 |
| | Slovakia | 50 % culling; 50 % genotyping | 179 000 |
| | Finland | 50 % culling; 50 % genotyping | 11 000 |
| | Sweden | 50 % culling; 50 % genotyping | 6 000 |
| United Kingdom | 50 % culling; 50 % genotyping | 5 178 000 | |
| Total | | | 24 398 000' |

COMMISSION DECISION

of 13 December 2007

amending Decision 2005/5/EC as regards Community comparative trials and tests on seeds and propagating material of *Asparagus officinalis* under Council Directive 2002/55/EC

(notified under document number C(2007) 6168)

(Text with EEA relevance)

(2007/852/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed ⁽¹⁾, and in particular Article 43(3) and (5) thereof,

Whereas:

- (1) Commission Decision 2005/5/EC of 27 December 2004 setting out the arrangements for Community comparative trials and tests on seeds and propagating material of certain plants of agricultural and vegetable species and vine under Council Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 92/33/EEC, 2002/54/EC, 2002/55/EC, 2002/56/EC and 2002/57/EC for the years 2005 to 2009 ⁽²⁾ sets out the arrangements for the comparative trials and tests to be carried out under Council Directive 2002/55/EC as regards *Asparagus officinalis* from 2005 to 2009.
- (2) The body responsible for carrying out those trials and tests has informed the Commission that work has progressed more rapidly than expected and that, due to a proper development of plants being observed during the years 2005 to 2007, it now expects all relevant observations required by the call for projects published on 21 June 2004 ⁽³⁾ to be completed by the end of 2008 instead of 2009. It pointed out that as a result total eligible costs would be lower than originally assumed, while costs in 2008 would be higher.
- (3) Based on those facts, the responsible body has submitted a proposal for a recalculation of the eligible costs and of the Community contribution.

(4) Consequently, the eligible expenditure and the Community contribution should be adapted.

(5) Decision 2005/5/EC should therefore be amended accordingly.

(6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2005/5/EC is amended as follows:

1. in the first paragraph of Article 1, '2009' is replaced by '2008';
2. in the first paragraph of Article 3, '2009' is replaced by '2008';
3. the Annex is amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 13 December 2007.

For the Commission
Markos KYPRIANOU
Member of the Commission

⁽¹⁾ OJ L 193, 20.7.2002, p. 33. Directive as last amended by Commission Directive 2006/124/EC (OJ L 339, 6.12.2006, p. 12).

⁽²⁾ OJ L 2, 5.1.2005, p. 12.

⁽³⁾ http://europa.eu.int/comm/food/plant/call2004/index_en.htm

ANNEX

The Annex to Decision 2005/5/EC is amended as follows:

1. The table with the title 'Trials and tests to be carried out in 2008' is replaced by the following table:

'Trials and tests to be carried out in 2008'

| Species | Responsible Body | Conditions to be Assessed | Number of Samples | Eligible costs (EUR) | Maximum Community financial contribution (equivalent to 80 % of the eligible costs) (EUR) |
|---------------------------|------------------|--|-------------------|----------------------|---|
| Asparagus officinalis (*) | BSA Hannover (D) | Varietal identity and purity (field) External seed quality (laboratory) | 100 | 43 495 | 34 794 |
| Total cost | | | | | 34 794 |

(*) Trials and tests lasting more than one year.'

2. The table with the title 'Trials and tests to be carried out in 2009' is deleted.

COMMISSION DECISION**of 13 December 2007****on the continuation in the year 2008 of Community comparative trials and tests on seeds and propagating material of *Asparagus officinalis* under Council Directive 2002/55/EC started in 2005****(Text with EEA relevance)**

(2007/853/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Council Directive 2002/55/EC as regards *Asparagus officinalis* from 2005 to 2009.

Having regard to the Treaty establishing the European Community,

(2) Trials and tests carried out in 2005, 2006 and 2007 should be continued in 2008,

Having regard to Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed ⁽¹⁾,

HAS DECIDED AS FOLLOWS:

Having regard to Commission Decision 2005/5/EC of 27 December 2004 setting out the arrangements for Community comparative trials and tests on seeds and propagating material of certain plants of agricultural and vegetable species and vine under Council Directives 66/401/EEC, 66/402/EEC, 68/193/EEC, 92/33/EEC, 2002/54/EC, 2002/55/EC, 2002/56/EC and 2002/57/EC for the years 2005 to 2009 ⁽²⁾, and in particular Article 3 thereof,*Sole Article*Community comparative trials and tests which began in 2005 on seeds and propagating material of *Asparagus officinalis* shall be continued in 2008 in accordance with Decision 2005/5/EC.

Done at Brussels, 13 December 2007.

Whereas:

(1) Decision 2005/5/EC sets out the arrangements for the comparative trials and tests to be carried out under

For the Commission
Markos KYPRIANOU
Member of the Commission

⁽¹⁾ OJ L 193, 20.7.2002, p. 33. Directive as last amended by Commission Directive 2006/124/EC (OJ L 339, 6.12.2006, p. 12).

⁽²⁾ OJ L 2, 5.1.2005, p. 12.

CORRIGENDA

Corrigendum to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

(Official Journal of the European Union L 347, 11 December 2006)

On page 1, footnote 1:

for: '(¹) OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/98/EC (OJ L 221, 12.8.2006, p. 9).';

read: '(¹) OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/98/EC (OJ L 363, 20.12.2006, p. 129).';

footnote 2:

for: '(²) OJ 71, 14.4.1967, p. 1301. Directive as last amended by Directive 69/463/EEC (OJ L 320, 20.12.1969, p. 34).';

read: '(²) OJ 71, 14.4.1967, p. 1301. Directive as last amended by Directive 77/388/EEC.'

On page 22, Article 83:

for: '... in accordance with Chapter 1 ...';

read: '... in accordance with Chapter 2 ...'.

On page 28, Article 133, last paragraph:

for: 'Member States ... may also apply the conditions provided for in point (d) of the first paragraph ...';

read: 'Member States ... may also apply the conditions provided for in point (d) of the first paragraph of this Article ...'.

On page 79, Annex XI, Part A, point 2, at the end of the list:

for: 'Directive 2006/98/EC (OJ L ..., ..., p. ... (*) — (only point 2 of the Annex)';

read: 'Directive 2006/98/EC (OJ L 363, 20.12.2006, p. 129) — (only point 2 of the Annex)'.
'

On page 79, footnote at the bottom of the page is deleted.

On page 80, Annex XI, Part B, at the end of the list:

after the entry:

'Directive 2006/69/EC — 1 January 2008';

the following entry is inserted:

'Directive 2006/98/EC — 1 January 2007'.

On page 81 and following, Annex XII, Correlation Table:

(a) On page 87, column 'This Directive', fifth from last entry:

for: 'Article 133, (a) to (d)';

read: 'Article 133, first paragraph, points (a) to (d)';

(b) On page 88, column 'This Directive', 13th entry:

for: 'Article 140 (a)';

read: 'Article 143 (a)';

- (c) On page 92, column 'Directive 77/388/EEC', fourth entry:
for: 'Article 24(2)',
read: 'Article 24(2), introductory sentence';
- (d) On page 92, column 'Directive 77/388/EEC', fourth-last entry:
for: 'Article 24a, first paragraph, first to twelfth indents',
read: 'Article 24a, first paragraph, first to tenth indents'.
- (e) On page 92, after the fourth-last line:
a new line is to be inserted between the fourth-last and the third-last entry:
— in the column 'Directive 77/388/EEC', insert the entry:
'Article 24a, second paragraph',
— in the column 'This Directive', insert a hyphen;
- (f) On page 94, column 'Directive 77/388/EEC', fourth entry:
for: 'Article 26a(B)(2), first and second indents',
read: 'Article 26a(B)(2), first to fourth indents';
- (g) On page 106, column 'Directive 77/388/EEC', seventh entry:
for: '— paragraph 2(b), first and second indents',
read: '— paragraph 2(b), first and second subparagraphs';
- (h) On page 112, column 'Directive 77/388/EEC', sixth-last entry:
for: 'Article 28p(7), second subparagraph, second, third and fourth indents',
read: 'Article 28p(7), second subparagraph, second and third indents';
- (i) On page 112, column 'This Directive', sixth-last entry:
for: 'Article 410(2)(a), (b) and (c)',
read: 'Article 410(2)(a) and (b)';
- (j) On page 117, column 'Other acts', second-last entry:
for: 'Annex VIII(7), point (1), third subparagraph, of the 2003 Act of Accession',
read: 'Annex VIII(7), point (1)(b), third subparagraph, of the 2003 Act of Accession'.
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