ISSN 1725-2555

# Official Journal of the European Union

L 181

English edition

Legislation

Volume 52

14 July 2009

Contents



[1] Text with EEA relevance

(Continued overleaf)



EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II *Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory*

DECISIONS

**Conference of the Representatives of the Governments of the Member States**



**Commission**



EN

[1] Text with EEA relevance

I

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

# REGULATIONS

## COUNCIL REGULATION (EC) No 613/2009

## of 6 July 2009

## laying down the weightings applicable from 1 July 2008 to the remuneration of officials, temporary staff and contract staff of the European Communities serving in third countries

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Staff Regulations of Officials of the European Communities and the Conditions of employment of other servants of the Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 [1], and in particular the first paragraph of Article 13 of Annex X thereto,

Having regard to the proposal from the Commission,

Whereas:

(1) It is necessary to take account of changes in the cost of living in countries outside the Community and to determine accordingly the weightings applicable from 1 July 2008 to remuneration paid in the currency of the country of employment to officials, temporary staff and contract staff serving in third countries.

(2) The weightings in respect of which payment has been made on the basis of Regulation (EC) No 624/2008 [2] may lead to retrospective upward or downward adjustments to remuneration.

(3) Provision should be made for back-payments in the event of an increase in remuneration as a result of the new weightings.

(4) Provision should be made for the recovery of sums overpaid in the event of a reduction in remuneration as a result of the new weightings for the period between 1 July 2008 and the date of entry into force of this Regulation.

(5) Provision should be made for any such recovery to be restricted to a period of no more than six months preceding the date of entry into force of this Regulation and for its effects to be spread over a period of no more than 12 months following that date, as is the case with the weightings applicable within the European Community to remuneration and pensions of officials and other servants of the European Communities,

HAS ADOPTED THIS REGULATION:

*Article 1*

With effect from 1 July 2008, the weightings applicable to the remuneration of officials, temporary staff and contract staff of the European Communities serving in third countries payable in the currency of the country of employment shall be as shown in the Annex hereto.

The exchange rates for the calculation of such remuneration shall be established in accordance with the rules for the implementation of the Financial Regulation and shall correspond to the date referred to in the first paragraph.

*Article 2*

1. The institutions shall make back-payments in the event of an increase in remuneration as a result of the weightings shown in the Annex.

2. The institutions shall make retrospective downward adjustments to remuneration in the event of a reduction as a result of the weightings shown in the Annex for the period between 1 July 2008 and the date of entry into force of this Regulation.

Retrospective adjustments involving the recovery of sums overpaid shall be restricted to a period of no more than six months preceding the date of entry into force of this Regulation. Recovery shall be spread over no more than 12 months from that date.

[1] OJ L 56, 4.3.1968, p. 1.
[2] OJ L 172, 2.7.2008, p. 1.

*Article 3*

This Regulation shall enter into force on the day 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, 6 July 2009.

*For the Council*
*The President*
C. BILDT

*ANNEX*

| | PLACE OF EMPLOYMENT | Weighting July 2008 |
|---|---|---|
| (*) | Afghanistan | 0 |
| | South Africa | 46,9 |
| | Albania | 78,5 |
| | Algeria | 87,5 |
| | Former Yugoslav Republic of Macedonia | 71,1 |
| | Angola | 112,8 |
| | Saudi Arabia | 79,1 |
| | Argentina | 54,7 |
| | Armenia | 71,1 |
| | Australia | 108,5 |
| | Azerbaijan | 72,9 |
| | Bangladesh | 45,4 |
| | Barbados | 105,5 |
| | Belarus | 62,7 |
| | Benin | 92,9 |
| | Bolivia | 49,5 |
| | Bosnia and Herzegovina (Sarajevo) | 78,6 |
| | Bosnia and Herzegovina (Banja Luka) | 62,7 |
| | Botswana | 46 |
| | Brazil | 95,5 |
| | Burkina Faso | 96,5 |
| (*) | Burundi | 0 |
| | Cambodia | 62,7 |
| | Cameroon | 109,7 |
| | Canada | 78,9 |
| | Cape Verde | 74,4 |
| | Chile | 57,7 |
| | China | 74,6 |
| | West Bank — Gaza Strip | 103,1 |

| | PLACE OF EMPLOYMENT | Weighting July 2008 |
|---|---|---|
| | Colombia | 79,2 |
| | Congo (Brazzaville) | 129,1 |
| | South Korea | 90,7 |
| | Costa Rica | 68,7 |
| | Côte d'Ivoire | 99,9 |
| | Croatia | 106,3 |
| | Cuba | 73,5 |
| | Djibouti | 85,4 |
| | Egypt | 33,8 |
| | El Salvador | 63,6 |
| | Ecuador | 57,9 |
| | Eritrea | 41,9 |
| | United States (New York) | 91,5 |
| | United States (Washington) | 85 |
| | Ethiopia | 77,8 |
| | Gabon | 110,4 |
| | Gambia | 70,3 |
| | Georgia | 99,7 |
| | Ghana | 54,3 |
| | Guatemala | 70,7 |
| | Guinea (Conakry) | 55,7 |
| | Guinea-Bissau | 114,6 |
| | Guyana | 53,5 |
| | Haiti | 104,2 |
| | Honduras | 60,3 |
| | Hong Kong | 83,4 |
| | Fiji | 72,2 |
| | Solomon Islands | 85,6 |
| | India | 50,9 |
| | Indonesia (Banda Aceh) | 49,5 |

| | PLACE OF EMPLOYMENT | Weighting July 2008 |
|---|---|---|
| | Indonesia (Jakarta) | 69,1 |
| (*) | Iraq | 0 |
| | Israel | 118,9 |
| | Jamaica | 86,1 |
| | Japan (Tokyo) | 105 |
| | Jordan | 70 |
| | Kazakhstan (Almaty) | 75,6 |
| | Kazakhstan (Astana) | 71 |
| | Kenya | 73,8 |
| | Kyrgyzstan | 86,7 |
| | Kosovo (Pristina) | 57,5 |
| | Laos | 77,6 |
| | Lesotho | 47,3 |
| | Lebanon | 80 |
| (*) | Liberia | 0 |
| | Madagascar | 84,2 |
| | Malaysia | 65,8 |
| | Malawi | 63,6 |
| | Mali | 83,5 |
| | Morocco | 86,9 |
| | Mauritius | 72,6 |
| | Mauritania | 61,2 |
| | Mexico | 69,7 |
| | Moldova | 67,1 |
| | Montenegro | 68,9 |
| | Mozambique | 71,9 |
| | Namibia | 57,5 |
| | Nepal | 66 |
| | Nicaragua | 46,2 |
| | Niger | 85,7 |
| | Nigeria | 93 |

| | PLACE OF EMPLOYMENT | Weighting July 2008 |
|---|---|---|
| | Norway | 131,2 |
| | New Caledonia | 140,4 |
| | New Zealand | 89,8 |
| | Uganda | 69,9 |
| | Uzbekistan | 45,4 |
| | Pakistan | 43,9 |
| | Panama | 52,2 |
| | Papua New Guinea | 73,5 |
| | Paraguay | 83,6 |
| | Peru | 67,4 |
| | Philippines | 61 |
| | Central African Republic | 113,1 |
| | Democratic Republic of the Congo (Kinshasa) | 112,3 |
| | Dominican Republic | 58,2 |
| | Russia | 121,8 |
| | Rwanda | 82,7 |
| | Samoa | 65,5 |
| | Senegal | 88,1 |
| | Serbia (Belgrade) | 73,9 |
| | Sierra Leone | 68,9 |
| | Singapore | 95,8 |
| | Sudan | 50 |
| | Sri Lanka | 58,1 |
| | Southern Sudan (Juba) | 87,6 |
| | Switzerland (Geneva) | 112,2 |
| | Switzerland (Berne) | 108 |
| | Suriname | 39,7 |
| | Swaziland | 46,4 |
| | Syria | 66,8 |
| | Tajikistan | 61,2 |
| | Taiwan | 77,3 |

| | PLACE OF EMPLOYMENT | Weighting July 2008 |
|---|---|---|
| | Tanzania | 61,4 |
| | Chad | 129,3 |
| | Thailand | 52,4 |
| | Timor Leste | 56,6 |
| | Togo | 87 |
| | Tonga | 85 |
| | Trinidad and Tobago | 61,6 |
| | Tunisia | 68,7 |
| | Turkey | 80,7 |
| | Ukraine | 109,4 |
| | Uruguay | 73,2 |
| | Vanuatu | 105,6 |
| | Venezuela | 61 |
| | Vietnam | 40,2 |
| | Yemen | 57 |
| | Zambia | 63,2 |
| (*) | Zimbabwe | 0 |

(*) Not available

# COUNCIL REGULATION (EC) No 614/2009

## of 7 July 2009

## on the common system of trade for ovalbumin and lactalbumin

**(Codified version)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 26, 87, 88, 89, 132, 133 and 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament [1],

Whereas:

(1) Regulation (EEC) No 2783/75 of the Council of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin [2] has been substantially amended several times [3]. In the interests of clarity and rationality the said Regulation should be codified.

(2) Ovalbumin, which is not included in Annex I to the Treaty, is not subject to application of the agricultural provisions of the Treaty, while egg yolk is.

(3) A situation arises therefrom which may adversely affect the efficiency of the common agricultural policy in the egg sector.

(4) In order to reach a balanced solution, a common system of trade should be established for ovalbumin corresponding to that established for eggs. It is necessary to extend the application of this system to lactalbumin, in view of the fact that the latter can, to a large extent, be substituted for ovalbumin.

(5) In pursuance of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [4], a single market system for eggs has been established in the Community.

(6) The system of trade applicable to albumins should follow the system in force for eggs, in view of the dependence of the former products on the latter.

(7) Under the Uruguay Round of multilateral trade negotiations, the Community has negotiated various agreements. Several of those agreements concern agriculture, in particular the Agreement on Agriculture [5].

(8) The Agreement on Agriculture requires the abolition of variable import levies and of the other measures and import charges. The rates of customs duty applicable to agricultural products in accordance with the Agreement on Agriculture are to be fixed in the Common Customs Tariff.

(9) Ovalbumin prices normally follow egg prices, which are different in the Community and on the world market. The price of eggs is not the only factor other than processing costs affecting the price of albumin on the world market. In order to maintain a minimum level of protection against the adverse effects on the market as a result of tarification, the Agreement on Agriculture permits the application of additional customs duties under precisely defined conditions, but only to products subject to tarification.

(10) The Agreement on Agriculture provides for a series of tariff quotas under arrangements for current and minimum access. The conditions applicable to such quotas are set out in detail in the Agreement on Agriculture. In view of the large number of quotas and in order to ensure that they are implemented as effectively as possible, the Commission should be responsible for opening and administering them using the management committee procedure.

(11) By reason of the close economic relationship existing between the various egg products, it is necessary to provide for the possible adoption, for ovalbumin and lactalbumin, of marketing standards which correspond as far as possible with the marketing standards laid down for the products referred to in Article 1(1)(s) of Regulation (EC) No 1234/2007.

[1] Opinion of 13 January 2009 (not yet published in the Official Journal).
[2] OJ L 282, 1.11.1975, p. 104.
[3] See Annex I.
[4] OJ L 299, 16.11.2007, p. 1.
[5] OJ L 336, 23.12.1994, p. 22.

(12) In the common organisation of the market in eggs, the exclusion from recourse to the arrangements for inward processing traffic falls exclusively within the competence of the Council. In the economic conditions arising under the Agreement on Agriculture, it could prove necessary to react rapidly to market problems arising from the application of the said arrangements. In that regard competence should be conferred on the Commission to adopt urgent measures which are limited in time,

HAS ADOPTED THIS REGULATION:

CHAPTER I

**SCOPE**

*Article 1*

Unless this Regulation provides otherwise, the rates of duty in the Common Customs Tariff shall apply to the following products:

| CN code | Description |
|---|---|
| 3502 | Albumins (including concentrates of two or more whey proteins, containing by weight more than 80 % whey proteins, calculated on the dry matter), albuminates and other albumin derivatives: |
| | – Egg albumin: |
| ex 3502 11 | – – Dried: |
| 3502 11 90 | – – – Other (than unfit, or to be rendered unfit, for human consumption) |
| ex 3502 19 | – – Other: |
| 3502 19 90 | – – – Other (than unfit, or to be rendered unfit, for human consumption) |
| ex 3502 20 | – Milk albumin, including concentrates of two or more whey proteins: |
| | – – Other (than unfit, or to be rendered unfit, for human consumption) |
| 3502 20 91 | – – – Dried (for example, in sheets, scales, flakes, powder) |
| 3502 20 99 | – – – Other |

CHAPTER II

**TRADE WITH THIRD COUNTRIES**

*Article 2*

1. Imports into the Community of any of the products listed in Article 1 may be subject to presentation of an import licence.

2. Import licences shall be issued by the Member States to any applicant, irrespective of his place of establishment in the Community and without prejudice to measures taken for the application of Article 4.

3. Import licences shall be valid throughout the Community. Such licences shall be issued subject to the lodging of a security guaranteeing that the products are imported during the term of validity of the licence; except in cases of *force majeure*, the security shall be forfeited in whole or in part if import is not carried out, or is only carried out partially, within that period.

4. The term of validity of import licences and other detailed rules for the application of paragraph 1 shall be adopted in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

*Article 3*

1. In order to prevent or counteract adverse effects on the market in the Community which may result from imports of certain products listed in Article 1, imports of one or more of such products at the rate of duty laid down in the Common Customs Tariff shall be subject to payment of an additional import duty if the conditions set out in Article 5 of the Agreement on Agriculture have been fulfilled, unless the imports are unlikely to disturb the Community market or where the effects would be disproportionate to the intended objective.

2. The trigger prices below which an additional duty may be imposed shall be those notified by the Community to the World Trade Organization.

The trigger volumes to be exceeded in order to have the additional import duty imposed shall be determined particularly on the basis of imports into the Community in the three years preceding the year in which the adverse effects referred to in paragraph 1 arise or are likely to arise.

3. The import prices to be taken into consideration for imposing an additional import duty shall be determined on the basis of the cif import prices of the consignment under consideration.

Cif import prices shall be checked to that end against the representative prices for the product on the world market or on the Community import market for that product.

4. The Commission shall adopt detailed rules for the application of paragraphs 1, 2 and 3 in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007. Such detailed rules shall specify in particular:

(a) the products to which additional import duties shall be applied under the terms of Article 5 of the Agreement on Agriculture;

(b) the other criteria necessary to ensure the application of paragraph 1 in accordance with Article 5 of the Agreement on Agriculture.

*Article 4*

1. Tariff quotas for the products listed in Article 1 resulting from agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations shall be opened and administered in accordance with detailed rules adopted under the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

2. Quotas shall be administered by applying one of the following methods or a combination of them:

(a) the method based on chronological order of the lodging of applications (first come, first served principle);

(b) the method of distribution in proportion to the quantities requested when the applications were lodged (using the simultaneous examination method);

(c) the method based on taking traditional trade patterns into account (using the traditional/new arrivals method).

Other appropriate methods may be adopted.

They must avoid any discrimination between the operators concerned.

3. Where necessary, the method of administration shall take account of the supply needs of the Community market and of the need to preserve its equilibrium and may be based on methods used in the past for quotas similar to those referred to in paragraph 1, without prejudice to rights arising under the agreements concluded during the Uruguay Round of multilateral trade negotiations.

4. The detailed rules referred to in paragraph 1 shall provide for annual quotas, suitably phased over the year, if necessary to be opened and, where appropriate, for:

(a) guarantees covering the nature, provenance and origin of the product;

(b) recognition of the document used for verifying the guarantees referred to in point (a); and

(c) the conditions under which import licences are issued and their term of validity.

*Article 5*

Where prices on the Community market rise significantly and where that situation is likely to continue, thereby disturbing or threatening to disturb that market, appropriate measures may be taken.

The Council, acting in accordance with the procedure laid down in Article 37(2) of the Treaty, shall, if necessary, adopt detailed rules for the application of the first paragraph of this Article.

*Article 6*

For the products listed in Article 1, marketing standards may be adopted which, subject to the need to take into account the characteristics of those products, shall correspond to the marketing standards provided for in Article 116 of Regulation (EC) No 1234/2007 for the products listed in Part XIX of Annex I to that Regulation. In particular, the standards may relate to grading by quality, packaging, storage, transport, presentation and marking.

The standards, their scope and the general rules for their application shall be adopted by the Council acting by a qualified majority on a proposal from the Commission.

*Article 7*

1. To the extent necessary for the proper working of the common organisation of the market in eggs and this Regulation, the Council, acting in accordance with the voting procedure laid down in Article 37(2) of the Treaty on a proposal from the Commission, may, in special cases, prohibit in whole or in part the use of inward processing arrangements in respect of products listed in Article 1 of this Regulation which are intended for the manufacture of products listed in that Article.

2. By way of derogation from paragraph 1, if the situation referred to in paragraph 1 arises with exceptional urgency and the Community market is disturbed or is liable to be disturbed by the inward processing arrangements, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures. The Council and the Member States shall be notified of such measures, which shall be valid for no more than six months and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within a week following receipt of the request.

3. Measures decided on by the Commission may be referred to the Council by any Member State within a week of the day on which they were notified. The Council, acting by a qualified majority, may confirm, amend or repeal the decision of the Commission. If the Council has not acted within three months, the decision of the Commission shall be deemed to have been repealed.

*Article 8*

1. The general rules for the interpretation of the combined nomenclature and the special rules for its application shall apply to the classification of products covered by this Regulation. The tariff nomenclature resulting from the application of this Regulation shall be incorporated in the Common Customs Tariff.

2. Save as otherwise provided for in this Regulation or in provisions adopted pursuant thereto, the following shall be prohibited in trade with third countries:

(a) the levying of any charge having equivalent effect to a customs duty;

(b) the application of any quantitative restriction or measure having equivalent effect.

CHAPTER III

**GENERAL PROVISIONS**

*Article 9*

Products specified in Article 1 which are manufactured or obtained from products to which Articles 23(2) and 24 of the Treaty do not apply shall not be admitted to free circulation within the Community.

*Article 10*

Member States and the Commission shall communicate to each other the information necessary for implementing this Regulation. Rules for the communication and distribution of such information shall be adopted in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

*Article 11*

Regulation (EEC) No 2783/75 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and be read in accordance with the correlation table set out in Annex II.

*Article 12*

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, 7 July 2009.

*For the Council*
*The President*
A. BORG

*ANNEX I*

**REPEALED REGULATION WITH LIST OF ITS SUCCESSIVE AMENDMENTS**

| | |
|---|---|
| Council Regulation (EEC) No 2783/75<br>(OJ L 282, 1.11.1975, p. 104). | |
| Commission Regulation (EEC) No 4001/87<br>(OJ L 377, 31.12.1987, p. 44). | |
| Council Regulation (EC) No 3290/94<br>(OJ L 349, 31.12.1994, p. 105). | Only Part B of Annex XII |
| Commission Regulation (EC) No 2916/95<br>(OJ L 305, 19.12.1995, p. 49). | Only point 6 of Article 1 |

*ANNEX II*

**CORRELATION TABLE**

| Regulation (EEC) No 2783/75 | This Regulation |
|---|---|
| Article 1 | Article 1 |
| Article 2(1), first subparagraph | Article 2(1) |
| Article 2(1), second subparagraph | Article 2(2) |
| Article 2(1), third subparagraph | Article 2(3) |
| Article 2(2) | Article 2(4) |
| Article 3 | Article 3 |
| Article 4(1) | Article 4(1) |
| Article 4(2), introductory wording | Article 4(2), introductory wording |
| Article 4(2), first, second and third indents | Article 4(2), points (a), (b) and (c) |
| Article 4(3) and (4) | Article 4(3) and (4) |
| Articles 5 to 7 | Articles 5 to 7 |
| Article 8(1) | Article 8(1) |
| Article 8(2), introductory wording | Article 8(2), introductory wording |
| Article 8(2), first and second indents | Article 8(2), points (a) and (b) |
| Articles 9 and 10 | Articles 9 and 10 |
| Article 11 | — |
| Article 12 | — |
| — | Article 11 |
| — | Article 12 |
| Annex | — |
| — | Annex I |
| — | Annex II |

# COMMISSION REGULATION (EC) No 615/2009

## of 13 July 2009

## 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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [2], and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 14 July 2009.

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

Done at Brussels, 13 July 2009.

*For the Commission*
Jean-Luc DEMARTY
*Director-General for Agriculture and Rural Development*

---

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 350, 31.12.2007, p. 1.

*ANNEX*

**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 | MK | 35,0 |
| | ZZ | 35,0 |
| 0707 00 05 | TR | 102,6 |
| | ZZ | 102,6 |
| 0709 90 70 | TR | 103,0 |
| | ZZ | 103,0 |
| 0805 50 10 | AR | 61,1 |
| | TR | 53,0 |
| | ZA | 66,7 |
| | ZZ | 60,3 |
| 0808 10 80 | AR | 80,2 |
| | BR | 76,0 |
| | CL | 83,0 |
| | CN | 91,0 |
| | NZ | 97,1 |
| | US | 99,3 |
| | ZA | 83,8 |
| | ZZ | 87,2 |
| 0808 20 50 | AR | 74,9 |
| | CL | 85,2 |
| | NZ | 87,2 |
| | ZA | 104,7 |
| | ZZ | 88,0 |
| 0809 10 00 | HR | 90,0 |
| | TR | 200,7 |
| | XS | 103,5 |
| | ZZ | 131,4 |
| 0809 20 95 | TR | 276,4 |
| | ZZ | 276,4 |
| 0809 30 | TR | 134,2 |
| | ZZ | 134,2 |

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

# COMMISSION REGULATION (EC) No 616/2009

## of 13 July 2009

## implementing Council Directive 2005/94/EC as regards the approval of poultry compartments and other captive birds compartments with respect to avian influenza and additional preventive biosecurity measures in such compartments

**(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC [1], and in particular Article 3, and Articles 34(4) and 63(1) thereof,

Whereas:

(1) In 2004, the World Organisation for Animal Health (OIE) introduced the concept of compartmentalisation in the chapter on zoning and regionalisation of its Terrestrial Animal Health Code [2] (the Code).

(2) The Code describes in Chapter 4.3 zoning and compartmentalisation as 'procedures implemented by a country under the provisions of this chapter with a view to defining subpopulations of distinct health status within its territory for the purpose of disease control and/or international trade.' Although spatial considerations and good management play important roles in the application of both concepts, zoning applies to an animal subpopulation defined primarily on a geographical basis (using natural, artificial or legal boundaries), whereas compartmentalisation applies to an animal subpopulation defined primarily by management and husbandry practices related to biosecurity.

(3) In addition, Chapter 4.4 on the application of compartmentalisation provides a structured framework for the application and recognition of compartments within countries. A compartment may consist of several establishments and can be approved for a defined animal disease(s), based upon a detailed and documented biosecurity plan drawn up and implemented for the disease(s) concerned. The initial approval of a compartment should preferably take place in a disease-free country, territory or zone, before an outbreak of the specific disease(s) occurs. This is particularly important in the case of highly contagious diseases, such as highly pathogenic avian influenza. In the event of an outbreak, compartmentalisation may be used to facilitate trade.

(4) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on A new Animal Health Strategy for the European Union (2007 to 2013) where 'Prevention is better than cure' [3] (the new animal health strategy) provides direction for the development of an animal health policy for the period from 2007 to 2013. The new animal health strategy aims to put greater focus on precautionary measures, disease surveillance, controls and research, in order to reduce the incidence of animal disease and minimise the impact of outbreaks when they do occur.

(5) Biosecurity plays an important role in the new animal health strategy. In addition, compartmentalisation would encourage farmers in the Community to apply biosecurity measures as compartmentalisation would facilitate safe trade and so present clear advantages for farmers while at the same time prevent animal diseases.

(6) In that respect, this Regulation should lay down rules for the approval, suspension and withdrawal of approval of compartments in respect of avian influenza. Such rules should take the Code into account in the interests of a consistent approach to combating the spread of avian influenza while considering the distinct health status of approved compartments.

(7) Directive 2005/94/EC sets out certain preventive measures relating to the surveillance and the early detection of avian influenza and the minimum control measures and movement restrictions to be applied in the event of an outbreak of that disease in poultry or other captive birds. Certain of those measures are to be applied in poultry compartments or in other captive bird compartments, as defined in that Directive.

(8) Directive 2005/94/EC provides a definition of poultry compartments and other captive birds' compartments and also provides that additional biosecurity measures may be applied in those compartments in order to prevent the spread of avian influenza.

[1] OJ L 10, 14.1.2006, p. 16.

[2] http://www.oie.int/eng/normes/mcode/en_sommaire.htm (Terrestrial Animal Health Code 2008).

[3] COM 539(2007) final.

(9) Directive 2005/94/EC provides that Member States are to carry out surveillance programmes in order to detect the prevalence of infections with avian influenza virus subtypes H5 and H7 in different species of poultry. For that purpose, compulsory surveillance programmes for avian influenza are annually approved in Member States. The approval of compartments in a Member State should therefore be subject to the approval of the national surveillance programme of the concerned Member State.

(10) Commission Decision 2006/437/EC of 4 August 2006 approving a Diagnostic Manual for avian influenza as provided for in Council Directive 2005/94/EC [1], lays down diagnostic procedures, sampling methods and criteria for the evaluation of the results of laboratory tests for the confirmation of an outbreak of avian influenza. In the interests of consistency of Community legislation in this area, those procedures and methods should be followed in the framework of a compartment.

(11) In order to facilitate the use of procedures by electronic means between Member States, and to ensure transparency and comprehensibility, it is important that information on the approved compartments, and on any granting, suspension or withdrawal of approval is made available in the most efficient way throughout the Community. The Member States should therefore establish Internet-based information pages containing such information and the Commission's website should display links to those pages.

(12) 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:

CHAPTER I

**SUBJECT MATTER, SCOPE AND DEFINITIONS**

*Article 1*

**Subject matter and scope**

This Regulation lays down rules for approval by the Member States of poultry compartments, and other captive birds compartments, in relation to avian influenza (hereinafter referred to as compartments), and provides for additional preventive biosecurity measures to be implemented in such compartments to grant them a distinct health status in relation to avian influenza.

*Article 2*

**Definitions**

For the purposes of this Regulation, the following definitions apply:

1. 'biosecurity plan' means all the biosecurity measures being implemented at holding level;

2. 'common biosecurity management system' means:

   (a) the common rules governing the functioning of a compartment; and

   (b) the overall biosecurity measures implemented in all the holdings comprising the compartment in accordance with their biosecurity plans;

3. 'compartment manager' means the person formally responsible for the compartment, in particular in relation to Articles 3, 4 and 5, and including:

   (a) supervising all actions carried out in the compartment relating to the common biosecurity management system, in particular for the implementation and monitoring of that system;

   (b) supervising the implementation of the holdings' biosecurity plans by the poultry or other captive birds' owners or keepers; and

   (c) liaising with the competent authority;

4. 'exit holding' means a holding from which poultry or other captive birds or their day-old chicks or hatching or table eggs (hereafter referred to as 'commodities'), are destined to be moved outside of the compartment;

5. 'supplier holding' means a holding from which the commodities are destined for an exit holding or any other holding within a compartment;

6. 'all involved parties' means compartment managers, business operators including food and feed business operators as defined in Article 3(3) and (6) of Regulation (EC) No 178/2002 of the European Parliament and of the Council [2], animal owners and keepers, pharmaceutical producers, or other industries delivering commodities to, or providing services for, the compartment.

[1] OJ L 237, 31.8.2006, p. 1.

[2] OJ L 31, 1.2.2002, p. 1.

CHAPTER II

**APPROVAL OF COMPARTMENTS**

*Article 3*

**Applications for the approval of compartments**

1. Voluntary applications for the approval of compartments (hereinafter referred to as applications) shall be submitted to the competent authority by the compartment manager.

2. The application shall contain the following information:

(a) the name of the compartment manager, his or her qualifications and position, contact details and the address of the compartment;

(b) a detailed description of the compartment, as set out in Part 1 of the Annex;

(c) a description of the common biosecurity management system and of the biosecurity plans of the holdings comprising the compartment, as set out in Part 2 of the Annex;

(d) detailed information on the specific measures, criteria and requirements for disease surveillance, in particular specific protection and surveillance for avian influenza, as set out in Part 3 of the Annex.

*Article 4*

**Granting approval of compartments**

1. The initial approval of a compartment shall only be granted by the competent authority for compartments which are situated in the territory, or part of the territory of a Member State, where no restrictions apply in relation to avian influenza, pursuant to Community legislation.

The initial approval of a compartment shall only be granted in a Member State whose national surveillance programme in order to detect the prevalence of infections with avian influenza virus subtypes H5 and H7 in different species of poultry, has been approved.

2. Before granting approval for a compartment, the competent authority shall ensure that in the compartment:

(a) specific protection and surveillance for avian influenza has been carried out for a period of at least six months prior to the date of application, as required by Part 3 of the Annex (including at least one testing procedure as required in point 4 of Part 3 of the Annex), and the presence of avian influenza has not been detected in any of the holdings comprising the compartment during that period;

(b) where appropriate, vaccination plans are carried out in accordance with Community legislation;

(c) the information submitted in accordance with Article 3(2) is complete and accurate;

(d) a common biosecurity management system, as set out in point 1 of Part 2 of the Annex, has been implemented and has shown to be sufficient to ensure a distinct health status with respect to avian influenza for the poultry or other captive birds population of the compartment;

(e) an official on-site control has been carried out with favourable results with respect to points (a) to (d);

3. The compartment shall have only one name and be granted only one approval number.

4. The competent authority shall ensure that following the granting of approval of a compartment, it is listed without delay on the list of approved compartments on the Internet-based information page provided for in Article 9(1) with detailed information concerning the location of the holdings comprising the compartment and whether they are exit or supplier holdings (list of approved compartments).

CHAPTER III

**CONDITIONS FOR THE RETENTION OF APPROVAL OF COMPARTMENTS**

*Article 5*

**Responsibilities and duties of the compartment manager**

Following the grant of approval of a compartment, the compartment manager shall:

1. supervise and monitor the compartment in order to ensure that it continues to comply with the information submitted in accordance with Article 3(2) and the criteria and requirements set out in the Annex; in particular such information must be kept up-to-date and made available to the competent authority on request;

2. ensure that disease surveillance activities, in particular surveillance for avian influenza, are carried out according to the common biosecurity management system and each biosecurity plan of the holdings comprising the compartment and that:

   (a) an early warning system is in place for the detection of the presence of avian influenza; and sampling and diagnostic tests are carried out in accordance with Decision 2006/437/EC and Part 3 of the Annex to this Regulation;

(b) surveillance plans as set in point 4 of Part 3 of the Annex are updated in the case of the identification of an increased risk of the introduction of avian influenza;

(c) all avian influenza diagnostic tests are carried out in laboratories officially approved for that purpose by the competent authority; information on the surveillance and results are made available to the competent authority;

(d) any inconclusive or positive results of the surveillance in the compartment are immediately reported to the competent authority, so that the related samples can be sent for confirmation to the national reference laboratory or Community reference laboratory for avian influenza;

3. ensure that any vaccination applied is carried out according to the common biosecurity management system and each biosecurity plan of the holdings comprising the compartment and that vaccination plans and procedures are made available to the competent authority on request;

4. organise regular internal or external audits to guarantee that all biosecurity measures, surveillance activities and the traceability system are effectively implemented in the compartment and keep the results of such audits, including those carried out in the framework of a quality assurance system, so that they are available to the competent authority on request;

5. immediately inform the competent authority if:

(a) the compartment no longer complies with the information submitted in accordance with Article 3(2) or the criteria and requirements set out in the Annex;

(b) the common biosecurity management system or a biosecurity plan has been amended or adapted to the epidemiological situation, including when a holding is added or withdrawn from the compartment.

*Article 6*

**Responsibilities and duties of the competent authority**

1. The competent authority shall ensure that official on-site risk-based controls of compartments are carried out in order to verify whether they continue to comply with the information submitted in accordance with Article 3(2) and the criteria and requirements set out in the Annex (controls).

2. Controls shall be carried out at intervals based on:

(a) the epidemiological situation inside and outside of the compartment, in particular in relation to avian influenza;

(b) information concerning any amendments or adaptations to the common biosecurity management system or biosecurity plans of the holdings comprising the compartment, as provided for in Article 5(5)(b).

3. The competent authority shall be responsible for any certification attesting that commodities come from an approved compartment.

CHAPTER IV

**SUSPENSION OR WITHDRAWAL OF APPROVAL OF COMPARTMENTS**

*Article 7*

**Suspension of approval of compartments**

1. If a control, or the epidemiological information related to the compartment shows that it no longer complies with the information submitted in accordance with Article 3(2), or the criteria and requirements set out in the Annex, the competent authority shall immediately suspend the approval of the compartment concerned and the compartment manager shall ensure that immediate action is taken to correct any such non-compliance.

2. Following the suspension of the approval of a compartment, the competent authority shall suspend any certification attesting that the commodities come from an approved compartment.

3. Where the approval of a compartment has been suspended, the competent authority shall not lift the suspension until it has verified that corrective action has been launched within 30 days of the date of the suspension and a subsequent control has been carried out with favourable results.

*Article 8*

**Withdrawal of approval of compartments**

1. The competent authority shall withdraw the approval of a compartment where, following suspension of the compartment in accordance with Article 7(1), the subsequent control in accordance with Article 7(3) demonstrates that:

(a) the compartment continues not to comply with the information submitted in accordance with Article 3(2) or the criteria and requirements set out in the Annex; or

(b) an outbreak of avian influenza occurred in the compartment.

2. Following the withdrawal of an approval of a compartment, the competent authority shall:

(a) stop any certification attesting that commodities come from an approved compartment;

(b) delete the name of the compartment from the list of approved compartments.

3. Following the deletion of the name of a compartment from the list of approved compartments, it may only be restored following a new application in accordance with Chapter II.

CHAPTER V

**INTERNET-BASED INFORMATION PAGE AND FINAL PROVISIONS**

*Article 9*

**Internet-based information page**

1. Member States shall:

(a) establish a list of approved compartments with the information required by Article 4(3) and (4);

(b) establish an Internet-based information page to make the list of approved compartments electronically available;

(c) communicate the Internet address of the Internet-based information pages to the Commission;

(d) keep their Internet-based information page updated to take into account without delay any new approvals or withdrawals of approval of compartments;

2. The Commission shall assist the Member States in making such information available to the public by providing the Internet address of its website which shall display national links to Internet-based information pages.

*Article 10*

**Entry into force**

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

It shall apply from 1 October 2009.

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

Done at Brussels, 13 July 2009.

*For the Commission*
Androulla VASSILIOU
*Member of the Commission*

*ANNEX*

## CRITERIA AND REQUIREMENTS FOR COMPARTMENTS

PART 1

### Description of the compartment as referred to in Article 3(2)(b)

The description of the compartment as referred to in Article 3(2)(b) shall be based on a site map(s) of the compartment showing its demarcations, indicating the precise location of all its components including the holdings and their premises, and all related functional units, such as feed processing or storage facilities, and other material storage facilities.

Sufficient information must be included in the application in order to provide a detailed description of the compartment, in particular:

1. Information on the infrastructural factors and their contribution to an epidemiological separation between the poultry and other captive birds in the compartment and animal populations with a different health status, including:

   (a) a description of the type of activity and the commodities produced in the compartment, including the total capacities of the premises and the number of poultry or other captive birds present;

   (b) a flow chart clearly indicating in detail all activities carried out in the compartment, and the responsibilities, roles and interrelations of all involved parties;

   (c) a description of the functional interactions between the holdings comprising the compartment, including a diagram of all premises showing their links to one another;

   (d) a description of the animal and animal product transport means, their usual routes, and cleaning and parking places.

2. Information on the epidemiological status regarding avian influenza and on the risk factors including the following elements:

   (a) the epidemiological history of the holdings comprising the compartment, and in particular their health status and any information in relation to avian influenza;

   (b) the movements into, out of, or within the compartment (inputs, outputs), such as movements of persons, commodities, other animals, products of animal origin or other products in contact with animals, transport vehicles, equipment, animal feed, water supply and drainage;

   (c) the presence of other poultry and other captive birds holdings in the vicinity of the compartment, including density (such as breeding or fattening farms, backyard farms, markets, collection centres, slaughterhouses, zoos);

   (d) the environmental risk factors such as waterways, wildlife resting and mixing places (including migratory routes of wild birds), the presence of rodents, the historical presence of the avian influenza agent in the environment;

   (e) the risk factors and potential pathways for the entry into and spread of avian influenza within the compartment in accordance with Community legislation and/or standards and guidelines of the World Organisation for Animal Health (OIE);

   (f) the early warning system in place to inform the competent authority of findings of any risk factors and potential pathways as referred to in point (e).

PART 2

### Description of the common biosecurity management system and of the biosecurity plans, as referred to in Article 3(2)(c)

1. The common biosecurity management system shall include at least the following elements:

   (a) good animal hygiene practices;

   (b) a traceability system for all movements between the holdings comprising the compartment and for all inputs and outputs; the traceability system must be continuously documented and be available to the competent authority at all times;

(c) a common plan of hazard analysis and critical control points (HACCP plan);

(d) the biosecurity plan(s) of the holdings comprising the compartment and an evaluation of their effectiveness in accordance with a defined level of risk.

2. The biosecurity plans of the holdings under the common biosecurity management system shall include at least the following elements:

(a) a documented implementation system of a staff hygiene plan, including general and specific hygienic practices, general and specific training for permanent and temporary staff and the procedure for control of that hygiene plan, including a rule that staff must (i) not personally keep poultry or other birds nor (ii) have close contact with poultry or other birds other than those of the compartment for a period of at least 72 hours before entering the holding; a shorter period may be required in case of urgent need of specific staff, but it must in no event be less than 24 hours and the procedure mitigating the risk must be described in the biosecurity plan;

(b) products and personnel flows, described on a diagram of all the premises of the holding with colour coded levels of biosecurity; there must be a hygiene barrier with a changing zone, including where appropriate showers, with separated clean and dirty areas at all entry points to the premises;

(c) a plan regulating the movements of any person entering or leaving the holding, distinguishing authorised and non-authorised persons or visitors, including a description of the physical barriers (such as hedges, fences, or any other barrier that clearly defines the perimeters of the premises of the holding), signs, locked gates and entrances to buildings; external visitors (including auditors or inspectors) must be required not to have had any contact with poultry or other birds for a period of at least 72 hours before entering the holding; a longer period may be required depending on risk factors (such as visitors coming from a protection or surveillance zone); a shorter period may be required for the official veterinarians or in case of urgent need of external specific intervention (such as a consultant or veterinarian), but it must in no event be less than 24 hours and the procedure mitigating the risk must be described in the biosecurity plan;

(d) a plan regulating and recording the movements of vehicles into, out of or between the holdings, including private and delivery vehicles (such as for feed, animals, or other supplies); a record of all vehicle movements must be available;

(e) an animal and product traceability system, enabling the tracing of all movements into, out of or between the holdings (inputs, outputs);

(f) a protocol to prevent contamination, including contamination through the supply, transportation, storage, delivery and disposal of:

(i) packing materials (such as the use of new or disinfected packing materials);

(ii) bedding materials (such as an appropriate storage quarantine time or a disinfection of bedding materials);

(iii) feed (such as the use of enclosed systems of feed);

(iv) water (such as an internal water treatment system);

(v) animal by-products such as carcases, manure, dirty/cracked eggs or dead in shell eggs;

(g) a cleaning and disinfection plan of the holding, its equipment and of materials used; a specific protocol on vehicle cleansing and disinfection must be available;

(h) a pest control plan, including rodents and other wild animals, providing for physical barriers and measures in case of findings of their activity;

(i) a HACCP plan relating to avian influenza, developed following the seven steps (namely hazards analysis, list of the critical control points (CCP), critical limits, monitoring procedures, corrective actions, verification and recordings), and which shall include at least the following elements:

(i) data on the production of poultry or other captive birds and other data in relation to defined periods (morbidity and mortality history, details of medications used, birds hatched, data relating to animal feed and water consumption);

(ii) information relating to the clinical checks and sampling plans for active and passive surveillance and screening analyses (frequencies, methods, results);

(iii) a register of visitors to the holding, in sufficient detail to be able to trace and contact any visitor;

(iv) information concerning any vaccination programmes applied, including the type of vaccine used and the frequency and dates of administration;

(v) detailed information records on the corrective actions performed and the related critical control points not complied with.

All involved parties shall be fully aware of and follow the rules of the HACCP plan, which is the management tool of the compartment that guarantees biosecurity measures and management practices.

The HACCP plan shall take into consideration the list of hazards and pathways which must be identified in advance. It shall be adaptable to the level of risk and include described actions to be taken in the case of increased risk, such as frequency of sampling.

3. Corrective actions and updates

The common biosecurity management system and the biosecurity plans shall describe whether a particular breach is to be considered as a minor or major breach, and the corrective actions to be taken.

The biosecurity plans shall be updated according to the level of risk, in particular where an outbreak of avian influenza is officially suspected or confirmed in the Member State or in the region or zone in which the compartment is situated (such as placing restrictions on vehicles, materials, animals and/or personnel movements, or implementing additional disinfection procedures).

PART 3

**Specific protection and surveillance for avian influenza**

1. An adequate physical bird proofing system shall be in place to prevent contact with wild birds and to prevent any contamination of feed, water and litter. The direct environment of the holdings shall not be attractive for wild birds.

2. Control of inputs and outputs

(a) The diagram referred to in point (1)(a) of Part 1 shall indicate the location of all types of poultry or other captive birds, including the pure line breeders, the great-grandparents, grandparents, parents and production animals, as well as flocks, hatcheries, rearing sites, laying sites, trial sites, egg stores and all places where eggs or birds are kept; it shall indicate the flows of commodities between those locations.

(b) A detailed protocol shall regulate the movements of poultry or other captive birds, their eggs and other related products; poultry or other captive birds, their eggs and other related products entering any holding on the compartment must come from a holding having the same health status as regards avian influenza and/or be checked to ensure that they present no risk of introduction of avian influenza.

(c) Poultry or other captive birds and hatching eggs moved into or within the compartment shall be identified in such a way that their history can be audited; flocks and/or eggs shall have the proper documented identification.

(d) In the case of a multi-age site, a written protocol shall regulate the addition and removal of poultry or other captive birds, including the washing and disinfection of catching crates.

3. The same compartment cannot comprise holdings of poultry and holdings of other captive birds. The same holding cannot comprise different poultry species, except for hatcheries.

4. In the compartment, the surveillance plan under the responsibility of the compartment manager shall include continuous active surveillance that shall be carried out on 20 blood samples taken at random from poultry, or other captive birds, of the same production unit for serological testing for avian influenza:

   (a) at least every six months during the production period where no outbreaks of highly pathogenic avian influenza (HPAI) in poultry or other captive birds, have been confirmed during the preceding six months in the territory of the Member State;

   (b) at least every three months where an outbreak of HPAI in poultry or other captive birds, has been confirmed during the preceding six months in the territory of the Member State;

   (c) when the compartment is located within an area under movement restrictions due to an outbreak of avian influenza pursuant to Community legislation, within one week following the date of the outbreak and at least every 21 days; in addition, and without prejudice to any specific provisions of Community legislation, the surveillance plan shall be updated and include enhanced clinical surveillance and active virological surveillance, carried out within one week following the date of the outbreak and at least every 21 days thereafter, on:

      (i) a sample of 20 tracheal/oropharyngeal swabs and 20 cloacal swabs taken at random from poultry or other captive birds of the same production unit; and

      (ii) samples taken on five sick or dead birds if found.

5. The early warning system provided for in Article 5(2)(a) must be based upon a written protocol which specifies the reporting procedures. It shall, in particular, be adapted to the different species of poultry or other captive birds and their respective susceptibility to avian influenza, and it shall:

   (a) prescribe action levels, such as mortality equal or higher to a defined threshold, significant drops in feed and/or water consumption and/or in egg production, behavioural changes or other relevant indicators;

   (b) describe the actions to be taken;

   (c) include a list of the responsible personnel to be notified.

II

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

DECISIONS

# CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

## DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

**of 8 July 2009**

**appointing a judge to the Court of First Instance of the European Communities**

(2009/541/EC, Euratom)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 224 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 140 thereof,

Whereas, pursuant to Articles 5 and 7, in conjunction with Article 47, of the Protocol on the Statute of the Court of Justice and as a result of the resignation of Mr Daniel ŠVÁBY, a judge should be appointed to the Court of First Instance of the European Communities for the remainder of Mr Daniel ŠVÁBY's term of office, which ends on 31 August 2010,

HAVE DECIDED AS FOLLOWS:

*Article 1*

Mr Juraj SCHWARCZ is hereby appointed judge to the Court of First Instance of the European Communities for the period from 7 October 2009 to 31 August 2010.

*Article 2*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 8 July 2009.

*The President*

C. DANIELSSON

# DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

## of 8 July 2009

## appointing a judge to the Court of Justice of the European Communities

(2009/542/EC, Euratom)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 223 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 139 thereof,

Whereas, pursuant to Articles 5 and 7 of the Protocol on the Statute of the Court of Justice and as a result of the resignation of Mr Peter JANN, a judge should be appointed to the Court of Justice of the European Communities for the remainder of Mr Peter JANN's term of office, which ends on 6 October 2012,

HAVE DECIDED AS FOLLOWS:

*Article 1*

Ms Maria BERGER is hereby appointed judge to the Court of Justice of the European Communities for the period from 7 October 2009 to 6 October 2012.

*Article 2*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 8 July 2009.

*The President*

C. DANIELSSON

# COMMISSION

## COMMISSION DECISION

**of 13 August 2008**

**establishing the ecological criteria for the award of the Community eco-label to outdoor paints and varnishes**

*(notified under document number C(2008) 4452)*

**(Text with EEA relevance)**

(2009/543/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme [1], and in particular the second subparagraph of Article 6(1) thereof,

Whereas:

(1) Under Regulation (EC) No 1980/2000 the Community eco-label may be awarded to a product possessing characteristics which enable it to contribute significantly to improvements in relation to key environmental aspects.

(2) Regulation (EC) No 1980/2000 provides that specific eco-label criteria are to be established according to product groups.

(3) It is appropriate to adopt a new decision establishing ecological criteria for the award of the Community eco-label to outdoor paints and vanishes.

(4) The ecological criteria, as well as the related assessment and verification requirements, should be valid for a period of four years.

(5) The measures provided for in this Decision are based on the draft criteria developed by the European Union Ecolabelling Board established under Article 13 of Regulation (EC) No 1980/2000.

(6) The measures provided for in this Decision are in accordance with the opinion of the committee instituted by Article 17 of Regulation (EC) No 1980/2000,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The product group 'outdoor paints and varnishes' shall comprise outdoor decorative and protective paints and varnishes, woodstains and related products for use on buildings and outdoor furniture, floors and fencing in accordance with paragraph 2, for use by do-it-yourself and professional users; and that are primarily developed for outdoor use and marketed as such.

This includes, inter alia, floor coatings and floor paints; products which are tinted by distributors at the request of amateur or professional decorators; tinting systems; decorative paints in liquid or paste formulas which may have been preconditioned, tinted or prepared by the manufacturer to meet consumers needs, including wood paints, wood and decking stains, masonry coatings and metal finishes (excluding anticorrosion finishes and primers) as well as primers (and undercoats) of such product systems.

2. 'Paint' means a pigmented coating material, in liquid or in paste or powder form, which when applied to a substrate, forms an opaque film having protective, decorative or specific technical properties.

[1] OJ L 237, 21.9.2000, p. 1.

'Varnish' means a clear coating material which when applied to a substrate forms a solid transparent film having protective, decorative or specific technical properties.

After application, the paint or varnish dries to a solid, adherent and protective coating.

Decorative paints and varnishes are paints and varnishes that are applied to buildings, their trim and fittings, as well as outdoor furniture, floors and fencing for decorative and protective purposes. They are applied *in situ*. Their function is decorative whilst providing a protective role.

Woodstains (lasures) are coatings producing a transparent or semi-transparent film for decoration and protection of wood against weathering, which enables maintenance to be carried out easily.

Masonry coatings are coatings that produce a decorative and protective film for use on concrete, (paintable) brickwork, blockwork, rendering, calcium silicate or fibre-reinforced cement. They are intended principally for exterior use, but may also be used internally, or on soffits and balcony ceilings.

'Tinting systems' is a method of preparing coloured paints by mixing a 'base' with coloured tints.

3. The following products are not included in the product group:

(a) anti-corrosion coatings;

(b) anti-fouling coatings;

(c) wood preservation products;

(d) coatings for particular industrial and professional uses, including heavy-duty coatings;

(e) any product primarily developed for indoor use and marketed as such.

*Article 2*

1. In order to be awarded the Community eco-label under Regulation (EC) No 1980/2000 and subject to paragraphs 2 and 3 of this Article, paints and varnishes must fall within the product group 'outdoor paints and varnishes' as defined in Article 1, and must comply with the ecological criteria set out in the Annex to this Decision.

2. Two-pack reactive performance coatings for specific end uses shall comply with the following conditions:

(a) both components thereof must individually comply with the ecological criteria set out in the Annex (with the exception of the criterion for Volatile Organic Compounds);

(b) they must be accompanied by information explaining that the individual components must not be used separately or mixed with other products;

(c) the final ready-for-use product, however, must also meet the ecological criteria, including the criterion for VOC.

3. Coatings marketed for both indoor and outdoor use must satisfy both the criteria set out in this Decision for outdoor paints and varnishes and the criteria set out in Commission Decision 2009/544/EC [1] for indoor paints and varnishes.

*Article 3*

The ecological criteria for the product group 'outdoor paints and varnishes', as well as the related assessment and verification requirements, shall be valid four years as from the date of entry into force of this Decision.

*Article 4*

For administrative purposes the code number assigned to the product group 'outdoor paints and varnishes' shall be '33'.

*Article 5*

This Decision is addressed to the Member States.

Done at Brussels, 13 August 2008.

*For the Commission*
Olli REHN
*Member of the Commission*

[1] See page 39 of this Official Journal.

*ANNEX*

## A. **FRAMEWORK**

**The aims of the criteria**

These criteria aim in particular at:

— the efficient use of the product and the minimisation of waste,

— reducing the environmental and other risks (such as tropospheric ozone) by reducing solvent emissions,

— reducing the discharges of toxic or otherwise polluting substances into waters. The criteria are set at levels that promote the labelling of exterior paints and varnishes which have a lower environmental impact.

**Assessment and verification requirements**

The specific assessment and verification requirements are indicated within each criterion.

Where the applicant is required to provide declarations, documentation, analyses, test reports, or other evidence to show compliance with the criteria, it is understood that these may originate from the applicant and/or his supplier(s) and/or their supplier(s), etc. as appropriate.

Where appropriate, test methods other than those indicated for each criterion may be used if their equivalence is accepted by the competent body assessing the application.

Where appropriate, competent bodies may require supporting documentation and may carry out independent verifications.

The competent bodies are recommended to take into account the implementation of recognised environmental management schemes, such as EMAS or EN ISO14001, when assessing applications and monitoring compliance with the criteria (*Note:* it is not required to implement such management schemes).

Where ingredients are referred to in the criteria, this includes substances and preparations. The definitions of 'substances' and 'preparations' are given in the REACH Regulation (Regulation (EC) No 1907/2006 of the European Parliament and of the Council [1]).

The exact formulation of the product should be provided to the competent body for all ingoing substances that are used by the applicant. Any substance, including impurities, present in concentrations greater than 0,01 % (m/m) should be reported unless a lower concentration is specified elsewhere in the criteria.

## B. **ECOLOGICAL CRITERIA**

All criteria except criterion 3 concerning VOC limits shall apply to the paint or varnish in its packaging. In line with the Directive 2004/42/EC of the European Parliament and of the Council [2] the VOC limits relate to the ready-to-use product and so the maximum VOC content should be calculated based on any recommended additions such as colourants and/or thinners. For this calculation, data supplied by the raw material suppliers regarding solids content, VOC content and product density will be required.

[1] OJ L 396, 30.12.2006, p. 1.
[2] OJ L 143, 30.4.2004, p. 87.

Criteria 1 and 2 apply only to white paints and light coloured paints, (including finishes, primers, undercoats and/or intermediates).

For tinting systems, criteria 1 and 2 apply only to the white (the base containing the most TiO2). In cases where the white base is unable to achieve the requirement of at least 6 $m^2$ per litre at a hiding power of 98 % according to criterion 7(a), the criteria shall be met after tinting to produce the standard colour RAL 9010.

Criteria 1 and 2 do not apply to transparent coatings.

1. **White pigments**

**White pigment content** (white inorganic pigments with a refractive index higher than 1,8): Paints shall have a white pigment content lower or equal to 38 g per $m^2$ of dry film, with 98 % opacity. This requirement does not apply to varnishes and woodstains.

*Assessment and verification:* The applicant shall either provide a declaration of non-use or provide the content of white pigments and the spreading rate, together with the detailed calculation showing compliance with this criterion.

2. **Titanium dioxide**

**Titanium dioxide:** The emissions and discharges of wastes from the production of any titanium dioxide pigment used shall not exceed the following (as derived from the Reference Document on Best Available Technology for the Manufacture of Large Volume Inorganic Chemicals (BREF) (August 2007)):

— SOx emissions (expressed as SO2): 266 mg per $m^2$ of dry film (98 % opacity),

— sulphate wastes: 19 g per $m^2$ of dry film (98 % opacity),

— chloride wastes: 3,9, 6,8 and 12,5 g per $m^2$ of dry film (98 % opacity) respectively for natural rutile, synthetic rutile and slag ores.

*Assessment and verification*: The applicant shall either provide a declaration of non-use or provide the supporting documentation indicating the respective levels of emissions and discharges of wastes for these parameters, the titanium dioxide content of the product, the spreading rate, together with the detailed calculations showing compliance with this criterion.

3. **Volatile organic compounds (VOC)**

**VOC** content shall not exceed:

| Product Classification (Directive 2004/42/EC) | VOC limits (g/l including water) |
|---|---|
| Coatings for exterior walls of mineral substrate | 40 |
| Exterior trim and cladding paints for wood and metal including undercoats | 90 |
| Exterior trim varnishes and wood-stains, including opaque woodstains | 90 |
| Exterior minimum build woodstains | 75 |
| Primers (for exterior use) | 15 |
| Binding Primers (for exterior use) | 15 |
| 1 Pack performance coatings | 100 |
| Two-pack reactive performance coatings for specific end use such as floors | 100 |

In this context volatile organic compounds (VOC) means any organic compounds having an initial boiling point less than or equal to 250 °C measured at a standard pressure of 101,3 kPa as defined Directive 2004/42/EC. The subcategories for paints and varnishes of the Directive are used for defining VOC limits. Only the categories relevant to outdoor coatings are displayed here.

*Assessment and verification:* The applicant shall provide a declaration of compliance with this criterion. For all products the applicant shall indicate the VOC content.

4. **Volatile aromatic hydrocarbons (VAH)**

Volatile aromatic hydrocarbons shall not be directly added to the product before or during tinting (where applicable); however ingredients containing VAH may be added up to such a limit that the VAH content in the end product will not exceed 0,1 % (m/m).

In this context volatile aromatic hydrocarbon (VAH) means any organic compound, as defined in Directive 2004/42/EC, having an initial boiling point less than or equal to 250 °C measured at a standard pressure of 101,3kPa and having at least one aromatic nucleus in its developed structural formula.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion stating that VAH has not been added other than in prefabricated ingredients and where applicable declarations from the suppliers of the ingredient confirming their VAH content.

5. **Heavy metals**

The following heavy metals or their compounds shall not be used as an ingredient of the product or tint (as applicable) (whether as a substance or as part of any preparation used): cadmium, lead, chromium VI, mercury, arsenic, barium (excluding barium sulphate), selenium, antimony.

Cobalt shall also not be added as an ingredient with the exception of cobalt salts used as a siccative in alkyd paints. These may be used up to a concentration not exceeding 0,05 % (m/m) in the end product, measured as cobalt metal. Cobalt in pigments is also exempted from this requirement.

It is accepted that ingredients may contain traces of these metals up to 0,01 % (m/m) deriving from impurities in the raw materials.

*Assessment and verification:* The applicant shall provide a declaration of compliance with this criterion as well as declarations from ingredient suppliers (where applicable).

6. **Dangerous substances**

(a) **The product:** The product shall not be classified as very toxic, toxic, dangerous to the environment, carcinogenic, toxic for reproduction, harmful, corrosive, mutagenic or irritant (only where this is caused by the presence of ingredients labelled with R43) in accordance with Directive 1999/45/EC of the European Parliament and of the Council [3] before or after tinting (where applicable).

*Assessment and verification:* The applicant shall provide a declaration of compliance with this criterion, together with a product material safety data sheet meeting the requirements of Annex II to REACH Regulation.

(b) **Ingredients (very toxic, toxic, carcinogenic, mutagenic, toxic for reproduction**): No ingredient including those used in tinting (if applicable) shall be used that is assigned or may be assigned at the time of application any of the following risk phrases (or combinations thereof):

— R23 (toxic by inhalation),

[3] OJ L 200, 30.7.1999, p. 1.

— R24 (toxic in contact with skin),

— R25 (toxic if swallowed),

— R26 (very toxic by inhalation),

— R27 (very toxic in contact with skin),

— R28 (very toxic if swallowed),

— R33 (danger of cumulative effects),

— R39 (danger of very serious irreversible effects),

— R40 (limited evidence of carcinogenic effect),

— R42 (may cause sensitisation by inhalation),

— R45 (may cause cancer),

— R46 (may cause heritable genetic damage),

— R48 (danger of serious damage to health by prolonged exposure),

— R49 (may cause cancer by inhalation),

— R60 (may impair fertility),

— R61 (may cause harm to the unborn child),

— R62 (possible risk of impaired fertility),

— R63 (possible risk of harm to the unborn child),

— R68 (possible risk of irreversible effects),

as laid down in Council Directive 67/548/EEC [4], and its subsequent amendments. Active ingredients used as preservatives in the formula and that are assigned any of the risk phrases R23, R24, R25, R26, R27, R28, R39 R40 or R48 (or combinations thereof) may nevertheless be used up to a limit of 0,1 % (m/m) of the total paint formulation.

[4] OJ 196, 16.8.1967, p. 1.

Alternatively, the Globally Harmonised System (GHS) of classification may be considered ([5]). In this case the ingredients, including those used in tinting (if applicable), classified as the following (or combinations thereof) shall not be used:

— Acute Toxicity (oral) — Category I, II, III,

— Acute Toxicity (dermal) — Category I, II, III,

— Acute Toxicity (inhalation) — Category I, II, III,

— Respiratory Sensitisation — Category I,

— Mutagenic Substances — Category I, II,

— Carcinogenic Substances — Category I, II,

— Substances Toxic for Reproduction — Category I, II,

— Specific Target Organ Systemic Toxicity (single exposure) — Category I, II,

— Specific Target Organ Systemic Toxicity (repeated exposure) — Category I, II,

as laid down in ST/SG/AC.10/30 ([6]) and revised in ST/SG/AC.10/34/Add.3 on the Globally Harmonised System of Classification and Labelling of Chemicals. Active ingredients used as preservers in the formula and that are assigned any of the following GHS categories may nevertheless be used up to a limit of 0,1 % (m/m) of the total paint formulation:

— Acute Toxicity (oral, dermal, inhalation) — I, II, III (only oral and dermal),

— Specific Target Organ Systemic Toxicity (single and/or repeated exposure) — I, II (or combinations thereof) and,

— Carcinogenicity category II.

Methyl Ethyl Ketoxime may be used in alkyd paints up to a limit of 0,3 % (m/m).

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion, together with a product material safety data sheet meeting the requirements of Annex II to REACH Regulation.

(c) **Ingredients (dangerous for the environment):** No ingredient shall exceed 2 % (m/m), including those used in tinting (if applicable), that is assigned or may be assigned at the time of application any of the following risk phrases:

— N R50 (very toxic to aquatic organisms),

([5]) On 27 June 2007, the European Commission adopted the 'Proposal for a Regulation of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, and amending Directive 67/548/EEC and Regulation (EC) No 1907/2006' (COM(2007) 355 final). For further information relating to the overlap between the existing system and GHS refer to Annex VII to Volume III of the proposal that has been adopted: http://ec.europa.eu/enterprise/reach/docs/ghs/ghs_prop_vol_iii_en.pdf

([6]) United Nations Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonised System of Classification and Labelling of Chemicals: http://www.unece.org/trans/main/dgdb/dgcomm/ac10rep.html

— N R50/53 (very toxic to aquatic organisms, may cause long-term adverse effects in the aquatic environment),

— N R51/53 (toxic to aquatic organisms, may cause long-term adverse effects in the aquatic environment),

— N R52/53 (harmful to aquatic organisms, may cause long-term adverse effects in the aquatic environment),

— R51 (toxic to aquatic organisms),

— R52 (harmful to aquatic organisms),

— R53 (may cause long-term adverse effects in the aquatic environment),

as laid down in Directive 67/548/EEC or Directive 1999/45/EC.

Alternatively, the Globally Harmonised System (GHS) of classification may be considered ([7]). In this case no ingredient shall exceed 2 % (m/m), including those used in tinting (if applicable), that is assigned or may be assigned at the time of application any of the following classifications:

Aquatic Toxicity categories (and combinations thereof):

— Acute I, II, III,

— Chronic I, II, III, IV,

as laid down in ST/SG/AC.10/30 and revised in ST/SG/AC.10/34/Add.3 on the Globally Harmonised System of Classification and Labelling of Chemicals.

In either case, the sum total of all ingredients that are assigned or may be assigned at the time of application any of these risk phrases (or combinations thereof) or GHS classifications shall not exceed 4 % (m/m).

This requirement does not apply to ammonia or akyl ammonia.

This requirement does not affect the obligation to fulfil the requirement set out in criterion 6(a) above.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion, together with a list of ingredients and material safety data sheets of each ingredient meeting the requirements of Annex II to REACH Regulation.

(d) **Alkylphenolethoxylates (APEOs)**: APEOS shall not be used in the product before or during tinting (if applicable).

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion.

([7]) See footnote 5.

(e) **Isothiazolinone compounds**: The content of isothiazolinone compounds in the product shall not exceed 0,05 % (m/m) before or after tinting (if applicable). For wood coatings isothiazolinone compounds shall not exceed 0,2 % (m/m). Likewise the content of the mixture of 5-chloro-2-methyl-2H-isothiazol-3-one (EC No 247-500-7) and 2- methyl-2H-isothiazol-3-one (EC No 220-239-6) (3:1) shall not exceed 0,0015 % (m/m).

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion, indicating the amounts (if used).

(f) Perfluorinated alkyl sulfonates (PFAS), perfluorinated carboxylic acids (PFCA) including Perfluorooctanoic Acid (PFOA) and related substances listed in the OECD 'Preliminary lists of PFOS, PFAS, PFOA, PFCA, related compounds and chemicals that may degrade to PFCA (as revised in 2007)' are not permitted in the product. The OECD list is provided in the Annex to this criteria document.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion.

(g) **Formaldehyde**: Free formaldehydes shall not be added. Formaldehyde donators may only be added in such quantities as will ensure that the resulting total content after tinting (if applicable) of free formaldehyde will not exceed 0,001 % (m/m).

*Assessment and verification:* The applicant shall provide a declaration of compliance with this criterion. In addition the applicant shall provide test results from raw materials suppliers using the VdL-RL 03 test method (VdL Guide-line03) 'In-can concentration of formaldehyde determined by the acetyl-acetone method' and calculations relating the data from these tests to the final product in order to indicate that the final maximum possible concentration of formaldehyde released by formaldehyde releasing substances is not higher than 0,001 % (m/m). Alternatively, formaldehyde resulting from formaldehyde donors can be measured in the end product based on High-performance liquid chromatography, by using a national standard or validated method as described in ISO/IEC 17025.

(h) **Halogenated Organic Solvents**: Notwithstanding criteria 6a, 6b and 6c, only halogenated compounds that at the time of application have been risk assessed and have not been classified with the risk phrases (or combinations thereof): R26/27, R45, R48/20/22, R50, R51, R52, R53, R50/53, R51/53, R52/53 and R59 in accordance with Directives 67/548/EEC and 1999/45/EC may be used in the product before or during tinting (if applicable).

*Assessment and verification:* The applicant shall provide a declaration of compliance with this criterion.

(i) **Phthalates**: Notwithstanding criteria 6a, 6b and 6c, only phthalates that at the time of application have been risk assessed and have not been classified with the phrases (or combinations thereof): R60, R61, R62, R50, R51, R52, R53, R50/53, R51/53, R52/53, in accordance with Directive 67/548/EEC and its amendments, may be used in the product before or during tinting (if applicable). Additionally DNOP (di-n-octyl phthalate), DINP (di-isononyl phthalate), DIDP (di-isodecyl phthalate) are not permitted in the product.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion.

7. **Fitness for use**

(a) **Spreading rate:** White paints and light-coloured paints (including finishes, primers, undercoats and/or intermediates) shall have a spreading rate (at a hiding power of 98 %) of at least 6 $m^2$ per litre of product.

For tinting systems, this criterion applies only to the white base (the base containing the most TiO2). In case the white base is unable to achieve the requirement of at least 6 $m^2$ per litre at a hiding power of 98 %, the criterion shall be met after tinting the white base to produce the standard colour RAL 9010. For all other bases used to produce tinted products — these are bases which as a rule contain less TiO2, which are unable to achieve the requirement of at least 6 $m^2$ per litre of product at a hiding power of 98 % — the criterion shall not apply. For paints that are a part of a tinting system, the applicant must advise the end-user on the product packaging and/or POS which shade or primer/undercoat (if possible carrying the European Eco-label) should be used as a basecoat before applying the darker shade.

Primers with specific blocking/sealing, penetrating/binding properties and primers with special adhesion properties for aluminium and galvanised surfaces shall have a spreading rate (at a hiding power of 98 %) of at least 6 $m^2$ per litre of product.

Elastomeric paints shall have a spreading rate (at a hiding power of 98 %) of at least 4 $m^2$ per litre of product.

This requirement does not apply to varnishes, woodstains, floor coatings, floor paints, undercoats, other adhesion primers or any other transparent coatings.

*Assessment and verification:* The applicant shall provide a test report using the method ISO6504/1 (Paints and varnishes — determination of hiding power — Part 1: Kubelka-Munk method for white and light-coloured paints) or 6504/3 (Part 3: determination of contrast ratio (opacity) of light-coloured paints at a fixed spreading rate), or (for paints specially designed to give a three-dimensional decorative effect and characterised by a very thick coat) the method NF T 30 073 (or equivalent). For bases used to produce tinted products not evaluated according to the abovementioned requirements, the applicant shall produce evidence that the end-user is advised to use a primer and/or grey (or other relevant shade) of undercoat before application of the product.

(b) **Resistance to water**: Varnishes, floor coatings and floor paints shall have a resistance to water, as determined by ISO 2812-3 such that after 24 hours' exposure and 16 hours' recovery no change of gloss or of colour occurs.

*Assessment and verification:* The applicant shall provide a test report using the method ISO 2812-3 (Paints and varnishes — determination of resistance to liquids — Part 3: Method using an absorbent medium).

(c) **Adhesion**: Masonry paints (excluding transparent primers) shall score a pass in the EN 24624 (ISO 4624) pull-off test for adhesion and floor coatings, floor paints and undercoats for concrete, wood and metal coatings shall score at least a 2 in the EN 2409 cross-cut method for adhesion. When carrying out EN 24624 where the cohesive strength of the substrate is less than the adhesive strength of the paint then this is considered a pass, otherwise the adhesion of the paint must be in excess of a pass value of 1,5MPa.

The applicant shall evaluate the primer and/or finish alone or both as part of a system (the system when tested shall concern products if possible labelled with the European Eco-label (with the exception of systems designed for metal surfaces)). When testing the finish alone this shall be considered the worst case scenario concerning adhesion.

*Assessment and verification*: The applicant shall provide a test report using the method EN ISO 2409 or EN 24624 (ISO 4624) as applicable.

(d) **Abrasion**: Floor coatings and floor paints shall have an abrasion resistance not exceeding 70 mg weight loss after 1 000 test cycles with a 1 000 g load and a CS10 wheel according to EN ISO 7784-2:2006.

*Assessment and verification:* The applicant shall provide a test report showing compliance with this criterion using the method EN ISO 7784-2:2006.

(e) **Weathering**: Masonry finish paints and wood and metal finishes including varnishes shall be exposed to artificial weathering in apparatus including fluorescent UV lamps and condensation or water spray according to 11507:2007. Masonry paints shall be exposed to test conditions for 1 000 hours, wood and metal finishes (including varnishes) shall be exposed to test conditions for 500 hours. Test conditions are: UVA 4h/60degC + humidity 4h/50degC.

Alternatively, wood finishes and wood varnishes may be exposed to weathering for 500 hours in the QUV accelerated weathering apparatus with cyclic exposure with UV(A) radiation and spraying according to EN 927-6.

The colour change of samples exposed to weathering shall not be greater than $\Delta E^* = 4$ and decrease in gloss for varnishes shall not be greater than 30 % of its initial value. The gloss shall be measured using ISO 2813. The criterion for colour change is not applicable to transparent varnishes and bases.

Chalking shall be tested using method EN ISO 4628-6:2007 on masonry finish coats and wood and metal finishes (where applicable) after the samples have been exposed to weathering. Coatings shall achieve a score of 1,5 or better (0,5 or 1,0) in this test. In the standard there are illustrated references.

The following parameters shall also be evaluated on masonry finish coats and wood and metal finishes after the samples have been exposed to weathering:

— Flaking according to ISO 4628-5:2003; flake density 2 or less, flake size 2 or less,

— Cracking according to ISO 4628-4:2003; crack quantity 2 or less, crack size 3 or less,

— Blistering according to ISO 4628-2:2003; blister density 3 or less, blister size 3 or less.

Due to the large number of possible tinting colours, these tests will be restricted to the base paint used.

*Assessment and verification*: The applicant shall provide test reports using either ISO11507:2007 according to the specified parameters or EN 927-6, or both (if relevant). Additionally the applicant shall provide test reports using EN ISO 4628-2, 4, 5, 6 where applicable. The applicant shall also provide a declaration that (where applicable) the colour change of the coating is within the parameter set in this document.

(f) **Water vapour permeability**: Where claims are made that exterior masonry and concrete paints are breathable the paint shall be classified as Class II (medium vapour permeability) or better according to the test method EN ISO 7783-2. Due to the large number of potential tinting colours, this criterion will be restricted to testing of the base paint; this requirement is not applicable to transparent primers.

*Assessment and verification*: The applicant shall provide a test report using methodology EN ISO 7783-2.

(g) **Liquid water permeability**: Where claims are made that exterior masonry and concrete paints are water repellent or elastomeric, the coating shall be classified as Class III (low liquid permeability) according to method DIN EN 1062-3:1999. Due to the large number of potential tinting colours, this criterion will be restricted to the testing of the base paint. All other masonry paints shall be classified as Class II (medium liquid permeability) or better according to the test method DIN EN 1062-3:1999.

*Assessment and verification:* The applicant shall provide a test report using methodology DIN EN 1062-3:1999.

(h) **Fungal resistance:** Where claims are made that masonry finish coatings have anti-fungal properties, the coating shall have a score of 2 or better (less than 10 % fungal coverage), as determined by method BS 3900:G6. Due to the large number of possible tinting colours, this criterion will be restricted to the testing of the base paint.

*Assessment and verification*: The applicant shall provide a test report using methodology BS 3900:G6.

(i) **Crack bridging:** Where claims are made that masonry (or concrete) paint has elastomeric properties, it shall be at least classified as A1 at 23 °C according to DIN EN 1062-7:2004. Due to the large number of potential tinting colours, this criterion will be restricted to the testing of the base paint.

*Assessment and verification*: The applicant shall provide a test report using methodology DIN EN 1062-7:2004.

(j) **Alkali resistance**: Masonry paints and primers shall show no noticeable damage when the coating is spotted for 24 hours with 10 % NaOH solution according to method ISO 2812-4:2007.The evaluation is done after 24 hours drying-recovery.

*Assessment and verification*: The applicant shall provide a test report using methodology ISO 2812-4:2007.

8. **Consumer information**

The following information shall appear on the packaging or attached to the packaging:

— the use, substrate and conditions of use for which the product is intended. This shall include advice on preparatory work, etc., such as correct substrate preparation, advice on outdoor use (where appropriate), or temperature,

— recommendations for cleaning tools and appropriate waste management (in order to limit water pollution). These recommendations shall be adapted to the type of product in question and field of application in question and may make use of pictograms if appropriate,

— recommendations concerning product storage conditions after opening (in order to limit solid waste), including safety advice if appropriate,

— for darker coatings for which criterion 7(a) does not apply, advice is given concerning the use of the correct primer or base paint (if possible carrying the European Ecolabel),

— text advising that unused paint requires specialist handling for safe environmental disposal and that it should not therefore be thrown away with household refuse or poured away. Advice regarding disposal and collection should be sought from the local authority,

— recommendations on preventive protection measures for the painter. The following text (or equivalent text): shall appear on the packaging or attached to the packaging:

For more information as to why this product has been awarded the Flower please visit the web-site: http://ec.europa.eu/environment/ecolabel.

*Assessment and verification:* A sample of the product packaging shall be provided on application, together with a corresponding declaration of compliance with these criteria, as appropriate.

9. **Information appearing on the eco-label**

Box 2 of the eco-label shall contain the following text:

— good performance for outdoor use,

— hazardous substances restricted,

— low solvent content.

*Assessment and verification*: The applicant shall provide a sample of the product packaging showing the label, together with a declaration of compliance with this criterion.

# COMMISSION DECISION

## of 13 August 2008

## establishing the ecological criteria for the award of the Community eco-label to indoor paints and varnishes

*(notified under document number C(2008) 4453)*

**(Text with EEA relevance)**

(2009/544/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme [1], and in particular the second subparagraph of Article 6(1) thereof,

Whereas:

(1) Under Regulation (EC) No 1980/2000 the Community eco-label may be awarded to a product possessing characteristics which enable it to contribute significantly to improvements in relation to key environmental aspects.

(2) Regulation (EC) No 1980/2000 provides that specific eco-label criteria, drawn up on the basis of the criteria drafted by the European Union Eco-Labelling Board, are to be established according to product groups.

(3) It also provides that the review of the eco-label criteria, as well as of the assessment and verification requirements related to those criteria, is to take place in due time before the end of the period of validity of the criteria specified for the product group concerned.

(4) Pursuant to Regulation (EC) No 1980/2000, a timely review has been carried out of the ecological criteria, as well as of the related assessment and verification requirements established by Commission Decision 2002/739/EC of 3 September 2002 establishing revised ecological criteria for the award of the Community eco-label to indoor paints and varnishes and amending Decision 1999/10/EC [2]. Those ecological criteria and the related assessment and verification requirements are valid until 28 February 2009.

(5) In the light of this review, it is appropriate, in order to take account of scientific and market developments, to modify the definition of the product group and to establish new ecological criteria.

(6) Decision 2002/739/EC should therefore be replaced.

(7) The ecological criteria, as well as the related assessment and verification requirements, should be valid until four years from the date of notification of this Decision.

(8) A transitional period should be allowed for producers whose products have been awarded the eco-label for indoor paints and varnishes before 18 August 2008 or who have applied for such an award before 18 August 2008 so that they have sufficient time to adapt their products to comply with the revised criteria and requirements. For the sake of legal certainty, until 28 February 2009 producers should be allowed to submit applications set out under the criteria set in Decision 2002/739/EC or set out under the criteria set in this Decision. After this date only the criteria set out in this Decision should apply.

(9) Measures provided for in this Decision are in accordance with the opinion of the Committee instituted by Article 17 of Regulation (EC) No 1980/2000,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The product group 'indoor paints and varnishes' shall comprise indoor decorative paints and varnishes, woodstains and related products, as defined in paragraph 2, intended for use by do-it-yourself and professional users and primarily developed for indoor use and marketed as such.

This includes, inter alia, floor coatings and floor paints; products which are tinted by distributors at the request of amateur or professional decorators; tinting systems; decorative paints in liquid or paste formulas which may have been preconditioned, tinted or prepared by the manufacturer to meet consumers needs, including primers and undercoats of such product systems.

2. 'Paint' means a pigmented coating material, in liquid or in paste or powder form, which when applied to a substrate, forms an opaque film having protective, decorative or specific technical properties.

'Varnish' means a clear coating material which when applied to a substrate forms a solid transparent film having protective, decorative or specific technical properties.

[1] OJ L 237, 21.9.2000, p. 1.
[2] L 236, 4.9.2002, p. 4.

'Decorative paints and varnishes' means paints and varnishes that are applied to buildings, their trim and fittings, for decorative and protective purposes. They are applied in-situ. While their main function is decorative in nature, they also have a protective role.

'Woodstains' (lasures) means coatings producing a transparent or semi-transparent film for decoration and protection of wood against weathering, which enables maintenance to be carried out easily.

'Tinting systems' is a method of preparing coloured paints by mixing a 'base' with coloured tints.

3. The product group shall not comprise:

(a) anti-corrosion coatings;

(b) anti-fouling coatings;

(c) wood preservation products;

(d) coatings for particular industrial and professional uses, including heavy-duty coatings;

(e) facade coatings;

(f) any product primarily developed for outdoor use and marketed as such.

*Article 2*

1. In order to be awarded the Community eco-label under Regulation (EC) No 1980/2000 and subject to paragraphs 2 and 3 of this Article, paints and varnishes must fall within the product group 'indoor paints and varnishes' as defined in Article 1, and must comply with the ecological criteria set out in the Annex to this Decision.

2. Two-pack reactive performance coatings for specific end uses shall comply with the following conditions:

(a) both components thereof must individually comply with the ecological criteria set out in the Annex (with the exception of the criterion for Volatile Organic Compounds);

(b) they must be accompanied by information explaining that the individual components must not be used separately or mixed with other products;

(c) the final ready-for-use product, however, must also meet the ecological criteria, including the criterion for VOC.

3. Coatings marketed for both indoor and outdoor use must satisfy both the criteria set out in this Decision for indoor paints and varnishes and the criteria set out in Commission Decision (2009/543/EC) [1] for outdoor paints and varnishes.

*Article 3*

The ecological criteria for the product group 'indoor paints and varnishes', as well as the related assessment and verification requirements, shall be valid until four years as from the date of entry into force of this decision.

*Article 4*

For administrative purposes the code number assigned to the product group 'indoor paints and varnishes' shall be '07'.

*Article 5*

Decision 2002/739/EC is repealed.

*Article 6*

1. Ecolabels awarded before 18 August 2008 in respect of products falling within the product group 'indoor paints and varnishes' may continue to be used until 28 February 2009.

2. Where applications have been submitted before 18 August 2008 for the award of the Ecolabel in respect of products falling within the product group 'indoor paints and varnishes', those products shall be awarded the eco-label under the conditions laid down in Decision 2002/739/EC. In such cases, the eco-label may be used until 28 February 2009.

3. Applications which are submitted after 18 August 2008 but before 1 March 2009 for the award of the eco-label in respect of products falling within the product group 'indoor paints and varnishes' may be based either on the criteria set out in Decision 2002/739/EC or on the criteria set out in this Decision.

Where the application is based on the criteria set out in Decision 2002/739/EC, the eco-label may be used until 28 February 2009.

*Article 7*

This Decision is addressed to the Member States.

Done at Brussels, 13 August 2008.

*For the Commission*

Olli REHN

*Member of the Commission*

[1] See page 27 of this Official Journal.

*ANNEX*

## A. **FRAMEWORK**

**The aims of the criteria**

These criteria aim in particular at:

— the efficient use of the product and the minimisation of waste,

— reducing the environmental and other risks (such as tropospheric ozone) by reducing solvent emissions,

— reducing the discharges of toxic or otherwise polluting substances into waters. The criteria are set at levels that promote the labelling of interior paints and varnishes which have a lower environmental impact.

**Assessment and verification requirements**

The specific assessment and verification requirements are indicated within each criterion.

Where the applicant is required to provide declarations, documentation, analyses, test reports, or other evidence to show compliance with the criteria, it is understood that these may originate from the applicant and/or his supplier(s) and/or their supplier(s), etc., as appropriate.

Where appropriate, test methods other than those indicated for each criterion may be used if their equivalence is accepted by the competent body assessing the application.

Where appropriate, competent bodies may require supporting documentation and may carry out independent verifications.

The competent bodies are recommended to take into account the implementation of recognised environmental management schemes, such as EMAS or EN ISO14001, when assessing applications and monitoring compliance with the criteria (*Note*: it is not required to implement such management schemes).

Where ingredients are referred to in the criteria, this includes substances and preparations. The definitions of 'substances' and 'preparations' are given in the REACH Regulation (Regulation (EC) No 1907/2006 of the European Parliament and of the Council [1].

The exact formulation of the product should be provided to the competent body for all ingoing substances that are used by the applicant. Any substance, including impurities, present in concentrations greater than 0,01 % (m/m) should be reported unless a lower concentration is specified elsewhere in the criteria.

## B. **ECOLOGICAL CRITERIA**

All criteria except criterion 3 concerning VOC limits shall apply to the paint or varnish in its packaging. In line with Directive 2004/42/EC of the European Parliament and of the Council [2] the VOC limits relate to the ready to use product and so the maximum VOC content should be calculated based on any recommended additions such as colorants and/or thinners. For this calculation, data supplied by the raw material suppliers regarding solids content, VOC content and product density will be required.

Criteria 1 and 2 apply only to white and light-coloured paints (including finishes, primers, undercoats and/or intermediates).

For tinting systems, criteria 1 and 2 apply only to the white base (the base containing the most TiO2). In cases where the white base is unable to achieve the requirement of at least 8 $m^2$ per litre at a hiding power of 98 % according to criterion 7(a), the criteria shall be met after tinting to produce the standard colour RAL 9010.

Criteria 1 and 2 do not apply to transparent coatings.

[1] OJ L 396, 30.12.2006, p. 1.
[2] OJ L 143, 30.4.2004, p. 87.

1. **White pigments**

**White pigment content** (white inorganic pigments with a refractive index higher than 1,8): Paints shall have a white pigment content lower or equal to 36 g per $m^2$ of dry film, with 98 % opacity. This requirement does not apply to varnishes and woodstains.

*Assessment and verification*: The applicant shall either provide a declaration of non-use or provide documentation showing the content of white pigments and the spreading rate, together with the detailed calculation showing compliance with this criterion.

2. **Titanium dioxide**

**Titanium dioxide**: The emissions and discharges of wastes from the production of any titanium dioxide pigment used shall not exceed the following (as derived from the Reference Document on Best Available Technology for the Manufacture of Large Volume Inorganic Chemicals (BREF) (August 2007)):

— SOx emissions (expressed as SO2): 252 mg per $m^2$ of dry film (98 % opacity),

— sulphate wastes: 18 g per $m^2$ of dry film (98 % opacity),

— chloride wastes: 3,7, 6,4 and 11,9 g per $m^2$ of dry film (98 % opacity) respectively, for natural rutile, synthetic rutile and slag ores.

*Assessment and verification*: The applicant shall either provide a declaration of non-use or provide the supporting documentation indicating the respective levels of emissions and discharges of wastes for these parameters, the titanium dioxide content of the product, the spreading rate, together with the detailed calculations showing compliance with this criterion.

3. **Volatile organic compounds (VOC)**

**VOC** content shall not exceed:

| Product Classification (Directive 2004/42/EC) | VOC limits (g/l including water) |
|---|---|
| Interior Matt (walls/ceiling) (Gloss < 25@60 °) | 15 |
| Interior glossy (walls/ceiling) (Gloss > 25@60 °) | 60 |
| Interior trim and cladding paints for wood and metal including undercoats | 90 |
| Interior trim varnishes and wood-stains, including opaque woodstains | 75 |
| Interior minimum build woodstains | 75 |
| Primers | 15 |
| Binding Primers | 15 |
| 1 Pack performance coatings | 100 |
| Two-pack reactive performance coatings for specific end use such as floors | 100 |
| Decorative effect coatings | 90 |

In this context volatile organic compounds (VOC) means any organic compounds having an initial boiling point less than or equal to 250 °C measured at a standard pressure of 101,3 kPa as defined in Directive 2004/42/EC. The subcategories for paints and varnishes of the Directive are used for defining VOC limits. Only the categories relevant to indoor coatings are displayed here.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion. For all products the applicant shall indicate the VOC content.

4. **Volatile aromatic hydrocarbons (VAH)**

**Volatile aromatic hydrocarbons** shall not be directly added to the product before or during tinting (where applicable); however ingredients containing VAH may be added up to such a limit that the VAH content in the end product will not exceed 0,1 % (m/m).

In this context volatile aromatic hydrocarbon (VAH) means any organic compound, as defined in Directive 2004/42/EC, having an initial boiling point less than or equal to 250 °C measured at a standard pressure of 101,3 kPa and having at least one aromatic nucleus in its developed structural formula.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion stating that VAH has not been added other than in prefabricated ingredients and where applicable declarations from the suppliers of the ingredient confirming their VAH content.

5. **Heavy metals**

The following **heavy metals** or their compounds shall not be used as an ingredient of the product or tint (if applicable) (whether as a substance or as part of any preparation used): cadmium, lead, chromium VI, mercury, arsenic, barium (excluding barium sulphate), selenium, antimony.

Cobalt shall also not be added as an ingredient with the exception of cobalt salts used as a siccative in alkyd paints. These may be used up to a concentration not exceeding 0,05 % (m/m) in the end product, measured as cobalt metal. Cobalt in pigments is also exempted from this requirement.

It is accepted that ingredients may contain traces of these metals up to 0,01 % (m/m) deriving from impurities in the raw materials.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion as well as declarations from ingredient suppliers (where applicable).

6. **Dangerous substances**

(a) **The product**: The product shall not be classified as very toxic, toxic, dangerous to the environment, carcinogenic, toxic for reproduction, harmful, corrosive, mutagenic or irritant (only where this is caused by the presence of ingredients labelled with R43) in accordance with Directive 1999/45/EC of the European Parliament and of the Council ([3]) before or after tinting (where applicable).

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion, together with a product material safety data sheet meeting the requirements of Annex II to the REACH Regulation.

(b) **Ingredients (very toxic, toxic, carcinogenic, mutagenic, toxic for reproduction)**: No ingredient including those used in tinting (if applicable) shall be used that at the time of application fulfil the classification criteria of any of the following risk phrases (or combinations thereof):

— R23 (toxic by inhalation),

— R24 (toxic in contact with skin),

— R25 (toxic if swallowed),

— R26 (very toxic by inhalation),

— R27 (very toxic in contact with skin),

— R28 (very toxic if swallowed),

— R33 (danger of cumulative effects),

— R39 (danger of very serious irreversible effects),

— R40 (limited evidence of carcinogenic effect),

— R42 (may cause sensitisation by inhalation),

([3]) OJ L 200, 30.7.1999, p. 1.

— R45 (may cause cancer),

— R46 (may cause heritable genetic damage),

— R48 (danger of serious damage to health by prolonged exposure),

— R49 (may cause cancer by inhalation),

— R60 (may impair fertility),

— R61 (may cause harm to the unborn child),

— R62 (possible risk of impaired fertility),

— R63 (possible risk of harm to the unborn child),

— R68 (possible risk of irreversible effects),

as laid down in Council Directive 67/548/EEC ([4]) or in Directive 1999/45/EC. Active ingredients used as preservatives in the formula and that are assigned any of the risk phrases R23, R24, R25, R26, R27, R28, R39 R40 or R48 (or combinations thereof) may nevertheless be used up to a limit of 0,1 % (m/m) of the total paint formulation.

Alternatively, the Globally Harmonised System (GHS) of classification may be considered ([5]). In this case the ingredients, including those used in tinting (if applicable), classified as the following (or combinations thereof) shall not be used:

— Acute Toxicity (oral) – Category I, II, III,

— Acute Toxicity (dermal) – Category I, II, III,

— Acute Toxicity (inhalation) – Category I, II, III,

— Respiratory Sensitisation – Category I,

— Mutagenic Substances – Category I, II,

— Carcinogenic Substances – Category I, II,

— Substances Toxic for Reproduction – Category I, II,

— Specific Target Organ Systemic Toxicity (single exposure) – Category I, II,

— Specific Target Organ Systemic Toxicity (repeated exposure) – Category I, II,

as laid down in ST/SG/AC.10/30 ([6]) and revised in ST/SG/AC.10/34/Add.3 on the Globally Harmonized System of Classification and Labelling of Chemicals. Active ingredients used as preservers in the formula and that are assigned any of the following GHS categories may nevertheless be used up to a limit of 0,1 % (m/m) of the total paint formulation:

— Acute Toxicity (oral, dermal, inhalation) – I, II, III (only oral and dermal),

— Specific Target Organ Systemic Toxicity (single and/or repeated exposure) – I, II (or combinations thereof) and,

— Carcinogenicity category II,

Methyl Ethyl Ketoxime may be used in alkyd paints up to a limit of 0,3 % (m/m).

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion, together with a product material safety data sheet meeting the requirements of Annex II to the REACH Regulation.

([4]) OJ 196, 16.8.1967, p. 1.

([5]) On 27 June 2007, the European Commission adopted the 'Proposal for a Regulation of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, and amending Directive 67/548/EEC and Regulation (EC) No 1907/2006' (COM(2007) 355 final). For further information relating to the overlap between the existing system and GHS refer to Annex VII in Volume III to the proposal that has been adopted: http://ec.europa.eu/enterprise/reach/docs/ghs/ghs_prop_vol_iii_en.pdf

([6]) United Nations Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals: http://www.unece.org/trans/main/dgdb/dgcomm/ac10rep.html

(c) **Ingredients (dangerous for the environment)**: No ingredient shall exceed 2 % (m/m), including those used in tinting (if applicable), that at the time of application fulfil the classification criteria of any of the following risk phrases (or combinations thereof):

— N R50 (very toxic to aquatic organisms),

— N R50/53 (very toxic to aquatic organisms, may cause long term adverse effects in the aquatic environment),

— N R51/53 (toxic to aquatic organisms, may cause long term adverse effects in the aquatic environment),

— N R52/53 (harmful to aquatic organisms, may cause long term adverse effects in the aquatic environment),

— R51 (toxic to aquatic organisms),

— R52 (harmful to aquatic organisms),

— R53 (may cause long-term adverse effects in the aquatic environment),

as laid down in Directive 67/548/EEC or Directive 1999/45/EC.

Alternatively, the Globally Harmonised System (GHS) of classification may be considered ([7]). In this case no ingredient shall exceed 2 % (m/m), including those used in tinting (if applicable), that is assigned or may be assigned at the time of application any of the following classifications:

Aquatic Toxicity categories (and combinations thereof):

— Acute I, II, III,

— Chronic I, II, III, IV,

as laid down in ST/SG/AC.10/30 and revised in ST/SG/AC.10/34/Add.3 on the Globally Harmonized System of Classification and Labelling of Chemicals.

In either case, the sum total of all ingredients that are assigned or may be assigned at the time of application any of these risk phrases (or combinations thereof) or GHS classifications shall not exceed 4 % (m/m).

This requirement does not apply to ammonia or akyl ammonia.

This requirement does not affect the obligation to fulfil the requirement set out in criterion 6(a) above.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion, together with a list of ingredients and material safety data sheets of each ingredient meeting the requirements of Annex II to the REACH Regulation.

(d) **Alkylphenolethoxylates (APEOs)**: APEOS shall not be used in the product before or during tinting (if applicable).

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion.

(e) **Isothiazolinone compounds**: The content of isothiazolinone compounds in the product shall not exceed 0,05 % (m/m) before or after tinting (if applicable). Likewise the content of the mixture of 5-chloro-2-methyl-2H-isothiazol-3-one (EC No 247-500-7) and 2- methyl-2H-isothiazol-3-one (EC No 220-239-6) (3:1) shall not exceed 0,0015 % (m/m).

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion, indicating the amounts (if used).

(f) Perfluorinated alkyl sulfonates (PFAS), perfluorinated carboxylic acids (PFCA) including Perfluorooctanoic Acid (PFOA) and related substances listed in the OECD 'Preliminary lists of PFOS, PFAS, PFOA, PFCA, related compounds and chemicals that may degrade to PFCA (as revised in 2007)' are not permitted in the product. The OECD list is provided in the Annex to this criteria document.

([7]) See footnote 5.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion.

(g) **Formaldehyde**: Free formaldehydes shall not be added. Formaldehyde donators may only be added in such quantities as will ensure that the resulting total content after tinting (if applicable) of free formaldehyde will not exceed 0,001 % (m/m).

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion. In addition the applicant shall provide test results from raw materials suppliers using the VdL-RL 03 test method (VdL Guide-line03) 'In-can concentration of formaldehyde determined by the acetyl-acetone method' and calculations relating the data from these tests to the final product in order to indicate that the final maximum possible concentration of formaldehyde released by formaldehyde releasing substances is not higher than 0,001 % (m/m). Alternatively formaldehyde resulting from formaldehyde donors can be measured in the end product by using a standard based on High-performance liquid chromatography.

(h) **Halogenated Organic Solvents**: Notwithstanding criteria 6a, 6b and 6c, only halogenated compounds that at the time of application have been risk assessed and have not been classified with the risk phrases (or combinations thereof): R26/27, R45, R48/20/22, R50, R51, R52, R53, R50/53, R51/53, R52/53 and R59 in accordance with Directives 67/548/EEC and 1999/45/EC may be used in the product before or during tinting (if applicable).

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion.

(i) **Phthalates**: Notwithstanding criteria 6a, 6b and 6c, only phthalates that at the time of application have been risk assessed and have not been classified with the phrases (or combinations thereof): R60, R61, R62, R50, R51, R52, R53, R50/53, R51/53, R52/53, in accordance with Directive 67/548/EEC and its amendments, may be used in the product before or during tinting (if applicable). Additionally DNOP (di-n-octyl phthalate), DINP (di-isononyl phthalate), DIDP (di-isodecyl phthalate) are not permitted in the product.

*Assessment and verification*: The applicant shall provide a declaration of compliance with this criterion.

7. **Fitness-for-use**

(a) **Spreading rate**: White paints and light-coloured paints (including finishes, primers, undercoats and/or intermediates) shall have a spreading rate (at a hiding power of 98 %) of at least 8 $m^2$ per litre of product.

For tinting systems, this criterion applies only to the white base (the base containing the most TiO2). In cases where the white base is unable to achieve the requirement of at least 8 $m^2$ per litre at a hiding power of 98 %, the criterion shall be met after tinting the white base to produce the standard colour RAL 9010. For all other bases used to produce tinted products — these are bases which as a rule contain less TiO2, which are unable to achieve the requirement of at least 8 $m^2$ per litre of product at a hiding power of 98 % — the criterion shall not apply. For paints that are a part of a tinting system, the applicant must advise the end-user on the product packaging and/or POS which shade or primer/undercoat (if possible bearing the Community Eco-label) should be used as a basecoat before applying the darker shade.

Primers with specific blocking/sealing, penetrating/binding properties and primers with special adhesion properties for aluminium and galvanised surfaces shall have a spreading rate (at a hiding power of 98 %) of at least 6 $m^2$ per litre of product.

Thick decorative coatings (paints that are specially designed to give a three-dimensional decorative effect and are therefore characterised by a very thick coat) shall alternatively have a spreading power of 1 $m^2$ per kg of product.

This requirement does not apply to varnishes, woodstains, floor coatings, floor paints, undercoats, adhesion primers or any other transparent coatings.

*Assessment and verification*: The applicant shall provide a test report using the method ISO 6504/1 (Paints and varnishes — determination of hiding power — Part 1: Kubelka-Munk method for white and light-coloured paints) or 6504/3 (Part 3: determination of contrast ratio (opacity) of light-coloured paints at a fixed spreading rate), or for paints specially designed to give a three-dimensional decorative effect and characterised by a very thick coat the method NF T 30 073 (or equivalent). For bases used to produce tinted products not evaluated according to the abovementioned requirements, the applicant shall produce evidence of how the end-user will be advised to use a primer and/or grey (or other relevant shade) of undercoat before application of the product.

(b) **Wet scrub resistance**: Wall paints (according to EN 13300) for which claims are made (whether on the product or in related marketing material) that they are washable, cleanable or brushable shall have a wet scrub resistance as measured by EN 13300 and EN ISO 11998 of class 2 or better (not exceeding 20 microns after 200 cycles).

Due to the large potential range of possible tinting colours, this criterion will be restricted to the testing of tinting bases.

*Assessment and verification*: The applicant shall provide a test report according to EN 13300 using the method EN ISO 11998 (Test for cleanability and scrub resistance) and evidence (on the product packaging or related marketing material) that the end-user is informed that the product has not been tested for wet scrub resistance in the case of ceiling paints.

(c) **Resistance to water**: Varnishes, floor coatings and floor paints shall have a resistance to water, as determined by ISO 2812-3 such that after 24 hours exposure and 16 hours recovery no change of gloss or of colour occurs.

*Assessment and verification*: The applicant shall provide a test report using the method ISO 2812-3 (Paints and varnishes — determination of resistance to liquids — Part 3: Method using an absorbent medium).

(d) **Adhesion**: Floor coatings, floor paints and floor undercoats, metal and wood undercoats shall score at least 2 in the EN 2409 test for adhesion. Pigmented masonry primers shall score a pass in the EN 24624 (ISO 4624) pull-off test where the cohesive strength of the substrate is less than the adhesive strength of the paint, otherwise the adhesion of the paint must be in excess of a pass value of 1,5MPa.

Transparent primers are not included in this requirement

*Assessment and verification*: The applicant shall provide a test report using the method EN ISO 2409 or EN 24624 (ISO 4624) as applicable.

(e) **Abrasion**: Floor coatings and floor paints shall have an abrasion resistance not exceeding 70 mg weight loss after 1 000 test cycles with a 1 000 g load and a CS10 wheel according to EN ISO 7784-2:2006.

*Assessment and verification*: The applicant shall provide a test report showing compliance with this criterion using the method EN ISO 7784-2:2006.

8. **Consumer information**

The following information shall appear on the packaging or attached to the packaging:

— the use, substrate and conditions of use for which the product is intended. This shall include advice on preparatory work, etc., such as correct substrate preparation, advice on indoor use (where appropriate), or temperature,

— recommendations for cleaning tools and appropriate waste management (in order to limit water pollution). These recommendations shall be adapted to the type of product in question and field of application in question and may make use of pictograms if appropriate;

— recommendations concerning product storage conditions after opening (in order to limit solid waste), including safety advice if appropriate,

— for darker coatings for which criterion 7(a) does not apply, advice is given concerning the use of the correct primer or base paint (if possible bearing the Community Eco-label),

— for thick decorative coatings a text informing that these are paints specially designed to give a three-dimensional decorative effect,

— text advising that unused paint requires specialist handling for safe environmental disposal and that it should not therefore be thrown away with household refuse. Advice regarding disposal and collection should be sought from the local authority,

— recommendations on preventive protection measures for the painter. The following text (or equivalent text) shall appear on the packaging or attached to the packaging:

'For more information as to why this product has been awarded the Flower please visit the web-site: http://ec.europa.eu/environment/ecolabel.'

*Assessment and verification*: A sample of the product packaging shall be provided when submitting the application, together with a corresponding declaration of compliance with this criterion as appropriate.

9. **Information appearing on the eco-label**

Box 2 of the eco-label shall contain the following text:

— good performance for indoor use,

— restricted hazardous substances,

— low solvent content.

*Assessment and verification*: The applicant shall provide a sample of the product packaging showing the label, together with a declaration of compliance with this criterion.

# COMMISSION DECISION

## of 7 July 2009

## fixing the annual breakdown per Member State of the amount referred to in Article 69(2a) of Council Regulation (EC) No 1698/2005 concerning support to rural development and amending Commission Decision 2006/636/EC

*(notified under document number C(2009) 5307)*

(2009/545/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [1], and in particular Article 69(4) thereof,

Whereas:

(1) Following the introduction of the new modulation rules, established in Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers [2], Commission Decision 2006/410/EC [3] has been replaced by Commission Decision 2009/379/EC of 11 May 2009 setting the amounts which, pursuant to Council Regulations (EC) No 1782/2003, (EC) No 378/2007, (EC) No 479/2008 and (EC) No 73/2009 are made available to the EAFRD and the amounts available for EAGF expenditure [4].

(2) Following the increasing of the total amounts of commitment appropriations by EUR 600 million and by EUR 420 million for the years 2009 and 2010 respectively, decided in the framework of the agreement on the European Economic Recovery Plan (EERP), Council Decision 2006/493/EC [5] was amended by Council Decision 2009/434/EC [6]. In order to ensure consistency, such amounts should be set out by Member State following the current repartition criteria.

(3) Following the adoption of Decision 2009/379/EC and Decision 2009/434/EC the amounts made available to EAFRD should be adapted and added to the annual breakdowns of Community support for rural development.

(4) Commission Decision 2006/636/EC of 12 September 2006 fixing the annual breakdown by Member State of the amount for Community support to rural development for the period from 1 January 2007 to 31 December 2013 [7] should be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

The amount referred to in Article 69(2a) of Regulation (EC) No 1698/2005 is set out per years and by Member State in Annex I to this Decision.

*Article 2*

The Annex to Decision 2006/636/EC is replaced by the text set out in Annex II to this Decision.

*Article 3*

This Decision shall apply from the 2009 financial year.

*Article 4*

This Decision is addressed to the Member States.

Done at Brussels, 7 July 2009.

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

[1] OJ L 277, 21.10.2005, p. 1.
[2] OJ L 30, 31.1.2009, p. 16.
[3] OJ L 163, 15.6.2006, p. 10.
[4] OJ L 117, 12.5.2009, p. 10.
[5] OJ L 195, 15.7.2006, p. 22.
[6] OJ L 144, 9.6.2009, p. 25.
[7] OJ L 261, 22.9.2006, p. 32.

*ANNEX I*

Breakdown by Member State of the amounts referred to in Article 69(2a) of Regulation (EC) No 1698/2005:

*(Current prices in EUR)*

| | 2009 | 2010 |
|---|---|---|
| Belgium | 2 220 000 | 1 554 000 |
| Bulgaria | 19 500 000 | 13 650 000 |
| Czech Republic | 21 000 000 | 14 700 000 |
| Denmark | 1 740 000 | 1 218 000 |
| Germany | 50 340 000 | 35 238 000 |
| Estonia | 5 340 000 | 3 738 000 |
| Ireland | 15 780 000 | 11 046 000 |
| Greece | 24 720 000 | 17 304 000 |
| Spain | 44 880 000 | 31 416 000 |
| France | 35 520 000 | 24 864 000 |
| Italy | 56 520 000 | 39 564 000 |
| Cyprus | 1 200 000 | 840 000 |
| Latvia | 7 800 000 | 5 460 000 |
| Lithuania | 13 020 000 | 9 114 000 |
| Luxembourg | 600 000 | 420 000 |
| Hungary | 28 440 000 | 19 908 000 |
| Malta | 600 000 | 420 000 |
| Netherlands | 2 280 000 | 1 596 000 |
| Austria | 27 180 000 | 19 026 000 |
| Poland | 98 700 000 | 69 090 000 |
| Portugal | 26 940 000 | 18 858 000 |
| Romania | 59 820 000 | 41 874 000 |
| Slovenia | 6 780 000 | 4 746 000 |
| Slovakia | 14 700 000 | 10 290 000 |
| Finland | 14 580 000 | 10 206 000 |
| Sweden | 12 420 000 | 8 694 000 |
| United Kingdom | 7 380 000 | 5 166 000 |
| Total | 600 000 000 | 420 000 000 |

*ANNEX II*

*'ANNEX*

**Breakdown by Member State of Community support for rural development (2007 to 2013)**

*(current prices in EUR)*

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Total 2007-2013 | of which minimum for regions under the convergence objective Total |
|---|---|---|---|---|---|---|---|---|---|
| Belgium | 63 991 299 | 63 957 784 | 62 458 083 | 70 637 509 | 73 167 519 | 75 495 480 | 77 776 632 | 487 484 306 | 40 744 223 |
| Bulgaria (*) | 244 055 793 | 337 144 772 | 456 843 751 | 412 748 664 | 398 058 913 | 397 696 922 | 395 699 781 | 2 642 248 596 | 692 192 783 |
| Czech Republic | 396 623 321 | 392 638 892 | 409 036 387 | 415 632 774 | 406 640 636 | 412 672 094 | 424 262 250 | 2 857 506 354 | 1 635 417 906 |
| Denmark | 62 592 573 | 66 344 571 | 67 411 254 | 85 052 762 | 91 231 467 | 98 797 618 | 106 488 551 | 577 918 796 | 0 |
| Germany | 1 184 995 564 | 1 186 941 705 | 1 202 865 574 | 1 311 256 553 | 1 322 959 200 | 1 355 761 509 | 1 387 114 950 | 8 951 895 055 | 3 174 037 771 |
| Estonia | 95 608 462 | 95 569 377 | 101 036 594 | 104 667 353 | 104 639 066 | 108 913 401 | 113 302 602 | 723 736 855 | 387 221 654 |
| Ireland | 373 683 516 | 355 014 220 | 346 851 422 | 363 518 252 | 351 698 528 | 352 271 063 | 351 503 589 | 2 494 540 590 | 0 |
| Greece | 461 376 206 | 463 470 078 | 482 113 090 | 492 922 509 | 665 568 186 | 669 030 398 | 671 747 957 | 3 906 228 424 | 1 905 697 195 |
| Spain | 286 654 092 | 1 277 647 305 | 1 320 830 901 | 1 400 090 047 | 1 227 613 000 | 1 255 978 191 | 1 284 264 263 | 8 053 077 799 | 3 178 127 204 |
| France | 931 041 833 | 942 359 146 | 947 341 939 | 1 091 752 155 | 1 169 090 147 | 1 223 917 557 | 1 278 994 332 | 7 584 497 109 | 568 263 981 |
| Italy | 1 142 143 461 | 1 135 428 298 | 1 183 870 921 | 1 256 577 236 | 1 403 606 589 | 1 422 949 382 | 1 441 205 996 | 8 985 781 883 | 3 341 091 825 |
| Cyprus | 26 704 860 | 24 772 842 | 23 949 762 | 23 911 507 | 22 402 714 | 21 783 947 | 21 037 942 | 164 563 574 | 0 |
| Latvia | 152 867 493 | 147 768 241 | 150 342 483 | 153 226 381 | 148 781 700 | 150 188 774 | 151 198 432 | 1 054 373 504 | 327 682 815 |
| Lithuania | 260 974 835 | 248 836 020 | 249 948 998 | 253 855 536 | 248 002 433 | 250 278 098 | 253 898 173 | 1 765 794 093 | 679 189 192 |
| Luxembourg | 14 421 997 | 13 661 411 | 13 255 487 | 13 838 190 | 13 287 289 | 13 281 368 | 13 212 084 | 94 957 826 | 0 |
| Hungary | 570 811 818 | 537 525 661 | 527 075 432 | 529 160 494 | 547 603 625 | 563 304 619 | 584 609 743 | 3 860 091 392 | 2 496 094 593 |
| Malta | 12 434 359 | 11 527 788 | 11 256 597 | 10 964 212 | 10 347 884 | 10 459 190 | 10 663 325 | 77 653 355 | 18 077 067 |

*(current prices in EUR)*

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Total 2007-2013 | of which minimum for regions under the convergence objective Total |
|---|---|---|---|---|---|---|---|---|---|
| Netherlands | 70 536 869 | 72 638 338 | 73 671 337 | 87 111 293 | 90 406 648 | 96 082 449 | 102 750 233 | 593 197 167 | 0 |
| Austria | 628 154 610 | 594 709 669 | 580 732 057 | 586 983 505 | 556 070 574 | 545 968 629 | 532 956 948 | 4 025 575 992 | 31 938 190 |
| Poland | 1 989 717 841 | 1 932 933 351 | 1 971 439 817 | 1 935 872 838 | 1 860 573 543 | 1 857 244 519 | 1 851 146 247 | 13 398 928 156 | 6 997 976 121 |
| Portugal | 560 524 173 | 562 491 944 | 584 180 154 | 625 419 895 | 611 642 601 | 611 692 105 | 610 872 156 | 4 166 823 028 | 2 180 735 857 |
| Romania (**) | 0 | 1 146 687 683 | 1 502 691 530 | 1 401 644 651 | 1 357 854 634 | 1 359 146 997 | 1 356 173 250 | 8 124 198 745 | 1 995 991 720 |
| Slovenia | 149 549 387 | 139 868 094 | 136 508 049 | 134 100 946 | 124 076 091 | 118 858 866 | 113 031 296 | 915 992 729 | 287 815 759 |
| Slovakia | 303 163 265 | 286 531 906 | 282 749 256 | 266 600 239 | 263 028 387 | 275 025 447 | 319 809 578 | 1 996 908 078 | 1 106 011 592 |
| Finland | 335 121 543 | 316 143 440 | 308 265 407 | 313 973 134 | 298 490 092 | 294 408 238 | 288 617 053 | 2 155 018 907 | 0 |
| Sweden | 292 133 703 | 277 225 207 | 270 816 031 | 280 491 463 | 269 775 513 | 268 860 755 | 266 759 282 | 1 926 061 954 | 0 |
| United Kingdom | 263 996 373 | 645 001 582 | 706 122 271 | 746 326 084 | 748 994 332 | 752 455 626 | 749 224 152 | 4 612 120 420 | 188 337 515 |
| Total | 10 873 879 246 | 13 274 839 325 | 13 973 664 584 | 14 368 336 182 | 14 385 611 311 | 14 562 523 242 | 14 758 320 797 | 96 197 174 687 | 31 232 644 963 |

(*) For 2007, 2008 and 2009, the appropriations from the Guarantee Section of the EAGGF are EUR 193 715 561, EUR 263 453 163 and EUR 337 004 104 respectively.
(**) For 2007, 2008 and 2009, the appropriations from the Guarantee Section of the EAGGF are EUR 610 786 223, EUR 831 389 081 and EUR 1 058 369 098 respectively.'

# COMMISSION DECISION

## of 8 July 2009

## exempting exploration for and exploitation of oil and gas in the Netherlands from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

*(notified under document number C(2009) 5381)*

**(Only the Dutch text is authentic)**

**(Text with EEA relevance)**

(2009/546/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 [1], and in particular Article 30(5) and (6),

Having regard to the request submitted by Nederlandse Aardolie Maatschappij B.V. (hereinafter referred to as NAM) by e-mail of 26 February 2009,

After consulting the Advisory Committee for Public Contracts,

Whereas:

### I. FACTS

(1) By Commission Decision 93/676/EEC [2], contracting entities exploring for or extracting oil or gas in the Netherlands were authorised to apply an alternative regime in place of the normal set of rules provided for under the then applicable Directive. The alternative regime entailed certain statistical obligations and an obligation to observe the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to economic operators concerning its procurement intentions. The effects of that Decision were safeguarded without prejudice to the provisions of Article 30 of Directive 2004/17/EC through its Article 27 of when it replaced the previous Directive.

(2) On 26 February 2009, NAM transmitted a request pursuant to Article 30(5) of Directive 2004/17/EC to the Commission by e-mail. In accordance with Article 30(5) first subparagraph, the Commission informed the Dutch authorities thereof by letter of 5 March 2009, to which the Dutch authorities answered by e-mail of 26 March 2009. The Commission also requested additional information of NAM by e-mail of 9 March 2009, which was transmitted by NAM by e-mail of 23 March 2009.

(3) The request submitted by NAM concerns the exploration for and exploitation of oil and gas in the Netherlands. In line with previous Commission Merger Decisions [3], three distinct activities where NAM is active, have been described in the request, namely:

a) exploration for oil and natural gas;

b) production of oil; and

c) production of natural gas.

In accordance with the abovementioned Commission Decisions, 'production' will for the purposes of this Decision be taken to include also 'development', i.e. the setting up of adequate infrastructure for future production (oil platforms, pipelines, terminals, etc.).

### II. LEGAL FRAMEWORK

(4) Article 30 of Directive 2004/17/EC provides that contracts intended to enable the performance of one of the activities to which Directive 2004/17/EC applies shall not be subject to that Directive if, in the Member State in

[1] OJ L 134, 30.4.2004, p. 1.

[2] Commission Decision 93/676/EC of 10 December 1993 establishing that the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas does not constitute in the Netherlands an activity defined in Article 2(2)(b)(i) of Council Directive 90/531/EEC and that entities carrying on such an activity are not to be considered in the Netherlands as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive, OJ L 316, 17.12.1993, p. 0041.

[3] See in particular Commission Decision 2004/284/EC of 29 September 1999 declaring a concentration compatible with the common market and the EEA Agreement (Case No IV/M.1383 — Exxon/Mobil) and subsequent decisions, inter alia, Commission Decision of 03/05/2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4545 — STATOIL/HYDRO) according to Council Regulation (EEC) No 139/2004.

which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. Access is deemed to be unrestricted if the Member State has implemented and applied the relevant Community legislation opening a given sector or a part of it.

(5) Since the Netherlands have implemented and applied Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons [1] access to the market should be deemed not to be restricted in accordance with the first subparagraph of Article 30(3) of Directive 2004/17/EC. Direct exposure to competition in a particular market should be evaluated on the basis of various criteria, none of which are, per se, decisive.

(6) In respect of the markets concerned by this Decision, the market share of the main players on a given market constitutes one criterion which should be taken into account. Another criterion is the degree of concentration on those markets. As the conditions vary for the different activities that are concerned by this Decision, the examination of the competitive situation should take into account the different situations on different markets.

(7) This Decision is without prejudice to the application of the rules on competition.

## III. **ASSESSMENT**

(8) Each of the three activities that are the subject of this request (exploration for oil and natural gas, production of oil and production of natural gas) have been considered to constitute separate product markets in the previous Commission Decisions referred to in Recital 3 above. They should therefore be examined separately.

*Exploration for oil and natural gas*

(9) According to established Commission practice [2], exploration for oil and natural gas constitutes one relevant product market, since it is not possible from the outset to determine whether the exploration will result in finding oil or natural gas. It has furthermore been established through the same, long-standing Commission practice that the geographic scope of that market is worldwide.

(10) Three ways of measuring the market shares of operators active in exploration can be distinguished: capital expenditure, proven reserves and expected production. Using capital expenditure as a parameter when evaluating the market shares of operators on the exploration market has at times been envisaged [3]. It has however been found to be unsuitable, i.a. because of the large differences between the required levels of investments that are necessary in different geographic areas. Thus, larger investments are needed to explore for oil and gas in the North Sea than is the case for exploration in, e.g. the Middle East. Two other parameters have, on the other hand, been applied to assess the market shares of economic operators within this sector, namely, their share of proven reserves and of the expected production. [4]

(11) As of 31 December 2007, the combined, proven oil and gas reserves amounted to a total of 378,6 billion standard cubic metres oil equivalent (in the following $Sm^3$ o.e.) worldwide, according to the available information [5]. As of 1 January 2008, the combined, proven oil and gas reserves in the Netherlands amounted to slightly more than 1 426 billion $Sm^3$ o.e [6], or slightly more than 3,7 ‰. NAM's share thereof is, even smaller. According to the available information, NAM's market share would also have to be considered as being negligible if the expected production was used as a yardstick. Thus, while NAM's actual oil production of 0,04 million barrels of oil per day is expected to rise to 0,06 million barrels a day through the full re-deployment of the Schoonebeek oilfield in Eastern Netherlands, this would, however, have to be seen against a daily, worldwide oil-production of 81 533 million barrels of oil and would therefore be equivalent to a share of approximately 0,7 ‰. Considering also the degree of concentration on the exploration market, which, apart from state-owned companies, is characterised by the presence of three international vertically integrated private players named the super majors (BP, ExxonMobil and Shell) as well as a certain number of so-called 'majors', these factors should be taken as an indication of direct exposure to competition.

[1] OJ L 79, 29.3.1996, p. 30.

[2] See in particular the abovementioned Exxon/Mobil Decision and, more recently, Commission Decision of 19/11/2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4934 — KAZMUNAIGAZ/ROMPETROL) according to Council Regulation (EEC) No 139/2004.

[3] See in particular the abovementioned Exxon/Mobil Decision (paragraphs 23–24).

[4] See in particular the abovementioned Exxon/Mobil Decision (paragraphs 25 and 27).

[5] See point 5.2.1 of the application and the sources quoted there, in particular the BP Statistical Review of World Energy, June 2008, annexed to it.

[6] That is, 1 390 billion $Sm^3$ gas, equal to 1 390 million $Sm^3$ o.e., and 36,6 million $Sm^3$ oil, giving a total of 1.426,600,000 $Sm^3$.

*Production of oil*

(12) According to established Commission practice [1], development and production of (crude) oil is a separate product market whose geographic scope is worldwide. According to the available information [2], the total, daily production of oil worldwide amounted to 81 533 million barrels in 2007. That same year, NAM produced a total of 0,04 million barrels per day, giving it a market share of 0,49 ‰. Considering also the degree of concentration on the market for crude oil production market, which, apart from state-owned companies, is characterised by the presence of three international vertically integrated private players named the super majors (BP, ExxonMobil and Shell), whose respective parts of oil production in 2007 amounted to 3,08 %, 2,32 % and 2,96 %, according to the available information) as well as a certain number of so-called 'majors' [3], these factors should be taken as an indication of direct exposure to competition.

*Production of natural gas*

(13) A previous Commission Decision [4] concerning downstream supply of gas to end-customers has distinguished between Low Calorific Value (LCV) Gas, High Calorific Value (HCV) gas. The Commission has also considered whether Liquefied Natural Gas (LNG) supplies should be distinguished from supplies of piped natural gas [5]. However, a subsequent Commission Decision [6] concerning i.a. development and production of natural gas left the question open whether, for the purpose of that Decision, separate markets existed for Low Calorific Value (LCV) Gas, High Calorific Value (HCV) gas and Liquefied Natural Gas (LNG), 'as the final assessment is not affected regardless of the definition adopted'. For the purpose of this Decision, the question can also be left open for the following reasons:

— NAM does not produce LNG,

— NAM operates only in the Netherlands, where the spot market for gas, the so- called Title Transfer Facility, (TTF), no longer makes any distinction between LCV and HCV as of 1 July 2008. Furthermore, since that date Gas Transport Services (the Dutch national gas network manager) has complete control over conversion of quality. It is thus not necessary for shippers to book conversion capacity.

(14) For the purposes of this Decision, the relevant product market can therefore be left open as being production of natural gas in general, without distinguishing between LCV, HCV and LNG. As far as the geographic market is concerned, previous Commission Decisions [7] have considered that it includes the European Economic Area (EEA) and possibly also Russia and Algeria.

(15) According to the available information [8], the total gas production in the EU amounted to 191,9 billion $Sm^3$ in 2007 and that of the EEA for the same year to 281,6 billion $Sm^3$. NAM's production for 2007 amounted to 50 billion $Sm^3$, giving it a market share of 17,76 %. For 2007, productions in Russia and Algeria amounted to respectively 607,4 and 83,0 billion $Sm^3$. The total production for the EEA plus Russia and Algeria therefore amounted to a total of 972 billion $Sm^3$ of which NAM's share amounted to 5,14 %. Considering also the degree of concentration on the market for natural gas production market, which is characterised by the presence of three super majors (BP, ExxonMobil and Shell) as well as other major players such as the Russian Gazprom, these factors should be taken as an indication of direct exposure to competition.

## IV. **CONCLUSIONS**

(16) In view of the factors examined in recitals (3) to (15), the condition of direct exposure to competition laid down in Article 30(1) of Directive 2004/17/EC should be considered to be met in the Netherlands in respect of the following services:

a) exploration for oil and natural gas;

b) production of oil; and

c) production of natural gas.

(17) Since the condition of unrestricted access to the market is deemed to be met, Directive 2004/17/EC should not apply when contracting entities award contracts intended to enable the services listed in points a) to c) of recital (16) to be carried out in the Netherlands, nor when design contests are organised for the pursuit of such an activity in the Netherlands.

(18) This Decision is based on the legal and factual situation as of February to March 2009 as it appears from the information submitted by NAM and the Kingdom of the Netherlands. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are no longer met,

[1] See in particular the abovementioned Exxon/Mobil Decision and, more recently, Commission Decision of 19/11/2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4934 — KAZMUNAIGAZ/ROMPETROL) according to Council Regulation (EEC) No 139/2004.

[2] See p. 8 of 'BP Statistical Review of World Energy, June 2008', annexed to request, in the following referred to as 'BP Statistics'.

[3] Whose market shares are smaller than those of the super majors.

[4] Commission Decision 2007/194/EC of 14 November 2006 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.4180 — Gaz de France/Suez), OJ L 88, 29.3.2007, p. 47.

[5] See in particular the abovementioned Gaz de France/Suez Decision.

[6] The abovementioned Case M4545, point 12.

[7] See for instance those mentioned under Recital 3 above.

[8] See in particular BP Statistics, p. 24.

HAS ADOPTED THIS DECISION:

*Article 1*

Directive 2004/17/EC shall not apply to contracts awarded by contracting entities and intended to enable the following services to be carried out in the Netherlands:

a) exploration for oil and natural gas;

b) production of oil; and

c) production of natural gas.

*Article 2*

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 8 July 2009.

*For the Commission*
Charlie McCREEVY
*Member of the Commission*

# COMMISSION DECISION

## of 10 July 2009

## amending Decision 2000/57/EC on the early warning and response system for the prevention and control of communicable diseases under Decision No 2119/98/EC of the European Parliament and of the Council

*(notified under document number C(2009) 5515)*

**(Text with EEA relevance)**

(2009/547/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Decision No 2119/98/EC of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community [1], and in particular Article 6(5) thereof,

After consulting the European Data Protection Supervisor,

Whereas:

(1) Commission Decision 2000/57/EC of 22 December 1999 on the early warning and response system for the prevention and control of communicable diseases under Decision No 2119/98/EC of the European Parliament and of the Council [2] defines events related to communicable diseases to be communicated by competent public health authorities of Member States to the early warning and response system (EWRS) component of the Community network, and sets up general procedures for information exchange on those events, for consultation and for coordination of measures among Member States in liaison with the Commission.

(2) Decision 2000/57/EC also commits competent public health authorities of each Member State to collect and exchange all necessary information on the events on communicable diseases, e.g. by using the national surveillance system, the epidemiological component of the Community network or any other Community collection system.

(3) The prevention and control of communicable diseases is defined in Decision No 2119/98/EC as a range of measures, including epidemiological investigation, taken by competent public health authorities in the Member States to prevent and stop the spread of communicable diseases. These measures cover contact tracing activities and along with any relevant information in the possession of national competent public health authority on an event related to communicable diseases are promptly forwarded to all other Member States and the Commission. Furthermore a Member State, which intends to undertake measures, in principle informs in advance the Community network on the nature and scope of those measures, as well as consults and coordinates those actions with other Member States in liaison with the Commission.

(4) Decision 2000/57/EC should clearly reflect the provisions of Decision No 2119/98/EC in relation with measures taken or intended to be adopted to prevent and stop the spread of communicable diseases.

(5) Furthermore the entry into force of the International Health Regulations (2005) commits the international community to provide a public health response to the international spread of diseases in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.

(6) In occurrence of an event related to communicable disease with a potential EU dimension necessitating contact tracing measures, Members States collaborate with each other in liaison with the Commission through the EWRS in order to identify infected persons and individuals potentially in danger. Such collaboration may involve an exchange of sensitive personal data of confirmed or suspected human cases between Member States concerned by the contact tracing procedure.

(7) The processing of personal data related to health is in principle prohibited by provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [3] and of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [4]. In addition Article 11 of Decision No 2119/98/EC states , inter alia, that its provisions shall apply without prejudice to Directive 95/46/EC.

[1] OJ L 268, 3.10.1998, p. 1.
[2] OJ L 21, 26.1.2000, p. 32.
[3] OJ L 281, 23.11.1995, p. 31.
[4] OJ L 8, 12.1.2001, p. 1.

(8) For the public health reasons, the processing of such data is covered by the exemption granted by Article 8(3) of Directive 95/46/EC and Article 10(3) of Regulation (EC) No 45/2001, in so far as it is required for the purposes of preventive medicine, medical diagnosis and the provision of care or treatment or the management of health-care services, and where those data are processed by a health professional subject under national law or rules established by national competent bodies to the obligation of professional secrecy or by another person also subject to an equivalent obligation of secrecy. Furthermore, Article 23(1) of International Health Regulations (2005), which entered into force on 15 June 2007, provides that the States Parties to the World Health Organisation (WHO) may require for public health reasons, including contact tracing purposes, on arrival or departure, certain data regarding travellers.

(9) In addition the processing of personal data for the purposes of contact tracing should be considered as lawful in so far as it is necessary in order to protect the vital interests of the data subject, in accordance with Article 7(d) of Directive 95/46/EC and with Article 5(e) of Regulation (EC) No 45/2001, and also for the performance of a task carried out in the public interest, in accordance with, respectively, Articles 7(e) and 5(a) of these Community acts.

(10) The Commission, the European Centre for Disease Prevention and Control and the Member States should put in place appropriate safeguards in relation with the processing of personal data for the purpose of contact tracing, in particular concerning the use of derogation from provisions of Directive 95/46/EC and of Regulation (EC) No 45/2001, ensuring that they process personal data in the EWRS in compliance with, respectively, Regulation (EC) No 45/2001 and Directive 95/46/EC.

(11) In particular when communicating personal data within the EWRS with a view to prevent and stop the spread of communicable diseases, the competent public health authorities of Member States and the Commission should ensure that personal data is adequate, relevant and not excessive in relation to that purpose as well as not processed for other purposes, and that it is accurate, updated when necessary and kept for no longer than necessary for that purpose; they should also ensure that persons subject to contact tracing are duly informed of the nature of the processing, of the data processed, of the rights to access and rectify data concerning them, unless this proves impossible or involves a disproportionate effort, and that appropriate levels of confidentiality and security are put in place within the EWRS to protect the processing of such data.

(12) In its 2007 report [1] on the operation of the EWRS, the Commission stressed the need for the introduction within EWRS of a selective messaging functionality to guarantee an exclusive communication channel only between Member States concerned by specific events related , inter alia, to contact tracing activities. The use of this selective functionality provides appropriate safeguards whenever personal data is communicated through the EWRS and should ensure that, for the implementation of this Decision, only adequate, relevant and not excessive personal data is circulated within the EWRS, in accordance with Article 4(1)(c) of Regulation (EC) No 45/2001 and Article 6(1)(c) of Directive 95/46/EC. For these reasons the use of the selective messaging functionality should be restricted to notifications involving the communication of relevant personal data, in order to be compatible with the obligations of the Member States under Articles 4, 5 and 6 of Decision No 2119/98/EC.

(13) The measures provided for in this Decision are in accordance with the opinion of the Committee set up under Article 7 of Decision No 2119/98/EC,

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2000/57/EC is amended as follows:

1. in Article 1(2), the wording 'information on these events' is replaced by 'information on these events and measures intended or adopted in response to those events or indications for such events';

2. the following Article 2a is inserted:

'*Article 2a*

1. This Article shall apply to measures implemented in order to trace persons who have been exposed to a source of infectious agents, and who are potentially in danger of developing or have developed a communicable disease of Community relevance according to the criteria laid down in Annex I (hereinafter referred as 'contact tracing').

[1] Report form the Commission to the Council and to the European Parliament on the operation of the Early Warning and Response Systems (EWRS) of the Community Network for the epidemiological surveillance and control of communicable diseases during years 2004 and 2005 (Decision 2000/57/EC) of 20 March 2007 (COM(2007) 121 final).

2. When communicating relevant personal data for contact tracing purposes through the early warning and response system, provided that those data are needed and available, competent public health authorities of a Member State shall use the selective messaging functionality which guarantees appropriate data protection safeguards. That communication channel shall be limited to the Member States concerned by the contact tracing.

3. When circulating that information through the selective messaging functionality, the competent public health authorities of that Member State shall refer to the event or measure communicated previously to the Community network.

4. For the purpose of paragraph 2, an indicative list of the personal data is provided in Annex III.

5. When communicating and circulating personal data through the selective messaging functionality, the competent health authorities of the Member States and the Commission shall comply with the provisions of Directive 95/46/EC of the European Parliament and of the Council (*) and of Regulation (EC) No 45/2001 of the European Parliament and of the Council (**).

(*) OJ L 281, 23.11.1995, p. 31.
(**) OJ L 8, 12.1.2001, p. 1.';

3. in Article 3, paragraph 1 is replaced by the following:

'1. Every year, the competent authorities in Member States shall submit to the Commission not later than 31 March an analytical report of the events, measures intended or adopted in relation to those events and on the procedures applied within the early warning and response system. In addition, the competent authorities in Member States may on a timely basis report on specific events of particular significance.';

4. the text in Annex to this Decision is added as Annex III.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 10 July 2009.

*For the Commission*
Androulla VASSILIOU
*Member of the Commission*

*ANNEX*

The following Annex III is added to Decision 2000/57/EC:

*'ANNEX III*

**Indicative list of personal data for the purpose of contact tracing**

1. PERSONAL INFORMATION
   - — Name and given names,
   - — Nationality, date of birth, sex,
   - — ID type, number and issuing authority,
   - — Current home address (street name and nr, city, country, postal code),
   - — Telephone numbers (mobile, residential, business),
   - — E-mail (private, business).
2. TRAVEL SPECIFICATIONS
   - — Conveyance data (e.g. flight number, date of flight, ship name, plate number),
   - — Seat number(s),
   - — Cabin number(s).
3. CONTACT INFORMATION
   - — Names of visited persons/places of stay,
   - — Dates and addresses of the places of stay (street name and nr, city, country, postal code),
   - — Telephone numbers (mobile, residential, business),
   - — E-mail (private, business).
4. INFORMATION ON ACCOMPANYING PERSONS
   - — Name and given names,
   - — Nationality,
   - — Personal information as laid down in point 1, indents 3-6.
5. EMERGENCY CONTACT DETAILS
   - — Name of person to be contacted,
   - — Address (street name and nr, city, country, postal code),
   - — Telephone numbers (mobile, residential, business),
   - — E-mail (private, business)'.

## 2009 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

| | | |
|---|---|---|
| EU Official Journal, L + C series, paper edition only | 22 official EU languages | EUR 1 000 per year (*) |
| EU Official Journal, L + C series, paper edition only | 22 official EU languages | EUR 100 per month (*) |
| EU Official Journal, L + C series, paper + annual CD-ROM | 22 official EU languages | EUR 1 200 per year |
| EU Official Journal, L series, paper edition only | 22 official EU languages | EUR 700 per year |
| EU Official Journal, L series, paper edition only | 22 official EU languages | EUR 70 per month |
| EU Official Journal, C series, paper edition only | 22 official EU languages | EUR 400 per year |
| EU Official Journal, C series, paper edition only | 22 official EU languages | EUR 40 per month |
| EU Official Journal, L + C series, monthly CD-ROM (cumulative) | 22 official EU languages | EUR 500 per year |
| Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week | multilingual: 23 official EU languages | EUR 360 per year (= EUR 30 per month) |
| EU Official Journal, C series — recruitment competitions | Language(s) according to competition(s) | EUR 50 per year |

(*) Sold in single issues: up to 32 pages: EUR 6
from 33 to 64 pages: EUR 12
over 64 pages: Priced individually.

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

## Sales and subscriptions

Priced publications issued by the Publications Office are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

**EUR-Lex (http://eur-lex.europa.eu) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.**

**For further information on the European Union, see: http://europa.eu**

Publications Office
Publications.europa.eu

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES
L-2985 LUXEMBOURG

EN