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⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COUNCIL REGULATION (EC) No 1128/2009

of 20 November 2009

repealing certain obsolete Council acts in the field of the common agricultural policy

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) Improving the transparency of Community law is an essential element of the better lawmaking strategy that Community institutions are implementing. In that context it is appropriate to remove from legislation in force those acts which no longer have real effect.
- (2) Council Regulation (EEC) No 2602/69 of 18 December 1969 on retaining the Management Committee procedure ⁽²⁾ has exhausted its effects since its content has been taken up by successive acts.
- (3) Council Decision 85/360/EEC of 16 July 1985 on the restructuring of the system of agricultural surveys in Greece ⁽³⁾ covered the period between 1986 and 1996 and has therefore exhausted its effects.
- (4) Council Regulation (EEC) No 3570/90 of 4 December 1990 on derogations in respect of agricultural statistical

surveys in Germany in connection with the unification of Germany ⁽⁴⁾ was intended for application during the transitional period following German unification and has therefore exhausted its effects.

- (5) Council Regulation (EC) No 2611/95 of 25 October 1995 establishing the possibility of national aid being granted in compensation for losses of agricultural income caused by monetary movements in other Member States ⁽⁵⁾ concerned the possibility of granting a three-year aid to be notified before 30 June 1996 and has therefore exhausted its effects.
- (6) Council Regulation (EC) No 1107/2007 of 26 September 2007 derogating from Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, as regards set-aside for the year 2008 ⁽⁶⁾, only covered the year 2008 and has therefore exhausted its effects.
- (7) For reasons of legal certainty and clarity, those obsolete Regulations and the Decision should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

1. Regulations (EEC) No 2602/69, (EEC) No 3570/90, (EC) No 2611/95 and (EC) No 1107/2007 and Decision 85/360/EEC are repealed.
2. The repeal of the Regulations and Decision referred to in paragraph 1 shall be without prejudice to the maintenance in force of Community acts adopted on the basis of those Regulations and Decision.

⁽¹⁾ Opinion not yet published in the Official Journal.

⁽²⁾ OJ L 324, 27.12.1969, p. 23.

⁽³⁾ OJ L 191, 23.7.1985, p. 53.

⁽⁴⁾ OJ L 353, 17.12.1990, p. 8.

⁽⁵⁾ OJ L 268, 10.11.1995, p. 3.

⁽⁶⁾ OJ L 253, 28.9.2007, p. 1.

Article 2

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

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

Done at Brussels, 20 November 2009.

For the Council
The President
E. ERLANDSSON

COMMISSION REGULATION (EC) No 1129/2009
of 24 November 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 25 November 2009.

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

Done at Brussels, 24 November 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	MA	33,8
	MK	37,7
	TR	65,8
	ZZ	45,8
0707 00 05	MA	52,9
	TR	76,2
	ZZ	64,6
0709 90 70	MA	44,3
	TR	121,7
	ZZ	83,0
0805 20 10	MA	71,5
	ZZ	71,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	50,4
	HR	59,5
	MA	68,9
	TR	75,3
	ZZ	63,5
0805 50 10	AR	64,7
	TR	71,3
	ZA	61,6
	ZZ	65,9
0808 10 80	AU	177,7
	CN	90,4
	MK	20,3
	US	104,0
	XS	24,5
	ZA	95,8
	ZZ	85,5
0808 20 50	CN	47,9
	TR	85,0
	US	131,0
	ZZ	88,0

⁽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 1130/2009**of 24 November 2009****laying down common detailed rules for verifying the use and/or destination of products from intervention****(codified version)**

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⁾, and in particular Article 43(f) in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules for verifying the use and/or destination of products from intervention ⁽²⁾ has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality the said Regulation should be codified.
- (2) Regulation (EC) No 1234/2007 provides for the application of an intervention system.
- (3) Certain products removed from intervention may be subject to a specific use and/or destination. A system of supervision should be set up to ensure that such products are not diverted from their use and/or destination.
- (4) In those cases where two or more Member States are involved in the supervision, Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽⁴⁾ should apply.
- (5) Other authorities as well as customs authorities competent to issue the T5 control copy and to verify the use and/or destination of intervention goods have to be designated.
- (6) In order to ensure equal treatment of sales from intervention stocks at a reduced price level and comparable schemes which provide for the granting of an aid, notably export refunds, to ensure equal treatment for operators in the Member States and to facilitate the recovery of economic advantages unduly granted, it is appropriate to provide for the payment of an amount equal to the amount of the security unduly released.
- (7) For reasons of simplification and efficiency, it is appropriate to stipulate that the T5 control copy, after the necessary checks have been carried out, is to be sent directly to the agency holding the security, and that where two or more Member States are involved, the T5 control copies are to be sent directly by each separate Member State to the agency holding the security.
- (8) It seems desirable, in order to simplify administrative procedures, to provide for greater flexibility than is afforded by the control copy in the case of exports in accordance with the system laid down in Articles 412 to 442a of Regulation (EEC) No 2454/93 which provides that, when a carriage operation starts within the Community and is to end outside it, no formalities need be carried out at the customs office for the frontier station.
- (9) In certain cases, products from intervention are sold at a price calculated by taking account of the amount of the refund applicable for third countries or a particular third country. Therefore, entitlement to the export refund is deducted from the selling price.
- (10) In order to ensure proper completion of the operation, a security is to be lodged. The amount of this security is calculated by taking account of the various aspects of the operation concerned, in particular the risk of deflection of trade and full compliance with the undertakings given by operators.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 301, 17.10.1992, p. 17.

⁽³⁾ See Annex I.

⁽⁴⁾ OJ L 253, 11.10.1993, p. 1.

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

1. Without prejudice to the specific derogations provided for in the Community rules relating to certain agricultural products, this Regulation lays down common detailed rules for verifying the use and/or destination of products removed from intervention stock pursuant to Article 25 of Regulation (EC) No 1234/2007, where such products are subject to a specific use and/or destination.

2. For the purposes of this Regulation, 'dispatch' means the consignment of goods from one Member State to another and 'exportation' means the consignment of goods from a Member State to a destination outside the customs territory of the Community.

3. For the purposes of this Regulation, the Belgo-Luxembourg Economic Union (BLEU) shall be considered as a single Member State.

Article 2

1. From the time of their removal from intervention stock until the use and/or destination specified has been verified, the products referred to in Article 1 shall be subject to control, comprising physical checks, scrutiny of documents and audit of accounts, by the designated control bodies, hereafter referred to as 'the competent control authority'.

In order to avoid any discrimination on the basis of the origin of the products, each Member State shall designate, for each specific measure or part of such measure, one single control body for the verification of the use and/or destination of the relevant products, irrespective of their origin (Community or national).

2. Member States shall take all necessary measures to ensure that the control referred to in paragraph 1 is effected and that the intervention products are not replaced by other products.

Those measures shall in particular prescribe that:

- (a) firms which deal with intervention products or processed intervention products by, for instance, buying, selling, stocking, transporting, transshipping, repackaging, working or processing shall submit to any measures of inspection or supervision considered necessary and keep such records as to enable the authorities to carry out any checks that they consider necessary;
- (b) the products referred to in point (a) shall be stocked and transported separately from other products in such a way that they can be identified.

Member States shall communicate to the Commission the measures taken pursuant to this paragraph.

3. The T5 control copy procedure referred to in Article 912a(2) of Regulation (EEC) No 2454/93, shall apply where the control referred to in paragraph 1 of this Article is to be carried out in whole or in part:

- (a) in a Member State other than that in which the products are removed from intervention stock;

or

- (b) in a Member State other than that in which the security was lodged.

The T5 control copy shall be issued and used in accordance with the provisions of Regulation (EEC) No 2454/93 unless otherwise stipulated in this Regulation.

4. Where the selling intervention agency, in accordance with Article 3(1), does not issue a T5 control copy, it shall provide a removal order. Member States may allow extracts of a removal order to be issued.

For the purposes of this Regulation, 'intervention agency' and 'agency' shall both mean paying agency or intervention agency.

The removal order or extract shall be presented to the competent control authority by the person concerned.

Article 3

1. The T5 control copy referred to in Article 2(3) shall be issued by:

(a) the selling intervention agency where intervention products are dispatched to another Member State in the same state as that in which they were removed from intervention stock, hereafter referred to as 'the unaltered state';

or

(b) the competent control authority, where intervention products are dispatched after processing to another Member State;

or

(c) the customs office of departure:

(i) on production of a removal order, issued by the intervention agency, where intervention products are exported in the unaltered state and are to cross the territory of one or more other Member States;

(ii) on production of a control document, issued by the competent control authority and stating that processing took place under control, where intervention products are exported after processing and are to cross the territory of one or more other Member States.

Where products pursuant to Article 39 of Regulation (EC) No 1234/2007 are stocked in a Member State other than that where the selling intervention agency is situated, the selling intervention agency shall issue the T5 control copy or have it issued under its responsibility.

Member States may:

(a) allow the T5 control copy to be issued by an authority designated for that purpose instead of by the selling agency;

(b) decide that authorised stockholders of intervention products can issue a T5 control copy under the responsibility of the intervention agency. Authorisation shall be granted to the stockholder according to the conditions of Article 912g of Regulation (EEC) No 2454/93 *mutatis mutandis*.

In those cases, issue shall be subject to production of a removal order.

2. The removal order and the control document as referred to in paragraph 1 shall bear a serial number and shall give:

(a) a description of the products, such description being made in the manner prescribed for completion of box 31 of the T5 control copy referred to in Article 2(3), and where appropriate, any other information necessary for the purposes of control;

(b) the number and type of packages, and the marks and numbers borne by such packages;

(c) the gross and net mass of the products;

(d) a reference to the applicable regulation;

(e) the information to be provided in boxes 104 and 106 of the T5 control copy, including the number of the contract of sale with the intervention agency.

The control document shall show the number of the preceding T5 control copy or removal order.

The removal order and the control document shall be kept by the office of departure.

3. The person concerned shall provide one original and two copies of the T5 control copy. The authority issuing the T5 control copy shall send a copy, for information, to the agency where the security is lodged pursuant to Article 5, and shall keep a copy.

4. The original T5 control copy shall be returned to the person concerned, or his representative, who shall present it to the competent control authority in the Member State of use and/or destination.

5. The original of the T5 control copy shall, after appropriate endorsement by the competent control authority in the Member State of use and/or destination, be sent back directly to the agency holding the security referred to in Article 5.

The full name and address of the agency holding the security shall be entered in box B of the T5 control copy by the person concerned.

6. Where only some of the products mentioned in the T5 control copy have complied with the prescribed provisions, the competent authority shall indicate the quantity of products that complied with those provisions in the section of the T5 control copy headed 'Control of use and/or destination', and also the date or dates on which the operation was carried out.

Article 4

Proof that the requirements as to control laid down in Article 2(1) have been complied with shall be provided as follows:

- (a) for products in respect of which the removal from intervention stock and the use and/or destination have been verified by the authority of a single Member State, by the production of documents specified by that Member State;
- (b) for products in respect of which the use and/or destination have been verified by the authorities in one or more Member States other than that in which the removal from intervention stock took place, by all T5 control copies issued for control of use and/or destination, duly certified and endorsed by the competent control authorities;
- (c) for products in respect of which the use and/or destination have been verified by the authorities in both the Member State where the removal from intervention stock took place and in one or more other Member States, by means of the documents referred to in both points (a) and (b);
- (d) for products in respect of which the export formalities and departure from the customs territory of the Community took place in the Member State where the final processing took place and in which the security was lodged, by the document or documents laid down by that Member State for proof of exportation and by the documents referred to in points (a) and/or (b), if these cover the processing.

Article 5

1. Where a security is required in order to guarantee the proper use and/or destination of the products referred to in Article 1, it shall be lodged prior to the taking over of the products. Such security shall be lodged:

- (a) in the case of products to be processed or to be processed and exported, with the intervention agency of the Member State in which processing is to take place or to commence;
- (b) in all other cases, with the selling intervention agency.

2. Where a security is lodged with the intervention agency of a Member State other than that where the selling intervention

agency is situated, the former shall forthwith forward to the selling intervention agency a communication in writing, showing:

- (a) the number of the relevant regulation;
- (b) the date and/or number of tender/sale;
- (c) the contract number;
- (d) the name of the buyer;
- (e) the amount of the security in euro;
- (f) the product;
- (g) the quantity of products;
- (h) the date on which the security was lodged;
- (i) the use and/or destination (where appropriate).

The selling intervention agency shall check the security data.

Article 6

1. Where, after the release in whole or in part of the security referred to in Article 5, it is established that the products in whole or in part did not reach the prescribed use and/or destination, the competent authority of the Member State where the security has been released shall require, in accordance with Article 9(1) of Council Regulation (EC) No 1290/2005 ⁽¹⁾, the operator concerned to pay an amount equal to the amount of the security which would have been forfeited if the failure had been taken into account before the release of the security. This amount shall be increased by interest calculated from the date of release to the day preceding the date of payment.

The receipt by the competent authority of the amount referred to in the first subparagraph shall constitute the recovery of the economic advantage unduly granted.

2. The payment shall be made within 30 days from the day of receipt of the demand for payment.

Where the time limit for payment is not met, Member States may decide that, instead of payment, the amount to be received shall be deducted from subsequent payments to the operator concerned.

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

3. The interest rate shall be calculated in accordance with the provisions of national law but may not be less than the rate applicable for the recovery of national amounts.

No interest shall be levied, or at the most, only an amount to be determined by the Member State corresponding to the undue profit, if the release of the security was an error of the competent authority.

4. Member States may refrain from demanding the payment referred to in paragraph 1 where the amount does not exceed EUR 60, provided that, under national law, such cases are covered by similar rules.

5. The sums recovered in accordance with paragraph 1 shall be made to the paying agency and recorded in the accounts by that agency as a revenue assigned to the European Agricultural Guarantee Fund (EAGF) in the month in which the money is actually received.

Article 7

1. Where the prescribed provisions on the use and/or destination cannot be complied with as a result of *force majeure*, the authority of the Member State in which the security was lodged or, if no security was lodged, the authority in the Member State in which the removal from intervention stock took place shall, at the request of the person concerned, decide:

(a) that the time limit prescribed for the transaction shall be extended for such a period as may be considered necessary in view of the circumstances invoked;

or

(b) if the products have been irretrievably lost, that control shall be deemed to have been carried out.

However, in those cases of *force majeure* where the measures referred to in points (a) and (b) are not appropriate, the competent authority shall inform the Commission, which may provide for the necessary measures in accordance with the procedure referred to in Article 195 of Regulation (EC) No 1234/2007.

2. The request referred to in paragraph 1 shall be lodged within 30 days of that on which information was received by

the person concerned that circumstances indicating a possible case of *force majeure* had arisen, but within the period laid down in the specific Regulation for producing the evidence needed to release the security.

3. The person concerned shall furnish proof of the circumstances relied upon as constituting *force majeure*.

CHAPTER II

PRODUCTS SUBJECT TO A PRESCRIBED USE OR SPECIFIC DESTINATION WITHIN THE COMMUNITY

Article 8

1. Products shall be considered as having complied with the prescribed use and/or destination when it is established that:

(a) in respect of products to be processed and/or to have other products incorporated in them, both types of operation being hereinafter referred to as 'processing', they have been processed;

(b) in respect of products to be sold for direct consumption as concentrated products, they have been concentrated, packaged for retail sale and taken over by the retail trade;

(c) in respect of products to be consumed by certain institutions or organisations or by the army and similar forces, they have been delivered to and taken over by them;

and, where appropriate, that the operations referred to in points (a), (b) and (c) have been carried out within the prescribed period.

2. The requirements mentioned in paragraph 1(a), (b) and (c) shall constitute primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 ⁽¹⁾.

Article 9

1. Where the T5 control copy is used, boxes 103, 104, 106 and 107 of the part headed 'Additional information' shall be completed.

Boxes 104 and 106 shall carry the endorsements specified in the relevant regulation.

⁽¹⁾ OJ L 205, 3.8.1985, p. 5.

Box 106 shall also show the number of the contract of sale with the intervention agency and, where appropriate, the number of the removal order.

Box 107 shall show the number of the relevant regulation.

2. Where products are dispatched to a third Member State, the provisions of Article 22 shall apply *mutatis mutandis*.

3. Where two or more operations take place successively in the same Member State, the provisions of Article 23 shall apply *mutatis mutandis*.

Article 10

Release of the security shall be subject to production of the proof referred to in Article 4.

Article 11

Where a T5 control copy is not received by the agency referred to in Article 3(5) within three months

(a) of expiry of the period fixed for completion of the transaction in question;

or

(b) of its issue, where no such period is fixed;

owing to circumstances beyond the control of the party concerned, the latter may apply to the competent authorities for other documents to be accepted as equivalent, stating the grounds for that application and providing supporting documents. Such supporting documents must bear a reference to the T5 control copy and include confirmation from the competent control authority that verified the use of the products, or had it verified, that the specified use was complied with, and the date on which the products have received the use and/or destination.

CHAPTER III

PRODUCTS EXPORTED FROM THE COMMUNITY IN THE UNALTERED STATE

Article 12

1. Products shall be considered as having complied with the prescribed destination when it is established that:

(a) they have left the customs territory of the Community in the unaltered state; for the purposes of this Regulation, deliveries of any products intended solely for consumption on board drilling or extraction platforms, including work-points providing support services for such operations, situated within the area of the European continental shelf, or within the area of the continental shelf of the non-European part of the Community, but beyond a three-mile zone starting from the base line used to determine the extent of a Member State's territorial waters, shall be considered to have left the customs territory of the Community;

or

(b) in the case specified in Article 33(1) of Commission Regulation (EC) No 612/2009 ⁽¹⁾, they have reached their destination;

or

(c) they have been placed in a victualling warehouse approved pursuant to Article 37 of Regulation (EC) No 612/2009;

or

(d) they have been cleared through customs for release for consumption in a specific third country where products are to be imported into that specific country;

and, where appropriate, that the operations referred to in points (a) to (d) have been carried out within the prescribed period.

2. The requirements laid down in points (a) to (d) of paragraph 1 shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85, without prejudice to the provisions of Article 16(2) of this Regulation.

3. Where products have been placed in a victualling warehouse as referred to in paragraph 1(c), the provisions of Articles 37 to 40 of Regulation (EC) No 612/2009 shall apply, with the exception of Article 39(3), even though no refund is applicable.

4. The provisions of the second subparagraph of Article 7(3) of Regulation (EC) No 612/2009 shall apply.

⁽¹⁾ OJ L 186, 17.7.2009, p. 1.

Article 13

1. Where intervention products are to be exported in the unaltered state, acceptance by the customs authorities of the export declaration shall take place in the Member State where the products were removed from stock.

2. The export declaration and any accompanying documents required in conformity with Community legislation shall, as appropriate, carry the entry:

(a) 'Intervention products with refund — Regulation (EC) No 1130/2009';

or

(b) 'Intervention products without refund — Regulation (EC) No 1130/2009'.

3. Even where no refund is applicable to the products to be exported, they shall, upon acceptance of the relevant export declaration, be considered as no longer covered by Article 23(2) of the Treaty and the provisions of Article 340c(3)(b) of Regulation (EEC) No 2454/93 shall apply to their movement.

4. The conditions as regards the time-limit to be respected for the grant of a refund and the proof to be produced for this purpose are applicable as far as the release of the security is concerned.

Article 14

1. Where the T5 control copy is used, boxes 103, 104, 106, 107 and where appropriate, 105 of the part headed 'Additional information' shall be completed.

Boxes 104 and 106 shall carry the endorsements specified in the relevant regulation.

Box 106 shall also show:

(a) the number of the contract of sale with the intervention agency;

and

(b) the number of the removal order.

Box 107 shall show the number of the relevant regulation.

2. Where the T5 control copy proving the exportation of goods is requested for the release of the security referred to in Article 5 and for payment of the refund, the competent authority holding the security shall immediately send a copy of the T5 control copy, certified as being a true copy, directly to the authority competent for payment of the refund.

In that case, the person concerned shall make the following entry in box 106 of the T5 control copy:

'Refund to be paid by ... (indicating the full name and address of the authority competent for payment of the refund)'.

3. Where it has not been possible to comply with the 12-month time limit for the proof of exportation for the payment of refund in accordance with Article 46(2) of Regulation (EC) No 612/2009 because of administrative delays in the forwarding of the T5 control copy by the agency holding the security to the authority competent for the payment of the refund, the date of receipt by the security agency shall also be deemed to be the date of receipt by the refund authority.

Article 15

1. Where, on acceptance by customs of the export declaration, products are placed under one of the procedures provided for in Articles 412 to 442a of Regulation (EEC) No 2454/93 for carriage to a station of destination or delivery to a consignee outside the customs territory of the Community, they shall be deemed to have been exported as soon as they are placed under that procedure.

2. When paragraph 1 applies, the customs office of departure accepting the export declaration shall ensure that one of the endorsements indicated in, as appropriate, Article 11(4) or (5) of Regulation (EC) No 612/2009, is entered on the document issued as proof of export.

3. The customs office of departure may permit the contract of carriage to be varied so that carriage ends within the Community only if it is established that either:

(a) if a security has been lodged with an intervention agency for the purpose of ensuring that export does take place, this security has not been released;

or

(b) a new security has been lodged.

However, if the security has been released pursuant to paragraph 1 and the product has not in fact left the customs territory of the Community within the period allowed, the customs office of departure shall so inform the agency responsible for releasing the security and shall provide it as soon as possible with all the necessary particulars. In such cases the release shall be regarded as having been made in error and an equivalent amount must be recovered.

Article 16

1. Release of the security shall be subject to the production of the proof referred to in Article 4.

In addition, release of the security shall be subject to production of the proof specified in Articles 16 and 17 of Regulation (EC) No 612/2009:

(a) where the products are to be imported into a specific third country; or

(b) where, in cases where the products are to be exported from the Community, serious doubts exist about the true destination.

The competent authorities of the Member States may require satisfactory additional proof that the products have in fact been placed on the market of the importing third country.

Where there are serious doubts as to the real destination of the products, the Commission may request that Member States apply the provisions of this paragraph.

2. Where the product is to be imported into a specific third country and where the amount of the refund is deducted from the selling price and the relevant proof referred to in paragraph 1 is not supplied:

(a) a part of the security shall be released on presentation of proof that the product has left the customs territory of the

Community; the amount released shall be equal to the lowest refund determined in accordance with Article 25(2) of Regulation (EC) No 612/2009 applicable on the day the export declaration is accepted;

(b) in addition to the amount referred to under point (a), that part of the security corresponding to the difference between the lowest refund referred to in point (a) and the amount of the refund applicable on the day on which the export declaration to the actual third country of imports is accepted, in so far as this amount does not exceed the amount of refund applicable to the obligatory destination, shall be released where:

(i) export to the abovementioned third country could not be made owing to a case of *force majeure*; and

(ii) the proof of import into the other country of destination is submitted in accordance with paragraph 1.

Article 17

1. Where Articles 186 and 187 of Council Regulation (EEC) No 2913/92 ⁽¹⁾ apply:

(a) the security referred to in Article 5(1) of this Regulation shall be forfeited if it has not yet been released;

(b) an amount equivalent to the security must be recovered if the latter has already been released.

2. Where products for which a security as referred to in Article 5(1) has been lodged leave the customs territory of the Community and the formalities for obtaining a refund have not been completed, those formalities shall, for the purposes of Articles 185, 186 and 187 of Regulation (EEC) No 2913/92, be deemed to have been completed and paragraph 1 shall apply.

3. The amount of the security referred to in paragraphs 1 and 2 shall be regarded as forfeited security within the meaning of Article 2 of Council Regulation (EEC) No 352/78 ⁽²⁾.

4. The person concerned shall prove to the competent authority, by means of a certificate issued by the intervention agency concerned, that the provisions of paragraph 1 have been complied with or that no security has been provided.

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 50, 22.2.1978, p. 1.

Article 18

Where a T5 control copy, intended as proof that products have complied with the prescribed destination referred to in Article 12(1), is not received by the agency referred to in Article 3(5) within three months of its issue owing to circumstances beyond the control of the party concerned, the latter may, in accordance with the provisions of Article 46(3) of Regulation (EC) No 612/2009, submit a reasoned request that other documents be regarded as equivalent to the competent authority.

CHAPTER IV

PRODUCTS EXPORTED FROM THE COMMUNITY AFTER PROCESSING*Article 19*

Products shall be considered as having complied with the prescribed use and destination when it is established that the requirements of Articles 8 and 12 have been met.

Article 20

Where products are to be exported after processing, acceptance by the customs authorities of the export declaration shall take place in the Member State where final processing takes place.

Article 21

1. Where products are to be dispatched in the unaltered state for processing followed by exportation, the T5 control copy shall be issued by the selling intervention agency and boxes 103, 104, 106 and 107 of the part headed 'Additional information' shall be completed.

Boxes 104 and 106 shall carry the endorsements specified in the relevant regulation.

Box 106 shall also show:

(a) the number of the contract of sale with the intervention agency;

(b) where appropriate, the number of the removal order; and

(c) the endorsement 'Products from intervention to be placed on exportation under the external Community transit procedure'.

Box 107 shall show the number of the relevant regulation.

2. Where products are to be dispatched after processing in the Member State in which the removal from intervention stock took place, for further processing followed by exportation, the T5 control copy shall be issued by the authority verifying the processing.

In that part of the T5 control copy headed 'Additional information', boxes 103, 104, 106 and 107 shall be completed.

Boxes 104 and 106 shall carry the endorsements specified in the relevant regulation.

Box 106 shall also show:

(a) the number of the contract of sale with the intervention agency; and

(b) the endorsement 'Products from intervention to be placed on exportation under the external Community transit procedure'.

Box 107 shall show the number of the relevant regulation.

3. Where products are to be exported after processing and are to cross the territory of one or more other Member State(s), the T5 control copy shall be issued by the customs office of departure on production of a document issued by the authority verifying the processing. That document shall be kept by the customs office of departure.

However, production of the document shall not be required in cases where the customs office of departure has verified the relevant processing.

In that part of the T5 control copy headed 'Additional information', boxes 103, 104, 106 and 107 and, where appropriate, 105 shall be completed.

Boxes 104 and 106 shall carry the endorsements specified in the relevant regulation.

Box 106 shall also show:

- (a) the number of the contract of sale with the intervention agency; and
- (b) where appropriate, the number of the document referred to in the first subparagraph.

Box 107 shall show the number of the relevant regulation.

4. Where the T5 control copy proving exportation of the goods is requested for release of the security referred to in Article 5 and for payment of the refund, the competent authority holding the security shall immediately send a copy of the T5 control copy, certified as a true copy, directly to the authority competent for payment of the refund.

In that case, the person concerned shall make the following entry in box 106 of the T5 control copy:

'Refund to be paid by ... (indicating the Member State and the full name and address of the authority competent for the payment of the refund).'

Article 22

1. Where products have been dispatched to another Member State for processing and the processed products:

- (a) are to be sent to a third Member State or another Member State for further processing;

or

- (b) are to cross the territory of a third Member State or other Member State in order to be exported;

then the competent authority referred to in Article 21(2) or (3), as appropriate, shall issue one or more T5 control copies.

The T5 control copy or copies shall be completed:

- (a) where point (a) of the first subparagraph applies, as indicated in Article 21(2)(b);
- (b) where point (b) of the first subparagraph applies, as indicated in Article 21(3)(b);

using the information given in the original T5 control copy. In addition, in box 106 of the T5 control copy or copies, the registration number and date of issue of the preceding document and the name of the authority that issued it, shall be entered.

2. In the case referred to under paragraph 1, the competent authority which verified the operation shall, after the appropriate endorsement, immediately return the original T5 control copy directly to the agency referred to in Article 3(5) and shall indicate on the original T5 control copy in the box headed 'Control of use and/or destination', that the product has been dispatched to another Member State for further processing, packaging, taking over or export. The original T5 control copy shall show the registration number or numbers of, or a reference to, the T5 control copies issued for that purpose.

3. The document referred to in Article 4(a) shall carry similar endorsements to those provided for in paragraph 2.

Article 23

1. Where two or more operations, except exportation, (such as processing, packaging, taking-over) take place successively in the same Member State, this Member State may decide that these operations are considered one operation. In this case, no following T5 control copy shall be issued until all involved operations have been carried out.

The original T5 control copy shall be returned to the agency referred to in Article 3(5) after the controls of all operations involved have been carried out. Member States shall take all appropriate measures to ensure that such system works properly.

2. Where Member States decide not to follow the procedure referred to under paragraph 1, the competent authority shall after each operation subsequently issue a T5 control copy. The competent authority which verified the operation shall indicate on the T5 control copy in the box headed 'Control of use and/or destination' that the product has been sent within the same Member State for further processing, packaging, taking over or export. The original T5 control copy shall show the registration number or numbers of, or a reference to, the T5 control copies issued for that purpose.

3. The document referred to in Article 4(a) shall carry similar endorsements to those provided for in paragraph 2.

Article 24

Article 11, Article 13(2), (3) and (4), Article 14(3) and Articles 15 to 18 shall apply to this Chapter.

CHAPTER V

FINAL PROVISIONS

Article 25

1. Member States shall inform the Commission of the full name and address of competent control authorities as referred

to in Article 2(1). The Commission shall inform the other Member States.

2. Member States shall inform the Commission each yearly quarter of cases in which they have applied Article 7(1), specifying the circumstances invoked, the quantities involved and the measures taken.

3. On 1 March and 1 September each year, Member States shall send returns to the Commission showing the number of applications made pursuant to Article 11 or 18, the reasons, where known, for failure to return the T5 control copy, the quantities concerned and the nature of the documents accepted as equivalent.

Article 26

Regulation (EEC) No 3002/92 is repealed.

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

Article 27

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, 24 November 2009.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Repealed Regulation with list of its successive amendments

Commission Regulation (EEC) No 3002/92	(OJ L 301, 17.10.1992, p. 17)
Commission Regulation (EEC) No 75/93	(OJ L 11, 19.1.1993, p. 5)
Commission Regulation (EEC) No 1938/93	(OJ L 176, 20.7.1993, p. 12)
Commission Regulation (EC) No 770/96	(OJ L 104, 27.4.1996, p. 13)

ANNEX II

Correlation table

Regulation (EEC) No 3002/92	This Regulation
Article 1(1) and (2)	Article 1(1) and (2)
Article 1(3)	—
Article 1(4)	Article 1(3)
Article 2(1), first and second subparagraphs	Article 2(1), first and second subparagraphs
Article 2(1), third subparagraph	—
Article 2(2), first subparagraph, introductory words and first and second indents	Article 2(2), first subparagraph
Article 2(2), second subparagraph, introductory words	Article 2(2), second subparagraph, introductory words
Article 2(2) second subparagraph, first indent	Article 2(2) second subparagraph, point (a)
Article 2(2), second subparagraph, second indent	Article 2(2), second subparagraph, point (b)
Article 2(2), third subparagraph	Article 2(2), third subparagraph
Article 2(3), first subparagraph, introductory words	Article 2(3), first subparagraph, introductory words
Article 2(3), first subparagraph, first indent	Article 2(3), first subparagraph, point (a)
Article 2(3), first subparagraph, second indent	Article 2(3), first subparagraph, point (b)
Article 2(3), second subparagraph	Article 2(3), second subparagraph
Article 2(4), first subparagraph	Article 2(4), first subparagraph
—	Article 2(4), second subparagraph
Article 2(4), second subparagraph	Article 2(4), third subparagraph
Article 3(1)(a), first subparagraph, introductory words	Article 3(1), first subparagraph, introductory words
Article 3(1)(a), first subparagraph, first indent	Article 3(1), first subparagraph, point (a)
Article 3(1)(a), first subparagraph, second indent	Article 3(1), first subparagraph, point (b)
Article 3(1)(a), first subparagraph, third indent, introductory words	Article 3(1), first subparagraph, point (c), introductory words
Article 3(1)(a), first subparagraph, third indent, first subindent	Article 3(1), first subparagraph, point (c)(i)
Article 3(1)(a), first subparagraph, third indent, second subindent	Article 3(1), first subparagraph, point (c)(ii)
Article 3(1)(a), second subparagraph	Article 3(1), second subparagraph
Article 3(1)(a), third subparagraph, introductory words	Article 3(1), third subparagraph, introductory words
Article 3(1)(a), third subparagraph, first indent	Article 3(1), third subparagraph, point (a)

Regulation (EEC) No 3002/92	This Regulation
Article 3(1)(a), third subparagraph, second indent	Article 3(1), third subparagraph, point (b)
Article 3(1)(a), fourth subparagraph	Article 3(1), fourth subparagraph
Article 3(1)(b), first subparagraph, introductory words	Article 3(2), first subparagraph, introductory words
Article 3(1)(b), first subparagraph, first indent	Article 3(2), first subparagraph, point (a)
Article 3(1)(b), first subparagraph, second indent	Article 3(2), first subparagraph, point (b)
Article 3(1)(b), first subparagraph, third indent	Article 3(2), first subparagraph, point (c)
Article 3(1)(b), first subparagraph, fourth indent	Article 3(2), first subparagraph, point (d)
Article 3(1)(b), first subparagraph, fifth indent	Article 3(2), first subparagraph, point (e)
Article 3(1)(b), second subparagraph	Article 3(2), second subparagraph
Article 3(1)(b), third subparagraph	Article 3(2), third subparagraph
Article 3(1)(c)	Article 3(3)
Article 3(1)(d)	Article 3(4)
Article 3(2)	Article 3(5)
Article 3(3)	Article 3(6)
Article 4	Article 4
Article 5(1), introductory part	Article 5(1), introductory part
Article 5(1), first indent	Article 5(1)(a)
Article 5(1), second indent	Article 5(1)(b)
Article 5(2), first subparagraph, introductory part	Article 5(2), first subparagraph, introductory part
Article 5(2), first subparagraph, first indent	Article 5(2), first subparagraph, point (a)
Article 5(2), first subparagraph, second indent	Article 5(2), first subparagraph, point (b)
Article 5(2), first subparagraph, third indent	Article 5(2), first subparagraph, point (c)
Article 5(2), first subparagraph, fourth indent	Article 5(2), first subparagraph, point (d)
Article 5(2), first subparagraph, fifth indent	Article 5(2), first subparagraph, point (e)
Article 5(2), first subparagraph, sixth indent	Article 5(2), first subparagraph, point (f)
Article 5(2), first subparagraph, seventh indent	Article 5(2), first subparagraph, point (g)
Article 5(2), first subparagraph, eighth indent	Article 5(2), first subparagraph, point (h)
Article 5(2), first subparagraph, ninth indent	Article 5(2), first subparagraph, point (i)
Article 5(2), second subparagraph	Article 5(2), second subparagraph
Article 5a	Article 6
Article 6	Article 7
Article 7	Article 8
Article 8(1), first subparagraph	Article 9(1), first subparagraph

Regulation (EEC) No 3002/92	This Regulation
Article 8(1), second subparagraph	Article 9(1), second subparagraph
Article 8(1), third subparagraph, introductory words and first and second indents	Article 9(1), third subparagraph
Article 8(1), fourth subparagraph	Article 9(1), fourth subparagraph
Article 8(2) and (3)	Article 9(2) and (3)
Article 9	Article 10
Article 10, introductory words	Article 11, introductory words
Article 10, first indent	Article 11(a)
Article 10, second indent	Article 11(b)
Article 10, final part	Article 11, final part
Article 11	Article 12
Article 12(1)	Article 13(1)
Article 12(2), introductory words	Article 13(2), introductory words
Article 12(2), first indent	Article 13(2)(a)
Article 12(2), second indent	Article 13(2)(b)
Article 12(3)	Article 13(3)
Article 12(4)	Article 13(4)
Article 13(1), first subparagraph	Article 14(1), first subparagraph
Article 13(1), second subparagraph	Article 14(1), second subparagraph
Article 13(1), third subparagraph, introductory words	Article 14(1), third subparagraph, introductory words
Article 13(1), third subparagraph, first indent	Article 14(1), third subparagraph, point (a)
Article 13(1), third subparagraph, second indent	Article 14(1), third subparagraph, point (b)
Article 13(1), fourth subparagraph	Article 14(1), fourth subparagraph
Article 13(2)	Article 14(2)
Article 13(3)	Article 14(3)
Article 14(1) and (2)	Article 15(1) and (2)
Article 14(3), first subparagraph, introductory words	Article 15(3), first subparagraph, introductory words
Article 14(3), first subparagraph, first indent	Article 15(3), first subparagraph, point (a)
Article 14(3), first subparagraph, second indent	Article 15(3) first subparagraph, point (b)
Article 14(3), second subparagraph	Article 15(3), second subparagraph
Article 15(1), first subparagraph, introductory words	Article 16(1), first subparagraph
Article 15(1), first subparagraph, final part	Article 16(1), second subparagraph, introductory words
Article 15(1), first subparagraph, first and second indents	Article 16(1), second subparagraph, points (a) and (b)
Article 15(1), second subparagraph	Article 16(1), third subparagraph

Regulation (EEC) No 3002/92	This Regulation
Article 15(1), third subparagraph	Article 16(1), fourth subparagraph
Article 15(2), introductory words	Article 16(2), introductory words
Article 15(2)(a)	Article 16(2)(a)
Article 15(2)(b), introductory part	Article 16(2)(b), introductory part
Article 15(2)(b), first indent	Article 16(2)(b)(i)
Article 15(2)(b) second indent	Article 16(2)(b)(ii)
Article 16(1), introductory words	Article 17(1), introductory words
Article 16(1), first indent	Article 17(1)(a)
Article 16(1), second indent	Article 17(1)(b)
Article 16(2)	Article 17(2)
Article 16(3)	Article 17(3)
Article 16(4)	Article 17(4)
Article 17	Article 18
Article 18	Article 19
Article 19	Article 20
Article 20(1), first subparagraph	Article 21(1), first subparagraph
Article 20(1), second subparagraph	Article 21(1), second subparagraph
Article 20(1), third subparagraph, introductory words	Article 21(1), third subparagraph, introductory words
Article 20(1), third subparagraph, first indent	Article 21(1), third subparagraph, point (a)
Article 20(1) third subparagraph, second indent	Article 21(1) third subparagraph, point (b)
Article 20(1) third subparagraph, third indent	Article 21(1) third subparagraph, point (c)
Article 20(1) fourth subparagraph	Article 21(1) fourth subparagraph
Article 20(2)(a)	Article 21(2), first subparagraph
Article 20(2)(b), first subparagraph	Article 21(2), second subparagraph
Article 20(2)(b), second subparagraph	Article 21(2), third subparagraph
Article 20(2)(b), third subparagraph, introductory words	Article 21(2), fourth subparagraph, introductory words
Article 20(2)(b), third subparagraph, first indent	Article 21(2), fourth subparagraph, point (a)
Article 20(2)(b), third subparagraph, second indent	Article 21(2), fourth subparagraph, point (b)
Article 20(2)(b), fourth subparagraph	Article 21(2), fifth subparagraph
Article 20(3)(a)	Article 21(3), first and second subparagraphs
Article 20(3)(b), first subparagraph	Article 21(3), third subparagraph
Article 20(3)(b), second subparagraph	Article 21(3), fourth subparagraph

Regulation (EEC) No 3002/92	This Regulation
Article 20(3)(b) third subparagraph, introductory words	Article 21(3) fifth subparagraph, introductory words
Article 20(3)(b), third subparagraph, first indent	Article 21(3), fifth subparagraph, point (a)
Article 20(3)(b), third subparagraph, second indent	Article 21(3), fifth subparagraph, point (b)
Article 20(3)(b), fourth subparagraph	Article 21(3), sixth subparagraph
Article 20(4)	Article 21(4)
Article 21(1), first subparagraph, introductory words	Article 22(1), first subparagraph, introductory words
Article 21(1), first subparagraph, first indent	Article 22(1), first subparagraph, point (a)
Article 21(1), first subparagraph, second indent	Article 22(1), first subparagraph, point (b)
Article 21(1), first subparagraph, final words	Article 22(1), first subparagraph, final words
Article 21(1), second subparagraph, introductory words	Article 22(1), second subparagraph, introductory words
Article 21(1), second subparagraph, first indent	Article 22(1), second subparagraph, point (a)
Article 21(1), second subparagraph, second indent	Article 22(1), second subparagraph, point (b)
Article 21(1), second subparagraph, final words	Article 22(1), second subparagraph, final words
Article 21(2)	Article 22(2)
Article 21(3)	Article 22(3)
Article 22	Article 23
Article 23	Article 24
Article 24	Article 25
Article 25	—
—	Article 26
Article 26	Article 27
—	Annex I
—	Annex II

COMMISSION REGULATION (EC) No 1131/2009**of 24 November 2009****entering a name in the register of protected designations of origin and protected geographical indications (Moutarde de Bourgogne (PGI))**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, France's application to register the name 'Moutarde de Bourgogne' was published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no objections within the meaning of Article 7 of Regulation (EC) No 510/2006 were received by the Commission, this name should be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

Article 2

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

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

Done at Brussels, 24 November 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 72, 26.3.2009, p. 62.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 2.6. Mustard paste

FRANCE

Moutarde de Bourgogne (PGI)

COMMISSION REGULATION (EC) No 1132/2009**of 24 November 2009****entering a name in the register of protected designations of origin and protected geographical indications (Marroni del Monfenera (PGI))**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 6(2) of Regulation (EC) No 510/2006, Italy's application to register the name 'Marroni del Monfenera' was published in the *Official Journal of the European Union* ⁽²⁾.

- (2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, this name should be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

Article 2

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

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

Done at Brussels, 24 November 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ C 89, 18.4.2009, p. 9.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6. Fruit, vegetables and cereals, fresh or processed

ITALY

Marroni del Monfenera (PGI)

COMMISSION REGULATION (EC) No 1133/2009
of 24 November 2009
amending Regulation (EC) No 1090/2009 fixing the import duties in the cereals sector applicable
from 16 November 2009

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 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

(1) The import duties in the cereals sector applicable from 16 November 2009 were fixed by Commission Regulation (EC) No 1090/2009 ⁽³⁾.

(2) As the average of the import duties calculated differs by more than EUR 5/tonne from that fixed, a corresponding adjustment must be made to the import duties fixed by Regulation (EC) No 1090/2009.

(3) Regulation (EC) No 1090/2009 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1090/2009 are hereby replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from 25 November 2009.

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

Done at Brussels, 24 November 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 161, 29.6.1996, p. 125.

⁽³⁾ OJ L 299, 14.11.2009, p. 3.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 25 November 2009

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	15,26
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	38,58
1005 10 90	Maize seed other than hybrid	15,68
1005 90 00	Maize, other than seed ⁽²⁾	15,68
1007 00 90	Grain sorghum other than hybrids for sowing	38,58

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

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

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

ANNEX II

Factors for calculating the duties laid down in Annex I

13.11.2009-23.11.2009

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

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minnéapolis	Chicago	—	—	—	—
Quotation	146,67	105,00	—	—	—	—
Fob price USA	—	—	127,27	117,27	97,27	74,77
Gulf of Mexico premium	—	14,72	—	—	—	—
Great Lakes premium	12,65	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

⁽²⁾ Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

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

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

Freight costs: Gulf of Mexico–Rotterdam: 22,58 EUR/t

Freight costs: Great Lakes–Rotterdam: 44,51 EUR/t

DIRECTIVES

DIRECTIVE 2009/127/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 October 2009

amending Directive 2006/42/EC with regard to machinery for pesticide application

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The use of pesticides is recognised as posing threats both to human health and the environment. In its Communication of 12 July 2006 entitled 'A Thematic Strategy on the Sustainable Use of Pesticides', the Commission adopted a strategy aiming at reducing the risks to human health and the environment resulting from the use of pesticides. Furthermore, the European Parliament and the Council have adopted Directive 2009/128/EC of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides ⁽³⁾ (the 'Framework Directive').
- (2) The design, construction and maintenance of machinery for pesticide application play a significant role in reducing the adverse effects of pesticides on human health and the environment. Regarding pesticide application equipment already in professional use, the Framework Directive introduces requirements for the inspection and maintenance to be carried out on such equipment.
- (3) The Framework Directive applies to pesticides which are plant protection products. It is therefore appropriate to limit the scope of this Directive to machinery for the

application of pesticides that are plant protection products. However, since it is anticipated that the scope of the Framework Directive will be extended to cover biocidal products, the extension of the scope of the environmental protection requirements to machinery for the application of biocidal products should be examined by the Commission by 31 December 2012.

- (4) The requirements for the protection of the health and safety of persons and, where appropriate, domestic animals and property are already covered by Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery ⁽⁴⁾. It is therefore appropriate that essential environmental protection requirements for the design and construction of new machinery for pesticide application are included in the Directive 2006/42/EC, while ensuring that these requirements are consistent with those of the Framework Directive relating to maintenance and inspection.
- (5) For this purpose, it is also necessary to include a reference to the protection of the environment in Directive 2006/42/EC, while limiting this objective to the category of machinery and to the risks subject to specific environmental protection requirements.
- (6) Machinery for pesticide application includes self-propelled, towed, vehicle-mounted, semi-mounted and airborne machinery, as well as stationary machinery intended for pesticide application, both for professional and non-professional use. It also includes powered or manually-operated portable and handheld machinery with a pressure chamber.
- (7) This Directive is limited to the essential requirements with which machinery for pesticide application must comply before being placed on the market and/or put into service, while the European standardisation organisations are responsible for drawing up harmonised standards providing detailed specifications for the various categories of such machinery in order to enable manufacturers to comply with those requirements.

⁽¹⁾ OJ C 182, 4.8.2009, p. 44.

⁽²⁾ Opinion of the European Parliament of 22 April 2009 (not yet published in the Official Journal) and Council Decision of 24 September 2009.

⁽³⁾ OJ L 309, 24.11.2009, p. 71.

⁽⁴⁾ OJ L 157, 9.6.2006, p. 24.

- (8) It is essential that all interested parties, including industry, farmers and environmental organisations, are equally involved in the establishment of such harmonised standards, so as to ensure that they are adopted on the basis of a clear consensus amongst all stakeholders.
- (9) Directive 2006/42/EC should be therefore amended accordingly.
- (10) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (11) Where the available scientific evidence is insufficient to allow an accurate risk assessment, Member States, when taking measures under this Directive, should apply the precautionary principle, which is a principle of Community law outlined, *inter alia*, in the Communication from the Commission of 2 February 2000, while taking due consideration of the other rules and principles contained in Directive 2006/42/EC, such as the free movement of goods and the presumption of conformity,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2006/42/EC

Directive 2006/42/EC is hereby amended as follows:

1. in the second paragraph of Article 2, the following point shall be added:

‘(m) “essential health and safety requirements” means mandatory provisions relating to the design and construction of the products subject to this Directive to ensure a high level of protection of the health and safety of persons and, where appropriate, of domestic animals and property and, where applicable, of the environment.

The essential health and safety requirements are set out in Annex I. Essential health and safety requirements for the protection of the environment are applicable only to the machinery referred to in section 2.4 of that Annex.’;

2. Article 4(1) shall be replaced by the following:

‘1. Member States shall take all appropriate measures to ensure that machinery may be placed on the market and/or

put into service only if it satisfies the relevant provisions of this Directive and does not endanger the health and safety of persons and, where appropriate, domestic animals and property and, where applicable, the environment, when properly installed and maintained and used for its intended purpose or under reasonably foreseeable conditions.’;

3. in Article 9(3), the first subparagraph shall be replaced by the following:

‘In the cases referred to in paragraph 1, the Commission shall consult the Member States and other interested parties, indicating the measures it intends to take in order to ensure, at Community level, a high level of protection of the health and safety of persons and, where appropriate, of domestic animals and property and, where applicable, of the environment.’;

4. Article 11(1) shall be replaced by the following:

‘1. Where a Member State ascertains that machinery covered by this Directive, bearing the CE marking, accompanied by the EC declaration of conformity and used in accordance with its intended purpose or under reasonably foreseeable conditions, is liable to endanger the health or safety of persons or, where appropriate, domestic animals or property or, where applicable, the environment, it shall take all appropriate measures to withdraw such machinery from the market, to prohibit the placing on the market and/or putting into service of such machinery or to restrict the free movement thereof.’;

5. Annex I shall be amended as follows:

(a) in the General Principles, point 4 shall be replaced by the following:

‘4. This Annex is organised in several parts. The first one is of general scope and applicable to all kinds of machinery. The other parts refer to certain kinds of more specific hazards. Nevertheless, it is essential to examine the whole of this Annex in order to be sure of meeting all the relevant essential requirements. When machinery is being designed, the requirements of the general part and the requirements of one or more of the other parts shall be taken into account, depending on the results of the risk assessment carried out in accordance with point 1 of these General Principles. Essential health and safety requirements for the protection of the environment are applicable only to the machinery referred to in section 2.4.’;

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

(b) Chapter 2 shall be amended as follows:

(i) the first paragraph shall be replaced by the following:

Foodstuffs machinery, machinery for cosmetics or pharmaceutical products, hand-held and/or hand-guided machinery, portable fixing and other impact machinery, machinery for working wood and material with similar physical characteristics and machinery for pesticide application must meet all the essential health and safety requirements set out in this chapter (see General Principles, point 4).;

(ii) the following Section shall be added:

2.4. MACHINERY FOR PESTICIDE APPLICATION

2.4.1. *Definition*

“Machinery for pesticide application” means machinery specifically intended for the application of plant protection products within the meaning of Article 2(1) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market (*).

2.4.2. *General*

The manufacturer of machinery for pesticide application or his authorised representative must ensure that an assessment is carried out of the risks of unintended exposure of the environment to pesticides, in accordance with the process of risk assessment and risk reduction referred to in the General Principles, point 1.

Machinery for pesticide application must be designed and constructed taking into account the results of the risk assessment referred to in the first paragraph so that the machinery can be operated, adjusted and maintained without unintended exposure of the environment to pesticides.

Leakage must be prevented at all times.

2.4.3. *Controls and monitoring*

It must be possible to easily and accurately control, monitor and immediately stop the pesticide application from the operating positions.

2.4.4. *Filling and emptying*

The machinery must be designed and constructed to facilitate precise filling with the necessary quantity of pesticide and to ensure easy and complete emptying, while preventing spillage of pesticide and avoiding the contamination of the water source during such operations.

2.4.5. *Application of pesticides*

2.4.5.1. *Application rate*

The machinery must be fitted with means of adjusting the application rate easily, accurately and reliably.

2.4.5.2. *Distribution, deposition and drift of pesticide*

The machinery must be designed and constructed to ensure that pesticide is deposited on target areas, to minimise losses to other areas and to prevent drift of pesticide to the environment. Where appropriate, an even distribution and homogeneous deposition must be ensured.

2.4.5.3. *Tests*

In order to verify that the relevant parts of the machinery comply with the requirements set out in sections 2.4.5.1 and 2.4.5.2 the manufacturer or his authorised representative must, for each type of machinery concerned, perform appropriate tests, or have such tests performed.

2.4.5.4. *Losses during stoppage*

The machinery must be designed and constructed to prevent losses while the pesticide application function is stopped.

2.4.6. *Maintenance*

2.4.6.1. *Cleaning*

The machinery must be designed and constructed to allow its easy and thorough cleaning without contamination of the environment.

2.4.6.2. *Servicing*

The machinery must be designed and constructed to facilitate the changing of worn parts without contamination of the environment.

2.4.7. Inspections

It must be possible to easily connect the necessary measuring instruments to the machinery to check the correct functioning of the machinery.

2.4.8. Marking of nozzles, strainers and filters

Nozzles, strainers and filters must be marked so that their type and size can be clearly identified.

2.4.9. Indication of pesticide in use

Where appropriate, the machinery must be fitted with a specific mounting on which the operator can place the name of the pesticide in use.

2.4.10. Instructions

The instructions must provide the following information:

- (a) precautions to be taken during mixing, loading, application, emptying, cleaning, servicing and transport operations in order to avoid contamination of the environment;
- (b) detailed conditions of use for the different operating environments envisaged, including the corresponding preparation and adjustments required to ensure the deposition of pesticide on target areas while minimising losses to other areas, to prevent drift to the environment and, where appropriate, to ensure an even distribution and homogeneous deposition of pesticide;
- (c) the range of types and sizes of nozzles, strainers and filters that can be used with the machinery;
- (d) the frequency of checks and the criteria and method for the replacement of parts subject to wear that affect the correct functioning of the machinery, such as nozzles, strainers and filters;
- (e) specification of calibration, daily maintenance, winter preparation and other checks necessary to ensure the correct functioning of the machinery;
- (f) types of pesticides that may cause incorrect functioning of the machinery;

(g) an indication that the operator should keep updated the name of the pesticide in use on the specific mounting referred to in section 2.4.9;

(h) the connexion and use of any special equipment or accessories, and the necessary precautions to be taken;

(i) an indication that the machinery may be subject to national requirements for regular inspection by designated bodies, as provided for in Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (**);

(j) the features of the machinery which must be inspected to ensure its correct functioning;

(k) instructions for connecting the necessary measuring instruments.

(*) OJ L 309, 24.11.2009, p. 1.

(**) OJ L 309, 24.11.2009, p. 71.

Article 2**Transposition**

1. Member States shall adopt and publish the provisions necessary to comply with this Directive by 15 June 2011 at the latest. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 15 December 2011.

When those provisions are adopted by Member States, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 3**Entry into force**

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

*Article 4***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 21 October 2009.

For the European Parliament
The President
J. BUZEK

For the Council
The President
C. MALMSTRÖM

COUNCIL DIRECTIVE 2009/133/EC**of 19 October 2009****on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States****(codified version)**

THE COUNCIL OF THE EUROPEAN UNION,

from the point of view of competition, in order to allow enterprises to adapt to the requirements of the internal market, to increase their productivity and to improve their competitive strength at the international level.

Having regard to the Treaty establishing the European Community, and in particular Article 94 thereof,

Having regard to the proposal from the Commission,

(3) Tax provisions disadvantage such operations, in comparison with those concerning companies of the same Member State. It is necessary to remove such disadvantages.

Having regard to the opinion of the European Parliament ⁽¹⁾,Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

(4) It is not possible to attain this objective by an extension at Community level of the systems in force in the Member States, since differences between these systems tend to produce distortions. Only a common tax system is able to provide a satisfactory solution in this respect.

Whereas:

(1) Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office, of an SE or SCE, between Member States ⁽³⁾ has been substantially amended several times ⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.

(5) The common tax system ought to avoid the imposition of tax in connection with mergers, divisions, partial divisions, transfers of assets or exchanges of shares, while at the same time safeguarding the financial interests of the Member State of the transferring or acquired company.

(2) Mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States may be necessary in order to create within the Community conditions analogous to those of an internal market and in order thus to ensure the effective functioning of such an internal market. Such operations ought not to be hampered by restrictions, disadvantages or distortions arising in particular from the tax provisions of the Member States. To that end it is necessary, with respect to such operations, to provide for tax rules which are neutral

(6) In respect of mergers, divisions or transfers of assets, such operations normally result either in the transformation of the transferring company into a permanent establishment of the company receiving the assets or in the assets becoming connected with a permanent establishment of the latter company.

(7) The system of deferral of the taxation of the capital gains relating to the assets transferred until their actual disposal, applied to such of those assets as are transferred to that permanent establishment, permits exemption from taxation of the corresponding capital gains, while at the same time ensuring their ultimate taxation by the Member State of the transferring company at the date of their disposal.

⁽¹⁾ Opinion of 13 January 2009 (not yet published in the Official Journal).

⁽²⁾ OJ C 100, 30.4.2009, p. 153.

⁽³⁾ OJ L 225, 20.8.1990, p. 1.

⁽⁴⁾ See Annex II, Part A.

- (8) While the companies listed in Annex I, Part A are corporate taxpayers in their Member State of residence, some of them may be considered to be fiscally transparent by other Member States. In order to preserve the effectiveness of this Directive, Member States treating non-resident corporate taxpayers as fiscally transparent should grant the benefits of this Directive to them. However, Member States should have the option not to apply the relevant provisions of this Directive when taxing a direct or indirect shareholder of those taxpayers.
- (9) It is also necessary to define the tax regime applicable to certain provisions, reserves or losses of the transferring company and to solve the tax problems occurring where one of the two companies has a holding in the capital of the other.
- (10) The allotment to the shareholders of the transferring company of securities of the receiving or acquiring company should not in itself give rise to any taxation in the hands of such shareholders.
- (11) The decision of an SE or SCE to reorganise its business by transferring its registered office should not be unduly hampered by discriminatory tax rules or by restrictions, disadvantages or distortions arising from national tax legislation which is contrary to Community Law. The transfer, or an event connected with the transfer, may give rise to some form of taxation in the Member State from which the office is transferred. Where the assets of the SE or of the SCE remain effectively connected with a permanent establishment in the Member State from which the registered office was transferred, that permanent establishment should enjoy benefits similar to those provided for by Articles 4, 5 and 6. Moreover, the taxation of shareholders on the occasion of the transfer of the registered office should be excluded.
- (12) This Directive does not deal with losses of a permanent establishment in another Member State recognised in the Member State of residence of an SE or SCE. In particular, where the registered office of an SE or SCE is transferred to another Member State, such transfer does not prevent the former Member State of residence from reinstating losses of the permanent establishment in due time.
- (13) It is necessary to allow Member States the possibility of refusing to apply this Directive where the merger, division, partial division, transfer of assets, exchange of shares or transfer of the registered office of an SE or SCE has as its objective tax evasion or avoidance or results in a company, whether or not it participates in the operation, no longer fulfilling the conditions required for the representation of employees in company organs.
- (14) One of the aims of this Directive is to eliminate obstacles to the functioning of the internal market, such as double

taxation. In so far as this is not fully achieved by the provisions of this Directive, Member States should take the necessary measures to achieve this aim.

- (15) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex II, Part B,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Each Member State shall apply this Directive to the following:

- (a) mergers, divisions, partial divisions, transfers of assets and exchanges of shares involving companies from two or more Member States;
- (b) transfers of the registered office from one Member State to another Member State of a European company (*Societas Europaea* or SE), as established in Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE) ⁽¹⁾, and a European Cooperative Society (SCE), as established in Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) ⁽²⁾.

Article 2

For the purposes of this Directive, the following definitions shall apply:

- (a) 'merger' means an operation whereby:
- (i) one or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to another existing company in exchange for the issue to their shareholders of securities representing the capital of that other company, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or, in the absence of a nominal value, of the accounting par value of those securities;
- (ii) two or more companies, on being dissolved without going into liquidation, transfer all their assets and liabilities to a company that they form, in exchange for the issue to their shareholders of securities representing the capital of that new company, and, if applicable, a cash payment not exceeding 10 % of the nominal value, or in the absence of a nominal value, of the accounting par value of those securities;

⁽¹⁾ OJ L 294, 10.11.2001, p. 1.

⁽²⁾ OJ L 207, 18.8.2003, p. 1.

- (iii) a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to the company holding all the securities representing its capital;
- (b) 'division' means an operation whereby a company, on being dissolved without going into liquidation, transfers all its assets and liabilities to two or more existing or new companies, in exchange for the pro rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;
- (c) 'partial division' means an operation whereby a company transfers, without being dissolved, one or more branches of activity, to one or more existing or new companies, leaving at least one branch of activity in the transferring company, in exchange for the pro-rata issue to its shareholders of securities representing the capital of the companies receiving the assets and liabilities, and, if applicable, a cash payment not exceeding 10 % of the nominal value or, in the absence of a nominal value, of the accounting par value of those securities;
- (d) 'transfer of assets' means an operation whereby a company transfers without being dissolved all or one or more branches of its activity to another company in exchange for the transfer of securities representing the capital of the company receiving the transfer;
- (e) 'exchange of shares' means an operation whereby a company acquires a holding in the capital of another company such that it obtains a majority of the voting rights in that company, or, holding such a majority, acquires a further holding, in exchange for the issue to the shareholders of the latter company, in exchange for their securities, of securities representing the capital of the former company, and, if applicable, a cash payment not exceeding 10 % of the nominal value, in the absence of a nominal value, of the accounting par value of the securities issued in exchange;
- (f) 'transferring company' means the company transferring its assets and liabilities or transferring all or one or more branches of its activity;
- (g) 'receiving company' means the company receiving the assets and liabilities or all or one or more branches of the activity of the transferring company;
- (h) 'acquired company' means the company in which a holding is acquired by another company by means of an exchange of securities;
- (i) 'acquiring company' means the company which acquires a holding by means of an exchange of securities;
- (j) 'branch of activity' means all the assets and liabilities of a division of a company which from an organisational point of view constitute an independent business, that is to say an entity capable of functioning by its own means;
- (k) 'transfer of the registered office' means an operation whereby an SE or an SCE, without winding up or creating a new legal person, transfers its registered office from one Member State to another Member State.

Article 3

For the purposes of this Directive, 'company from a Member State' shall mean any company which:

- (a) takes one of the forms listed in Annex, I Part A;
- (b) according to the tax laws of a Member State is considered to be resident in that Member State for tax purposes and, under the terms of a double taxation agreement concluded with a third country, is not considered to be resident for tax purposes outside the Community; and
- (c) is subject to one of the taxes listed in Annex I, Part B, without the possibility of an option or of being exempt, or to any other tax which may be substituted for any of those taxes.

CHAPTER II

RULES APPLICABLE TO MERGERS, DIVISIONS, PARTIAL DIVISIONS, TO TRANSFERS OF ASSETS AND EXCHANGES OF SHARES

Article 4

1. A merger, division or partial division shall not give rise to any taxation of capital gains calculated by reference to the difference between the real values of the assets and liabilities transferred and their values for tax purposes.
2. For the purpose of this Article, the following definitions shall apply:
 - (a) 'value for tax purposes': the value on the basis of which any gain or loss would have been computed for the purposes of tax upon the income, profits or capital gains of the transferring company if such assets or liabilities had been sold at the time of the merger, division or partial division but independently of it;

(b) 'transferred assets and liabilities': those assets and liabilities of the transferring company which, in consequence of the merger, division or partial division, are effectively connected with a permanent establishment of the receiving company in the Member State of the transferring company and play a part in generating the profits or losses taken into account for tax purposes.

3. Where paragraph 1 applies and where a Member State considers a non-resident transferring company as fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted and therefore taxes the shareholders on their share of the profits of the transferring company as and when those profits arise, that Member State shall not tax any income, profits or capital gains calculated by reference to the difference between the real values of the assets and liabilities transferred and their values for tax purposes.

4. Paragraphs 1 and 3 shall apply only if the receiving company computes any new depreciation and any gains or losses in respect of the assets and liabilities transferred according to the rules that would have applied to the transferring company or companies if the merger, division or partial division had not taken place.

5. Where, under the laws of the Member State of the transferring company, the receiving company is entitled to have any new depreciation or any gains or losses in respect of the assets and liabilities transferred computed on a basis different from that set out in paragraph 4, paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.

Article 5

The Member States shall take the necessary measures to ensure that, where provisions or reserves properly constituted by the transferring company are partly or wholly exempt from tax and are not derived from permanent establishments abroad, such provisions or reserves may be carried over, with the same tax exemption, by the permanent establishments of the receiving company which are situated in the Member State of the transferring company, the receiving company thereby assuming the rights and obligations of the transferring company.

Article 6

To the extent that, if the operations referred to in Article 1(a) were effected between companies from the Member State of the transferring company, the Member State would apply provisions allowing the receiving company to takeover the losses of the transferring company which had not yet been exhausted for tax purposes, it shall extend those provisions to cover the takeover of such losses by the receiving company's permanent establishments situated within its territory.

Article 7

1. Where the receiving company has a holding in the capital of the transferring company, any gains accruing to the receiving company on the cancellation of its holding shall not be liable to any taxation.

2. The Member States may derogate from paragraph 1 where the receiving company has a holding of less than 15 % in the capital of the transferring company.

From 1 January 2009 the minimum holding percentage shall be 10 %.

Article 8

1. On a merger, division or exchange of shares, the allotment of securities representing the capital of the receiving or acquiring company to a shareholder of the transferring or acquired company in exchange for securities representing the capital of the latter company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

2. On a partial division, the allotment to a shareholder of the transferring company of securities representing the capital of the receiving company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

3. Where a Member State considers a shareholder as fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that shareholder arising from the law under which it is constituted and therefore taxes those persons having an interest in the shareholder on their share of the profits of the shareholder as and when those profits arise, that Member State shall not tax those persons on income, profits or capital gains from the allotment of securities representing the capital of the receiving or acquiring company to the shareholder.

4. Paragraphs 1 and 3 shall apply only if the shareholder does not attribute to the securities received a value for tax purposes higher than the value the securities exchanged had immediately before the merger, division or exchange of shares.

5. Paragraphs 2 and 3 shall apply only if the shareholder does not attribute to the sum of the securities received and those held in the transferring company, a value for tax purposes higher than the value the securities held in the transferring company had immediately before the partial division.

6. The application of paragraphs 1, 2 and 3 shall not prevent the Member States from taxing the gain arising out of the subsequent transfer of securities received in the same way as the gain arising out of the transfer of securities existing before the acquisition.

7. For the purpose of this Article, 'value for tax purposes' shall mean the value on the basis of which any gain or loss would be computed for the purposes of tax upon the income, profits or capital gains of a shareholder of the company.

8. Where, under the law of the Member State in which he is resident, a shareholder may opt for tax treatment different from that set out in paragraphs 4 and 5, paragraphs 1, 2 and 3 shall not apply to the securities in respect of which such an option is exercised.

9. Paragraphs 1, 2 and 3 shall not prevent a Member State from taking into account when taxing shareholders any cash payment that may be made on the merger, division, partial division or exchange of shares.

Article 9

Articles 4, 5 and 6 shall apply to transfers of assets.

CHAPTER III

SPECIAL CASE OF THE TRANSFER OF A PERMANENT ESTABLISHMENT

Article 10

1. Where the assets transferred in a merger, a division, a partial division or a transfer of assets include a permanent establishment of the transferring company which is situated in a Member State other than that of the transferring company, the Member State of the transferring company shall renounce any right to tax that permanent establishment.

The Member State of the transferring company may reinstate in the taxable profits of that company such losses of the permanent establishment as may previously have been set off against the taxable profits of the company in that Member State and which have not been recovered.

The Member State in which the permanent establishment is situated and the Member State of the receiving company shall apply the provisions of this Directive to such a transfer as if the Member State where the permanent establishment is situated were the Member State of the transferring company.

This paragraph shall also apply in the case where the permanent establishment is situated in the same Member State as that in which the receiving company is resident.

2. By way of derogation from paragraph 1, where the Member State of the transferring company applies a system of taxing worldwide profits, that Member State shall have the right to tax any profits or capital gains of the permanent establishment resulting from the merger, division, partial division

or transfer of assets, on condition that it gives relief for the tax that, but for the provisions of this Directive, would have been charged on those profits or capital gains in the Member State in which that permanent establishment is situated, in the same way and in the same amount as it would have done if that tax had actually been charged and paid.

CHAPTER IV

SPECIAL CASE OF TRANSPARENT ENTITIES

Article 11

1. Where a Member State considers a non-resident transferring or acquired company to be fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted, it shall have the right not to apply the provisions of this Directive when taxing a direct or indirect shareholder of that company in respect of the income, profits or capital gains of that company.

2. A Member State exercising the right referred to in paragraph 1 shall give relief for the tax which, but for the provisions of this Directive, would have been charged on the fiscally transparent company on its income, profits or capital gains, in the same way and in the same amount as that Member State would have done if that tax had actually been charged and paid.

3. Where a Member State considers a non-resident receiving or acquiring company to be fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted, it shall have the right not to apply Article 8(1), (2) and (3).

4. Where a Member State considers a non-resident receiving company to be fiscally transparent on the basis of that Member State's assessment of the legal characteristics of that company arising from the law under which it is constituted, that Member State may apply to any direct or indirect shareholders the same treatment for tax purposes as it would if the receiving company were resident in that Member State.

CHAPTER V

RULES APPLICABLE TO THE TRANSFER OF THE REGISTERED OFFICE OF AN SE OR AN SCE

Article 12

1. Where:

- (a) an SE or an SCE transfers its registered office from one Member State to another Member State; or

(b) in connection with the transfer of its registered office from one Member State to another Member State, an SE or an SCE, which is resident in the first Member State, ceases to be resident in that Member State and becomes resident in another Member State;

that transfer of registered office or the cessation of residence shall not give rise to any taxation of capital gains, calculated in accordance with Article 4(1), in the Member State from which the registered office has been transferred, derived from those assets and liabilities of the SE or SCE which, in consequence, remain effectively connected with a permanent establishment of the SE or of the SCE in the Member State from which the registered office has been transferred and play a part in generating the profits or losses taken into account for tax purposes.

2. Paragraph 1 shall apply only if the SE or the SCE computes any new depreciation and any gains or losses in respect of the assets and liabilities that remain effectively connected with that permanent establishment, as though the transfer of the registered office had not taken place or the SE or the SCE had not so ceased to be tax resident.

3. Where, under the laws of the Member State from which the registered office was transferred, the SE or the SCE is entitled to have any new depreciation or any gains or losses in respect of the assets and liabilities remaining in that Member State computed on a basis different from that set out in paragraph 2, paragraph 1 shall not apply to the assets and liabilities in respect of which that option is exercised.

Article 13

1. Where:

- (a) an SE or an SCE transfers its registered office from one Member State to another Member State; or
- (b) in connection with the transfer of its registered office from one Member State to another Member State, an SE or an SCE, which is resident in the first Member State, ceases to be resident in that Member State and becomes resident in another Member State;

the Member States shall take the necessary measures to ensure that, where provisions or reserves properly constituted by the SE or the SCE before the transfer of the registered office are partly or wholly exempt from tax and are not derived from permanent establishments abroad, such provisions or reserves may be carried over, with the same tax exemption, by a permanent establishment of the SE or the SCE which is situated within the territory of the Member State from which the registered office was transferred.

2. To the extent that a company transferring its registered office within the territory of a Member State would be allowed to carry forward or carry back losses which had not been exhausted for tax purposes, that Member State shall allow the permanent establishment, situated within its territory, of the SE or of the SCE transferring its registered office, to take over those losses of the SE or SCE which have not been exhausted for tax purposes, provided that the loss carry forward or carry back would have been available in comparable circumstances to a company which continued to have its registered office or which continued to be tax resident in that Member State.

Article 14

1. The transfer of the registered office of an SE or of an SCE shall not, of itself, give rise to any taxation of the income, profits or capital gains of the shareholders.

2. The application of paragraph 1 shall not prevent the Member States from taxing the gain arising out of the subsequent transfer of the securities representing the capital of the SE or of the SCE that transfers its registered office.

CHAPTER VI

FINAL PROVISIONS

Article 15

1. A Member State may refuse to apply or withdraw the benefit of all or any part of the provisions of Articles 4 to 14 where it appears that one of the operations referred to in Article 1:

- (a) has as its principal objective or as one of its principal objectives tax evasion or tax avoidance; the fact that the operation is not carried out for valid commercial reasons such as the restructuring or rationalisation of the activities of the companies participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its principal objective or as one of its principal objectives;
- (b) results in a company, whether participating in the operation or not, no longer fulfilling the necessary conditions for the representation of employees on company organs according to the arrangements which were in force prior to that operation.

2. Paragraph 1(b) shall apply as long as and to the extent that no Community law provisions containing equivalent rules on representation of employees on company organs are applicable to the companies covered by this Directive.

Article 16

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

Article 17

Directive 90/434/EEC, as amended by the acts listed in Annex II, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 18

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

Article 19

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 2009.

For the Council

The President

E. ERLANDSSON

ANNEX I

PART A

LIST OF COMPANIES REFERRED TO IN ARTICLE 3(a)

- (a) companies (SE) incorporated under Regulation (EC) No 2157/2001 and Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees⁽¹⁾ and cooperative societies (SCE) incorporated under Regulation (EC) No 1435/2003 and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees⁽²⁾;
- (b) companies under Belgian law known as 'société anonyme'/'naamloze vennootschap', 'société en commandite par actions'/'commanditaire vennootschap op aandelen', 'société privée à responsabilité limitée'/'besloten vennootschap met beperkte aansprakelijkheid', 'société coopérative à responsabilité limitée'/'coöperatieve vennootschap met beperkte aansprakelijkheid', 'société coopérative à responsabilité illimitée'/'coöperatieve vennootschap met onbeperkte aansprakelijkheid', 'société en nom collectif'/'vennootschap onder firma', 'société en commandite simple'/'gewone commanditaire vennootschap', public undertakings which have adopted one of the abovementioned legal forms, and other companies constituted under Belgian law subject to the Belgian corporate tax;
- (c) companies under Bulgarian law known as 'събирателното дружество', 'командитното дружество', 'дружеството с ограничена отговорност', 'акционерното дружество', 'командитното дружество с акции', 'кооперации', 'кооперативни съюзи', and 'държавни предприятия' constituted under Bulgarian law and carrying on commercial activities;
- (d) companies under Czech law known as 'akciová společnost' and 'společnost s ručením omezeným';
- (e) companies under Danish law known as 'aktieselskab' and 'anpartsselskab' and other companies subject to tax under the Corporation Tax Act, in so far as their taxable income is calculated and taxed in accordance with the general tax legislation rules applicable to 'aktieselskaber';
- (f) companies under German law known as 'Aktiengesellschaft', 'Kommanditgesellschaft auf Aktien', 'Gesellschaft mit beschränkter Haftung', 'Versicherungsverein auf Gegenseitigkeit', 'Erwerbs- und Wirtschaftsgenossenschaft', 'Betriebe gewerblicher Art von juristischen Personen des öffentlichen Rechts', and other companies constituted under German law subject to German corporate tax;
- (g) companies under Estonian law known as 'täisühing', 'usaldusühing', 'osaühing', 'aktsiaselts' and 'tulundusühistu';
- (h) companies incorporated or existing under Irish law, bodies registered under the Industrial and Provident Societies Act, building societies incorporated under the Building Societies Acts and trustee savings banks within the meaning of the Trustee Savings Banks Act, 1989;
- (i) companies under Greek law known as 'ανώνυμη εταιρεία' and 'εταιρεία περιορισμένης ευθύνης (Ε.Π.Ε.)';
- (j) companies under Spanish law known as 'sociedad anónima', 'sociedad comanditaria por acciones', 'sociedad de responsabilidad limitada', and those public law bodies which operate under private law;
- (k) companies under French law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée', 'sociétés par actions simplifiées', 'sociétés d'assurances mutuelles', 'caisses d'épargne et de prévoyance', 'sociétés civiles' which are automatically subject to corporation tax, 'coopératives', 'unions de coopératives', industrial and commercial public establishments and undertakings, and other companies constituted under French law subject to the French corporate tax;
- (l) companies under Italian law known as 'società per azioni', 'società in accomandita per azioni', 'società a responsabilità limitata', 'società cooperativa', 'società di mutua assicurazione', and private and public entities whose activity is wholly or principally commercial;
- (m) companies (εταιρείες) under Cypriot law as defined in the income tax laws;

⁽¹⁾ OJ L 294, 10.11.2001, p. 22.

⁽²⁾ OJ L 207, 18.8.2003, p. 25.

- (n) companies under Latvian law known as 'akciju sabiedrība' and 'sabiedrība ar ierobežotu atbildību';
- (o) companies incorporated under the law of Lithuania;
- (p) companies under Luxembourg law known as 'société anonyme', 'société en commandite par actions', 'société à responsabilité limitée', 'société coopérative', 'société coopérative organisée comme une société anonyme', 'association d'assurances mutuelles', 'association d'épargne-pension', 'entreprise de nature commerciale, industrielle ou minière de l'État, des communes, des syndicats de communes, des établissements publics et des autres personnes morales de droit public', and other companies constituted under Luxembourg law subject to the Luxembourg corporate tax;
- (q) companies under Hungarian law known as 'közkereseti társaság', 'betéti társaság', 'közös vállalat', 'korlátolt felelősségű társaság', 'részvénytársaság', 'egyesülés', 'közhasznú társaság' and 'szövetkezet';
- (r) companies under Maltese law known as 'Kumpaniji ta' Responsabilita Limitata' and 'Soċjetajiet en commandite li l-kapital tagħhom maqsum f'azzjonijiet';
- (s) companies under Dutch law known as 'naamloze vennootschap', 'besloten vennootschap met beperkte aansprakelijkheid', 'open commanditaire vennootschap', 'coöperatie', 'onderlinge waarborgmaatschappij', 'fonds voor gemene rekening', 'vereniging op coöperatieve grondslag' and 'vereniging welke op onderlinge grondslag als verzekeraar of kredietinstelling optreedt', and other companies constituted under Dutch law subject to the Dutch corporate tax;
- (t) companies under Austrian law known as 'Aktiengesellschaft', 'Gesellschaft mit beschränkter Haftung', and 'Erwerbs- und Wirtschaftsgenossenschaften';
- (u) companies under Polish law known as 'spółka akcyjna' and 'spółka z ograniczoną odpowiedzialnością';
- (v) commercial companies or civil law companies having a commercial form as well as other legal persons carrying on commercial or industrial activities, which are incorporated under Portuguese law;
- (w) companies under Romanian law known as 'societăți pe acțiuni', 'societăți în comandită pe acțiuni' and 'societăți cu răspundere limitată';
- (x) companies under Slovenian law known as 'delniška družba', 'komanditna družba' and 'družba z omejeno odgovornostjo';
- (y) companies under Slovak law known as 'akciová spoločnosť', 'spoločnosť s ručením obmedzeným' and 'komanditná spoločnosť';
- (z) companies under Finnish law known as 'osakeyhtiö'/aktiebolag, 'osuuskunta'/andelslag, 'säästöpankki'/sparbank and 'vakuutusyhtiö'/försäkringsbolag;
- (aa) companies under Swedish law known as 'aktiebolag', 'bankaktiebolag', 'försäkringsaktiebolag', 'ekonomiska föreningar', 'sparbanker' and 'ömsesidiga försäkringsbolag';
- (ab) companies incorporated under the law of the United Kingdom.

PART B

LIST OF TAXES REFERRED TO IN ARTICLE 3(C)

- impôt des sociétés/vennootschapsbelasting in Belgium,
- корпоративен данък in Bulgaria,
- daň z příjmů právnických osob in the Czech Republic,
- selskabsskat in Denmark,
- Körperschaftssteuer in Germany,
- tulumaks in Estonia,

- corporation tax in Ireland,
 - φόρος εισοδήματος νομικών προσώπων κερδοσκοπικού χαρακτήρα in Greece,
 - impuesto sobre sociedades in Spain,
 - impôt sur les sociétés in France,
 - imposta sul reddito delle società in Italy,
 - φόρος εισοδήματος in Cyprus,
 - uzņēmumu ienākuma nodoklis in Latvia,
 - pelno mokestis in Lithuania,
 - impôt sur le revenu des collectivités in Luxembourg,
 - társasági adó in Hungary,
 - taxxa fuq l-income in Malta,
 - vennootschapsbelasting in the Netherlands,
 - Körperschaftssteuer in Austria,
 - podatek dochodowy od osób prawnych in Poland,
 - imposto sobre o rendimento das pessoas colectivas in Portugal,
 - impozit pe profit in Romania,
 - davek od dobička pravnih oseb in Slovenia,
 - daň z príjmov právnických osôb in Slovakia,
 - yhteisöjen tulovero/inkomstskatten för samfund in Finland,
 - statlig inkomstskatt in Sweden,
 - corporation tax in the United Kingdom.
-

ANNEX II

PART A

Repealed Directive with list of its successive amendments

(referred to in Article 17)

Council Directive 90/434/EEC
(OJ L 225, 20.8.1990, p. 1).

Point XI(B)(l)(2) of Annex I to the 1994 Act of
Accession
(OJ C 241, 29.8.1994, p. 196)

Point 9.7 of Annex II to the 2003 Act of Accession
(OJ L 236, 23.9.2003, p. 559).

Council Directive 2005/19/EC
(OJ L 58, 4.3.2005, p. 19).

Council Directive 2006/98/EC
(OJ L 363, 20.12.2006, p. 129).

only point 6 of the Annex

PART B

List of time-limits for transposition into national law and application

(referred to in Article 17)

Directive	Time-limit for transposition	Date of application
90/434/EEC	1 January 1992	1 January 1993 ⁽¹⁾
2005/19/EC	1 January 2006 ⁽²⁾ 1 January 2007 ⁽³⁾	—
2006/98/EC	1 January 2007	—

⁽¹⁾ Applicable to the Portuguese Republic only.

⁽²⁾ As regards the provisions referred to in Article 2(1) of the Directive.

⁽³⁾ As regards the provisions referred to in Article 2(2) of the Directive.

ANNEX III

Correlation Table

Directive 90/434/EEC	This Directive
Article 1	Article 1
Article 2(a) first indent	Article 2(a)(i)
Article 2(a) second indent	Article 2(a)(ii)
Article 2(a) third indent	Article 2(a)(iii)
Article 2(b)	Article 2(b)
Article 2(b)(a)	Article 2(c)
Article 2(c)	Article 2(d)
Article 2(d)	Article 2(e)
Article 2(e)	Article 2(f)
Article 2(f)	Article 2(g)
Article 2(g)	Article 2(h)
Article 2(h)	Article 2(i)
Article 2(i)	Article 2(j)
Article 2(j)	Article 2(k)
Article 3(a)	Article 3(a)
Article 3(b)	Article 3(b)
Article 3(c), introductory phrase of the first subparagraph and second subparagraph	Article 3(c)
Article 3(c), first subparagraph, first to twenty-seventh indents	Annex I, Part B
Article 4(1) first subparagraph	Article 4(1)
Article 4(1) second subparagraph	Article 4(2)
Article 4(2)	Article 4(3)
Article 4(3)	Article 4(4)
Article 4(4)	Article 4(5)
Articles 5 and 6	Articles 5 and 6
Article 7(1)	Article 7(1)
Article 7(2), first subparagraph	Article 7(2), first subparagraph
Article 7(2), second subparagraph, first sentence	—
Article 7(2), second subparagraph, second sentence	Article 7(2), second subparagraph
Articles 8, 9 and 10	Articles 8, 9 and 10
Article 10a	Article 11
Article 10b	Article 12
Article 10c	Article 13
Article 10d	Article 14
Article 11	Article 15
Article 12(1)	—

Directive 90/434/EEC	This Directive
Article 12(2)	—
Article 12(3)	Article 16
—	Article 17
—	Article 18
Article 13	Article 19
Annex	Annex I, Part A
—	Annex II
—	Annex III

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