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Price: EUR 4

(Continued overleaf)

<sup>(1)</sup> Text with EEA relevance

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<sup>(1)</sup> Text with EEA relevance

## II

(Non-legislative acts)

## REGULATIONS

## COUNCIL IMPLEMENTING REGULATION (EU) No 167/2011

of 21 February 2011

**terminating the partial interim review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating, *inter alia*, in the Republic of Korea**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> (the basic Regulation), and in particular Article 11(3) and (6) thereof,

Having regard to the proposal submitted by the European Commission after consulting the Advisory Committee,

Whereas:

#### A. PROCEDURE

##### 1. Measures in force

(1) The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 192/2007<sup>(2)</sup> on imports of certain polyethylene terephthalate originating, *inter alia*, in the Republic of Korea (South Korea). For the Korean companies with individual duties, the duties in force are zero. The residual duty is 148,3 EUR/tonne.

##### 2. Request for a review

(2) A request for a partial interim review pursuant to Article 11(3) of the basic Regulation was lodged by the Polyethylene Terephthalate (PET) Committee of PlasticEurope (the applicant), representing seven Union producers.

(3) The request was limited in scope to the examination of dumping as far as the exporting producer KP Chemical Group, composed of Honam Petrochemicals Corp. and KP Chemical Corp. (KP Chemical Group), is concerned, and of certain injury aspects.

(4) The applicant provided *prima facie* evidence showing that, as far as KP Chemical Group is concerned, the continued imposition of the measure at the current level of zero, is no longer sufficient to counteract the current injurious dumping.

##### 3. Initiation of a partial interim review

(5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed to justify the initiation of a partial interim review, the Commission announced, by a notice published in the *Official Journal of the European Union*<sup>(3)</sup> the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited to the examination of dumping and of certain injury aspects insofar as the KP Chemical Group is concerned.

##### 4. Product concerned and like product

(6) The product under review is polyethylene terephthalate having a viscosity number of 78 ml/g or higher, according to the ISO Standard 1628-5, currently falling within CN code 3907 60 20 and originating in South Korea (the product concerned).

(7) The product concerned and sold on the Korean domestic market and that exported to the Union has the same basic physical, technical and chemical characteristics and uses and is therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ L 59, 27.2.2007, p. 1.

<sup>(3)</sup> OJ C 47, 25.2.2010, p. 24.

### 5. Parties concerned

- (8) The Commission officially advised the exporting producer, representatives of the exporting country, Union producers and the applicant of the initiation of the partial interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time-limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (9) The Commission sent questionnaires to the exporting producer and the Union industry and received replies within the deadlines set for that purpose. The Commission sought and verified all information deemed necessary. The Commission carried out verification visits at the premises of the KP Chemical Corp., South Korea; Honam Petrochemicals Corp, South Korea; Novapet SA, Spain; Equipolymers Srl, Italy; UAB Orion Global PET (Indorama), Lithuania; UAB Indorama Polymers Europe, Lithuania; UAB Neo Group, Lithuania; La Seda de Barcelona, S.A., Spain and M&G Polimeri Italia SpA, Italy.

### 6. Review investigation period

- (10) The investigation of dumping covered the period from 1 January 2009 to 31 December 2009 (review investigation period).

## B. RESULTS OF THE INVESTIGATION

#### *Normal value*

- (11) As far as the determination of normal value is concerned, the Commission first established whether the total domestic sales of the product concerned made by KP Chemical Group were representative in comparison with its total export sales to the Union. In accordance with Article 2(2) of the basic Regulation, domestic sales are considered representative when the total domestic sales volume is at least 5 % of the total export sales volume to the Union. The Commission established that the product concerned, which was considered a homogenous product and not subdivided into different product types, was sold domestically by KP Chemical Group in overall representative volumes.
- (12) An examination was also made as to whether the sales of the product concerned sold domestically in representative quantities could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers on the domestic market. As it was found that there were

sufficient sales in the ordinary course of trade, normal value was based on the actual domestic price of profitable sales.

#### *Export price*

- (13) As the product concerned was exported directly to independent customers in the Union, the export price was established in accordance with Article 2(8) of the basic Regulation, i.e. on the basis of the export price actually paid or payable.

#### *Comparison*

- (14) The comparison between normal value and export price was made on an ex-works basis.
- (15) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Allowances for differences in transport costs, freight and insurance costs, bank charges, packing costs and credit costs were granted where they were found to be reasonable, accurate and supported by verified evidence.

#### *Dumping margin*

- (16) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export price as established above.
- (17) The dumping margin thus calculated is less than 2 %, expressed as a percentage of the net, free-at-Union-frontier price, duty unpaid, and shall therefore be considered *de minimis* in accordance with Article 9(3) of the basic Regulation.

## C. LASTING NATURE OF CIRCUMSTANCES

- (18) Like the previous interim review which resulted in Regulation (EC) No 192/2007, the present interim review showed a dumping margin at a *de minimis* level for the KP Chemical Group.
- (19) No indications were found that this *de minimis* margin would not be of a lasting nature, as the KP Chemical Group has been found to operate at a very high capacity utilisation rate (almost 100 %). In addition, the KP Chemical Group has no plans to increase their production capacity in South Korea. Indeed, the KP Chemical Group has acquired a production plant within the Union and is more likely to decrease its exports from South Korea.

- (20) Therefore the circumstances under which the dumping margin has been calculated in this investigation can be considered to be of a lasting nature.

#### D. TERMINATION OF THE REVIEW

- (21) In light of the above findings, the present review should be terminated without amending the level of the duty applicable to KP Chemical Group. In these circumstances, the injury aspects do not need to be addressed.

#### E. DISCLOSURE

- (22) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to terminate the present partial interim review. All parties were given the opportunity to comment. Comments were received from the Union industry, which however, were not of a nature to change the above conclusions.

#### F. FINAL PROVISION

- (23) This review should therefore be terminated without any amendment to Regulation (EC) No 192/2007,

HAS ADOPTED THIS REGULATION:

##### *Article 1*

The partial interim review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating, *inter alia*, in the Republic of Korea, is hereby terminated without amending the measures in force.

##### *Article 2*

This Regulation shall enter into force on the 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, 21 February 2011.

*For the Council*

*The President*

MARTONYI J.

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## COMMISSION REGULATION (EU) No 168/2011

of 23 February 2011

amending Regulation (EU) No 107/2010 as regards the use of the feed additive *Bacillus subtilis* ATCC PTA-6737 in feed containing maduramycin ammonium, monensin sodium, narasin, or robenidine hydrochloride

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition<sup>(1)</sup>, and in particular Article 13(3) thereof,

Whereas:

(1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.

(2) Regulation (EC) No 1831/2003 provides for the possibility to modify the authorisation of a feed additive further to a request from the holder of the authorisation and an opinion of the European Food Safety Authority (the Authority).

(3) The use of the micro-organism preparation of *Bacillus subtilis* ATCC PTA-6737 was authorised for 10 years for chickens for fattening by Commission Regulation (EU) No 107/2010<sup>(2)</sup>.

(4) The holder of the authorisation applied for a modification of the authorisation of *Bacillus subtilis* ATCC PTA-6737 to allow its use in feed containing the

coccidiostats maduramycin ammonium, monensin sodium, narasin, or robenidine hydrochloride for chickens for fattening. The holder of the authorisation submitted the relevant data to support this request.

(5) The Authority concluded in its opinion of 7 October 2010 that the additive *Bacillus subtilis* ATCC PTA-6737 is compatible with maduramycin ammonium, monensin sodium, narasin, or robenidine hydrochloride<sup>(3)</sup>.

(6) The conditions provided for in Article 5 of Regulation (EC) No 1831/2003 are satisfied.

(7) Regulation (EU) No 107/2010 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Regulation (EU) No 107/2010 is replaced by the text in the Annex to this Regulation.

*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, 23 February 2011.

For the Commission  
The President

José Manuel BARROSO

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(2)</sup> OJ L 36, 9.2.2010, p. 1.

<sup>(3)</sup> EFSA Journal 2010; 8(10):1863.

## ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 %			
<b>Category of zootechnical additives. Functional group: gut flora stabilisers</b>									
4b1823	Kemin Europa NV	<i>Bacillus subtilis</i> ATCC PTA-6737	<p><b>Additive composition:</b></p> <p>Preparation of <i>Bacillus subtilis</i> ATCC PTA-6737 containing a minimum of <math>1 \times 10^{10}</math> CFU/g additive</p> <p><b>Characterisation of active substance:</b></p> <p>Spores of <i>Bacillus subtilis</i> ATCC PTA-6737</p> <p><b>Analytical methods <sup>(1)</sup></b></p> <p>Enumeration: spread plate method using tryptone soya agar with pre heat-treatment of feed samples</p> <p>Identification: pulsed-field gel electrophoresis (PFGE) method</p>	Chickens for fattening	—	$1 \times 10^7$	—	<p>1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting.</p> <p>2. May be used in feed containing the permitted coccidiostats: diclazuril, decoquinate, salinomycin sodium, narasin/nicarbazin, lasalocid A sodium, maduramycin ammonium, monensin sodium, narasin or robenidine hydrochloride.</p>	1.3.2020

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



## COMMISSION REGULATION (EU) No 169/2011

of 23 February 2011

concerning the authorisation of diclazuril as a feed additive for guinea fowls (holder of authorisation Janssen Pharmaceutica N.V.)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of diclazuril. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) The application concerns the authorisation of a new use of diclazuril as a feed additive for guinea fowls, to be classified in the additive category 'coccidiostats and histomonostats'.
- (4) The use of diclazuril was authorised for 10 years in accordance with Council Directive 70/524/EEC<sup>(2)</sup> as a feed additive for use in chickens reared for laying up to 16 weeks and turkeys up to 12 weeks by Commission Regulation (EC) No 2430/1999<sup>(3)</sup>. The use for chickens for fattening was authorised for 10 years by Commission Regulation (EU) No 1118/2010<sup>(4)</sup>.

- (5) New data were submitted in support of the application for the authorisation of diclazuril for guinea fowls. The European Food Safety Authority (the Authority) concluded in its opinion of 5 October 2010<sup>(5)</sup> that, under the proposed conditions of use, diclazuril does not have an adverse effect on animal health, human health or the environment and that its use controls coccidiosis in guinea fowls. It considers that there is a need for specific requirements of post-market monitoring to control the possible development of bacterial and/or *Eimeria* spp resistances. The Authority also verified the report on the method of analysis of the feed additive in feed submitted by the Community Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (6) The assessment of diclazuril shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this preparation should be authorised as specified in the Annex to this Regulation.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

*Article 1*

The preparation specified in the Annex, belonging to the additive category 'coccidiostats and histomonostats', is authorised as an additive in animal nutrition subject to the conditions laid down in that Annex.

*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, 23 February 2011.

For the Commission  
The President  
José Manuel BARROSO

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(2)</sup> OJ L 270, 14.12.1970, p. 1.

<sup>(3)</sup> OJ L 296, 17.11.1999, p. 3.

<sup>(4)</sup> OJ L 317, 3.12.2010, p. 5.

<sup>(5)</sup> EFSA Journal 2010; 8(10):1866.



## ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive (Trade name)	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation	Maximum Residue Limits (MRLs) in the relevant foodstuffs of animal origin
						mg of active substance/kg of complete feedingstuff with a moisture content of 12 %				
<b>Coccidiostats and histomonostats</b>										
5 1 771	Janssen Pharmaceutica N.V.	Diclazuril 0,5 g/100 g (Clinacox 0,5 %)	<p><i>Additive composition</i> Diclazuril: 0,50 g/100 g. Protein-poor soybean meal: 99,25 g/100 g Polyvidone K 30: 0,20 g/100 g Sodium hydroxide: 0,05 g/100 g</p> <p><i>Characterisation of the active substance</i> Diclazuril, C<sub>17</sub>H<sub>9</sub>Cl<sub>3</sub>N<sub>4</sub>O<sub>2</sub>, (±)-4-chlorophenyl[2,6-dichloro-4-(2,3,4,5-tetrahydro-3,5-dioxo-1,2,4-triazin-2-yl)phenyl]acetonitrile, CAS number: 101831-37-2 Related impurities: Degradation compound (R064318): ≤ 0,1 % Other related impurities (T001434, R066891, R068610, R070156, R070016): ≤ 0,5 % individually Total impurities: ≤ 1,5 %</p> <p><i>Analytical method</i> <sup>(1)</sup> For determination of diclazuril in feed: reversed-phase high performance liquid chromatography (HPLC) using Ultraviolet detection at 280 nm (Regulation (EC) No 152/2009) For determination of diclazuril in poultry tissues: HPLC coupled to triple quadrupole mass spectrometer (MS/MS) using one precursor ion and two product ions</p>	Guinea fowls	—	1	1	<ol style="list-style-type: none"> <li>The additive shall be incorporated in compound feed in form of a premixture.</li> <li>Diclazuril shall not be mixed with other coccidiostats.</li> <li>For safety: breathing protection, glasses and gloves shall be used during handling.</li> <li>The holder of the authorisation shall carry out a post-market monitoring programme on the resistance to bacteria and <i>Eimeria</i> spp.</li> </ol>	16 March 2021	<p>1 500 µg diclazuril/kg of wet liver 1 000 µg diclazuril/kg of wet kidney 500 µg diclazuril/kg of wet muscle 500 µg diclazuril/kg of wet skin/fat</p>

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

## COMMISSION REGULATION (EU) No 170/2011

of 23 February 2011

concerning the authorisation of *Saccharomyces cerevisiae* MUCL 39885 as a feed additive for piglets (weaned) and amending Regulation (EC) No 1200/2005 (holder of authorisation Prosol SpA)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation. Article 10 of that Regulation provides for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC<sup>(2)</sup>.
- (2) The preparation of *Saccharomyces cerevisiae* MUCL 39885 was authorised in accordance with Directive 70/524/EEC as a feed additive without a time limit for use on piglets (weaned) by Commission Regulation (EC) No 1200/2005<sup>(3)</sup>, for cattle for fattening by Commission Regulation (EC) No 492/2006<sup>(4)</sup>. The additive was subsequently entered in the Community Register of feed additives as an existing product, in accordance with Article 10(1)(b) of Regulation (EC) No 1831/2003.
- (3) The preparation of *Saccharomyces cerevisiae* MUCL 39885 was also authorised in accordance with Regulation (EC) No 1831/2003 as a feed additive for 10 years for use in sows by Commission Regulation (EC) No 896/2009<sup>(5)</sup> and for dairy cows and horses by Commission Regulation (EU) No 1119/2010<sup>(6)</sup>.
- (4) In accordance with Article 10(2) of Regulation (EC) No 1831/2003 in conjunction with Article 7 of that Regulation, an application was submitted for the re-evaluation of *Saccharomyces cerevisiae* MUCL 39885 as a feed additive for piglets (weaned) requesting that additive to be classified in the additive category 'zootechnical additives'. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.

(5) The European Food Safety Authority ('the Authority') concluded in its opinion of 6 October 2010<sup>(7)</sup> that, under the proposed conditions of use, *Saccharomyces cerevisiae* MUCL 39885 does not have an adverse effect on animal health, human health or on the environment, and that it has the potential to improve the zootechnical performance of the target species. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Community Reference Laboratory set up by Regulation (EC) No 1831/2003.

- (6) The assessment of *Saccharomyces cerevisiae* MUCL 39885 shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this preparation should be authorised as specified in the Annex to this Regulation.
- (7) As a consequence of a new authorisation being granted by this Regulation, the entry for *Saccharomyces cerevisiae* MUCL 39885 in Regulation (EC) No 1200/2005 should be deleted.
- (8) Since the modifications to the conditions of the authorisation are not related to safety reasons, it is appropriate to allow a transitional period for the disposal of existing stocks of pre-mixtures and compound feed containing this preparation.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

## Article 1

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

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(2)</sup> OJ L 270, 14.12.1970, p. 1.

<sup>(3)</sup> OJ L 195, 27.7.2005, p. 6.

<sup>(4)</sup> OJ L 89, 28.3.2006, p. 6.

<sup>(5)</sup> OJ L 256, 29.9.2009, p. 6.

<sup>(6)</sup> OJ L 317, 3.12.2010, p. 9.

<sup>(7)</sup> EFSA Journal 2010; 8(10):1864.

*Article 2*

In Annex II to Regulation (EC) No 1200/2005, the entry E 1710, additive: *Saccharomyces cerevisiae* MUCL 39885, is deleted.

70/524/EEC may continue to be placed on the market and used until the existing stocks are exhausted.

*Article 3*

Pre-mixtures and compound feed containing *Saccharomyces cerevisiae* MUCL 39885 labelled in accordance with Directive

*Article 4*

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, 23 February 2011.

*For the Commission*

*The President*

José Manuel BARROSO

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## ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						CFU/kg of complete feedingstuff with a moisture content of 12 %			
<b>Category of zootechnical additives. Functional group: gut flora stabilisers</b>									
4b1710	Prosol SpA	<i>Saccharomyces cerevisiae</i> MUCL 39885	<p><i>Additive composition</i></p> <p>Preparation of <i>Saccharomyces cerevisiae</i> MUCL 39885 containing a minimum of <math>1 \times 10^9</math> CFU/g</p> <p><i>Characterisation of active substance</i></p> <p>Viable cells of <i>Saccharomyces cerevisiae</i> MUCL 39885</p> <p><i>Analytical methods</i> <sup>(1)</sup></p> <p>Enumeration: pour plate method using chloramphenicol glucose yeast extract agar</p> <p>Identification: polymerase chain reaction (PCR) method</p>	Piglets (weaned)		$3 \times 10^9$	—	<ol style="list-style-type: none"> <li>In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting.</li> <li>For safety: glasses and gloves shall be used during handling.</li> <li>For piglets (weaned) up to 35 kg.</li> </ol>	16 March 2021

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

## COMMISSION REGULATION (EU) No 171/2011

of 23 February 2011

**concerning the authorisation of 6-phytase (EC 3.1.3.26) produced by *Aspergillus oryzae* DSM 14223 as a feed additive for poultry and for porcine species and amending Regulation (EC) No 255/2005 (holder of authorisation DSM Nutritional Products Ltd represented by DSM Nutritional products Sp. z o.o)**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation. Article 10 of that Regulation provides for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC<sup>(2)</sup>.
- (2) 6-phytase (EC 3.1.3.26) produced by *Aspergillus oryzae* DSM 14223 was authorised in accordance with Directive 70/524/EEC as a feed additive without a time limit for chickens for fattening, laying hens, turkeys for fattening, piglets, pigs for fattening and sows by Commission Regulation (EC) No 255/2005<sup>(3)</sup>. That additive was subsequently entered in the Community Register of feed additives as an existing product, in accordance with Article 10(1)(b) of Regulation (EC) No 1831/2003.
- (3) That feed additive was also authorised in accordance with Regulation (EC) No 1831/2003 for 10 years for ducks by Commission Regulation (EC) No 1500/2007 of 18 December 2007 concerning the authorisation of a new use of 6-phytase EC 3.1.3.26 (Ronozyme) as a feed additive<sup>(4)</sup>.
- (4) In accordance with Article 10(2) of Regulation (EC) No 1831/2003 in conjunction with Article 7 of that Regulation, an application was submitted for the re-evaluation of 6-phytase (EC 3.1.3.26) produced by *Aspergillus oryzae* DSM 14223 as a feed additive for chickens for fattening, laying hens, turkeys for fattening, piglets,

pigs for fattening and sows and, in accordance with Article 7 of that Regulation, for a new use on poultry species and porcine species, not covered previously, requesting that additive to be classified in the additive category 'zootechnical additives'. That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.

- (5) New data were submitted to support the application. The European Food Safety Authority ('the Authority') concluded in its opinion of 6 October 2010<sup>(5)</sup> that, under the proposed conditions of use, 6-phytase (EC 3.1.3.26) produced by *Aspergillus oryzae* DSM 14223 does not have an adverse effect on animal health, human health or the environment, and that its use can improve the digestibility of phosphorus. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Community Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (6) The assessment of 6-phytase (EC 3.1.3.26) produced by *Aspergillus oryzae* DSM 14223 shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of this preparation should be authorised as specified in the Annex to this Regulation.
- (7) As a consequence of a new authorisation being granted by this Regulation, the entry for 6-phytase (EC 3.1.3.26) produced by *Aspergillus oryzae* DSM 14223 in Regulation (EC) No 255/2005 should be deleted.
- (8) In the interest of clarity, Regulation (EC) No 1500/2007 should be repealed.
- (9) Since the modifications to the conditions of the authorisation are not related to safety reasons, it is appropriate to allow a transitional period for the disposal of existing stocks of pre-mixtures and compound feed.

<sup>(1)</sup> OJ L 268, 18.10.2003, p. 29.

<sup>(2)</sup> OJ L 270, 14.12.1970, p. 1.

<sup>(3)</sup> OJ L 45, 16.2.2005, p. 3.

<sup>(4)</sup> OJ L 333, 19.12.2007, p. 54.

<sup>(5)</sup> EFSA Journal 2010; 8(10):1862.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

In Annex II to Regulation (EC) No 255/2005, the entry EC No: 1614(i), additive: 6-phytase EC 3.1.3.26, is deleted.

*Article 3*

Regulation (EC) No 1500/2007 is repealed.

*Article 4*

Pre-mixtures and compound feed containing 6-phytase (EC 3.1.3.26) produced by *Aspergillus oryzae* DSM 14223 which are labelled in accordance with Directive 70/524/EEC and Regulation (EC) No 255/2005 may continue to be placed on the market and used until the existing stocks are exhausted.

Pre-mixtures and compound feed containing 6-phytase (EC 3.1.3.26) produced by *Aspergillus oryzae* DSM 14223 which are labelled in accordance with Regulations (EC) No 1831/2003 and (EC) No 1500/2007 may continue to be placed on the market and used until the existing stocks are exhausted.

*Article 5*

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, 23 February 2011.

*For the Commission*  
*The President*  
José Manuel BARROSO

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## ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						Units of activity/kg of complete feedingstuff with a moisture content of 12 %			

**Category of zootechnical additives. Functional group: digestibility enhancers**

4a1641(i)	DSM Nutritional Products Ltd represented by DSM Nutritional products Sp. Z o.o	6-phytase EC 3.1.3.26	<p><i>Additive composition</i></p> <p>Preparation of 6-phytase produced by <i>Aspergillus oryzae</i> DSM 14223 having a minimum activity of:</p> <p>Solid form: 5 000 FYT/g <sup>(1)</sup></p> <p>Liquid form: 20 000 FYT/g</p> <p><i>Characterisation of the active substance</i></p> <p>6-phytase produced by <i>Aspergillus oryzae</i> DSM 14223</p> <p><i>Analytical method</i> <sup>(2)</sup></p> <p>Colorimetric method based on reaction of vanadomolybdate on inorganic phosphate produced by action of 6-phytase on a phytate-containing substrate (sodium phytate) at pH 5,5 and 37 °C, quantified against a standard curve from inorganic phosphate.</p>	Poultry for breeding and for laying	—	300 FYT	—	<p>1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting.</p> <p>2. For use in feed containing more than 0,23 % phytin-bound phosphorus.</p> <p>3. For safety: breathing protection, glasses and gloves shall be used during handling.</p>	16 March 2021
				Other poultry	—	250 FYT	—		
				Pigs for breeding and minor porcine species for breeding	—	750 FYT	—		
				Other pigs and minor porcine species	—	500 FYT	—		

<sup>(1)</sup> 1 FYT is the amount of enzyme that liberates 1 micromole of inorganic phosphate per minute from sodium phytate at pH 5,5 and a temperature of 37 °C.

<sup>(2)</sup> Details of the analytical methods are available at the following address of the Community Reference Laboratory: [www.irmm.jrc.be/crl-feed-additives](http://www.irmm.jrc.be/crl-feed-additives).



**COMMISSION REGULATION (EU) No 172/2011****of 23 February 2011****fixing for 2011 the amount of aid in advance for private storage of butter**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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) <sup>(1)</sup>, and in particular Article 43(a) and (d), in conjunction with Article 4 thereof,

Whereas:

- (1) Article 28 of Regulation (EC) No 1234/2007 provides for the granting of private storage aid for butter.
- (2) Developments in prices and stocks of butter indicate an imbalance in the market which may be eliminated or reduced by the seasonal storage. In view of the current market situation, it is appropriate to grant aid for private storage of butter as from 1 March 2011.
- (3) Commission Regulation (EC) No 826/2008 of 20 August 2008 laying down common rules for the granting of private storage aid for certain agricultural products <sup>(2)</sup> has established common rules for the implementation of a private storage aid scheme.
- (4) Pursuant to Article 6 of Regulation (EC) No 826/2008, aid fixed in advance is to be granted in accordance with the detailed rules and conditions provided for in Chapter III of that Regulation.
- (5) In accordance with Article 29 of Regulation (EC) No 1234/2007 the aid should be fixed in the light of storage costs and the likely trends in prices for fresh butter and butter from stocks.
- (6) It is appropriate to fix aid for the costs for entry and exit of the products concerned and for daily costs for cold storage and financing.
- (7) To facilitate the implementation of the present measure and taking into consideration the existing practice in the Member States, the aid should relate only to products that have been fully placed into storage. Consequently, a derogation from Article 7(3) of Regulation (EC) No 826/2008 should be provided for.
- (8) For reasons of administrative efficiency and simplification, where the required information concerning storage details are already included in the application for aid, it is appropriate to waive the request to notify the same information after the conclusion of the contract as provided for in point (a) of the first paragraph of Article 20 of Regulation (EC) No 826/2008.
- (9) For reasons of simplification and logistic efficiency, Member States should be allowed to waive the requirement to mark the contract number on each unit stored where the contracts number is entered in the stores register.
- (10) For reasons of administrative efficiency and simplification, taking into account the particular situation for butter storage, the checks provided for in Article 36(6) of Regulation (EC) No 826/2008 should be carried out in respect of at least one half of the contracts. Consequently, a derogation from that Article should be provided for.
- (11) The amount of aid applicable to private storage of butter for 2010 has been fixed by Commission Regulation (EU) No 158/2010 <sup>(3)</sup>. Since a new amount is to be fixed for 2011, that Regulation should be repealed for reasons of clarity. For the same reasons, this Regulation should expire on the final date laid down for the end of contractual storage.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. This Regulation provides for private storage aid for salted and unsalted butter as referred to in Article 28(a) of Regulation (EC) No 1234/2007 for contracts concluded from 1 March 2011.
2. Regulation (EC) No 826/2008 shall apply save as otherwise provided for in this Regulation.

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.<sup>(2)</sup> OJ L 223, 21.8.2008, p. 3.<sup>(3)</sup> OJ L 49, 26.2.2010, p. 14.

*Article 2*

The unit of measurement referred to in Article 16(2)(c) of Regulation (EC) No 826/2008 is the 'storage lot' which corresponds to the quantity of the product covered by this Regulation, weighing at least 1 tonne and of homogeneous composition and quality, produced in a single factory, taken into storage in a single warehouse on a single day.

*Article 3*

1. By way of derogation from Article 7(3) of Regulation (EC) No 826/2008, applications shall only relate to products that have been fully placed into storage.

2. Point (a) of the first paragraph of Article 20 of Regulation (EC) No 826/2008 shall not apply.

3. Member States may waive the requirements referred to in Article 22(1)(e) of Regulation (EC) No 826/2008 to mark the contract number provided that the store manager undertakes to enter the contract number in the register referred to in point III of Annex I to that Regulation.

4. By way of derogation from Article 36(6) of Regulation (EC) No 826/2008, at the end of the contractual storage period, the authority responsible for checking shall, throughout the whole removal period from August 2011 to February 2012, in respect of at least one half of the number of contracts, by sampling, verify weight and identification of the butter in storage.

*Article 4*

1. The aid for the products referred in Article 1 shall be:

— 18,06 EUR per tonne of storage for fixed storage costs,

— 0,35 EUR per tonne per day of contractual storage.

2. Entry into contractual storage shall take place between 1 March and 15 August 2011. Removal from store may take place only as from 16 August 2011. Contractual storage shall end on the day preceding that of the removal from storage or at the latest the last day of February following the year of entry into store.

3. Aid may be granted only where the contractual storage period is between 90 and 210 days.

*Article 5*

Member States shall notify the Commission each Tuesday by 12 noon (Brussels time) of the quantities for which contracts have been concluded as required under Article 35(1)(a) of Regulation (EC) No 826/2008, as well as of the quantities of products for which applications to conclude contracts have been submitted.

*Article 6*

Regulation (EU) No 158/2010 is repealed.

*Article 7*

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

It shall expire on 29 February 2012.

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

Done at Brussels, 23 February 2011.

For the Commission  
The President  
José Manuel BARROSO

## COMMISSION REGULATION (EU) No 173/2011

of 23 February 2011

**amending Regulations (EC) No 2095/2005, (EC) No 1557/2006, (EC) No 1741/2006, (EC) No 1850/2006, (EC) No 1359/2007, (EC) No 382/2008, (EC) No 436/2009, (EC) No 612/2009, (EC) No 1122/2009, (EC) No 1187/2009 and (EU) No 479/2010 as regards the notification obligations within the common organisation of agricultural markets and the direct support schemes for farmers**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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) <sup>(1)</sup>, and in particular Article 161(3), Article 170, Article 171(1) and Article 192(2), in conjunction with Article 4 thereof,

Having regard to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 <sup>(2)</sup>, and in particular Article 142(q) thereof,

Whereas:

(1) Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands <sup>(3)</sup> lays down common rules for notifying information and documents by the competent authorities of the Member States to the Commission. Those rules cover in particular the obligation for the Member States to use the information systems made available by the Commission and the validation of the access rights of the authorities or individuals authorised to send notifications. In addition, that Regulation sets common principles applying to the information systems so that they guarantee the authenticity, integrity and legibility over time of the documents and provides for personal data protection.

(2) Pursuant to Regulation (EC) No 792/2009 the obligation to use the information systems in accordance with that

Regulation has to be provided for in the Regulations establishing a specific notification obligation.

(3) The Commission has developed an information system that allows managing documents and procedures electronically in its own internal working procedures and in its relations with the authorities involved in the common agricultural policy.

(4) It is considered that several notification obligations can be fulfilled via that system in accordance with Regulation (EC) No 792/2009, in particular those provided for in Commission Regulations (EC) No 2095/2005 of 20 December 2005 laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 as regards communication of information on tobacco <sup>(4)</sup>, (EC) No 1557/2006 of 18 October 2006 laying down detailed rules for implementing Council Regulation (EC) No 1952/2005 as regards registration of contracts and the communication of data concerning hops <sup>(5)</sup>, (EC) No 1741/2006 of 24 November 2006 laying down the conditions for granting the special export refund on boned meat of adult male bovine animals placed under the customs warehousing procedure prior to export <sup>(6)</sup>, (EC) No 1850/2006 of 14 December 2006 laying down detailed rules for the certification of hops and hop products <sup>(7)</sup>, (EC) No 1359/2007 of 21 November 2007 laying down the conditions for granting special export refunds on certain cuts of boned meat of bovine animals <sup>(8)</sup>, (EC) No 382/2008 of 21 April 2008 on rules of application for import and export licences in the beef and veal sector <sup>(9)</sup>, (EC) No 436/2009 of 26 May 2009 laying down detailed rules for the application of Council Regulation (EC) No 479/2008 as regards the vineyard register, compulsory declarations and the gathering of information to monitor the wine market, the documents accompanying consignments of wine products and the wine sector registers to be kept <sup>(10)</sup>, (EC) No 612/2009 of 7 July 2009 laying down common detailed rules for the application of the system of export refunds on agricultural products <sup>(11)</sup>, (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 30, 31.1.2009, p. 16.

<sup>(3)</sup> OJ L 228, 1.9.2009, p. 3.

<sup>(4)</sup> OJ L 335, 21.12.2005, p. 6.

<sup>(5)</sup> OJ L 288, 19.10.2006, p. 18.

<sup>(6)</sup> OJ L 329, 25.11.2006, p. 7.

<sup>(7)</sup> OJ L 355, 15.12.2006, p. 72.

<sup>(8)</sup> OJ L 304, 22.11.2007, p. 21.

<sup>(9)</sup> OJ L 115, 29.4.2008, p. 10.

<sup>(10)</sup> OJ L 128, 27.5.2009, p. 15.

<sup>(11)</sup> OJ L 186, 17.7.2009, p. 1.

schemes for farmers provided for in that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector <sup>(1)</sup>, (EC) No 1187/2009 of 27 November 2009 laying down special detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards export licences and export refunds for milk and milk products <sup>(2)</sup> and (EU) No 479/2010 of 1 June 2010 laying down rules for the implementation of Council Regulation (EC) No 1234/2007 as regards Member States' notifications to the Commission in the milk and milk products sector <sup>(3)</sup>.

- (5) In the interest of efficient administration and taking account of the experience, the notifications should be simplified. In particular, it should be established that only Member States producing tobacco and hop respectively should be obliged to send the data required under Regulations (EC) No 2095/2005, (EC) No 1557/2006 and (EC) No 1850/2006. Furthermore, for reasons of clarity, the content of some notifications should be specified in those Regulations.
- (6) The information that Member States have to submit to the Commission pursuant to Article 19(1)(b)(ii) and (iii) of Regulation (EC) No 436/2009, are to be sent to Eurostat. For reasons of coherence and good administration, the notifications concerned should be made by electronic means to the single entry point for data at Eurostat, in conformity with the technical specifications provided by the Commission (Eurostat).
- (7) The exchange rate to be used should be in coherence with the principle established in Article 11 of Commission Regulation (EC) No 1913/2006 of 20 December 2006 laying down detailed rules for the application of the agrimonetary system for the euro in agriculture and amending certain regulations <sup>(4)</sup>.
- (8) Regulations (EC) No 2095/2005, (EC) No 1557/2006, (EC) No 1741/2006, (EC) No 1850/2006, (EC) No 1359/2007, (EC) No 382/2008, (EC) No 436/2009, (EC) No 612/2009, (EC) No 1122/2009, (EC) No 1187/2009 and (EU) No 479/2010 should therefore be amended accordingly.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments and the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

#### Article 1

Regulation (EC) No 2095/2005 is amended as follows:

- (1) Article 1 is replaced by the following:

<sup>(1)</sup> OJ L 316, 2.12.2009, p. 65.

<sup>(2)</sup> OJ L 318, 4.12.2009, p. 1.

<sup>(3)</sup> OJ L 135, 2.6.2010, p. 26.

<sup>(4)</sup> OJ L 365, 21.12.2006, p. 52.

#### 'Article 1

1. For each harvest, the producing Member States shall notify the Commission, by 31 July of the year following the harvest year, of the following information given as a total and, except for point (a), broken down by the raw tobacco variety groups referred to in paragraph 3:

- number of first processing enterprises;
- number of farmers;
- area in hectares;
- quantity delivered in tonnes;
- average price, excluding taxes and other levies, paid to farmers;
- stocks in tonnes at the end of June of the year following the harvest year concerned, held by the first processor.

The price referred to in point (e) shall be expressed in EUR per kg, using if necessary, the most recent exchange rate set by the European Central Bank prior to 1 January of the year following the harvest year.

2. For each harvest, the producing Member States shall notify the Commission, by 31 July of the ongoing harvest year, of the following information given as a total and broken down by the raw tobacco variety groups referred to in paragraph 3:

- estimated area in hectares;
- estimated production in tonnes.

3. The variety groups of raw tobacco are:

- Group I: Flue-cured: tobacco dried in ovens with controlled air circulation, temperature and humidity, in particular Virginia;
- Group II: Light air-cured: tobacco dried in the air under cover, not left to ferment, in particular Burley and Maryland;
- Group III: Dark air-cured: tobacco dried in the air under cover, left to ferment naturally before being marketed, in particular Badischer Geudertheimer, Fermented Burley, Havana, Mocny Skroniowski, Nostrano del Brenta and Pulawski;
- Group IV: Fire-cured: tobacco dried by fire, in particular Kentucky and Salento;
- Group V: Sun-cured: tobacco dried in the sun, also called 'Oriental varieties', in particular Basmás, Katerini and Kaba-Koulak.

4. Member States growing less than 3 000 hectares in the preceding harvest year may notify only the information referred to in points (b) and (c) of paragraph 1 and paragraph 2(a) and only given as a total without breakdown by raw tobacco variety groups.

5. The notifications referred to in paragraphs 1, 2 and 4 shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

(\*) OJ L 228, 1.9.2009, p. 3.;

(2) Article 2 is replaced by the following:

*Article 2*

Member States shall take the measures necessary to ensure that the economic operators concerned, including producer organisations, provide them with the information required within the relevant time limits.;

(3) Annexes IA, IB, II and III are deleted.

*Article 2*

Regulation (EC) No 1557/2006 is amended as follows:

(1) Article 5 is replaced by the following:

*Article 5*

1. For each harvest, the producing Member States shall notify the Commission, by 15 April of the year following the hop harvest concerned, of the following information given as a total and, except for points (a) and (g), broken down by two groups of hops varieties (bitter and aromatic):

- (a) number of farmers growing hops;
- (b) area harvested and area newly sown in the harvest year (in hectares);
- (c) quantity in tonnes and average farm-gate price of hops sold under contracts concluded in advance;
- (d) quantity in tonnes and average farm-gate price of hops sold under other contracts or without contracts;
- (e) quantity of hops in tonnes remaining unsold;
- (f) alpha-acid production in tonnes and average alpha-acid content (in percent);
- (g) quantity of hops in tonnes covered by contracts concluded in advance for the next harvest.

The prices referred to in points (c) and (d) shall be expressed in EUR per kg, using, if necessary, the most recent exchange rate set by the European Central Bank prior to 1 January of the year following the harvest year.

2. The notifications referred to in paragraph 1 shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

3. Member States shall take the measures necessary to ensure that the economic operators concerned, including producer organisations, provide them with the information required within the relevant time limits.

(\*) OJ L 228, 1.9.2009, p. 3.;

(2) the Annex is deleted.

*Article 3*

Article 13 of Regulation (EC) No 1741/2006 is replaced by the following:

*Article 13*

**Notification to the Commission**

1. Member States shall each month notify the Commission of the quantities of boned meat of adult male bovine animals placed under the customs warehousing procedure prior to export in accordance with this Regulation, with a breakdown of those quantities by 12-figure code of the agricultural product nomenclature for export refunds established by Regulation (EEC) No 3846/87.

Member States shall notify the Commission of the information referred to in the first subparagraph no later than the second month following the month in which the declaration of entry into storage is accepted.

2. The notifications referred to in paragraph 1 shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

(\*) OJ L 228, 1.9.2009, p. 3.;

*Article 4*

Article 23 of Regulation (EC) No 1850/2006 is replaced by the following:

*Article 23*

**Notification to the Commission**

1. Producing Member States shall notify to the Commission, by 30 June each year at the latest, of:

- (a) a list of hop production areas;
- (b) a list of the certification centres and the code for each centre;
- (c) the names and addresses of the competent certification authorities.

2. The notifications referred to in paragraph 1 shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

(\*) OJ L 228, 1.9.2009, p. 3.;

*Article 5*

Regulation (EC) No 1359/2007 is amended as follows:

(1) in Article 9, paragraph 1 is replaced by the following:



‘1. The Member States shall determine the conditions for supervision and shall notify the Commission accordingly. They shall take all necessary measures to make substitution of the products in question impossible, in particular by identification of each piece of meat. Member States shall notify the Commission of any changes of the conditions for supervision without delay.’;

(2) in Article 10, the introductory phrase is replaced by the following:

‘For certificates as provided for in Article 5(1), endorsed by the competent authorities each quarter and covering boned cuts produced from hindquarters, the Member States shall notify the following no later than the end of the second month following each quarter.’;

(3) the following Article 10a is inserted:

*‘Article 10a*

The notifications to the Commission referred to in this Regulation shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

(\*) OJ L 228, 1.9.2009, p. 3.’.

*Article 6*

Regulation (EC) No 382/2008 is amended as follows:

(1) in Article 14, paragraph 6 is replaced by the following:

‘6. Member States shall notify the Commission of:

- (a) by 6 p.m. (Brussels time) on each working day, the total quantity of products for which applications have been lodged;
- (b) no later than the end of the month following the month in which the applications were lodged, a list of applicants.’;

(2) in Article 15, paragraph 6 is replaced by the following:

‘6. Member States shall notify the Commission of:

- (a) by 6 p.m. (Brussels time) on each working day, the total quantity of products for which applications have been lodged;
- (b) no later than the end of the month following the month in which the applications were lodged, a list of applicants.’;

(3) Article 16 is replaced by the following:

*‘Article 16*

1. Member States shall notify the Commission of the following:

- (a) by Friday each week:
  - (i) applications for licences with advance fixing of the refund lodged in accordance with Article 10(1) or the fact that no applications were lodged from Monday to Friday that week;

- (ii) applications for licences lodged in accordance with the procedure laid down in Article 47 of Regulation (EC) No 376/2008 or the fact that no applications were lodged from Monday to Friday that week;

- (iii) the quantities for which licences have been issued pursuant to Article 12(6) of this Regulation or the fact that no licences were issued from Monday to Friday that week;

- (iv) the quantities for which licences have been issued in respect of applications lodged in accordance with the procedure laid down in Article 47 of Regulation (EC) No 376/2008, indicating the date on which the application was lodged and the country of destination, from Monday to Friday that week;

- (v) the quantities for which export licence applications have been withdrawn pursuant to Article 12(5) of this Regulation, during that week, indicating the date on which the application was lodged;

(b) by the 14th day of each month for the previous month:

- (i) applications for licences as referred to in Article 15 of Regulation (EC) No 376/2008;

- (ii) the quantities for which licences have been issued pursuant to Article 10(1) of this Regulation and pursuant to Article 47 of Regulation (EC) No 376/2008 and not used.

2. The notifications referred to in paragraph 1 shall specify:

- (a) the quantity by weight of product or the number of heads for each category referred to in Article 10(5);

- (b) the quantity breakdown by destination for each category.’;

(4) the following Article 16a is inserted:

*‘Article 16a*

The notifications referred to in this Chapter shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

(\*) OJ L 228, 1.9.2009, p. 3.’;

(5) Annex VIII is deleted.

*Article 7*

Regulation (EC) No 436/2009 is amended as follows:

(1) in Article 15, paragraph 1 is replaced by the following:

‘1. To convert quantities of products other than wine into hectolitres of wine, Member States may set coefficients that may vary according to different objective criteria having a bearing on the conversion. Member States shall notify the Commission of the coefficients along with the summary provided for in Article 19(1).’;

- (2) the heading of Chapter III of Title II is replaced by the following:

‘CHAPTER III

**Notifications to be made by the Member States’;**

- (3) in Article 19(3), the introductory phrase of the first subparagraph is replaced by the following:

‘With a view to establishing price trends, Member States whose wine production during the past five years was on average more than 5 % of the total Union wine production shall notify the Commission of the following in relation to the wines referred to in point 1 of Annex Xlb to Council Regulation (EC) No 1234/2007 (\*):

(\*) OJ L 299, 16.11.2007, p. 1.’;

- (4) Article 49 is replaced by the following:

‘Article 49

**Notification**

1. Each Member State shall notify the Commission of:

- (a) the name and address of the competent authority or authorities for the purposes of implementing this title;
- (b) where appropriate, the name and address of any bodies empowered by a competent authority for the purposes of implementing this title.

2. Each Member State shall also notify the Commission of:

- (a) any subsequent changes concerning the competent authorities and bodies referred to in paragraph 1;
- (b) the measures they have taken to implement this title, where those measures are of specific value for the purposes of cooperation between Member States as referred to in Regulation (EC) No 555/2008.

3. The Commission shall draw up and keep up to date a list containing the names and addresses of the competent bodies and authorities based on information notified by the Member States. The Commission shall publish that list on the Internet.’;

- (5) Article 50 is replaced by the following:

‘Article 50

**Notification**

1. Without prejudice to any specific provisions of this Regulation, Member States shall take all measures necessary to ensure that they are able to meet the deadlines for notification set out in this Regulation.

2. Member States shall retain the information recorded under this Regulation for at least five wine years following the one during which it was recorded.

3. The notifications requested in this Regulation shall not prejudice the Member States’ obligations laid down in Regulation (EEC) No 357/79 on statistical surveys of areas under vines.

4. The notifications to the Commission referred to in this Regulation shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

However, the notifications referred to in Article 19(1)(b)(ii) and (iii) shall be sent by the Member States in electronic form or uploaded by electronic means to the single entry point for data at Eurostat, in conformity with the technical specifications provided by the Commission (Eurostat).

(\*) OJ L 228, 1.9.2009, p. 3.’

*Article 8*

Article 50 of Regulation (EC) No 612/2009 is replaced by the following:

‘Article 50

**Notification to the Commission**

1. Member States shall notify the Commission:

- (a) without delay, of cases where Article 27(1) applies. The Commission shall subsequently notify the other Member States;
- (b) no later than the end of the second month following the month in which the export declarations have been accepted, for each 12-digit code, of the quantities of exported products not covered by export licences with advance fixing of the refund for the cases referred to in the first indent of the second subparagraph of Article 4(1), Article 6 and Article 42. The codes shall be grouped by sector.

2. The notifications to the Commission referred to in this Regulation shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

(\*) OJ L 228, 1.9.2009, p. 3.’

*Article 9*

In Article 84 of Regulation (EC) No 1122/2009, the following paragraph 6 is added:

‘6. The notifications referred to in Article 40(2) and paragraph 5 of this Article shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

(\*) OJ L 228, 1.9.2009, p. 3.’

*Article 10*

Regulation (EC) No 1187/2009 is amended as follows:



(1) in Article 10, paragraph 1 is replaced by the following:

'1. Export licences with advanced fixing of the refund shall be issued on the fifth working day following the day on which applications are submitted, provided that the quantities for which licences have been applied for have been notified in accordance with Article 6(1) of Commission Regulation (EU) No 479/2010 (\*) and that measures referred to in points (a) and (b) of paragraph 2 of this Article have not been adopted.

(\*) OJ L 135, 2.6.2010, p. 26.;

(2) in Article 24(2), the second subparagraph is replaced by the following:

'The Member State shall notify the Commission as soon as possible of the change of designated importer and the Commission shall notify the change to the competent authorities of the United States.;

(3) Article 31 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Not later than the fifth working day following the expiry of the period for lodging licence applications, Member States shall notify the Commission, for each of the two parts of the quota and for each product code of the export refund nomenclature, of the quantities covered by licence applications or, where applicable, that no applications have been lodged.

Before the notification referred to in the first subparagraph, Member States shall verify in particular that the conditions referred to in Article 27(2) and in Article 28(1) and (2) are fulfilled.;

(b) in paragraph 2, the third subparagraph is replaced by the following:

'If the application of the allocation coefficient results in a quantity per applicant of less than 20 tonnes, applicants may withdraw their applications. In such cases, they shall notify the competent authority within three working days of publication of the Commission's decision. The security shall be released immediately. The competent authority shall notify the Commission, within eight working days of publication of the decision, of the quantities broken down by product codes of the export refund nomenclature, for which applications have been withdrawn and for which the security has been released.;

(4) Article 32 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Licences shall be issued at the request of the operator, not earlier than 1 June and not later than 15 February of the following year. They shall be issued only to operators whose licence applications were notified in accordance with Article 31(1).

If the information provided by an operator to whom a licence has been issued is found to be incorrect, the licence shall be cancelled and the security forfeited.

Member States shall notify the Commission by the end of February at the latest for both parts of the quota referred to in Article 28(1), of the quantities for which no licences were issued, broken down by product code of the export refund nomenclature.;

(b) paragraph 5 is replaced by the following:

'5. By 31 August each year at the latest, Member States shall notify the Commission for both parts of the quota referred to in Article 28(1), and in respect to the previous 12-month period as referred to in Article 28(1), of the following quantities, broken down by product code of the export refund nomenclature:

- the quantity for which licences have been allocated,
- the quantity for which licences have been issued,
- the quantity exported.;

(5) in Article 33, paragraph 2 is replaced by the following:

'2. The notifications to the Commission referred to in this Regulation shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

(\*) OJ L 228, 1.9.2009, p. 3.;

(6) Annexes IV, V and VI are deleted.

#### Article 11

In Article 7 of Regulation (EU) No 479/2010, the following paragraph 3 is added:

'3. By way of derogation from Article 8, the notifications referred to in this Article shall be made in accordance with Commission Regulation (EC) No 792/2009 (\*).

(\*) OJ L 228, 1.9.2009, p. 3.;

*Article 12*

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

It shall apply from 1 March 2011.

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

Done at Brussels, 23 February 2011.

*For the Commission*  
*The President*  
José Manuel BARROSO

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**COMMISSION REGULATION (EU) No 174/2011**  
**of 23 February 2011**  
**amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe <sup>(1)</sup>, and in particular Article 11(b) thereof,

Whereas:

- (1) Annex III to Regulation (EC) No 314/2004 lists the persons covered by the freezing of funds and economic resources under that Regulation.
- (2) Council Decision 2011/101/CFSP of 15 February 2011 <sup>(2)</sup> concerning restrictive measures against Zimbabwe identifies the natural and legal persons to

whom restrictions are to apply as provided for in Article 5 of that Decision, and Regulation (EC) No 314/2004 gives effect to that Decision to the extent that action at Union level is required. Annex III to Regulation (EC) No 314/2004 should, therefore, be amended to ensure consistency with this Council Decision,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex III to Regulation (EC) No 314/2004 is hereby amended as set out in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the 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, 23 February 2011.

*For the Commission,*  
*On behalf of the President,*  
*Director — Head of Foreign Policy Instruments Service*

<sup>(1)</sup> OJ L 55, 24.2.2004, p. 1.

<sup>(2)</sup> OJ L 42, 16.2.2011, p. 6.

## ANNEX

Annex III to Regulation (EC) No 314/2004 is amended as follows:

1. The following entries shall be removed from the part 'I. Natural persons'

- 
- '6. Bonyongwe, Willa (a.k.a. Willia)
- 
10. Chairuka, Annie Flora Imagine
- 
13. Charamba, Rudo Grace
- 
14. Charumbira, Fortune Zefanaya
- 
20. Chihuri, Isobel (a.k.a. Isabel) Halima
- 
27. Chingoka, Peter Farai
- 
33. Chitepo, Victoria
- 
40. Damasane, Abigail
- 
43. Dokora, Lazarus
- 
45. Gambe, Theophilus
- 
46. Georgias, Aguy
- 
49. Gono, Helen (a.k.a. Hellin) Mushanyuri
- 
50. Gula-Ndebele, Sobuza
- 
57. Jangara (a.k.a. Changara), Thomsen
- 
59. Kangai, Kumbirai
- 
63. Kaukonde, Ray Joseph
- 
69. Kuruneri, Christopher Tichaona
- 
73. Lesabe, Thenjiwe V.
- 
77. Made, Patricia A.
- 
83. Malinga, Joshua
- 
88. Masawi, Ephrahim Sango
- 
96. Matshalaga, Obert
- 
97. Matshiya, Melusi (Mike)
- 
126. Mugabe, Sabina
- 
128. Muguti, Edwin
- 
143. Mutinhiri, Tracey
- 
151. Ndlovu, Naison K.
- 
152. Ndlovu, Richard
- 
160. Nyathi, George
- 
164. Parirenyatwa, Choice
- 
167. Patel, Khantibhal
- 
168. Pote, Selina M.
- 
180. Sekeremayi (a.k.a. Sekeramayi), Tsitsi Chihuri
- 
193. Stamps, Timothy
- 
197. Udenge, Samuel'
-

2. The entries for the persons named below in part 'I. Natural persons' shall be replaced by the entry listed below:

Name	Function/Reason for listing; Identifying data	Date of designation referred to in Article 7 (2)
1. Mugabe, Robert Gabriel	President, born 21.2.1924, Passport AD001095. Head of Government and responsible for activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2002
8. Buka (a.k.a. Bhuka), Flora	President's office (Former Minister of State for Special Affairs responsible for Land and Resettlement Programmes, former Minister of State in the Vice-President's office and former Minister of State for the Land Reform in the President's Office), born 25.2.1968. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
11. Chapfika, David	Former Deputy Minister of Agriculture (former Deputy Minister of Finance), born 7.4.1957. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2004
12. Charamba, George	Permanent Secretary, Department for Information and Publicity, born 4.4.1963, Passport AD002226. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2002
17. Chigwedere, Aeneas Soko	Provincial Governor: Mashonaland East, former Minister, born 25.11.1939. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
18. Chihota, Phineas	Deputy Minister for Industry and International Trade. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005
21. Chimbudzi, Alice	ZANU (PF) Politburo Committee Member. Member of the politburo with strong ties to the Government and its policy.	16.6.2005
23. Chimutengwende, Chenhamo Chekezha	Former Minister of State for Public and Interactive Affairs (former Minister of Information, former Minister of Post and Telecommunications), born 28.8.1943. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005
25. Chinamasa, Patrick Anthony	Minister of Justice, Legal and Parliamentary Affairs, born 25.1.1947. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2002
38. Chombo, Ignatius Morgan Chiminya	Minister of Local Government, Public Works and Urban Development, born 1.8.1952. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2002
51. Gumbo, Rugare Eleck Ngidi	Former Minister of Agriculture (Former Minister of Economic Development), born 8.3.1940. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002

Name	Function/Reason for listing; Identifying data	Date of designation referred to in Article 7 (2)
62. Kasukuwere, Saviour	Deputy Minister for Youth Development & Employment Creation and ZANU-PF Politburo Deputy-Secretary for Youth Affairs, born 23.10.1970. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
72. Langa, Andrew	Deputy Minister of Environment and Tourism (former Deputy Minister of Transport and Communications). Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2004
76. Made, Joseph Mtakwese	State Minister of Agricultural Engineering and Mechanisation (Former Minister of Agriculture and Rural Development), born 21.11.1954. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2002
78. Madzongwe, Edna (a.k.a. Edina)	ZANU-PF President of Senate, born 11.7.1943. Member of the politburo with strong ties to the Government and its policy.	25.7.2002
84. Maluleke, Titus	Provincial Governor: Masvingo (Former Deputy Minister of Education, Sports and Culture). Former Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	18.4.2007
85. Mangwana, Paul Munyaradzi	Minister of State for Indigenisation and Empowerment, born 10.8.1961. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
87. Marumahoko, Reuben	Deputy Minister for Foreign Affairs (former Deputy Minister for Home Affairs), born 4.4.1948. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	14.9.2002
94. Matiza, Joel Biggie	Deputy Minister for Rural Housing and Social Amenities, born 17.8.1960. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005
95. Matonga, Brighton	Deputy Minister for Information and Publicity, born 1969. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005
98. Mavhaire, Dzikamai	ZANU-PF Politburo Committee Member. Member of the politburo with strong ties to the Government and its policy.	6.3.2007
99. Mbiriri, Partson	Permanent Secretary, Ministry of Local Government, Public Works and Urban Development. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	2.8.2005
102. Midzi, Amos Bernard (Mugenva)	Former Minister of Mines and Mining Development (former Minister of Energy and Power Development), born 4.7.1952. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	14.9.2002

Name	Function/Reason for listing; Identifying data	Date of designation referred to in Article 7 (2)
103. Mnangagwa, Emmerson Dambudzo	Minister of Rural Housing and Social Amenities (former Speaker of Parliament), born 15.9.1946. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2002
104. Mohadi, Kembo Campbell Dugishi	Minister of Home Affairs (former Deputy Minister of Local Government, Public Works and National Housing), born 15.11.1949. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
112. Mpofu, Obert Moses	Minister for Industry and International Trade (former Provincial Governor: Matabeleland North) (ZANU-PF Politburo Deputy Secretary for National Security), born 12.10.1951. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
117. Muchena, Olivia Nyembesi (a.k.a. Nyembezi)	Minister of State for Science and Technology in the President's Office (former Minister of State in Vice-President Msika's Office), born 18.8.1946. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
118. Muchinguri, Oppah Chamu Zvipange	ZANU-PF Politburo Secretary for Gender and Culture (Former Minister for Women's Affairs, Gender and Community Development), born 14.12.1958. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
121. Mudenge, Isack Stanislaus Gorerazvo	Minister of Higher Tertiary Education (former Minister of Foreign Affairs), born 17.12.1941. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2002
124. Mugabe, Grace	Born 23.7.1965, Passport AD001159. Spouse of the Head of Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
129. Mujuru, Joyce Teurai Ropa	Vice President (former Minister of Water Resources and Infrastructural Development), born 15.4.1955. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
130. Mujuru, Solomon T.R.	ZANU-PF Politburo Senior Committee Member, born 1.5.1949. Member of the politburo with strong ties to the Government and its policy.	25.7.2002
133. Mumbengegwi, Samuel Creighton	Former Minister of Finance; former Minister of State for Indigenisation and Empowerment, born 23.10.1942. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002



Name	Function/Reason for listing; Identifying data	Date of designation referred to in Article 7 (2)
134. Mumbengegwi, Simbarashe Simbanenduku	Minister of Foreign Affairs, born 20.7.1945, Passport: AD001086. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005
137. Mushohwe, Christopher Chindoti	Provincial Governor: Manicaland. (Former Minister of Transport and Communications, former Deputy Minister of Transport and Communications), born 6.2.1954. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
138. Mutasa, Didymus Noel Edwin	Minister of State for National Security, Land Reform and Resettlement in the Office of the President, ZANU-PF, Secretary for Administration, born 27.7.1935. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
141. Mutezo, Munacho	Former Minister for Water Resources and Infrastructural Development. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005
142. Mutinhiri, Ambros (a.k.a. Ambrose)	Minister of Youth Development, Gender and Employment Creation, Retired Brigadier. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2004
144. Mutiwekuziva, Kenneth Kaparadza	Former Deputy Minister of Small and Medium Enterprises, Development and Employment Creation, born 27.5.1948. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	14.9.2002
146. Muzenda, Tsitsi V.	ZANU-PF Politburo Senior Committee Member, born 28.10.1922. Member of the politburo with strong ties to the Government and its policy.	25.7.2002
148. Mzembi, Walter	Deputy Minister for Water Resources and Infrastructural Development, born 16.3.1964. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	18.4.2007
150. Ncube, Abedinico	Deputy Minister of Public Service, Labour and Social Welfare (former Deputy Minister of Foreign Affairs), born 13.10.1954. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
153. Ndlovu, Sikhanyiso	Former Minister of Information and Publicity (Former Deputy Minister of Higher and Tertiary Education), born 20.9.1949. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002

Name	Function/Reason for listing; Identifying data	Date of designation referred to in Article 7 (2)
154. Nguni, Sylvester	Minister of Economic Development (Former Deputy Minister for Agriculture), born 4.8.1955. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005
155. Nhema, Francis	Minister of Environment and Tourism, born 7.4.1959. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
157. Nkomo, John Landa	Former Speaker of House of Assembly (former Minister of Special Affairs in the President's Office), ZANU-PF national chairman, born 22.8.1934. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2002
158. Nyambuya, Michael Reuben	Former Minister for Energy and Power Development (former Lieutenant General, Provincial Governor: Manicaland), born 23.7.1955. Former member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2004
159. Nyanhongo, Hubert Magadzire	Deputy Minister of Transport and Communications. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005
163. Nyoni, Sithembiso Gile Glad	Minister of Small and Medium Enterprises Development and Employment Creation, born 20.9.1949. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
165. Parirenyatwa, David Pagwese	Minister of Health and Child Welfare (former Deputy Minister), born 2.8.1950. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
174. Sakabuya, Morris	Deputy Minister for Local Government, Public Works and Urban Development. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005
175. Sakupwanya, Stanley	ZANU-PF Politburo Deputy Secretary for Health and Child Welfare. Member of the politburo, with strong ties to the Government and its policy.	25.7.2002
177. Sandi, E.	ZANU-PF Politburo Deputy Secretary for Women's Affairs. Member of the politburo, with strong ties to the Government and its policy.	16.6.2005
178. Savanhu, Tendai	ZANU-PF Deputy Secretary for Transport and Social Welfare, born 21.3.1968. Member of the politburo with strong ties to the Government and its policy.	16.6.2005
179. Sekeramayi, Sydney (a.k.a. Sidney) Tigere	Minister of Defence, born 30.3.1944. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2002

Name	Function/Reason for listing; Identifying data	Date of designation referred to in Article 7 (2)
182. Shamu, Webster Kotiwani	Minister of State for Policy Implementation (former Minister of State for Policy Implementation in the President's Office), born 6.6.1945. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2004
183. Shamuyarira, Nathan Marwirakuwa	ZANU-PF Politburo Secretary for Information and Publicity, born 29.9.1928. Member of the politburo with strong ties to the Government and its policy.	25.7.2002
185. Shumba, Masvayamwando Isaiah	Deputy Minister of Education, Sports and Culture, born 3.1.1949. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	25.7.2002
189. Sibanda, Misheck Julius Mpande	Cabinet Secretary (successor to Charles Utete), born 3.5.1949. Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	21.2.2004
192. Sikosana, Absalom	ZANU-PF Politburo Secretary for Youth Affairs. Member of the politburo with strong ties to the Government and its policy.	25.7.2002
200. Zhuwao, Patrick	Deputy Minister for Science and Technology (NB Mugabe's nephew). Member of the Government and engaged in activities that seriously undermine democracy, respect for human rights and the rule of law.	16.6.2005

**COMMISSION REGULATION (EU) No 175/2011**  
**of 23 February 2011**  
**establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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) <sup>(1)</sup>,

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 <sup>(2)</sup>, 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 24 February 2011.

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

Done at Brussels, 23 February 2011.

*For the Commission,*  
*On behalf of the President,*  
José Manuel SILVA RODRÍGUEZ  
*Director-General for Agriculture and*  
*Rural Development*

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<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> 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 <sup>(1)</sup>	Standard import value
0702 00 00	IL	122,2
	MA	69,6
	TN	117,7
	TR	113,4
	ZZ	105,7
0707 00 05	MK	140,7
	TR	176,9
	ZZ	158,8
0709 90 70	MA	41,5
	TR	116,8
	ZZ	79,2
0805 10 20	EG	55,8
	IL	59,1
	MA	56,9
	TN	51,7
	TR	69,9
	ZZ	58,7
0805 20 10	IL	159,0
	MA	91,6
	US	107,8
	ZZ	119,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	70,2
	EG	51,1
	IL	115,9
	JM	74,2
	MA	111,8
	PK	34,8
	TR	64,5
	ZZ	74,6
	0805 50 10	EG
MA		52,1
TR		49,1
ZZ		56,6
0808 10 80	CA	91,7
	CM	53,6
	CN	84,0
	MK	50,2
	US	124,3
	ZZ	80,8
0808 20 50	AR	178,5
	CL	98,0
	CN	50,3
	US	117,6
	ZA	94,9
	ZZ	107,9

<sup>(1)</sup> 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'.

# DIRECTIVES

## COMMISSION DIRECTIVE 2011/15/EU

of 23 February 2011

### amending Directive 2002/59/EC of the European Parliament and of the Council establishing a Community vessel traffic monitoring and information system

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC<sup>(1)</sup>, and in particular Article 27 thereof,

Whereas:

- (1) Resolution MSC.150(77) of the International Maritime Organisation (IMO) has been revoked and replaced by IMO Resolution MSC.286(86) with effect from 1 July 2009. Therefore Article 12 of Directive 2002/59/EC referring to the revoked IMO Resolution should also be updated accordingly.
- (2) The carriage requirements concerning the automatic identification Systems (AIS) and voyage data recorders (VDR) should be updated in line with the modifications to the International Convention for the Safety of Life at Sea (SOLAS) and should take account of the development of simplified VDRs, as approved by the IMO. The scope of exemptions of carriage requirements for small passenger vessels on short distances should also be made more precise and adapted to such voyages.
- (3) Following an incident at sea, the powers of intervention of Member States should be made more explicit. In particular, it should be clearly stated that they may give instructions to the assistance, salvage or towage companies in order to prevent a serious and imminent threat to its coastline or related interests, to the safety of other ships and their crews and passengers or of persons on shore or to protect the marine environment.

- (4) The measures provided for in this Directive are in accordance with the opinion of the Committee on Safe Seas and the Prevention of Pollution from Ships,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

##### Amendments

Directive 2002/59/EC is amended as follows:

1. in Article 12(1), point (b) is replaced by the following:

‘(b) for the substances referred to in Annex I to the Marpol Convention, the safety data sheet detailing the physico-chemical characteristics of the products, including, where applicable, their viscosity expressed in cSt at 50 °C and their density at 15 °C and the other data contained in the safety data sheet in accordance with IMO Resolution MSC.286(86).’;

2. Annex II is replaced by Annex I to this Directive;
3. Annex IV is replaced by Annex II to this Directive.

#### Article 2

##### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 months from its entry into force at the latest, without prejudice to the transposition date provided for by Article 2(1) of Directive 2009/17/EC of the European Parliament and of the Council<sup>(2)</sup> as far as fishing vessels are concerned. They shall forthwith communicate to the Commission the text of those provisions. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

<sup>(1)</sup> OJ L 208, 5.8.2002, p. 10.

<sup>(2)</sup> OJ L 131, 28.5.2009, p. 101.

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

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 23 February 2011.

*Article 3*

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

*For the Commission*

*The President*

José Manuel BARROSO

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## ANNEX I

## ANNEX II

**Requirements applicable to on-board equipment**

## I. FISHING VESSELS

Fishing vessels with a length of more than 15 metres overall shall be fitted with an automatic identification system (AIS) as provided for in Article 6a according to the following timetable:

- fishing vessels of overall length 24 metres and upwards but less than 45 metres: not later than 31 May 2012,
- fishing vessels of overall length 18 metres and upwards but less than 24 metres: not later than 31 May 2013,
- fishing vessels of overall length exceeding 15 metres but less than 18 metres: not later than 31 May 2014,
- new-built fishing vessels of overall length exceeding 15 metres are subject to the carrying requirement laid down in Article 6a as from 30 November 2010.

## II. SHIPS ENGAGED ON INTERNATIONAL VOYAGES

Passenger ships, irrespective of size, and all ships, other than passenger ships, of 300 gross tonnage and upwards engaged on international voyages, which call at a port of a Member State shall be fitted with an automatic identification system (AIS) in accordance with the technical and performance standards laid down in Chapter V of SOLAS. Passenger ships, irrespective of size, and all ships other than passenger ships, of 3 000 gross tonnage and upwards engaged on international voyages, which call at a port of a Member State shall be fitted with a voyage data recorder (VDR) in accordance with the technical and performance standards laid down in Chapter V of SOLAS. In case of cargo ships constructed before 1 July 2002 the VDR may be a simplified voyage data recorder (S-VDR), which shall comply with the technical and performance standards developed in accordance with Chapter V of SOLAS.

## III. SHIPS ENGAGED ON NON-INTERNATIONAL VOYAGES

1. **Automatic identification systems (AIS)**

Passenger ships, irrespective of size, and all other ships of 300 gross tonnage and upwards engaged on a non-international voyage shall be fitted with an automatic identification system (AIS) which complies with the technical and performance standards laid down in Chapter V of SOLAS.

2. **Voyage data recorder (VDR) systems**

- (a) Passenger ships, irrespective of size, and ships other than passenger ships, of 3 000 gross tonnage and upwards and constructed on or after 1 July 2002 engaged on a non-international voyage shall be fitted with a voyage data recorder (VDR) which complies with the technical and performance standards developed in accordance with Chapter V of SOLAS.
- (b) Cargo ships of 3 000 gross tonnage and upwards constructed before 1 July 2002 engaged on a non-international voyage shall be fitted with a voyage data recorder (VDR) or with a simplified voyage data recorder (S-VDR) which complies with the technical and performance standards developed in accordance with Chapter V of SOLAS.

## IV. EXEMPTIONS

1. **Exemptions from the requirement to carry AIS on board**

- (a) Member States may exempt passenger ships below 15 metres in length or 300 gross tonnage engaged on non-international voyages from the application of the requirements concerning AIS laid down in this Annex.
- (b) Member States may exempt ships, other than passenger ships, of 300 gross tonnage and upwards but less than 500 gross tonnage sailing exclusively within the internal waters of a Member State and outside routes normally used by other ships fitted with AIS, from the carriage requirements for AIS laid down in this Annex.

## 2. Exemptions from the requirement to carry a VDR or S-VDR on board

Member States may grant exemptions from the requirement to be fitted with a VDR or an S-VDR as follows:

- (a) Passenger ships only on voyages in sea areas other than those covered by Class A, as referred to in Article 4 of Directive 2009/45/EC of the European Parliament and of the Council <sup>(1)</sup>, may be exempted from the requirement to be fitted with a VDR.
- (b) Ships, other than ro-ro passenger ships, constructed before 1 July 2002 may be exempted from the requirement to be fitted with a VDR where it can be demonstrated that interfacing a VDR with the existing equipment on the ship is unreasonable and impracticable.
- (c) Cargo ships constructed before 1 July 2002, engaged on international or non-international voyages, may be exempted from the requirement to be fitted with an S-VDR if such ships are to be taken permanently out of service within two years of the implementation date specified in Chapter V of SOLAS.

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<sup>(1)</sup> OJ L 163, 25.6.2009, p. 1.'

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## ANNEX II

## 'ANNEX IV

### **Measures available to Member States in the event of a threat to maritime safety and the protection of the environment**

(pursuant to Article 19(1))

Where, following an incident or circumstance of the type described in Article 17 affecting a ship, the competent authority of the Member State concerned deems, within the framework of international law, that it is necessary to avert, lessen or remove a serious and imminent threat to its coastline or related interests, the safety of other ships and their crews and passengers or of persons on shore or to protect the marine environment, that authority may, in particular:

- (a) restrict the movement of the ship or direct it to follow a specific course. This requirement does not affect the master's responsibility for the safe handling of his ship;
- (b) give official notice to the master of the ship to put an end to the threat to the environment or maritime safety;
- (c) send an evaluation team aboard the ship to assess the degree of risk, help the master to remedy the situation and keep the competent coastal station informed thereof;
- (d) instruct the master to put in at a place of refuge in the event of imminent peril, or cause the ship to be piloted or towed.

In the case of a ship which is towed under a towage or salvage agreement, the measures taken by the competent authority of a Member State under points (a) and (d) may be also addressed to the assistance, salvage and towage companies involved.'

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# DECISIONS

## COMMISSION DECISION

of 22 February 2011

### on a derogation from the rules of origin set out in Council Decision 2001/822/EC as regards certain fishery products imported from Saint Pierre and Miquelon

(notified under document C(2011) 986)

(2011/122/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision')<sup>(1)</sup>, and in particular Article 37 of Annex III thereto,

Whereas:

- (1) Annex III to Decision 2001/822/EC concerns the definition of the concept of 'originating products' and methods of administrative cooperation. Pursuant to Article 37 thereof derogations from those rules of origin may be adopted where justified by the development of existing industries or the creation of new industries in a country or territory.
- (2) On 19 October 2010 Saint Pierre and Miquelon requested a derogation from the rules of origin set out in Annex III to Decision 2001/822/EC for a period of 8 years. On 12 November additional information was provided by Saint Pierre and Miquelon. The request covers a total annual quantity of 225 tonnes of lobster (*Homarus americanus*) of HS headings 0306 and 1605, 600 tonnes of mackerel and herring (*Scomber scombrus*, *Clupea harengus*) of HS headings 0303, 0304, 0305 and 1604 and 250 tonnes of mussels (*Mytilus edulis*) of HS headings 0307 and 1605 originating in third countries and processed in Saint Pierre and Miquelon for export to the Union.
- (3) Saint Pierre and Miquelon has based its request on the continuing shortfall in the sources of supply of other fish.

- (4) This derogation is justified pursuant to Article 37(1) and (5)(a) and (b) of Annex III to Decision 2001/822/EC, in particular as regards the development of an existing local industry, the economic and social impact and the particular situation of Saint Pierre and Miquelon. As the derogation is being granted for products which involve actual processing, it will contribute to the development of an existing industry. The derogation is essential for the success of the plant in question, which employs a significant number of staff. Therefore current production should be complemented with new species.
- (5) Subject to compliance with certain conditions relating to quantities, surveillance and duration, the derogation would not cause serious injury to an established industry of the Union or one or more of the Member States.
- (6) As regards products falling within HS heading 0303, however, it follows from the general scheme of Article 37 that a derogation from the rules of origin set out in Annex III to Decision 2001/822/EC may not be granted for these products. These products do not in fact contribute to the development of an existing industry because they are subject of packaging operations, which are not in the nature of genuinely industrial activities.
- (7) The derogation should also not be granted for fresh and frozen fillets of mackerel and herrings of HS heading 0304 since associated filleting operations are characterised by increasingly high levels of mechanisation. The use of labour force in the filleting operations turns out to be too insignificant to have an impact on the employment level. Processing those products will therefore not contribute to the development of the existing industry and any derogation in their favour is not justified.

<sup>(1)</sup> OJ L 314, 30.11.2001, p. 1.

- (8) As regards mackerel and herring of HS headings 0305 and 1604 the derogation should cover only smoked and processed mackerel and herring. To allow the local industry to fully benefit from the regular and qualitative supply of raw materials and to offer a complementary activity during low season thus generating an economy of scale for the local industry, the requested annual quantity of 600 tonnes should be granted for those products.
- (9) 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 Common Customs Code<sup>(1)</sup> lays down rules for the management of tariff quotas. To ensure an efficient management, those rules should be applied *mutatis mutandis* to the management of the quantities in respect of which the derogation in question is granted.
- (10) As Decision 2001/822/EC expires on 31 December 2013, it should be laid down that the derogation will continue to apply after 31 December 2013 if a new decision is adopted on the association of the overseas countries and territories with the European Community or if Decision 2001/822/EC is extended.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS DECISION:

*Article 1*

By way of derogation from Annex III to Decision 2001/822/EC, the fishery products processed in Saint Pierre and Miquelon which are listed in the Annex to this Decision shall be regarded as originating in Saint Pierre and Miquelon where they are obtained from non-originating fish, in accordance with the terms of this Decision.

*Article 2*

The derogation provided for in Article 1 shall apply to the fishery products and to the annual quantities shown in the Annex which are imported into the Union from Saint Pierre and Miquelon during the period from 1 February 2011 to 31 January 2019.

*Article 3*

Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93 relating to the management of tariff quotas shall apply *mutatis*

*mutandis* to the management of the quantities set out in the Annex to this Decision.

*Article 4*

The customs authorities of Saint Pierre and Miquelon shall take the necessary steps to carry out quantitative checks on exports of the products referred to in Article 1.

To that end, all the certificates they issue pursuant to this Decision shall bear a reference to it.

The competent authorities of Saint Pierre and Miquelon shall forward to the Commission every 3 months a statement of the quantities in respect of which EUR 1 movement certificates have been issued pursuant to this Decision and the serial numbers of those certificates.

*Article 5*

Box 7 of EUR 1 certificates issued under this Decision shall contain one of the following entries:

— 'Derogation — Decision 2011/122/EU',

— 'Dérogation — Décision 2011/122/UE'.

*Article 6*

This Decision shall apply from 1 February 2011 until 31 January 2019.

However, if a new preferential regime is adopted replacing Decision 2001/822/EC beyond 31 December 2013, or if the current regime is extended, this Decision shall continue to apply until the date of expiry of the new regime or of the extended current regime but in any case not later than 31 January 2019.

*Article 7*

This Decision is addressed to the Member States.

Done at Brussels, 22 February 2011.

*For the Commission*

Algirdas ŠEMETA

*Member of the Commission*

<sup>(1)</sup> OJ L 253, 11.10.1993, p. 1.

## ANNEX

## FISHERY PRODUCTS PROCESSED IN SAINT PIERRE AND MIQUELON

Serial No	HS Code	Description of goods	Period	Total annual quantity (tonnes)
09.1623	ex 0306 12 ex 1605 30	Frozen lobster ( <i>Homarus americanus</i> ), whole, cooked. Frozen lobster ( <i>Homarus americanus</i> ), in pieces, cooked or fresh. Frozen lobster meat ( <i>Homarus americanus</i> ), cooked or fresh. Prepared meals of lobster meat ( <i>Homarus americanus</i> ), including meals ready for consumption.	1.2.2011 to 31.1.2019	225
09.1624	ex 0305 42 ex 0305 49 ex 1604 12 ex 1604 15 ex 1604 20	Smoked fillets of herrings ( <i>Clupea harengus</i> ) or mackerel ( <i>Scomber scombrus</i> ). Prepared or preserved herrings ( <i>Clupea harengus</i> ) or mackerel ( <i>Scomber scombrus</i> ).	1.2.2011 to 31.1.2019	600
09.1625	ex 0307 39 ex 1605 90	Frozen mussels ( <i>Mytilus edulis</i> ), cooked, whether in shell or not. Prepared or preserved mussels ( <i>Mytilus edulis</i> ), and meals containing mussels ( <i>Mytilus edulis</i> ), including meals ready for consumption.	1.2.2011 to 31.1.2019	250

## COMMISSION DECISION

of 23 February 2011

recognising in principle the completeness of the dossiers submitted for detailed examination in view of the possible inclusion of sedaxane and *Bacillus firmus* I-1582 in Annex I to Council Directive 91/414/EEC

(notified under document C(2011) 989)

(Text with EEA relevance)

(2011/123/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular Article 6(3) thereof,

Whereas:

- (1) Directive 91/414/EEC provides for the development of a European Union list of active substances authorised for incorporation in plant protection products.
- (2) The dossier for the active substance sedaxane was submitted by Syngenta Crop Protection AG to the authorities of France on 18 June 2010 with the application to obtain its inclusion in Annex I to Directive 91/414/EEC.
- (3) The dossier for the active substance *Bacillus firmus* I-1582 was submitted by Bayer CropScience SAS to the authorities of France on 29 September 2010 with the application to obtain its inclusion in Annex I to Directive 91/414/EEC.
- (4) The French authorities have indicated to the Commission that, on preliminary examination, the dossiers for the active substances concerned appear to satisfy the data and information requirements set out in Annex II to Directive 91/414/EEC. The dossiers submitted appear also to satisfy the data and information requirements set out in Annex III to Directive 91/414/EEC in respect of one plant protection product containing the active substances concerned. In accordance with Article 6(2) of Directive 91/414/EEC, the dossiers were subsequently forwarded by the applicants to the Commission and other Member States, and were referred to the Standing Committee on the Food Chain and Animal Health.
- (5) By this Decision it should be formally confirmed at European Union level that the dossiers are considered as satisfying in principle the data and information requirements set out in Annex II and, for at least one

plant protection product containing one of the active substances concerned, the requirements set out in Annex III to Directive 91/414/EEC.

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

HAS ADOPTED THIS DECISION:

*Article 1*

The dossiers concerning the active substances identified in the Annex to this Decision, which were submitted to the Commission and the Member States with a view to obtaining the inclusion of those substances in Annex I to Directive 91/414/EEC, satisfy in principle the data and information requirements set out in Annex II to that Directive.

The dossiers also satisfy the data and information requirements set out in Annex III to Directive 91/414/EEC in respect of one plant protection product containing the active substance, taking into account the uses proposed.

*Article 2*

The rapporteur Member State shall pursue the detailed examination for the dossiers referred to in Article 1 and shall communicate to the Commission the conclusions of its examination accompanied by any recommendations on the inclusion or non-inclusion in Annex I to Directive 91/414/EEC of the active substances referred to in Article 1 and any conditions for that inclusion as soon as possible and by 28 February 2012 at the latest.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels, 23 February 2011.

For the Commission  
John DALLI  
Member of the Commission

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1.

## ANNEX

## ACTIVE SUBSTANCES CONCERNED BY THIS DECISION

Common name, CIPAC identification number	Applicant	Date of application	Rapporteur Member State
Sedaxane CIPAC No: 833	Syngenta Crop Protection AG	18 June 2010	FR
<i>Bacillus firmus</i> I-1582 CIPAC No: not applicable	Bayer CropScience SAS	29 September 2010	FR

## COMMISSION DECISION

of 23 February 2011

**recognising in principle the completeness of the dossier submitted for detailed examination in view of the possible inclusion of ethametsulfuron in Annex I to Council Directive 91/414/EEC***(notified under document C(2011) 991)***(Text with EEA relevance)**

(2011/124/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market <sup>(1)</sup>, and in particular Article 6(3) thereof,

Whereas:

- (1) Directive 91/414/EEC provides for the development of a European Union list of active substances authorised for incorporation in plant protection products.
- (2) The dossier for the active substance ethametsulfuron was submitted by DuPont de Nemours GmbH to the authorities of the United Kingdom on 29 June 2010 with the application to obtain its inclusion in Annex I to Directive 91/414/EEC.
- (3) The authorities of the United Kingdom have indicated to the Commission that, on preliminary examination, the dossier for the active substance concerned appears to satisfy the data and information requirements set out in Annex II to Directive 91/414/EEC. The dossier submitted appears also to satisfy the data and information requirements set out in Annex III to Directive 91/414/EEC in respect of one plant protection product containing the active substance concerned. In accordance with Article 6(2) of Directive 91/414/EEC, the dossier was subsequently forwarded by the applicant to the Commission and other Member States, and was referred to the Standing Committee on the Food Chain and Animal Health.
- (4) By this Decision it should be formally confirmed at European Union level that the dossier is considered as satisfying in principle the data and information requirements set out in Annex II and, for at least one plant protection product containing the active substance concerned, the requirements set out in Annex III to Directive 91/414/EEC.

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

HAS ADOPTED THIS DECISION:

*Article 1*

The dossier concerning the active substance identified in the Annex to this Decision, which was submitted to the Commission and the Member States with a view to obtaining the inclusion of that substance in Annex I to Directive 91/414/EEC, satisfies in principle the data and information requirements set out in Annex II to that Directive.

The dossier also satisfies the data and information requirements set out in Annex III to Directive 91/414/EEC in respect of one plant protection product containing the active substance, taking into account the uses proposed.

*Article 2*

The rapporteur Member State shall pursue the detailed examination for the dossier referred to in Article 1 and shall communicate to the Commission the conclusions of its examination accompanied by any recommendations on the inclusion or non-inclusion in Annex I to Directive 91/414/EEC of the active substance referred to in Article 1 and any conditions for that inclusion as soon as possible and by 28 February 2012 at the latest.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels, 23 February 2011.

*For the Commission*  
John DALLI  
*Member of the Commission*

<sup>(1)</sup> OJ L 230, 19.8.1991, p. 1.



## ANNEX

**ACTIVE SUBSTANCE CONCERNED BY THIS DECISION**

Common Name, CIPAC Identification Number	Applicant	Date of application	Rapporteur Member State
Ethametsulfuron CIPAC-No: 834	DuPont de Nemours GmbH	29 June 2010	UK

## IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

## EFTA SURVEILLANCE AUTHORITY DECISION

No 305/09/COL

of 8 July 2009

**on the power sales agreement entered into by Notodden municipality and Becromal Norway AS  
(Norway)**

THE EFTA SURVEILLANCE AUTHORITY<sup>(1)</sup>,

Having regard to the Agreement on the European Economic Area<sup>(2)</sup>, and in particular Articles 61 to 63 and Protocol 26 thereof,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice<sup>(3)</sup>, and in particular Article 24 thereof,

Having regard to Article 1(3) of Part I and Articles 4(2), 4(4) and 7(2) of Part II of Protocol 3 to the Surveillance and Court Agreement<sup>(4)</sup>,

Having called on interested parties to submit their comments pursuant to those provisions<sup>(5)</sup>, and having regard to their comments,

Whereas:

## I. FACTS

### 1. Procedure

The Authority's Decision No 718/07/COL to initiate the formal investigation procedure was published in the *Official Journal of the European Union* and in the EEA Supplement hereto<sup>(6)</sup>. The Authority called on interested parties to submit their comments. The Authority received no comments from interested parties. By letter dated 4 February 2008 (Event No 463572), the Norwegian authorities have submitted comments to the opening decision.

<sup>(1)</sup> Hereinafter referred to as 'the Authority'.

<sup>(2)</sup> Hereinafter referred to as 'the EEA Agreement'.

<sup>(3)</sup> Hereinafter referred to as 'the Surveillance and Court Agreement'.

<sup>(4)</sup> Hereinafter referred to as 'Protocol 3'.

<sup>(5)</sup> OJ C 96, 17.4.2008, p. 21, and EEA Supplement No 20, 17.4.2008, p. 36.

<sup>(6)</sup> OJ C 96, 17.4.2008, p. 21, and EEA Supplement No 20, 17.4.2008, p. 38.

By letter dated 21 May 2008, the aid recipient, Becromal Norway AS, requested a meeting with the Authority. A meeting was held at the Authority's premises on 11 June 2008. In the meeting, the representatives of Becromal mentioned, inter alia, an additional agreement between the municipality of Notodden and Becromal, relating to the municipality's use of wastewater from the power plant operated by Becromal (Event No 482695).

### 2. Description of the investigated measure

Notodden is a municipality in the County of Telemark in south-eastern Norway. Located where two rivers flow into the lake Heddalsvatnet, the municipality has significant hydropower resources within its limits.

In that capacity, the municipality is entitled to receive a certain amount of so-called 'concession power' from concessionaires for waterfall exploitation every year. The system of concession power is laid down in Section 2(12) of the Industrial Licensing Act and Section 12(15) of the Waterfalls Regulation Act<sup>(7)</sup>. According to these provisions, which are identical in wording, counties and municipalities in which a power plant is located are entitled to receive up to 10 per cent of a plant's yearly production at a price determined by the State. With respect to concessions granted prior to 1959, such as the

<sup>(7)</sup> These provisions read: 'The licence shall stipulate that the licensee shall surrender to the counties and municipalities in which the power plant is located up to 10 per cent of the increase in water power obtained for each waterfall, calculated according to the rules in section 11, subsection 1, cf. section 2, third paragraph. The amount surrendered and its distribution shall be decided by the Ministry concerned on the basis of the county's or municipality's general electric power supply needs. The county or municipality may use the power provided as it sees fit. [...] The price of power [for the municipality] shall be set on the basis of the average cost for a representative sample of hydroelectric power stations throughout the country. Taxes calculated on the profit from power generation in excess of a normal rate of return are not included in the calculation of this cost. Each year the Ministry shall set the price of power supplied at the power station's transmission substation. The provisions of the first and third sentences do not apply to licences valid prior to the entry into force of Act No 2 of 10 April 1959.' (Translation by the Norwegian Ministry of Petroleum and Energy.)

concession in the case at hand, the price is based on the so-called 'individual costs' of the plant, unless a lower price is agreed on<sup>(1)</sup>. Thus, the price of concession power will normally be lower than the market price.

Each municipality's entitlement to concession power is decided on the basis of its 'general electric power supply needs'. According to the Norwegian Water Resources and Energy Directorate, this includes electric power for industry, agriculture and households, but not power for power intensive industries and wood conversion<sup>(2)</sup>. From 1988 Notodden municipality had been entitled to approximately 3,9 GWh from the Sagafoss waterfall located in Notodden, which appears to have been raised to 7,114 GWh in 2002<sup>(3)</sup>.

In addition to the concession power volumes that the municipality was entitled to under the regulations on concession power, Notodden municipality appears to have had its own rights of use of the waterfall Sagafoss in Notodden. This right of use was exploited by Tinfos AS and not by the municipality itself. In return, the municipality was entitled to additional volumes of electric power from the plant. The commercial relationship between Notodden and Tinfos is currently governed by a contract entered into on 15 August 2001<sup>(4)</sup>. This contract stipulates that, until 31 March 2006, the municipality was entitled to buy 30 GWh per year, including 3,9 GWh concession power, from Tinfos AS. The price was set at 13,5 øre/kWh for concession power and the additional volume alike. After 31 March 2006, the municipality has only been entitled to buy the volume constituting the concession power, and the prices established for the municipality's purchase of such power has been applicable since then.

The relevant legal basis for the municipalities' right to concession power, referred to above, expressly states that municipalities may dispose of the concession power as they see fit, irrespective of the fact that the amount to which they are entitled is calculated on the basis of their 'general electric power supply needs'. Thus, there is nothing to prevent municipalities from selling this power to power intensive industries, or any other industry, established within the municipality.

Against this background, on 10 May 2002, the municipality entered into an agreement<sup>(5)</sup> with the aluminium foil producer Becromal concerning the resale of the power

volumes to which it was entitled under the agreement with Tinfos. The agreement takes retroactive effect and, therefore, also governs the power volumes sold to Becromal from 14 May 2001 until the date of signature of the contract. The volumes covered appear to correspond to the volumes under the municipality's contract with Tinfos until 31 March 2007: i.e. 14,4794 GWh from 14 May 2001 to 31 December 2001, 30 GWh per year from 2002 to 2005, 7,397 GWh from 1 January 2006 to 31 March 2006, and, finally, an option for Becromal to buy the municipality's concession power from 1 April 2006 to 31 March 2007. The prices also mirror those laid down in the municipality's contract with Tinfos, i.e. 13,5 øre/kWh until 31 March 2006, and, from 1 April 2006 to 31 March 2007, 'the conditions at which Notodden municipality may, at that time, buy the power in question'.

Becromal did choose to buy the concession power in the period from 1 April 2006 to 31 March 2007<sup>(6)</sup>. Notodden municipality has explained that, for the period from April to June 2006, the municipality paid 15,21 øre/kWh for the concession power, and sold the power to Becromal at the same price. From July to December 2006, the municipality paid 11,235 øre/kWh and sold the power to Becromal at 15,21 øre/kWh. From January through March 2007, the municipality paid 10,425 øre/kWh and sold at 14,20 øre/kWh<sup>(7)</sup>.

By letter dated 4 March 2007<sup>(8)</sup>, Becromal requested a prolongation of the power purchase agreement. It also asked whether higher volumes could be included in the contract. On 30 April 2007, the municipality replied to the request, offering Becromal to buy the municipality's concession power at 20 øre/kWh (which is said to correspond to the spot price at Nord Pool, the Nordic power exchange, for May 2007) for the period from 1 April to 31 December 2007, and thereafter a three-year agreement at the price of 26,4 øre/kWh from 1 January 2008 to 31 December 2010. The municipality also stated that from 1 April 2007 the concession power volume would be 7,113 GWh.

On 30 June 2007, Becromal replied that it accepted the prices offered for the last 9 months of 2007. By contrast, it declined the offer for the period 2008-2010, as it was considered to be too high. The municipality replied, by letter dated 4 July, that in light of Becromal's letter, it considered that an agreement had been reached concerning power volumes for 2007. Hence, it would come back soon with a draft agreement. In respect of the period from 2008 to 2010, it upheld its previous position that the contract must be on market terms<sup>(9)</sup>. The municipality has later confirmed that no formal agreement has yet been entered into. Nor have negotiations been held with respect to the period after 1 January 2008<sup>(10)</sup>.

<sup>(1)</sup> The 'individual costs' of the plant are calculated in accordance with the legal provisions applicable until 1959. Under these provisions, the individual cost price would be calculated as the plant's production costs including 6 per cent interest on the initial costs, plus a mark-up of 20 per cent, divided by average yearly production in the period 1970-1999. See the so-called KTV-Notat No 53/2001 of 24 August 2001, Event No 455241.

<sup>(2)</sup> KTV-Notat No 53/2001, cited above.

<sup>(3)</sup> See Norway's reply to question 4 in the second request for information, Event No 449660.

<sup>(4)</sup> Annex to Event No 449660.

<sup>(5)</sup> Annex to Norway's reply of 9 July 2007, Event No 428860.

<sup>(6)</sup> The Authority is not in possession of a copy of any such prolongation agreement.

<sup>(7)</sup> Event No 521513, e-mail dated 11 June 2009.

<sup>(8)</sup> Annex to Norway's reply of 9 July 2007, Event No 428860.

<sup>(9)</sup> See annexes to Norway's reply of 9 July 2007, Event No 428860.

<sup>(10)</sup> See Norway's reply to the Authority's second request for information, Event No Event No 449660.

### 3. Comments by the Norwegian authorities

The Norwegian authorities have submitted their comments by forwarding a letter from Notodden municipality.

The municipality argues, primarily, that the market price for long-term over-the-counter (OTC) contracts at Nord Pool was in fact roughly similar to the price agreed between the municipality of Notodden and Becromal. In fact, according to the table 'Prices of electric energy traded in the wholesale market and concession power — 1994-2005' downloaded from the homepage of Statistics Norway<sup>(1)</sup>, the average price for contracts of 1 to 5 years' duration in 2001 was 13,6 øre/kWh, whilst the price agreed between Notodden and Becromal was 13,5 øre/kWh.

The municipality recognises that contract price and that appearing in the table from Statistics Norway are both significantly lower than the Nord Pool spot price. In that respect, it points out that the difference between the price to Becromal and the market price in the range of NOK 17,5 million, mentioned in a letter from the municipality to the company and referred to in the opening decision, actually refers to the difference between the agreed price and the spot price.

With regard to the relevant benchmark price, the municipality argues that the contract price should be compared to the price for OTC contracts and not to the spot price. Although the municipality could have sold the power volumes purchased under this agreement on the spot market, thereby potentially obtaining a higher price, it is argued that this would expose the municipality to significant financial risk. This risk stems from the municipality's right and obligation to purchase 30 GWh per year from Tinfos, at the price of 13,5 øre/kWh for the period until 31 March 2006. Thus, if the spot price, during that period, was to drop below 13,5 øre/kWh, the municipality would incur a loss. The Norwegian authorities describe the contract with Becromal as a back-to-back contract, designed to secure the municipality against financial loss.

## II. ASSESSMENT

### 1. The presence of State aid

#### 1.1. State aid within the meaning of Article 61(1) EEA and the Authority's doubts in the opening decision

State aid within the meaning of Article 61(1) EEA Agreement is defined as follows:

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.'

It follows from this provision that, for State aid within the meaning of the EEA to be present, the aid must be granted through State resources; it must confer a selective economic advantage upon the recipient(s); the beneficiary must be an undertaking within the meaning of the EEA Agreement and the aid measure must be capable of distorting competition and affecting trade between the contracting parties.

In the opening decision, the Authority considered that the contract between Notodden municipality and Becromal would confer a selective advantage on Becromal, and, thus, involve aid, if the price agreed between the parties did not correspond to the market price. The Authority held that the facts of the case indicated that the contract price might have been lower than the market price. Firstly, the Authority pointed out that the price in the municipality's power sales contract with Becromal reflected its own purchase price under the contract with Tinfos. As this price, in turn, was partly based on the price for concession power and partly reflected compensation to the municipality for Tinfos' exploitation of the municipality's right of use to the waterfall, it was likely to be considerably lower than the market price.

The Authority pointed out that the price seemed low compared to other contracts entered into around the same time. Finally, it referred to the municipality's own statement that the contract might have saved Becromal NOK 17,5 million compared to the market price.

#### 1.2. The presence of an advantage within the meaning of Article 61(1) EEA

In order for this condition to be fulfilled, the measures must confer on Becromal advantages that relieve it of charges that are normally borne from its budget. This would be the case when a public entity does not fix an energy tariff in the manner of an ordinary economic agent but uses it to confer a pecuniary advantage on energy consumers<sup>(2)</sup>. In the case at hand, an advantage would be present if the power price in the contract between Becromal and Notodden municipality is lower than the market price. In that case, the measure would also be selective since it exclusively benefits Becromal.

<sup>(1)</sup> See updated table on [http://www.ssb.no/english/subjects/10/08/10/elektrisitetar\\_en/tab-2008-05-30-23-en.html](http://www.ssb.no/english/subjects/10/08/10/elektrisitetar_en/tab-2008-05-30-23-en.html)

<sup>(2)</sup> See Joined Cases 67/85, 68/85 and 70/85 *Kwekerij Gebroeders van der Kooy BV and others v Commission* [1988] ECR 219, paragraph 28.

### 1.2.1. The basis for establishing the market price

As a preliminary comment, the Authority notes that the cost-based price mechanism in the agreement, as referred to above, gives rise to a presumption that an economic advantage is present. The prices of concession power which the municipalities are entitled to buy, on the basis of the legislation referred to above, would in the majority of cases be significantly lower than the market price. However, for a finding that an economic advantage is present, it is not sufficient to rely on that presumption alone. It must be demonstrated that the price was in fact lower than the market price for a similar contract as the one between Notodden and Becromal.

In order to establish the market price, the Authority must assess which price would have been acceptable to a private investor in a market economy. In the opening decision, the Authority referred to a difference of NOK 17,5 million between the price paid and the market price. In their comments to the Authority's opening decision, the Norwegian authorities have clarified that this was the difference between the spot market price and the contract price. However, as the contract in question is a bilateral contract of five years' duration, the contract price cannot necessarily be compared to the spot market prices, as those prices reflect the sale of electricity on the power exchange Nord Pool. In Nord Pool's Elspot market, hourly power contracts are traded daily for physical delivery in the next day's 24-hour period<sup>(1)</sup>. Thus, the duration of the contracts and the conditions under which they are traded differ significantly from the current contract.

What falls to be examined is whether a private investor operating in a market economy would have chosen to enter into a long-term bilateral contract for the same price and on the same terms as in the agreement in question. In making that

assessment, the Authority cannot replace the municipality's commercial judgement with its own, which implies that the municipality, as the seller of electricity, must enjoy a wide margin of judgement. Only where there is no other plausible explanation for the municipality's choice of contract would it be qualified as State aid<sup>(2)</sup>. Since there is a market for bilateral long-term contracts and a market price can be established, it must be assumed that market investors may, depending on the circumstances, prefer such arrangements to spot price sales, even if selling the power volumes on the power exchange (thus obtaining the spot price) might have yielded a higher profit. There can be a number of commercially sound reasons to prefer one, stable buyer rather than the fluctuating prices on the power exchange for a certain period of time, such as risk reduction and administrative simplification.

Against this background, the Authority finds that the contract price should be compared to the average price for the type of contracts entered into on similar terms and for a similar duration, at around the same time. The Authority specifically notes that what falls to be assessed is the market price which could be reasonably expected at the time of entering into the contract, not the subsequent price development in the market during the contract period.

### 1.2.2. Market price data for bilateral long-term contracts

In order to establish the market price for bilateral long-term contracts at the time of entry into the contract, the Norwegian authorities, in their comments to the decision to open the formal investigation procedure, have submitted statistics from Statistics Norway pertaining to prices of electric energy traded in the wholesale market and concession power for the years 1994 to 2005 (Table 24 from Statistics Norway at the time, currently 23).

Table 23

Prices of electric energy traded in the wholesale market and concession power — 1994-2007 — Øre/kWh<sup>(3)</sup>

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Bilateral contracts, total	13,2	14,4	16	17,1	13,5	13,2	12,5	14,7	16,5	21,9	18,9	19,1	26,4	24,1
Contracts up to 1 year duration	11,9	14,7	17,2	19,6	15,1	13,4	12,5	18,4	20,5	29,2	23,8	23,6	36	24,2
Contracts up to 1-5 years' duration	14,2	15,6	16,8	18,7	14,9	15,6	15,2	13,6	17,3	21	18,8	18,5	23,7	31
Contracts with more than 5 years' duration	13,5	12,7	14	13,7	11,2	11	10,7	10,5	10,4	12,4	12,4	12,1	20,6	15,5
Market power trade, total	17,3	12,3	25,4	14,2	12,1	11,7	11	19	21,6	30,8	23,8	24,7	39,5	24,3

<sup>(1)</sup> See further explanations on [http://www.nordpoolspot.com/trading/The\\_Elspot\\_market](http://www.nordpoolspot.com/trading/The_Elspot_market)

<sup>(2)</sup> See, by analogy, the Authority's Guidelines on the Application of State Aid Provisions to Public Enterprises in the Manufacturing Sector, paragraphs 5(1) and 5(3).

<sup>(3)</sup> [http://www.ssb.no/english/subjects/10/08/10/elektristetaar\\_en/tab-2009-05-28-23-en.html](http://www.ssb.no/english/subjects/10/08/10/elektristetaar_en/tab-2009-05-28-23-en.html)

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Spot prices	18,2	11,3	25,4	14,3	12,1	11,7	11	18,8	21,6	30,8	24,9	24,7	39,6	24,3
The regulation market	17,3	14,8	25,3	13,6	12,1	11,8	10,3	19,1	20,8	30,5	23,8	24,3	38,4	24,4
Concession power	9,8	9,4	10,4	10,9	9,1	10	9,3	10	9,7	8,7	7,6	7,5	6,8	7,6

This table shows that the average price per kWh in bilateral contracts of 1 to 5 years' duration, was 13,6 øre in 2001, and 17,3 øre in 2002. The prices for contracts of more than five years duration were 10,5 øre and 10,4 øre. The Authority has requested information from Statistics Norway relating to the contracts on which the statistics are based. According to Statistics Norway, the prices in the table are based on wholesale contracts in effect in the year in question, including contracts entered into earlier but still running. Moreover, contracts with end-users are not included in this table<sup>(1)</sup>. Statistics Norway have also provided a technical explanation on the data set relied on to the Norwegian authorities<sup>(2)</sup>.

The Authority has also found other statistics from Statistics Norway's database to be relevant, including, in particular, Table 7 'Time series covering quarterly and yearly prices of electric energy in the whole sale market, taxes excluded':

Table 7

**Time series covering quarterly and yearly prices of electric energy in the whole sale market, taxes excluded<sup>(3)</sup>**

	1 2001	2 2001	3 2001	4 2001	1 2002	2 2002	3 2002	4 2002	1 2003	2 2003	3 2003	4 2003
Sales of electricity	24,3	17	15,8	16,1	16,9	13	14,2	25,6	29,2	20,7	23,8	25,4
Fixed-price contracts, full-time	13,7	12,1	13,6	17,4	16,1	14,6	12,6	11,2	23,7	10,7	10,9	11,1
Fixed-price contracts, free-time	21,5	19,8	17,9	17,8	18,7	15,9	14,4	20,6	26,1	22,1	28,1	24,4
Electricity access	21,5	15,8	14,7	15	14,3	11,5	12,6	22,6	28,3	21,1	21,1	21,9
New fixed-price contracts (entered into the last 3 months before the measuring week)	13,8	15,6	—	—	—	—	—	—	—	—	—	33,1

	1 2004	2 2004	3 2004	4 2004	1 2005	2 2005	3 2005	4 2005	1 2006	2 2006	3 2006	4 2006
Sales of electricity	21,2	19,2	21,3	19,9	18,9	23,4	22,6	21,6	30,7	25,5	44,1	38,2
Fixed-price contracts, full-time	17,8	10,9	16	11	12,1	11,9	11,1	10,5	10,7	10,7	10,5	13,8
Fixed-price contracts, free-time	20,7	21,5	23,2	20,7	22,6	21,6	17,9	20,3	26,9	21,9	36,7	33
Electricity access	19,6	17,3	19,7	19,1	16,8	22,8	22	18,6	29	26,2	42,7	36,7
New fixed-price contracts (entered into the last 3 months before the measuring week)	—	25,5	—	18,9	23,2	—	—	—	33,5	—	—	—

<sup>(1)</sup> Event No 495870.

<sup>(2)</sup> Event No 503107, *Redegjørelse SSB*.

<sup>(3)</sup> Only columns and rows concerning the most relevant prices and time periods have been included here. The full version can be obtained on [http://www.ssb.no/english/subjects/10/08/10/elkraftpris\\_en/arkiv/tab-2009-04-06-07-en.html](http://www.ssb.no/english/subjects/10/08/10/elkraftpris_en/arkiv/tab-2009-04-06-07-en.html)



On the basis of the wording of the contract <sup>(1)</sup>, it would seem that the contract between Notodden municipality and Becromal is a so-called 'full-time contract', i.e. a contract providing a fixed amount of power each minute over whole contract period <sup>(2)</sup>. For fixed price, full-time contracts (row number two in the above table), the average price was 12,1 øre/kWh on 14 May 2001, or 14,6 øre/kWh on 10 May 2002.

Furthermore, the last row in the table shows prices in new fixed price contracts, entered into the last three months before the measuring week. It shows that the price in the second quarter of 2001 was 15,6 øre/kWh, whilst the price for the second quarter of 2002 seems to be unknown. These figures include full-time and free-time contracts alike.

The Authority has also collected statistics from Nord Pool. Nord Pool's statistics show the average price per date for one year financial contracts traded on the power exchange. The prices reflect the price of financial contracts at the date in question. On 14 May 2001, the prices of the contract types in question were 18,4 øre/kWh, 17,413 øre/kWh and 17,75 øre/kWh <sup>(3)</sup>.

Finally, Statistics Norway also produces statistics of electricity prices to end-users of electric power <sup>(4)</sup>. However, the Authority has not found these statistics to be of much relevance for the contract in question, as the prices applicable for energy intensive industries, according to Statistics Norway, probably include long-term government subsidised contracts entered into before the entry into force of the EEA Agreement. Thus, these prices are far lower than the wholesale prices referred to above <sup>(5)</sup>.

### 1.2.3. The relevance of the various price statistics for the purpose of establishing the market price for the Becromal contract

In order to identify the most comparable price data, a detailed examination of the contract between Notodden and Becromal is necessary.

<sup>(1)</sup> Clause 2 of the contract reads: 'The power volumes shall be spread evenly over each year in order that, at any given point of time each calendar year, the same effect is taken out.'

<sup>(2)</sup> Event No 521166, e-mail from Statistics Norway dated 5 June 2009. The opposite of full-time contracts is 'free-time contracts', i.e. contracts allowing the user to choose how much power is taken out at each moment in time.

<sup>(3)</sup> Event Nos 521164 and 521163.

<sup>(4)</sup> See Table 19 'Weighted average prices for electricity and grid rent, exclusive of VAT — 1997-2007 — Øre/kWh', [http://www.ssb.no/english/subjects/10/08/10/elektrisitetaar\\_en/tab-2009-05-28-19-en.html](http://www.ssb.no/english/subjects/10/08/10/elektrisitetaar_en/tab-2009-05-28-19-en.html)

<sup>(5)</sup> Event No 495870, e-mail from Statistics Norway dated 8 October 2008.

The contract was signed on 10 May 2002, but has retroactive effect as from 14 May 2001, when the delivery started. Thus, it can be questioned whether the relevant benchmark prices would be the prices applicable on 10 May 2002 or the prices applicable on 14 May 2001. As a starting point, it would seem correct to look at the date at which the contract was entered into, since it is at that time the parties, on the basis of the expected future market development, fix the price and other contract terms. However, when the contract has retroactive effect, as here, some form of implicit agreement on price and other contract terms must have existed as from the beginning of the power delivery. Thus, the Authority finds that not only the prices relating to the date the contract was signed, but also the general price trends in the period around the start of delivery and the signing of the contract, must be taken into account.

Secondly, it must be pointed out that the benchmark price should, ideally, be based on contracts of a similar type and of similar duration. This would mean fixed price, full-time contracts of approximately five years' duration. Furthermore, the benchmark price should, preferably, be based on statistics for contracts entered into in 2001-2002, not for contracts which were simply in effect at that time.

Against that background, it should, firstly, be noted that the prices from Nord Pool seem to be of less relevance since they reflect the prices of financial contracts, of one year's duration. Financial contracts do not concern physical power volumes, but guarantee the buyer a certain power volume at an agreed price in a specified period in the future. The power will have to be physically traded in the spot market before the contract is settled. Financial contracts are entered into as a price securing measure for future power needs <sup>(6)</sup>. Thus, the conditions under which such contracts are traded are different and they must be seen as a different product from the contract in question, which concerns a physical power volume from a specific plant. Therefore, it is the Authority's view that the prices in the financial market are not necessarily directly comparable to the price agreed between Becromal and Notodden municipality.

As regards Table 24 rendered above, it shows the prices of all contracts which were in effect in the year in question. The same is true with respect to the prices for full-time contracts in Table 7 ('Time Series covering quarterly and yearly prices of electric energy in the wholesale market, taxes excluded, øre kWh'). Ideally, the price paid by Becromal should be compared to

<sup>(6)</sup> The basic characteristics of the financial power market are described on Nord Pool's homepages: <http://www.nordpoolspot.com/en/PowerMarket/The-Nordic-model-for-a-liberalised-power-market/The-financial-market>

the prices of contracts entered into in 2001, not to the prices of all contracts in effect at that time. However, that type of information has not been made available to the Authority. The prices for new fixed price contracts entered into the last 3 months (the last row in Table 7) do reflect the prices of new contracts. Those statistics do not distinguish between full-time and free-time contracts. Since the prices of full-time contracts are generally seen to be somewhat lower than the prices of free-time contracts elsewhere in the table, it would seem to be likely that the prices of new contracts would also have been somewhat lower had full-time contracts been shown separately. Moreover, it seems that Statistics Norway does not have sufficient price data for this type of contracts from the 3rd quarter 2001 until the 3rd quarter 2003, as no prices are included in the table for this period.

In conclusion, the Authority finds that no single price from these statistics is suitable for accurately establishing the market price of this type of contract entered into at the material time. At the same time, the prices for 1 to 5<sup>(1)</sup> years' bilateral contracts in Table 24, the prices of fixed price, full-time contracts in Table 7 and the prices of new fixed price contracts in the same table concern the same or a similar type of agreements. Therefore, they are relevant to establishing the market price for the Becromal agreement. Taken together, these price data can provide a price range that, in the Authority's view, could give a useful indication of the market price.

In Table 24, the prices for 1 to 5 years' contracts which were in effect in 2001 and 2002 were 13,6 øre/kWh and 17,3 øre/kWh, respectively. For contracts of more than five years duration the prices were 10,5 øre/kWh and 10,4 øre/kWh. Table 7 shows that the prices of fixed price, full-time contracts in effect in the second quarter of 2001 and 2002, respectively, were 12,1 øre/kWh and 14,6 øre/kWh. Finally, the price of new fixed price contracts entered into in the second quarter of 2001 was 15,6 øre/kWh. These prices differ somewhat, and can hardly be compared directly. Still, it would seem that the price in the Becromal agreement, 13,5 øre/kWh, would fall within the price range which can be established on the basis of these price data. Also, there seems to have been a certain degree of uncertainty in the market, given the significant differences in some price data from one quarter to the next one (see Table 7).

In order to establish that the price in the contract conferred an advantage on Becromal within the meaning of the State aid rules, the Authority must find that price deviates sufficiently

from the established market price to justify such a finding<sup>(2)</sup>. As described above, the exact market price for the contract at the time of conclusion cannot be established. However, the general price picture during the relevant period, and in particular the price of 1-5 years' wholesale contracts in 2001 (13,6 øre/kWh, Table 23), the price of fixed price, full-time contracts in the second quarter of 2001 (12,1 øre/kWh, Table 7) and new fixed price contracts entered into in the second quarter of 2001 (15,6 øre/kWh, Table 7), give a good indication of the market price range. Moreover, as stated above, the price for contracts over five years was 10,5 øre/kWh in 2001. In the original agreement, the agreed price was 13,5 øre/kWh. In light of the general price tendencies during the relevant period, as described above, and in particular the seemingly most comparable prices, the Authority considers that the contract price does not seem to differ sufficiently from the likely market price for the Authority to conclude that the contract gave Becromal an economic advantage.

As for the prolongation agreement, the Authority understands that Clause 7 of the original agreement confers a legal right on Becromal to extend the contract from 1 April 2006 to 31 March 2007 on the conditions laid down in the clause. Included in the original agreement, the clause was concluded and made binding on the parties in 2001/2002. As an alternative, the parties could have chosen to enter into a six years' rather than a five years' contract at the price of 13,5 øre/kWh. That being the case, the Authority finds that the price in the prolongation period should be assessed as a part of the original agreement; i.e. with reference to the market price for long-term, bilateral contracts entered into in 2001/2002. As noted above, the prices in the prolongation period were 15,21 øre/kWh and 14,20 øre/kWh, depending on the season. As these prices are higher than the original contract price of 13,5 øre/kWh, they do not, in line with the arguments set out above, differ sufficiently from any reasonable market price range for an economic advantage to be present.

In these circumstances, the Authority concludes that the Becromal agreement did not confer an advantage on Becromal within the meaning of Article 61(1) EEA.

## 2. Conclusion

On the basis of the foregoing assessment, the Authority considers that the agreement between Notodden municipality and Becromal Norway AS for the period from 14 May 2001 to 31 March 2006, as well as the prolongation from 1 April 2006 to 31 March 2007, do not constitute State aid within the meaning of Article 61(1) of the EEA Agreement,

<sup>(1)</sup> Including the prolongation agreement, the contract has a duration of nearly 6 years. However, the Authority assumes that the contract is still more comparable to other 1 to 5-year contracts, since all contracts exceeding five years' duration are grouped together, including contracts of very long duration (e.g. more than 20 years).

<sup>(2)</sup> See, by analogy, statements by the Court of First Instance in cases pertaining to the sale of real estate: Case T-274/01 *Valmont*, [2004] ECR II-3145, paragraph 45 and Joined Cases T-127/99, T-129/99 and T-148/99, *Diputación Foral de Alava*, [2002] ECR II-1275, paragraph 85 (not appealed on this point).



HAS ADOPTED THIS DECISION:

*Article 3*

Only the English text is authentic.

*Article 1*

The EFTA Surveillance Authority considers that the contract between Becromal Norway AS and the Municipality of Notodden in force from 14 May 2001 to 31 March 2006, as well as its prolongation until 31 March 2007, do not constitute State aid within the meaning of Article 61 of the EEA Agreement.

Done at Brussels, 8 July 2009.

*For the EFTA Surveillance Authority*

*Article 2*

This Decision is addressed to the Kingdom of Norway.

Per SANDERUD  
*President*

Kristján A. STEFÁNSSON  
*College Member*

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## CORRIGENDA

**Corrigendum to Commission Regulation (EU) No 143/2011 of 17 February 2011 amending Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals ('REACH')**

(Official Journal of the European Union L 44 of 18 February 2011)

On page 5, the Annex is replaced by the following text:

## 'ANNEX

In Annex XIV to Regulation (EC) No 1907/2006 the following table is inserted:

Entry Nr	Substance	Intrinsic property(ies) referred to in Article 57	Transitional arrangements		Exempted (categories of) uses	Review periods
			Latest application date <sup>(1)</sup>	Sunset date <sup>(2)</sup>		
1.	5-tert-butyl-2,4,6-trinitro-m-xylene <b>(Musk xylene)</b> EC No: 201-329-4 CAS No: 81-15-2	vPvB	21 February 2013	21 August 2014	—	—
2.	4,4'-Diaminodiphenylmethane <b>(MDA)</b> EC No: 202-974-4 CAS No: 101-77-9	Carcinogenic (category 1B)	21 February 2013	21 August 2014	—	—
3.	Hexabromocyclododecane <b>(HBCDD)</b> EC No: 221-695-9, 247-148-4, CAS No: 3194-55-6 25637-99-4 alpha-hexabromocyclododecane CAS No: 134237-50-6, beta-hexabromocyclododecane CAS No: 134237-51-7 gamma-hexabromocyclododecane CAS No: 134237-52-8	PBT	21 February 2014	21 August 2015	—	—
4.	Bis(2-ethylhexyl) phthalate <b>(DEHP)</b> EC No: 204-211-0 CAS No: 117-81-7	Toxic for reproduction (category 1B)	21 August 2013	21 February 2015	Uses in the immediate packaging of medicinal products covered under Regulation (EC) No 726/2004, Directive 2001/82/EC, and/or Directive 2001/83/EC.	
5.	Benzyl butyl phthalate <b>(BBP)</b> EC No: 201-622-7 CAS No: 85-68-7	Toxic for reproduction (category 1B)	21 August 2013	21 February 2015	Uses in the immediate packaging of medicinal products covered under Regulation (EC) No 726/2004, Directive 2001/82/EC, and/or Directive 2001/83/EC.	

Entry Nr	Substance	Intrinsic property(ies) referred to in Article 57	Transitional arrangements		Exempted (categories of) uses	Review periods
			Latest application date <sup>(1)</sup>	Sunset date <sup>(2)</sup>		
6.	Dibutyl phthalate <b>(DBP)</b> EC No: 201-557-4 CAS No: 84-74-2	Toxic for reproduction (category 1B)	21 August 2013	21 February 2015	Uses in the immediate packaging of medicinal products covered under Regulation (EC) No 726/2004, Directive 2001/82/EC, and/or Directive 2001/83/EC.	

<sup>(1)</sup> Date referred to in Article 58(1)(c)(ii) of Regulation (EC) No 1907/2006.

<sup>(2)</sup> Date referred to in Article 58(1)(c)(i) of Regulation (EC) No 1907/2006.'

**Corrigendum to Commission Regulation (EU) No 144/2011 of 17 February 2011 amending Regulation (EU) No 206/2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements**

*(Official Journal of the European Union L 44 of 18 February 2011)*

On page 17, Annex, the table in point 2, row 'BW — Botswana', 8th column:

*for:* '[insert the date of application of present Regulation]',

*read:* '18 February 2011'.







IV Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty

- ★ EFTA Surveillance Authority Decision No 305/09/COL of 8 July 2009 on the power sales agreement entered into by Notodden municipality and Becromal Norway AS (Norway) ..... 44

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Corrigenda

- ★ Corrigendum to Commission Regulation (EU) No 143/2011 of 17 February 2011 amending Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals ('REACH') (OJ L 44, 18.2.2011) ..... 52
- ★ Corrigendum to Commission Regulation (EU) No 144/2011 of 17 February 2011 amending Regulation (EU) No 206/2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements (OJ L 44, 18.2.2011) ..... 53

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