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

EN

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

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

DECISIONS

2011/177/EU:

- ★ **Commission Decision of 2 March 2011 amending Decision 2008/458/EC laying down rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council establishing the European Return Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ as regards Member States’ management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund** (*notified under document C(2011) 1159*) ..... 32



## II

(Non-legislative acts)

## REGULATIONS

## COUNCIL IMPLEMENTING REGULATION (EU) No 282/2011

of 15 March 2011

laying down implementing measures for Directive 2006/112/EC on the common system of value added tax

(recast)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(1)</sup>, and in particular Article 397 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) A number of substantial changes are to be made to Council Regulation (EC) No 1777/2005 of 17 October 2005 laying down implementing measures for Directive 77/388/EEC on the common system of value added tax <sup>(2)</sup>. It is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast.
- (2) Directive 2006/112/EC contains rules on value added tax (VAT) which, in some cases, are subject to interpretation by the Member States. The adoption of common provisions implementing Directive 2006/112/EC should ensure that application of the VAT system complies more fully with the objective of the internal market, in cases where divergences in application have arisen or may arise which are incompatible with the proper functioning of such internal market. These implementing measures are legally binding only from the date of the entry into force of this Regulation and are without prejudice to the validity of the legislation and interpretation previously adopted by the Member States.
- (3) Changes resulting from the adoption of Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services <sup>(3)</sup> should be reflected in this Regulation.
- (4) The objective of this Regulation is to ensure uniform application of the current VAT system by laying down rules implementing Directive 2006/112/EC, in particular in respect of taxable persons, the supply of goods and services, and the place of taxable transactions. In accordance with the principle of proportionality as set out in Article 5(4) of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve this objective. Since it is binding and directly applicable in all Member States, uniformity of application will be best ensured by a Regulation.
- (5) These implementing provisions contain specific rules in response to selective questions of application and are designed to bring uniform treatment throughout the Union to those specific circumstances only. They are therefore not conclusive for other cases and, in view of their formulation, are to be applied restrictively.
- (6) If a non-taxable person changes residence and transfers a new means of transport, or a new means of transport returns to the Member State from which it was originally supplied exempt of VAT to the non-taxable person returning it, it should be clarified that such a transfer does not constitute the intra-Community acquisition of a new means of transport.
- (7) For certain services, it is sufficient for the supplier to demonstrate that the customer for these services, whether or not a taxable person, is located outside the Community for the supply of those services to fall outside the scope of VAT.

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1.

<sup>(2)</sup> OJ L 288, 29.10.2005, p. 1.

<sup>(3)</sup> OJ L 44, 20.2.2008, p. 11.

- (8) It should be specified that the allocation of a VAT identification number to a taxable person who makes or receives a supply of services to or from another Member State, and for which the VAT is payable solely by the customer, does not affect the right of that taxable person to benefit from non-taxation of his intra-Community acquisitions of goods. However, if the taxable person communicates his VAT identification number to the supplier in respect of an intra-Community acquisition of goods, he is in any event deemed to have opted to make those transactions subject to VAT.
- (9) The further integration of the internal market has led to an increased need for cooperation by economic operators established in different Member States across internal borders and the development of European economic interest groupings (EEIGs), constituted in accordance with Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) <sup>(1)</sup>. It should therefore be clarified that EEIGs are taxable persons where they supply goods or services for consideration.
- (10) It is necessary to clearly define restaurant and catering services, the distinction between the two, and the appropriate treatment of these services.
- (11) In order to enhance clarity, the transactions identified as electronically supplied services should be listed without the lists being definitive or exhaustive.
- (12) It is necessary, on the one hand, to establish that a transaction which consists solely of assembling the various parts of a machine provided by a customer must be considered as a supply of services, and, on the other hand, to establish the place of such supply when the service is supplied to a non-taxable person.
- (13) The sale of an option as a financial instrument should be treated as a supply of services separate from the underlying transactions to which the option relates.
- (14) To ensure the uniform application of rules relating to the place of taxable transactions, concepts such as the place where a taxable person has established his business, fixed establishment, permanent address and the place where a person usually resides should be clarified. While taking into account the case law of the Court of Justice, the use of criteria which are as clear and objective as possible should facilitate the practical application of these concepts.
- (15) Rules should be established to ensure the uniform treatment of supplies of goods once a supplier has exceeded the distance selling threshold for supplies to another Member State.
- (16) It should be clarified that the journey of the means of transport determines the section of a passenger transport operation effected within the Community, and not the journey of the passengers within it.
- (17) In the case of intra-Community acquisition of goods, the right of the Member State of acquisition to tax the acquisition should remain unaffected by the VAT treatment of the transaction in the Member States of departure.
- (18) The correct application of the rules governing the place of supply of services relies mainly on the status of the customer as a taxable or non-taxable person, and on the capacity in which he is acting. In order to determine the customer's status as a taxable person, it is necessary to establish what the supplier should be required to obtain as evidence from his customer.
- (19) It should be clarified that when services supplied to a taxable person are intended for private use, including use by the customer's staff, that taxable person cannot be deemed to be acting in his capacity as a taxable person. Communication by the customer of his VAT identification number to the supplier is sufficient to establish that the customer is acting in his capacity as a taxable person, unless the supplier has information to the contrary. It should also be ensured that a single service acquired for the business but also used for private purposes is only taxed in one place.
- (20) In order to determine the customer's place of establishment precisely, the supplier of the service is required to verify the information provided by the customer.
- (21) Without prejudice to the general rule on the place of supply of services to a taxable person, where services are supplied to a customer established in more than one place, there should be rules to help the supplier determine the customer's fixed establishment to which the service is provided, taking account of the circumstances. If the supplier of the services is not able to determine that place, there should be rules to clarify the supplier's obligations. Those rules should not interfere with or change the customer's obligations.
- (22) The time at which the supplier of the service must determine the status, the capacity and the location of the customer, whether a taxable person or not, should also be specified.
- (23) Without prejudice to the general application of the principle with respect to abusive practices to the provisions of this Regulation, it is appropriate to draw specific attention to its application to certain provisions of this Regulation.

<sup>(1)</sup> OJ L 199, 31.7.1985, p. 1.

- (24) Certain specific services such as the assignment of television broadcasting rights in respect of football matches, the translation of texts, services for claiming VAT refunds, and services as an intermediary to a non-taxable person involve cross-border scenarios or even the participation of economic operators established outside the Community. The place of supply of these services needs to be clearly determined in order to create greater legal certainty.
- (25) It should be specified that services supplied by an intermediary acting in the name and on behalf of another person who takes part in the provision of accommodation in the hotel sector are not governed by the specific rule for the supply of services connected with immovable property.
- (26) Where various services supplied in the framework of organising a funeral form part of a single service, the rule on the place of supply should also be determined.
- (27) In order to ensure uniform treatment of supplies of cultural, artistic, sporting, scientific, educational, entertainment and similar services, admission to such events and ancillary services which are related to admission need to be defined.
- (28) It is necessary to clarify the treatment of restaurant services and catering services supplied on board a means of transport when passenger transport is being carried out on the territory of several countries.
- (29) Given that particular rules for the hiring of a means of transport depend on the duration of its possession or use, it is necessary not only to establish which vehicles should be considered means of transport, but also to clarify the treatment of such a supply where one successive contract follows another. It is also necessary to determine the place where a means of transport is actually put at the disposal of the customer.
- (30) In certain specific circumstances a credit or debit card handling fee which is paid in connection with a transaction should not reduce the taxable amount for that transaction.
- (31) It is necessary to clarify that the reduced rate may be applied to the hiring out of tents, caravans and mobile homes installed on camping sites and used as accommodation.
- (32) Vocational training or retraining should include instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes, regardless of the duration of a course.
- (33) Platinum nobles should be treated as being excluded from the exemptions for currency, bank notes and coins.
- (34) It should be specified that the exemption of the supply of services relating to the importation of goods the value of which is included in the taxable amount of those goods should cover transport services carried out during a change of residence.
- (35) Goods transported outside the Community by the purchaser thereof and used for the equipping, fuelling or provisioning of means of transport used for non-business purposes by persons other than natural persons, such as bodies governed by public law and associations, should be excluded from the exemption for export transactions.
- (36) To guarantee uniform administrative practices for the calculation of the minimum value for exemption on exportation of goods carried in the personal luggage of travellers, the provisions on such calculations should be harmonised.
- (37) It should be specified that the exemption for certain transactions treated as exports should also apply to services covered by the special scheme for electronically supplied services.
- (38) A body to be set up under the legal framework for a European Research Infrastructure Consortium (ERIC) should only qualify as an international body for the purposes of exemption from VAT where it fulfils certain conditions. The features necessary for it to benefit from exemption should therefore be identified.
- (39) Supplies of goods and services under diplomatic and consular arrangements, or to recognised international bodies, or to certain armed forces are exempt from VAT subject to certain limits and conditions. In order that a taxable person making such a supply from another Member State can establish that the conditions and limits for this exemption are met, an exemption certificate should be established.
- (40) Electronic import documents should also be admitted to exercise the right to deduct, where they fulfil the same requirements as paper-based documents.
- (41) Where a supplier of goods or services has a fixed establishment within the territory of the Member State where the tax is due, the circumstances under which that establishment should be liable for payment of VAT should be specified.
- (42) It should be clarified that a taxable person who has established his business within the territory of the Member State where the tax is due must be deemed to be a taxable person established in that Member State for the purposes of liability for the tax, even when that place of business is not involved in the supply of goods or services.

- (43) It should be clarified that every taxable person is required to communicate his VAT identification number, as soon as he has one, for certain taxable transactions in order to ensure fairer collection of the tax.
- (44) Weights for investment gold which are definitely accepted by the bullion market should be named and a common date for establishing the value of gold coins be determined to ensure equal treatment of economic operators.
- (45) The special scheme for taxable persons not established in the Community, supplying services electronically to non-taxable persons established or resident within the Community, is subject to certain conditions. Where those conditions are no longer fulfilled, the consequences thereof should, in particular, be made clear.
- (46) Certain changes result from Directive 2008/8/EC. Since those changes concern, on the one hand, the taxation of the long-term hiring of means of transport as from 1 January 2013 and, on the other, the taxation of electronically supplied services as from 1 January 2015, it should be specified that the corresponding Articles of this Regulation apply only as from those dates,

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

##### SUBJECT MATTER

###### Article 1

This Regulation lays down measures for the implementation of certain provisions of Titles I to V, and VII to XII of Directive 2006/112/EC.

#### CHAPTER II

##### SCOPE

###### (TITLE I OF DIRECTIVE 2006/112/EC)

###### Article 2

The following shall not result in intra-Community acquisitions within the meaning of point (b) of Article 2(1) of Directive 2006/112/EC:

- (a) the transfer of a new means of transport by a non-taxable person upon change of residence provided that the exemption provided for in point (a) of Article 138(2) of Directive 2006/112/EC could not apply at the time of supply;
- (b) the return of a new means of transport by a non-taxable person to the Member State from which it was initially supplied to him under the exemption provided for in point (a) of Article 138(2) of Directive 2006/112/EC.

###### Article 3

Without prejudice to point (b) of the first paragraph of Article 59a of Directive 2006/112/EC, the supply of the following services is not subject to VAT if the supplier demonstrates that the place of supply determined in accordance with Subsections 3 and 4 of Section 4 of Chapter V of this Regulation is outside the Community:

- (a) from 1 January 2013, the service referred to in the first subparagraph of Article 56(2) of Directive 2006/112/EC;
- (b) from 1 January 2015, the services listed in Article 58 of Directive 2006/112/EC;
- (c) the services listed in Article 59 of Directive 2006/112/EC.

###### Article 4

A taxable person who is entitled to non-taxation of his intra-Community acquisitions of goods, in accordance with Article 3 of Directive 2006/112/EC, shall remain so where, pursuant to Article 214(1)(d) or (e) of that Directive, a VAT identification number has been attributed to that taxable person for the services received for which he is liable to pay VAT or for the services supplied by him within the territory of another Member State for which VAT is payable solely by the recipient.

However, if that taxable person communicates this VAT identification number to a supplier in respect of an intra-Community acquisition of goods, he shall be deemed to have exercised the option provided for in Article 3(3) of that Directive.

#### CHAPTER III

##### TAXABLE PERSONS

###### (TITLE III OF DIRECTIVE 2006/112/EC)

###### Article 5

A European Economic Interest Grouping (EEIG) constituted in accordance with Regulation (EEC) No 2137/85 which supplies goods or services for consideration to its members or to third parties shall be a taxable person within the meaning of Article 9(1) of Directive 2006/112/EC.

#### CHAPTER IV

##### TAXABLE TRANSACTIONS

###### (ARTICLES 24 TO 29 OF DIRECTIVE 2006/112/EC)

###### Article 6

1. Restaurant and catering services mean services consisting of the supply of prepared or unprepared food or beverages or both, for human consumption, accompanied by sufficient support services allowing for the immediate consumption thereof. The provision of food or beverages or both is only one component of the whole in which services shall predominate. Restaurant services are the supply of such services on the premises of the supplier, and catering services are the supply of such services off the premises of the supplier.

2. The supply of prepared or unprepared food or beverages or both, whether or not including transport but without any other support services, shall not be considered restaurant or catering services within the meaning of paragraph 1.

#### Article 7

1. 'Electronically supplied services' as referred to in Directive 2006/112/EC shall include services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology.

2. Paragraph 1 shall cover, in particular, the following:

- (a) the supply of digitised products generally, including software and changes to or upgrades of software;
- (b) services providing or supporting a business or personal presence on an electronic network such as a website or a webpage;
- (c) services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient;
- (d) the transfer for consideration of the right to put goods or services up for sale on an Internet site operating as an online market on which potential buyers make their bids by an automated procedure and on which the parties are notified of a sale by electronic mail automatically generated from a computer;
- (e) Internet Service Packages (ISP) of information in which the telecommunications component forms an ancillary and subordinate part (i.e. packages going beyond mere Internet access and including other elements such as content pages giving access to news, weather or travel reports; playgrounds; website hosting; access to online debates etc.);
- (f) the services listed in Annex I.

3. Paragraph 1 shall not, in particular, cover the following:

- (a) radio and television broadcasting services;
- (b) telecommunications services;
- (c) goods, where the order and processing is done electronically;
- (d) CD-ROMs, floppy disks and similar tangible media;

- (e) printed matter, such as books, newsletters, newspapers or journals;
- (f) CDs and audio cassettes;
- (g) video cassettes and DVDs;
- (h) games on a CD-ROM;
- (i) services of professionals such as lawyers and financial consultants, who advise clients by e-mail;
- (j) teaching services, where the course content is delivered by a teacher over the Internet or an electronic network (namely via a remote link);
- (k) offline physical repair services of computer equipment;
- (l) offline data warehousing services;
- (m) advertising services, in particular as in newspapers, on posters and on television;
- (n) telephone helpdesk services;
- (o) teaching services purely involving correspondence courses, such as postal courses;
- (p) conventional auctioneers' services reliant on direct human intervention, irrespective of how bids are made;
- (q) telephone services with a video component, otherwise known as videophone services;
- (r) access to the Internet and World Wide Web;
- (s) telephone services provided through the Internet.

#### Article 8

If a taxable person only assembles the various parts of a machine all of which were provided to him by his customer, that transaction shall be a supply of services within the meaning of Article 24(1) of Directive 2006/112/EC.

#### Article 9

The sale of an option, where such a sale is a transaction falling within the scope of point (f) of Article 135(1) of Directive 2006/112/EC, shall be a supply of services within the meaning of Article 24(1) of that Directive. That supply of services shall be distinct from the underlying transactions to which the services relate.

## CHAPTER V

**PLACE OF TAXABLE TRANSACTIONS**

## SECTION 1

**Concepts***Article 10*

1. For the application of Articles 44 and 45 of Directive 2006/112/EC, the place where the business of a taxable person is established shall be the place where the functions of the business's central administration are carried out.

2. In order to determine the place referred to in paragraph 1, account shall be taken of the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets.

Where these criteria do not allow the place of establishment of a business to be determined with certainty, the place where essential decisions concerning the general management of the business are taken shall take precedence.

3. The mere presence of a postal address may not be taken to be the place of establishment of a business of a taxable person.

*Article 11*

1. For the application of Article 44 of Directive 2006/112/EC, a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.

2. For the application of the following Articles, a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to provide the services which it supplies:

- (a) Article 45 of Directive 2006/112/EC;
- (b) from 1 January 2013, the second subparagraph of Article 56(2) of Directive 2006/112/EC;
- (c) until 31 December 2014, Article 58 of Directive 2006/112/EC;
- (d) Article 192a of Directive 2006/112/EC.

3. The fact of having a VAT identification number shall not in itself be sufficient to consider that a taxable person has a fixed establishment.

*Article 12*

For the application of Directive 2006/112/EC, the 'permanent address' of a natural person, whether or not a taxable person, shall be the address entered in the population or similar register, or the address indicated by that person to the relevant tax authorities, unless there is evidence that this address does not reflect reality.

*Article 13*

The place where a natural person 'usually resides', whether or not a taxable person, as referred to in Directive 2006/112/EC shall be the place where that natural person usually lives as a result of personal and occupational ties.

Where the occupational ties are in a country different from that of the personal ties, or where no occupational ties exist, the place of usual residence shall be determined by personal ties which show close links between the natural person and a place where he is living.

## SECTION 2

**Place of supply of goods****(Articles 31 to 39 of Directive 2006/112/EC)***Article 14*

Where in the course of a calendar year the threshold applied by a Member State in accordance with Article 34 of Directive 2006/112/EC is exceeded, Article 33 of that Directive shall not modify the place of supplies of goods other than products subject to excise duty carried out in the course of the same calendar year which are made before the threshold applied by the Member State for the calendar year then current is exceeded provided that all of the following conditions are met:

- (a) the supplier has not exercised the option provided for under Article 34(4) of that Directive;
- (b) the value of his supplies of goods did not exceed the threshold in the course of the preceding calendar year.

However, Article 33 of Directive 2006/112/EC shall modify the place of the following supplies to the Member State in which the dispatch or transport ends:

- (a) the supply of goods by which the threshold applied by the Member State for the calendar year then current was exceeded in the course of the same calendar year;
- (b) any subsequent supplies of goods within that Member State in that calendar year;
- (c) supplies of goods within that Member State in the calendar year following the calendar year in which the event referred to in point (a) occurred.



*Article 15*

The section of a passenger transport operation effected within the Community referred to in Article 37 of Directive 2006/112/EC, shall be determined by the journey of the means of transport and not by the journey completed by each of the passengers.

## SECTION 3

**Place of intra-Community acquisitions of goods**

**(Articles 40, 41 and 42 of Directive 2006/112/EC)**

*Article 16*

Where an intra-Community acquisition of goods within the meaning of Article 20 of Directive 2006/112/EC has taken place, the Member State in which the dispatch or transport ends shall exercise its power of taxation irrespective of the VAT treatment applied to the transaction in the Member State in which the dispatch or transport began.

Any request by a supplier of goods for a correction in the VAT invoiced by him and reported by him to the Member State where the dispatch or transport of the goods began shall be treated by that Member State in accordance with its own domestic rules.

## SECTION 4

**Place of supply of services**

**(Articles 43 to 59 of Directive 2006/112/EC)**

## Subsection 1

**Status of the customer***Article 17*

1. If the place of supply of services depends on whether the customer is a taxable or non-taxable person, the status of the customer shall be determined on the basis of Articles 9 to 13 and Article 43 of Directive 2006/112/EC.

2. A non-taxable legal person who is identified or required to be identified for VAT purposes under point (b) of Article 214(1) of Directive 2006/112/EC because his intra-Community acquisitions of goods are subject to VAT or because he has exercised the option of making those operations subject to VAT shall be a taxable person within the meaning of Article 43 of that Directive.

*Article 18*

1. Unless he has information to the contrary, the supplier may regard a customer established within the Community as a taxable person:

(a) where the customer has communicated his individual VAT identification number to him, and the supplier obtains confirmation of the validity of that identification number

and of the associated name and address in accordance with Article 31 of Council Regulation (EC) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax <sup>(1)</sup>;

(b) where the customer has not yet received an individual VAT identification number, but informs the supplier that he has applied for it and the supplier obtains any other proof which demonstrates that the customer is a taxable person or a non-taxable legal person required to be identified for VAT purposes and carries out a reasonable level of verification of the accuracy of the information provided by the customer, by normal commercial security measures such as those relating to identity or payment checks.

2. Unless he has information to the contrary, the supplier may regard a customer established within the Community as a non-taxable person when he can demonstrate that the customer has not communicated his individual VAT identification number to him.

3. Unless he has information to the contrary, the supplier may regard a customer established outside the Community as a taxable person:

(a) if he obtains from the customer a certificate issued by the customer's competent tax authorities as confirmation that the customer is engaged in economic activities in order to enable him to obtain a refund of VAT under Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory <sup>(2)</sup>;

(b) where the customer does not possess that certificate, if the supplier has the VAT number, or a similar number attributed to the customer by the country of establishment and used to identify businesses or any other proof which demonstrates that the customer is a taxable person and if the supplier carries out a reasonable level of verification of the accuracy of the information provided by the customer, by normal commercial security measures such as those relating to identity or payment checks.

## Subsection 2

**Capacity of the customer***Article 19*

For the purpose of applying the rules concerning the place of supply of services laid down in Articles 44 and 45 of Directive 2006/112/EC, a taxable person, or a non-taxable legal person deemed to be a taxable person, who receives services exclusively for private use, including use by his staff, shall be regarded as a non-taxable person.

<sup>(1)</sup> OJ L 268, 12.10.2010, p. 1.

<sup>(2)</sup> OJ L 326, 21.11.1986, p. 40.

Unless he has information to the contrary, such as information on the nature of the services provided, the supplier may consider that the services are for the customer's business use if, for that transaction, the customer has communicated his individual VAT identification number.

Where one and the same service is intended for both private use, including use by the customer's staff, and business use, the supply of that service shall be covered exclusively by Article 44 of Directive 2006/112/EC, provided there is no abusive practice.

### Subsection 3

#### Location of the customer

##### Article 20

Where a supply of services carried out for a taxable person, or a non-taxable legal person deemed to be a taxable person, falls within the scope of Article 44 of Directive 2006/112/EC, and where that taxable person is established in a single country, or, in the absence of a place of establishment of a business or a fixed establishment, has his permanent address and usually resides in a single country, that supply of services shall be taxable in that country.

The supplier shall establish that place based on information from the customer, and verify that information by normal commercial security measures such as those relating to identity or payment checks.

The information may include the VAT identification number attributed by the Member State where the customer is established.

##### Article 21

Where a supply of services to a taxable person, or a non-taxable legal person deemed to be a taxable person, falls within the scope of Article 44 of Directive 2006/112/EC, and the taxable person is established in more than one country, that supply shall be taxable in the country where that taxable person has established his business.

However, where the service is provided to a fixed establishment of the taxable person located in a place other than that where the customer has established his business, that supply shall be taxable at the place of the fixed establishment receiving that service and using it for its own needs.

Where the taxable person does not have a place of establishment of a business or a fixed establishment, the supply shall be taxable at his permanent address or usual residence.

##### Article 22

1. In order to identify the customer's fixed establishment to which the service is provided, the supplier shall examine the nature and use of the service provided.

Where the nature and use of the service provided do not enable him to identify the fixed establishment to which the service is provided, the supplier, in identifying that fixed establishment, shall pay particular attention to whether the contract, the order form and the VAT identification number attributed by the Member State of the customer and communicated to him by the customer identify the fixed establishment as the customer of the service and whether the fixed establishment is the entity paying for the service.

Where the customer's fixed establishment to which the service is provided cannot be determined in accordance with the first and second subparagraphs of this paragraph or where services covered by Article 44 of Directive 2006/112/EC are supplied to a taxable person under a contract covering one or more services used in an unidentifiable and non-quantifiable manner, the supplier may legitimately consider that the services have been supplied at the place where the customer has established his business.

2. The application of this Article shall be without prejudice to the customer's obligations.

##### Article 23

1. From 1 January 2013, where, in accordance with the first subparagraph of Article 56(2) of Directive 2006/112/EC, a supply of services is taxable at the place where the customer is established, or, in the absence of an establishment, where he has his permanent address or usually resides, the supplier shall establish that place based on factual information provided by the customer, and verify that information by normal commercial security measures such as those relating to identity or payment checks.

2. Where, in accordance with Articles 58 and 59 of Directive 2006/112/EC, a supply of services is taxable at the place where the customer is established, or, in the absence of an establishment, where he has his permanent address or usually resides, the supplier shall establish that place based on factual information provided by the customer, and verify that information by normal commercial security measures such as those relating to identity or payment checks.

##### Article 24

1. From 1 January 2013, where services covered by the first subparagraph of Article 56(2) of Directive 2006/112/EC, are supplied to a non-taxable person who is established in more than one country or has his permanent address in one country and his usual residence in another, priority shall be given to the place that best ensures taxation at the place of actual consumption when determining the place of supply of those services.

2. Where services covered by Articles 58 and 59 of Directive 2006/112/EC are supplied to a non-taxable person who is established in more than one country or has his permanent address in one country and his usual residence in another, priority shall be given to the place that best ensures taxation at the place of actual consumption when determining the place of supply of those services.

#### Subsection 4

### **Common provision regarding determination of the status, the capacity and the location of the customer**

#### *Article 25*

For the application of the rules governing the place of supply of services, only the circumstances existing at the time of the chargeable event shall be taken into account. Any subsequent changes to the use of the service received shall not affect the determination of the place of supply, provided there is no abusive practice.

#### Subsection 5

### **Supply of services governed by the general rules**

#### *Article 26*

A transaction whereby a body assigns television broadcasting rights in respect of football matches to taxable persons, shall be covered by Article 44 of Directive 2006/112/EC.

#### *Article 27*

The supply of services which consist in applying for or receiving refunds of VAT under Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State <sup>(1)</sup> shall be covered by Article 44 of Directive 2006/112/EC.

#### *Article 28*

In so far as they constitute a single service, the supply of services made in the framework of organising a funeral shall fall within the scope of Articles 44 and 45 of Directive 2006/112/EC.

#### *Article 29*

Without prejudice to Article 41 of this Regulation, the supply of services of translation of texts shall fall within the scope of Articles 44 and 45 of Directive 2006/112/EC.

#### Subsection 6

### **Supply of services by intermediaries**

#### *Article 30*

The supply of services of intermediaries as referred to in Article 46 of Directive 2006/112/EC shall cover the services

of intermediaries acting in the name and on behalf of the recipient of the service procured and the services performed by intermediaries acting in the name and on behalf of the provider of the services procured.

#### *Article 31*

Services supplied by intermediaries acting in the name and on behalf of another person consisting of the intermediation in the provision of accommodation in the hotel sector or in sectors having a similar function shall fall within the scope of:

- (a) Article 44 of Directive 2006/112/EC if supplied to a taxable person acting as such, or a non-taxable legal person deemed to be a taxable person;
- (b) Article 46 of that Directive, if supplied to a non-taxable person.

#### Subsection 7

### **Supply of cultural, artistic, sporting, scientific, educational, entertainment, and similar services**

#### *Article 32*

1. Services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events as referred to in Article 53 of Directive 2006/112/EC shall include the supply of services of which the essential characteristics are the granting of the right of admission to an event in exchange for a ticket or payment, including payment in the form of a subscription, a season ticket or a periodic fee.

2. Paragraph 1 shall apply in particular to:

- (a) the right of admission to shows, theatrical performances, circus performances, fairs, amusement parks, concerts, exhibitions, and other similar cultural events;
- (b) the right of admission to sporting events such as matches or competitions;
- (c) the right of admission to educational and scientific events such as conferences and seminars.

3. Paragraph 1 shall not cover the use of facilities such as gymnastics halls and suchlike, in exchange for the payment of a fee.

#### *Article 33*

The ancillary services referred to in Article 53 of Directive 2006/112/EC shall include services which are directly related to admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events and which are supplied separately for a consideration to a person attending an event.

Such ancillary services shall include in particular the use of cloakrooms or sanitary facilities but shall not include mere intermediary services relating to the sale of tickets.

<sup>(1)</sup> OJ L 44, 20.2.2008, p. 23.

## Subsection 8

**Supply of ancillary transport services and valuations of and work on movable property**

## Article 34

Except where the goods being assembled become part of immovable property, the place of the supply of services to a non-taxable person consisting only of the assembly by a taxable person of the various parts of a machine, all of which were provided to him by his customer, shall be established in accordance with Article 54 of Directive 2006/112/EC.

## Subsection 9

**Supply of restaurant and catering services on board means of transport**

## Article 35

The section of a passenger transport operation effected within the Community as referred to in Article 57 of Directive 2006/112/EC shall be determined by the journey of the means of transport and not by the journey completed by each of the passengers.

## Article 36

Where restaurant services and catering services are supplied during the section of a passenger transport operation effected within the Community, that supply shall be covered by Article 57 of Directive 2006/112/EC.

Where restaurant services and catering services are supplied outside such a section but on the territory of a Member State or a third country or third territory, that supply shall be covered by Article 55 of that Directive.

## Article 37

The place of supply of a restaurant service or catering service carried out within the Community partly during a section of a passenger transport operation effected within the Community, and partly outside such a section but on the territory of a Member State, shall be determined in its entirety according to the rules for determining the place of supply applicable at the beginning of the supply of the restaurant or catering service.

## Subsection 10

**Hiring of means of transport**

## Article 38

1. 'Means of transport' as referred to in Article 56 and point (g) of the first paragraph of Article 59 of Directive 2006/112/EC shall include vehicles, whether motorised or not, and other equipment and devices designed to transport persons or objects from one place to another, which might

be pulled, drawn or pushed by vehicles and which are normally designed to be used and actually capable of being used for transport.

2. The means of transport referred to in paragraph 1 shall include, in particular, the following vehicles:

- (a) land vehicles, such as cars, motor cycles, bicycles, tricycles and caravans;
- (b) trailers and semi-trailers;
- (c) railway wagons;
- (d) vessels;
- (e) aircraft;
- (f) vehicles specifically designed for the transport of sick or injured persons;
- (g) agricultural tractors and other agricultural vehicles;
- (h) mechanically or electronically propelled invalid carriages.

3. Vehicles which are permanently immobilised and containers shall not be considered to be means of transport as referred to in paragraph 1.

## Article 39

1. For the application of Article 56 of Directive 2006/112/EC, the duration of the continuous possession or use of a means of transport which is the subject of hiring shall be determined on the basis of the contract between the parties involved.

The contract shall serve as a presumption which may be rebutted by any means in fact or law in order to establish the actual duration of the continuous possession or use.

The fact that the contractual period of short-term hiring within the meaning of Article 56 of Directive 2006/112/EC is exceeded on grounds of force majeure shall have no bearing on the determination of the duration of the continuous possession or use of the means of transport.

2. Where hiring of one and the same means of transport is covered by consecutive contracts between the same parties, the duration shall be that of the continuous possession or use of the means of transport provided for under the contracts as a whole.

For the purposes of the first subparagraph a contract and its extensions shall be consecutive contracts.

However, the duration of the short-term hire contract or contracts preceding a contract which is regarded as long-term shall not be called into question provided there is no abusive practice.

3. Unless there is abusive practice, consecutive contracts between the same parties for different means of transport shall not be considered to be consecutive contracts for the purposes of paragraph 2.

#### Article 40

The place where the means of transport is actually put at the disposal of the customer as referred to in Article 56(1) of Directive 2006/112/EC, shall be the place where the customer or a third party acting on his behalf takes physical possession of it.

### Subsection 11

#### **Supply of services to non-taxable persons outside the Community**

##### Article 41

The supply of services of translation of texts to a non-taxable person established outside the Community shall be covered by point (c) of the first paragraph of Article 59 of Directive 2006/112/EC.

### CHAPTER VI

#### **TAXABLE AMOUNT**

##### **(TITLE VII OF DIRECTIVE 2006/112/EC)**

##### Article 42

Where a supplier of goods or services, as a condition of accepting payment by credit or debit card, requires the customer to pay an amount to himself or another undertaking, and where the total price payable by that customer is unaffected irrespective of how payment is accepted, that amount shall constitute an integral part of the taxable amount for the supply of the goods or services, under Articles 73 to 80 of Directive 2006/112/EC.

### CHAPTER VII

#### **RATES**

##### Article 43

'Provision of holiday accommodation' as referred to in point (12) of Annex III to Directive 2006/112/EC shall include the hiring out of tents, caravans or mobile homes installed on camping sites and used as accommodation.

### CHAPTER VIII

#### **EXEMPTIONS**

##### SECTION 1

##### **Exemptions for certain activities in the public interest**

##### **(Articles 132, 133 and 134 of Directive 2006/112/EC)**

##### Article 44

Vocational training or retraining services provided under the conditions set out in point (i) of Article 132(1) of Directive 2006/112/EC shall include instruction relating directly to a

trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes. The duration of a vocational training or retraining course shall be irrelevant for this purpose.

##### SECTION 2

##### **Exemptions for other activities**

##### **(Articles 135, 136 and 137 of Directive 2006/112/EC)**

##### Article 45

The exemption provided for in point (e) of Article 135(1) of Directive 2006/112/EC shall not apply to platinum nobles.

##### SECTION 3

##### **Exemptions on importation**

##### **(Articles 143, 144 and 145 of Directive 2006/112/EC)**

##### Article 46

The exemption provided for in Article 144 of Directive 2006/112/EC shall apply to transport services connected with the importation of movable property carried out as part of a change of residence.

##### SECTION 4

##### **Exemptions on exportation**

##### **(Articles 146 and 147 of Directive 2006/112/EC)**

##### Article 47

'Means of transport for private use' as referred to in point (b) of Article 146(1) of Directive 2006/112/EC shall include means of transport used for non-business purposes by persons other than natural persons, such as bodies governed by public law within the meaning of Article 13 of that Directive and associations.

##### Article 48

In order to determine whether, as a condition for the exemption of the supply of goods carried in the personal luggage of travellers, the threshold set by a Member State in accordance with point (c) of the first subparagraph of Article 147(1) of Directive 2006/112/EC has been exceeded, the calculation shall be based on the invoice value. The aggregate value of several goods may be used only if all those goods are included on the same invoice issued by the same taxable person supplying goods to the same customer.

##### SECTION 5

##### **Exemptions relating to certain transactions treated as exports**

##### **(Articles 151 and 152 of Directive 2006/112/EC)**

##### Article 49

The exemption provided for in Article 151 of Directive 2006/112/EC shall also apply to electronic services where these are provided by a taxable person to whom the special scheme for electronically supplied services provided for in Articles 357 to 369 of that Directive applies.

#### Article 50

1. In order to qualify for recognition as an international body for the application of point (g) of Article 143(1) and point (b) of the first subparagraph of Article 151(1) of Directive 2006/112/EC a body which is to be set up as a European Research Infrastructure Consortium (ERIC), as referred to in Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) <sup>(1)</sup> shall fulfil all of the following conditions:

- (a) it shall have a distinct legal personality and full legal capacity;
- (b) it shall be set up under and shall be subject to European Union law;
- (c) its membership shall include Member States and, where appropriate, third countries and inter-governmental organisations, but exclude private bodies;
- (d) it shall have specific and legitimate objectives that are jointly pursued and essentially non-economic in nature.

2. The exemption provided for in point (g) of Article 143(1) and point (b) of the first subparagraph of Article 151(1) of Directive 2006/112/EC shall apply to an ERIC referred to in paragraph 1 where it is recognised as an international body by the host Member State.

The limits and conditions of such an exemption shall be laid down by agreement between the members of the ERIC in accordance with point (d) of Article 5(1) of Regulation (EC) No 723/2009. Where the goods are not dispatched or transported out of the Member State in which the supply takes place, and in the case of services, the exemption may be granted by means of a refund of the VAT in accordance with Article 151(2) of Directive 2006/112/EC.

#### Article 51

1. Where the recipient of a supply of goods or services is established within the Community but not in the Member State in which the supply takes place, the VAT and/or excise duty exemption certificate set out in Annex II to this Regulation shall, subject to the explanatory notes set out in the Annex to that certificate, serve to confirm that the transaction qualifies for the exemption under Article 151 of Directive 2006/112/EC.

When making use of that certificate, the Member State in which the recipient of the supply of goods or services is established may decide to use either a common VAT and excise duty exemption certificate or two separate certificates.

2. The certificate referred to in paragraph 1 shall be stamped by the competent authorities of the host Member State. However, if the goods or services are intended for official use, Member States may dispense the recipient from the requirement to have the certificate stamped under such conditions as they may lay down. This dispensation may be withdrawn in the case of abuse.

Member States shall inform the Commission of the contact point designated to identify the services responsible for stamping the certificate and the extent to which they dispense with the requirement to have the certificate stamped. The Commission shall inform the other Member States of the information received from Member States.

3. Where direct exemption is applied in the Member State in which the supply takes place, the supplier shall obtain the certificate referred to in paragraph 1 of this Article from the recipient of the goods or services and retain it as part of his records. If the exemption is granted by means of a refund of the VAT, pursuant to Article 151(2) of Directive 2006/112/EC, the certificate shall be attached to the request for refund submitted to the Member State concerned.

#### CHAPTER IX

##### DEDUCTIONS

##### (TITLE X OF DIRECTIVE 2006/112/EC)

#### Article 52

Where the Member State of importation has introduced an electronic system for completing customs formalities, the term 'import document' in point (e) of Article 178 of Directive 2006/112/EC shall cover electronic versions of such documents, provided that they allow for the exercise of the right of deduction to be checked.

#### CHAPTER X

##### OBLIGATIONS OF TAXABLE PERSONS AND CERTAIN NON-TAXABLE PERSONS

##### (TITLE XI OF DIRECTIVE 2006/112/EC)

#### SECTION 1

##### Persons liable to pay the VAT

##### (Articles 192a to 205 of Directive 2006/112/EC)

#### Article 53

1. For the application of Article 192a of Directive 2006/112/EC, a fixed establishment of the taxable person shall be taken into consideration only when it is characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to make the supply of goods or services in which it intervenes.

2. Where a taxable person has a fixed establishment within the territory of the Member State where the VAT is due, that establishment shall be considered as not intervening in the

<sup>(1)</sup> OJ L 206, 8.8.2009, p. 1.

supply of goods or services within the meaning of point (b) of Article 192a of Directive 2006/112/EC, unless the technical and human resources of that fixed establishment are used by him for transactions inherent in the fulfilment of the taxable supply of those goods or services made within that Member State, before or during this fulfilment.

Where the resources of the fixed establishment are only used for administrative support tasks such as accounting, invoicing and collection of debt-claims, they shall not be regarded as being used for the fulfilment of the supply of goods or services.

However, if an invoice is issued under the VAT identification number attributed by the Member State of the fixed establishment, that fixed establishment shall be regarded as having intervened in the supply of goods or services made in that Member State unless there is proof to the contrary.

#### Article 54

Where a taxable person has established his place of business within the territory of the Member State where the VAT is due, Article 192a of Directive 2006/112/EC shall not apply whether or not that place of business intervenes in the supply of goods or services he makes within that Member State.

### SECTION 2

#### Miscellaneous provisions

##### (Articles 272 and 273 of Directive 2006/112/EC)

#### Article 55

For the transactions referred to in Article 262 of Directive 2006/112/EC, taxable persons to whom a VAT identification number has been attributed in accordance with Article 214 of that Directive and non-taxable legal persons identified for VAT purposes shall be required, when acting as such, to communicate their VAT identification number forthwith to those supplying goods and services to them.

The taxable persons referred to in point (b) of Article 3(1) of Directive 2006/112/EC, who are entitled to non-taxation of their intra-Community acquisitions of goods in accordance with the first paragraph of Article 4 of this Regulation, shall not be required to communicate their VAT identification number to those supplying goods to them when a VAT identification number has been attributed to them in accordance with Article 214(1)(d) or (e) of that Directive.

### CHAPTER XI

#### SPECIAL SCHEMES

### SECTION 1

#### Special scheme for investment gold

##### (Articles 344 to 356 of Directive 2006/112/EC)

#### Article 56

'Weights accepted by the bullion markets' as referred to in point (l) of Article 344(1) of Directive 2006/112/EC shall at least cover the units and the weights traded as set out in Annex III to this Regulation.

#### Article 57

For the purposes of establishing the list of gold coins referred to in Article 345 of Directive 2006/112/EC, 'price' and 'open market value' as referred to in point (2) of Article 344(1) of that Directive shall be the price and open market value on 1 April of each year. If 1 April does not fall on a day on which those values are fixed, the values of the next day on which they are fixed shall be used.

### SECTION 2

#### Special scheme for non-established taxable persons supplying electronic services to non-taxable persons

##### (Articles 357 to 369 of Directive 2006/112/EC)

#### Article 58

Where, in the course of a calendar quarter, a non-established taxable person using the special scheme for electronically supplied services provided for in Articles 357 to 369 of Directive 2006/112/EC meets at least one of the criteria for exclusion laid down in Article 363 of that Directive, the Member State of identification shall exclude that non-established taxable person from the special scheme. In such cases the non-established taxable person may subsequently be excluded from the special scheme at any time during that quarter.

In respect of services supplied electronically prior to exclusion but during the calendar quarter in which exclusion occurs, the non-established taxable person shall submit a VAT return for the entire quarter in accordance with Article 364 of Directive 2006/112/EC. The requirement to submit this return shall have no effect on the requirement, if any, to be identified for VAT purposes in a Member State under the normal rules.

#### Article 59

Any return period (calendar quarter) within the meaning of Article 364 of Directive 2006/112/EC shall be a separate return period.

#### Article 60

Once a VAT return has been submitted as provided for under Article 364 of Directive 2006/112/EC, any subsequent changes to the figures contained therein may be made only by means of an amendment to that return and not by an adjustment to a subsequent return.

#### Article 61

Amounts on VAT returns made under the special scheme for electronically supplied services provided for in Articles 357 to 369 of Directive 2006/112/EC shall not be rounded up or down to the nearest whole monetary unit. The exact amount of VAT shall be reported and remitted.

*Article 62*

A Member State of identification which receives a payment in excess of that resulting from the VAT return submitted for electronically supplied services under Article 364 of Directive 2006/112/EC shall reimburse the overpaid amount directly to the taxable person concerned.

Where the Member State of identification has received an amount pursuant to a VAT return subsequently found to be incorrect, and that Member State has already distributed that amount among the Member States of consumption, those Member States shall directly reimburse the overpayment to the non-established taxable person and inform the Member State of identification of the adjustment to be made.

*Article 63*

Amounts of VAT paid under Article 367 of Directive 2006/112/EC shall be specific to the VAT return submitted pursuant to Article 364 of that Directive. Any subsequent amendments to the amounts paid may be effected only by reference to that return and may not be allocated to another return, or adjusted on a subsequent return.

## CHAPTER XII

**FINAL PROVISIONS***Article 64*

Regulation (EC) No 1777/2005 is hereby repealed.

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

Done at Brussels, 15 March 2011.

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

*Article 65*

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

It shall apply from 1 July 2011.

However:

- point (a) of Article 3, point (b) of Article 11(2), Article 23(1) and Article 24(1) shall apply from 1 January 2013,
- point (b) of Article 3 shall apply from 1 January 2015,
- point (c) of Article 11(2) shall apply until 31 December 2014.

*For the Council*  
*The President*  
MATOLCSY Gy.

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## ANNEX I

**Article 7 of this Regulation**

- (1) Point (1) of Annex II to Directive 2006/112/EC:
  - (a) Website hosting and webpage hosting;
  - (b) automated, online and distance maintenance of programmes;
  - (c) remote systems administration;
  - (d) online data warehousing where specific data is stored and retrieved electronically;
  - (e) online supply of on-demand disc space.
- (2) Point (2) of Annex II to Directive 2006/112/EC:
  - (a) Accessing or downloading software (including procurement/accountancy programmes and anti-virus software) plus updates;
  - (b) software to block banner adverts showing, otherwise known as Bannerblockers;
  - (c) download drivers, such as software that interfaces computers with peripheral equipment (such as printers);
  - (d) online automated installation of filters on websites;
  - (e) online automated installation of firewalls.
- (3) Point (3) of Annex II to Directive 2006/112/EC:
  - (a) Accessing or downloading desktop themes;
  - (b) accessing or downloading photographic or pictorial images or screensavers;
  - (c) the digitised content of books and other electronic publications;
  - (d) subscription to online newspapers and journals;
  - (e) weblogs and website statistics;
  - (f) online news, traffic information and weather reports;
  - (g) online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time);
  - (h) the provision of advertising space including banner ads on a website/web page;
  - (i) use of search engines and Internet directories.
- (4) Point (4) of Annex II to Directive 2006/112/EC:
  - (a) Accessing or downloading of music on to computers and mobile phones;
  - (b) accessing or downloading of jingles, excerpts, ringtones, or other sounds;
  - (c) accessing or downloading of films;
  - (d) downloading of games on to computers and mobile phones;
  - (e) accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another.

(5) Point (5) of Annex II to Directive 2006/112/EC:

- (a) Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student;
  - (b) workbooks completed by pupils online and marked automatically, without human intervention.
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## ANNEX II

## Article 51 of this Regulation

EUROPEAN UNION

VAT AND/OR EXCISE DUTY EXEMPTION CERTIFICATE (\*)  
(Directive 2006/112/EC – Article 151 – and Directive 2008/118/EC – Article 13)

<b>Serial No (optional):</b>	
<b>1. ELIGIBLE BODY/INDIVIDUAL</b>	
Designation/name	
Street and No	
Postcode, place	
(Host) Member State	
<b>2. COMPETENT AUTHORITY RESPONSIBLE FOR STAMPING (name, address and telephone number)</b>	
<b>3. DECLARATION BY THE ELIGIBLE BODY OR INDIVIDUAL</b>	
The eligible body or individual <sup>(1)</sup> hereby declares	
(a) that the goods and/or services set out in box 5 are intended <sup>(2)</sup>	
<input type="checkbox"/> For the official use of <ul style="list-style-type: none"> <li><input type="checkbox"/> foreign diplomatic mission</li> <li><input type="checkbox"/> foreign consular representation</li> <li><input type="checkbox"/> a European body to which the Protocol on the privileges and immunities of the European Union applies</li> <li><input type="checkbox"/> an international organisation</li> <li><input type="checkbox"/> the armed forces of a State being a party to the North Atlantic Treaty (NATO force)</li> <li><input type="checkbox"/> the armed forces of the United Kingdom stationed in the island of Cyprus</li> </ul>	<input type="checkbox"/> For the personal use of <ul style="list-style-type: none"> <li><input type="checkbox"/> a member of a foreign diplomatic mission</li> <li><input type="checkbox"/> a member of a foreign consular representation</li> <li><input type="checkbox"/> a staff member of an international organisation</li> </ul>
(designation of the institution) (see box 4)	
(b) that the goods and/or services described at box 5 comply with the conditions and limitations applicable to the exemption in the host Member State mentioned in box 1, and	
(c) that the information above is furnished in good faith.	
The eligible body or individual hereby undertakes to pay to the Member State from which the goods were dispatched or from which the goods and/or services were supplied, the VAT and/or excise duty which would be due if the goods and/or services did not comply with the conditions of exemption, or if the goods and/or services were not used in the manner intended.	
	Name and status of signatory
Place, date	Signature
<b>4. STAMP OF THE BODY (in case of exemption for personal use)</b>	
Place, date	Name and status of signatory
Stamp	Signature

**5. DESCRIPTION OF THE GOODS AND/OR SERVICES, FOR WHICH THE EXEMPTION FROM VAT AND/OR EXCISE DUTY IS REQUESTED**

A. Information concerning the supplier/authorised warehousekeeper

(1) Name and address:

(2) Member State

(3) VAT/excise number or tax reference number

B. Information concerning the goods and/or services:

No	Detailed description of the goods and/or services <sup>(3)</sup> (or reference to the attached order form)	Quantity or number	Value excluding VAT and excise duty		Currency
			Value per unit	Total value	
Total amount					

**6. CERTIFICATION BY THE COMPETENT AUTHORITIES OF THE HOST MEMBER STATE**

The consignment/supply of goods and/or services described in box 5 meets:

totally  up to a quantity of (number) <sup>(4)</sup>

the conditions for exemption from VAT and/or excise duty

Name and status of signatory

Place, date

Stamp

Signature

**7. PERMISSION TO DISPENSE WITH THE STAMP UNDER BOX 6 (only in case of exemption for official use)**

By letter No:

Dated:

Designation of eligible institution:

Is by

Competent authority in host Member State:

Dispensed from the obligation under box 6 to obtain the stamp

Name and status of signatory

Place, date

Stamp

Signature

(\*) Delete as appropriate.

(1) Delete as appropriate.

(2) Place a cross in the appropriate box.

(3) Delete space not used. This obligation also applies if order forms are attached.

(4) Goods and/or services not eligible should be deleted in box 5 or on the attached order form.

### Explanatory notes

1. For the supplier and/or the authorised warehousekeeper, this certificate serves as a supporting document for the tax exemption of the supplies of goods and services or the consignments of goods to the eligible bodies/individuals referred to in Article 151 of Directive 2006/112/EC and Article 13 of Directive 2008/118/EC. Accordingly, one certificate shall be drawn up for each supplier/warehousekeeper. Moreover, the supplier/warehousekeeper is required to keep this certificate as part of his records in accordance with the legal provisions applicable in his Member State.
2. (a) The general specification of the paper to be used is as laid down in the *Official Journal of the European Communities* C 164 of 1.7.1989, p. 3.

The paper is to be white for all copies and should be 210 millimetres by 297 millimetres with a maximum tolerance of 5 millimetres less or 8 millimetres more with regard to their length.

For an exemption from excise duty the exemption certificate shall be drawn up in duplicate:

  - one copy to be kept by the consignor,
  - one copy to accompany the movement of the products subject to excise duty.
- (b) Any unused space in box 5.B. is to be crossed out so that nothing can be added.
- (c) The document must be completed legibly and in a manner that makes entries indelible. No erasures or overwriting are permitted. It shall be completed in a language recognised by the host Member State.
- (d) If the description of the goods and/or services (box 5.B of the certificate) refers to a purchase order form drawn up in a language other than a language recognised by the host Member State, a translation must be attached by the eligible body/individual.
- (e) On the other hand, if the certificate is drawn up in a language other than a language recognised by the Member State of the supplier/warehousekeeper, a translation of the information concerning the goods and services in box 5.B must be attached by the eligible body/individual.
- (f) A recognised language means one of the languages officially in use in the Member State or any other official language of the Union which the Member State declares can be used for this purpose.
3. By its declaration in box 3 of the certificate, the eligible body/individual provides the information necessary for the evaluation of the request for exemption in the host Member State.
4. By its declaration in box 4 of the certificate, the body confirms the details in boxes 1 and 3(a) of the document and certifies that the eligible individual is a staff member of the body.
5. (a) The reference to the purchase order form (box 5.B of the certificate) must contain at least the date and order number. The order form should contain all the elements that figure at box 5 of the certificate. If the certificate has to be stamped by the competent authority of the host Member State, the order form shall also be stamped.
- (b) The indication of the excise identification number as defined in Article 22(2)(a) of Council Regulation (EC) No 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties is optional; the VAT identification number or tax reference number must be indicated.
- (c) The currencies should be indicated by means of a three-letter code in conformity with the ISO code 4217 standard established by the International Standards Organisation <sup>(1)</sup>.
6. The abovementioned declaration by the eligible body/individual; shall be authenticated at box 6 by the stamp of the competent authority of the host Member State. That authority can make its approval dependent on the agreement of another authority in its Member State. It is up to the competent tax authority to obtain such an agreement.
7. To simplify the procedure, the competent authority can dispense with the obligation on the eligible body to ask for the stamp in the case of exemption for official use. The eligible body should mention this dispensation at box 7 of the certificate.

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<sup>(1)</sup> As an indication, some codes relating to currencies currently used: EUR (euro), BGN (lev), CZK (Czech koruna), DKK (Danish krone), GBP (pound sterling), HUF (forint), LTL (litas), PLN (zloty), RON (Romanian leu), SEK (Swedish krona), USD (United States dollar).

## ANNEX III

**Article 56 of this Regulation**

Unit	Weights traded
Kg	12,5/1
Gram	500/250/100/50/20/10/5/2,5/2
Ounce (1 oz = 31,1035 g)	100/10/5/1 <sup>1</sup> / <sub>2</sub> / <sup>1</sup> / <sub>4</sub>
Tael (1 tael = 1,193 oz) <sup>(1)</sup>	10/5/1
Tola (10 tolas = 3,75 oz) <sup>(2)</sup>	10

<sup>(1)</sup> Tael = a traditional Chinese unit of weight. The nominal fineness of a Hong Kong tael bar is 990 but in Taiwan 5 and 10 tael bars can be 999,9 fineness.

<sup>(2)</sup> Tola = a traditional Indian unit of weight for gold. The most popular sized bar is 10 tola, 999 fineness.

## ANNEX IV

## Correlation Table

Regulation (EC) No 1777/2005	This Regulation
Chapter I	Chapter I
Article 1	Article 1
Chapter II	Chapters III and IV
Section 1 of Chapter II	Chapter III
Article 2	Article 5
Section 2 of Chapter II	Chapter IV
Article 3(1)	Article 9
Article 3(2)	Article 8
Chapter III	Chapter V
Section 1 of Chapter III	Section 4 of Chapter V
Article 4	Article 28
Section 2 of Chapter III	Section 4 of Chapter V
Article 5	Article 34
Article 6	Articles 29 and 41
Article 7	Article 26
Article 8	Article 27
Article 9	Article 30
Article 10	Article 38(2)(b) and (c)
Article 11(1) and (2)	Article 7(1) and (2)
Article 12	Article 7(3)
Chapter IV	Chapter VI
Article 13	Article 42
Chapter V	Chapter VIII
Section 1 of Chapter V	Section 1 of Chapter VIII
Article 14	Article 44
Article 15	Article 45
Section 2 of Chapter V	Section 4 of Chapter VIII
Article 16	Article 47

Regulation (EC) No 1777/2005	This Regulation
Article 17	Article 48
Chapter VI	Chapter IX
Article 18	Article 52
Chapter VII	Chapter XI
Article 19(1)	Article 56
Article 19(2)	Article 57
Article 20(1)	Article 58
Article 20(2)	Article 62
Article 20(3), first subparagraph	Article 59
Article 20(3), second subparagraph	Article 60
Article 20(3), third subparagraph	Article 63
Article 20(4)	Article 61
Chapter VIII	Section 3 of Chapter V
Article 21	Article 16
Article 22	Article 14
Chapter IX	Chapter XII
Article 23	Article 65
Annex I	Annex I
Annex II	Annex III



**COMMISSION REGULATION (EU) No 283/2011****of 22 March 2011****amending Regulation (EC) No 633/2007 as regards the transitional arrangements referred to in Article 7****(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 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation) <sup>(1)</sup>, and in particular Article 3(5) thereof,Having regard to Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) <sup>(2)</sup>, and in particular Article 8(1) thereof,

Whereas:

- (1) The implementation of a flight message transfer protocol is intended to be used for the exchange of flight data in accordance with Commission Regulation (EC) No 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange flight data for the purpose of notification, coordination and transfer of flight between air traffic control units <sup>(3)</sup>.
- (2) In order to comply with the requirements of point 6 of Annex I to Commission Regulation (EC) No 633/2007 of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units <sup>(4)</sup>, some Member States or air navigation service providers have to update not only their Internet protocol (IP) network but also many of their flight data systems and network infrastructure. The update of these systems before 20 April 2011 could have a significant financial impact for the concerned Member States or air navigation service providers and, for this reason, appropriate transitional arrangements should contribute to minimise the cost.
- (3) During the period of validity of the transitional arrangements, the concerned Member States or air navigation service providers should apply the necessary measures to ensure interoperability within the European air traffic management network (hereinafter EATMN).
- (4) Regulation (EC) No 633/2007 should therefore be amended accordingly.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Single Sky Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

In Article 7 of Regulation (EC) No 633/2007, the first two paragraphs are numbered and the following paragraphs 3, 4 and 5 are added:

'3. Where a Member State or an air navigation service provider is developing a flight message transfer protocol in conjunction with the implementation of Regulation (EC) No 1032/2006 between its systems, the systems referred to in Article 1(2)(a) and (b) shall comply with the requirements of Annex I by 31 December 2012.

4. Where a Member State or an air navigation service provider has ordered or signed a binding contract to that effect or developed a flight message transfer protocol for the systems referred to in Article 1(2)(a) and (b) before the date of entry into force of this Regulation so that the compliance with the requirements of point 6 of Annex I cannot be guaranteed, the air navigation service provider or the controlling military unit may use other versions of the Internet protocol for peer-to-peer communications between their systems until 31 December 2014.

Those Member States and air navigation service providers shall ensure that all peer-to-peer communications from their systems to those of other Member States or air navigation service providers comply with the requirements specified in Annex I, unless a bilateral agreement concluded before 20 April 2011 allows the use of other versions of the Internet protocol for a transitional period ending no later than 31 December 2014.

5. The Member States referred to in paragraphs 3 and 4 shall communicate to the Commission before 20 April 2011 detailed information on the measures applied by the air navigation service provider or the controlling military units to ensure interoperability of the systems referred to in Article 1(2)(a) and (b) within the EATMN.'

*Article 2*This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

<sup>(1)</sup> OJ L 96, 31.3.2004, p. 26.

<sup>(2)</sup> OJ L 96, 31.3.2004, p. 1.

<sup>(3)</sup> OJ L 186, 7.7.2006, p. 27.

<sup>(4)</sup> OJ L 146, 8.6.2007, p. 7.

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

Done at Brussels, 22 March 2011.

*For the Commission*

*The President*

José Manuel BARROSO

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**COMMISSION REGULATION (EU) No 284/2011****of 22 March 2011****laying down specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules <sup>(1)</sup>, and in particular Article 48(1) thereof,

Whereas:

- (1) Commission Directive 2002/72/EC <sup>(2)</sup> lays down specific provisions relating to plastic materials and articles intended to come into contact with foodstuffs, including compositional requirements, and restrictions and specifications for substances that may be used therein.
- (2) Several notifications and alerts have been received by the Rapid Alert System for Food and Feed pursuant to Article 50 of Regulation (EC) No 178/2002 of the European Parliament and of the Council <sup>(3)</sup> concerning food contact materials imported into the Union from the People's Republic of China (hereinafter 'China') and Hong Kong Special Administrative Region of the People's Republic of China (hereinafter 'Hong Kong'), releasing into food or food simulant amounts of chemicals that are not in compliance with the Union legislation.
- (3) These notifications and alerts primarily concern polyamide and melamine plastic kitchenware that does not comply with the requirements concerning the release of primary aromatic amines and formaldehyde into food as laid down in Part A of Annex V and Section A of Annex II to Directive 2002/72/EC respectively.
- (4) Primary aromatic amines (hereinafter 'PAA') are a family of compounds, some of which are carcinogenic, while others of these compounds are suspected carcinogens. PAA may arise in materials intended for food contact as a result of the presence of impurities or breakdown products.
- (5) Polyamide kitchenware originating in or consigned from China and Hong Kong has been reported to release high level of PAA into food.
- (6) Directive 2002/72/EC authorises the use of formaldehyde in the manufacture of plastics, provided that these plastics do not release into food more than 15 mg/kg of formaldehyde (specific migration limit (SML) expressed as total formaldehyde and hexamethylenetetramine).
- (7) Melamine kitchenware originating in or consigned from China and Hong Kong has been reported to release into food levels of formaldehyde that are higher than those authorised.
- (8) In the past few years, in order to increase knowledge of the requirements set out in Union legislation concerning food contact materials imported into the Union, the Commission has taken several initiatives, including training sessions for Chinese control authorities and the industry concerned.
- (9) Despite those initiatives, the missions of the Food and Veterinary Office to China and Hong Kong in 2009 identified serious deficiencies in the official control system regarding plastic food contact materials intended for importation into the Union and large quantities of controlled polyamide and melamine plastic kitchenware originating in or consigned from China and Hong Kong still do not fulfil the requirements of Union legislation.
- (10) Regulation (EC) No 1935/2004 of the European Parliament and of the Council <sup>(4)</sup> lays down specific provisions relating to the materials and articles intended to come into contact directly or indirectly with food, including certain general and specific requirements that these materials and articles should fulfil. Pursuant to Article 24 thereof, Member States shall carry out official controls in order to enforce compliance with that Regulation in accordance with the relevant provisions of Union law relating to official food and feed controls. Those provisions are laid down in Regulation (EC) No 882/2004.
- (11) More specifically, Article 48(1) of Regulation (EC) No 882/2004 provides that in so far as Union legislation does not lay down the conditions and detailed procedures to be respected when importing goods from third countries, they may, if necessary, be laid down by the Commission.

<sup>(1)</sup> OJ L 165, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 220, 15.8.2002, p. 18.

<sup>(3)</sup> OJ L 31, 1.2.2002, p. 1.

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

- (12) Article 48(2) of Regulation (EC) No 882/2004 provides for the possibility to impose specific import conditions on particular products coming from certain third countries, taking into account the risks associated with these products.
- (13) In order to minimise the health risks that may arise from polyamide and melamine plastic kitchenware originating in or consigned from China or Hong Kong, each consignment of such products should be accompanied by appropriate documentation, including analytical results showing that it meets the requirements concerning the release of PAA and formaldehyde respectively, as laid down in Directive 2002/72/EC.
- (14) In order to ensure a more efficient organisation of the controls of polyamide and melamine plastic kitchenware originating in or consigned from China or Hong Kong, the importers or their representatives should give prior notification of the arrival and of the nature of the consignments. Likewise, Member States should have the possibility to designate specific first points of introduction through which consignments of these articles may enter the Union. This information should be publicly available.
- (15) In order to ensure a degree of uniformity at the Union level with regard to the controls of polyamide and melamine plastic kitchenware originating in or consigned from China or Hong Kong, the procedure for the official controls, as defined in Article 2 of Regulation (EC) No 882/2004, should be defined in this Regulation. These controls should include documentary, identity and physical checks.
- (16) In the event of non-compliance being identified during the physical checks, Member States should immediately inform the Commission through the Rapid Alert System for Food and Feed.
- (17) Member States should have the possibility, in specific cases, to authorise the onward transportation of consignments of polyamide and melamine plastic kitchenware originating in or consigned from China or Hong Kong from the first point of introduction, provided arrangements are made with the competent authority at the point of destination to ensure the traceability of the consignments pending the results of the physical checks, in order to allow the competent authority to deal with the process of importing such consignments effectively and efficiently.
- (18) The release into free circulation of polyamide and melamine plastic kitchenware originating in or consigned from China or Hong Kong should take place only once all the checks have been completed and the results are known. For that purpose the result of the controls should be made available to the customs authorities before the goods can be released for free circulation.
- (19) A procedure for recording the information obtained from these controls should be established. This information should be submitted regularly to the Commission.
- (20) The provisions of this Regulation should be periodically reviewed, taking into account the information received from the Member States.
- (21) 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*

##### **Subject matter**

This Regulation lays down specific conditions and detailed procedures for the import of polyamide and of melamine plastic kitchenware originating in or consigned from the People's Republic of China (hereinafter 'China') and Hong Kong Special Administrative Region of the People's Republic of China (hereinafter 'Hong Kong').

#### *Article 2*

##### **Definitions**

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

- (a) 'plastic kitchenware' means plastic materials as described in paragraphs 1 and 2 of Article 1 of Directive 2002/72/EC and falling within CN code ex 3924 10 00;
- (b) 'consignment' means a quantity of polyamide or melamine plastic kitchenware, covered by the same document(s), conveyed by the same means of transport and coming from the same third country;
- (c) 'competent authorities' means the competent authorities of the Member States designated in accordance with Article 4 of Regulation (EC) No 882/2004;
- (d) 'first point of introduction' means the point of entry of a consignment into the Union;
- (e) 'documentary check' means the checking of the documents referred to in Article 3 of this Regulation;
- (f) 'identity check' means a visual inspection to ensure that the documents accompanying the consignment tally with the contents of the consignment;
- (g) 'physical check' means the sampling for analysis and laboratory testing and any other check necessary to verify compliance with the requirements concerning the release of PAA and formaldehyde laid down in Directive 2002/72/EC.

*Article 3***Import conditions**

1. Polyamide and melamine plastic kitchenware originating in or consigned from China and Hong Kong shall be imported into the Member States only if the importer submits to the competent authority for each consignment a declaration, duly completed, confirming that it meets the requirements concerning the release of primary aromatic amines and formaldehyde laid down in Part A of Annex V and in Section A of Annex II to Directive 2002/72/EC respectively.

2. A model of the declaration referred to in paragraph 1 is set out in the Annex to this Regulation. The declaration shall be drawn up in the official language, or in one of the official languages, of the Member State in which the consignment is imported.

3. The declaration referred to in paragraph 1 shall be accompanied by a laboratory report providing:

- (a) as regards polyamide kitchenware, analytical results demonstrating that they do not release into foods or food simulants primary aromatic amines in a detectable quantity. The detection limit applies to the sum of primary aromatic amines. For the purpose of the analysis the detection limit for primary aromatic amines is set at 0,01 mg/kg food or food simulants;
- (b) as regards melamine kitchenware, analytical results demonstrating that they do not release into foods or food simulants formaldehyde in a quantity exceeding 15 mg/kg food.

4. The competent authority shall indicate in the declaration set out in the Annex to this Regulation, whether the goods are acceptable or not for release into free circulation, depending on whether they fulfil the terms and conditions provided for in Directive 2002/72/EC as set out in paragraph 1.

*Article 4***Prior notification of consignments**

Importers or their representatives shall notify the competent authority at the first point of introduction at least two working days in advance of the estimated date and time of physical arrival of consignments originating in or consigned from China and Hong Kong.

*Article 5***Notification of the first point of introduction**

Where the Member States decide to designate specific first points of introduction for consignments originating in or consigned from China and Hong Kong, they shall publish on the Internet an up-to-date list of these points and communicate the Internet address to the Commission.

The Commission shall display on its website; for information purposes, the links to the national lists of specific first points of introduction.

*Article 6***Controls at the first point of introduction**

1. The competent authority at the first point of introduction shall carry out:

- (a) documentary checks on all consignments within two working days from the time of their arrival;
- (b) identity and physical checks, including laboratory analysis of 10 % of consignments, and in such a way that it is not possible for the importers or their representatives to predict whether any particular consignment will be subjected to such checks; the results of physical checks must be available as soon as technically possible.

2. If the laboratory analysis referred to in point (b) of paragraph 1 identifies non-compliance, the competent authorities shall immediately inform the Commission of the results through the Rapid Alert System for Food and Feed established by Article 50 of Regulation (EC) No 178/2002.

*Article 7***Onward transportation**

The competent authority at the first point of introduction may authorise the onward transportation of the consignments originating in or consigned from China and Hong Kong, pending the results of the checks referred to in point (b) of Article 6(1).

If the competent authority grants the authorisation referred to in the first paragraph, it shall notify the competent authority at the point of destination and shall supply a copy of the declaration set out in the Annex, duly completed as provided in Article 3 and the results of the checks referred to in point (b) of Article 6(1), as soon as the latter are available.

The Member States shall ensure that appropriate arrangements are put in place to ensure that the consignments remain under the continuous control of the competent authorities and cannot be tampered with in any way pending the results of the checks mentioned in point (b) of Article 6(1).

*Article 8***Release for free circulation**

The release for free circulation of polyamide and melamine plastic kitchenware originating in or consigned from China and Hong Kong is subject to the presentation to the customs authorities of the declaration set out in the Annex duly completed as provided for in Article 3.

*Article 9***Reporting to the Commission**

1. When checks referred to in Article 6(1) are performed, the competent authorities shall keep records of the following information:

- (a) details of each consignment checked, including:
  - (i) the size in terms of number of articles;
  - (ii) the country of origin;
- (b) the number of consignments subject to sampling and analysis;
- (c) the results of the controls referred to in Article 6.

2. Member States shall submit to the Commission a report including the information referred to in paragraph 1, quarterly by the end of the month following each quarter.

*Article 10***Entry into force**

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

This Regulation shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States in accordance with the Treaties.

Done at Brussels, 22 March 2011.

*For the Commission*

*The President*

José Manuel BARROSO

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## ANNEX

**Declaration to be provided for every consignment of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China**

Name and full address (including telephone or e-mail address) of the natural or legal person issuing this declaration	
Name and full address (including telephone or e-mail address) of the business operator(s) which manufacture(s) the plastic kitchenware of the consignment	
Name and full address (including telephone or e-mail address) of the business operator which is responsible for the first introduction in the Union of the consignment	
<p>Identification code of the consignment:</p> <p>Type and number of articles in the consignment:</p> <p>This consignment contains plastic kitchenware made of:</p> <p><input type="checkbox"/> polyamide — Analytical tests have been carried out demonstrating that the articles do not release PAA in a detectable quantity</p> <p>— The detection limit of the method used is .....</p> <p>— The results of these tests as well as the description of the method of analysis used are attached to this document</p> <p><input type="checkbox"/> melamine — Analytical tests have been carried out demonstrating that the articles do not release formaldehyde in a quantity exceeding the SML of 15 mg/kg</p> <p>— The results of these tests as well as the description of the method of analysis used are attached to this document</p>	
List of documents annexed confirming that the consignment meets the requirements concerning the release of primary aromatic amines or formaldehyde laid down in Directive 2002/72/EC:	
The undersigned, as importer in the Union of the consignment, confirms that such consignment meets the requirements concerning the release of primary aromatic amines or formaldehyde laid down in Directive 2002/72/EC	<p>Place and date</p> <p>Name of signatory</p> <p>Signature</p> <p>Full address (including telephone and e-mail address)</p>
Declaration of the competent authority on the consignment:	<p>Acceptable for release into free circulation:</p> <p><input type="checkbox"/> Conforms</p> <p><input type="checkbox"/> Does not conform</p> <p>Place and date</p> <p>Name of signatory</p> <p>Signature</p> <p>Full address (including telephone and e-mail address)</p>

**COMMISSION IMPLEMENTING REGULATION (EU) No 285/2011****of 22 March 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 23 March 2011.

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

Done at Brussels, 22 March 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	ET	73,9
	IL	82,8
	JO	71,2
	MA	53,4
	TN	115,9
	TR	90,5
	ZZ	81,3
0707 00 05	EG	170,1
	JO	110,6
	TR	149,2
	ZZ	143,3
0709 90 70	MA	38,2
	TR	114,2
	ZZ	76,2
0805 10 20	EG	54,3
	IL	76,5
	MA	51,2
	TN	56,9
	TR	73,7
	ZZ	62,5
0805 50 10	EG	66,4
	MA	45,2
	TR	49,2
	ZZ	53,6
0808 10 80	AR	91,7
	BR	92,1
	CA	88,7
	CL	98,0
	CN	99,3
	MK	50,2
	US	137,9
	UY	66,1
	ZZ	90,5
0808 20 50	AR	91,9
	CL	80,1
	CN	58,3
	US	79,9
	ZA	97,1
	ZZ	81,5

<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'.

# DECISIONS

## COMMISSION DECISION

of 2 March 2011

**amending Decision 2008/458/EC laying down rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council establishing the European Return Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ as regards Member States’ management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund**

(notified under document C(2011) 1159)

(Only the Bulgarian, Czech, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are authentic)

(2011/177/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’<sup>(1)</sup>, and in particular Article 23 and Article 35(4) thereof,

Whereas:

- (1) In the light of the experience gained since the launch of the European Return Fund, it is appropriate to clarify the obligations in the Commission Decision 2008/458/EC<sup>(2)</sup> relating to transparency, equal treatment and non-discrimination when implementing projects.
- (2) Member States are required to report on the implementation of the annual programmes. It is therefore appropriate to clarify which information Member States have to provide.
- (3) In order to reduce the administrative burden on the Member States and to provide a greater legal certainty the rules on the eligibility of expenditure of actions co-financed by the European Return Fund should be simplified and clarified.
- (4) Most of the changes introduced by this Decision should apply immediately. However, since the 2009 and 2010 annual programmes are ongoing, the revised rules on the eligibility of expenditure of actions co-financed by the

European Return Fund should apply from the 2011 annual programme. Member States should nonetheless be given the possibility to apply those rules earlier under certain conditions.

- (5) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom is bound by the basic act and, as a consequence, by this Decision.
- (6) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland is bound by the basic act and, as a consequence, by this Decision.
- (7) In accordance with Article 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not bound by this Decision or subject to the application thereof.
- (8) The measures provided for in this Decision are in accordance with the opinion of the common Committee ‘Solidarity and management of Migration Flows’ established by Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’<sup>(3)</sup>.
- (9) Decision 2008/458/EC should therefore be amended accordingly,

<sup>(1)</sup> OJ L 144, 6.6.2007, p. 45.

<sup>(2)</sup> OJ L 167, 27.6.2008, p. 135.

<sup>(3)</sup> OJ L 144, 6.6.2007, p. 22.

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2008/458/EC is amended as follows:

- (1) in Article 9(1), the second sentence is replaced by the following:

'Any substantial change to the content of the calls for proposals shall also be published under the same conditions.'

- (2) Article 11 is replaced by the following:

*'Article 11*

**Implementation contracts**

When awarding contracts for the implementation of the projects, the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or several of such bodies governed by public law shall act in accordance with the applicable Union and national public procurement law and principles.

Entities other than those referred to in the first paragraph shall award contracts for the implementation of the projects following appropriate publicity in order to ensure compliance with the principles of transparency, non-discrimination and equal treatment. Contracts with a value of less than EUR 100 000 may be awarded provided the concerned entity requests at least three offers. Without prejudice to national rules, contracts with a value of less than EUR 5 000 shall not be subject to any procedural obligations.'

- (3) in Article 21, paragraph 1 is replaced by the following:

'1. The responsible authority shall notify the Commission by formal letter of any substantial change in the management and control system and shall send a revised description of the management and control system to the Commission as soon as possible and at the latest at the time any such change takes effect.'

- (4) in Article 24, paragraph 3 is replaced by the following:

'3. The financial tables linked to the progress reports and final reports shall present a breakdown of the amounts both by priority and by specific priority, as defined in the strategic guidelines.'

- (5) Article 25 is amended as follows:

- (a) in paragraph 1 the following sentences are added:

'Any changes to the audit strategy submitted in respect of Article 30(1)(c) of the basic act and accepted by the Commission shall be sent to the Commission as soon as possible. The revised audit strategy shall be established in accordance with the model in Annex VI, marking the revisions introduced.'

- (b) paragraph 2 is replaced by the following:

'2. Except when each of the last two annual programmes adopted by the Commission corresponds to an annual Community contribution of less than EUR 1 million, the audit authority shall submit an annual audit plan before 15 February each year, as from 2010. The audit plan shall be established in accordance with the model in Annex VI. Member States are not required to resubmit the audit strategy when submitting the annual audit plans. In the case of a combined audit strategy, as provided for in Article 30(2) of the basic act, a combined annual audit plan may be submitted.'

- (6) Article 26 is replaced by the following:

*'Article 26*

**Documents established by the certifying authority**

1. The certification relating to the request for a second pre-financing payment referred to in Article 39(4) of the basic act shall be drawn up by the certifying authority and transmitted by the responsible authority to the Commission in the format in Annex VIII.

2. The certification relating to the request for a final payment referred to in Article 40(1)(a) of the basic act shall be drawn up by the certifying authority and transmitted by the responsible authority to the Commission in the format in Annex IX.'

- (7) Article 37 is replaced by the following:

*'Article 37*

**Electronic exchange of documents**

In addition to the duly signed paper versions of the documents referred to in Chapter 3, the information shall also be sent by electronic means.'

- (8) the Annexes are amended in accordance with the Annex to this Decision.

*Article 2*

1. Points 1 to 7 of Article 1 and points 1 to 5 of the Annex shall apply from the date of adoption of this Decision.

2. Point 6 of the Annex shall apply from the implementation of the 2011 annual programmes at the latest.

3. Member States may decide to apply point 6 of the Annex in respect of ongoing or future projects as from the 2009 and 2010 annual programmes in full respect of the principles of equal treatment, transparency and non-discrimination. In that case Member States shall apply the new rules in their entirety to the project concerned and, where necessary, shall amend the grant agreement. In respect of technical assistance expenditure only, Member States may decide to apply point 6 of the Annex as from the 2008 annual programme.

*Article 3*

This Decision is addressed to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 2 March 2011.

*For the Commission*  
Cecilia MALMSTRÖM  
*Member of the Commission*

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## ANNEX

The Annexes to Decision 2008/458/EC are amended as follows:

1. Annex III is amended as follows:

1.1. point 2 is deleted;

1.2. point 4.2 is deleted;

2. Annex IV is amended as follows:

2.1. Part A, point 1.2 is replaced by the following:

'1.2. Description of the process concerning selection of projects (at the level of the Responsible Authority/Delegated authority or associated bodies) and their results';

2.2. in Part A, point 2, table 1, last column the word 'eligible' is deleted;

3. Annex V, Part A is amended as follows:

3.1. point 1.2 is replaced by the following:

'1.2. Update from the progress report on the description of the organisation of the selection of projects (at the level of the Responsible Authority/Delegated authority or associated bodies) and their results, if appropriate';

3.2. the following point 1.8 is added:

'1.8. Confirmation that no substantial changes to the Management and control system have taken place since the last revision notified to the Commission on ...';

3.3. point 4 is replaced by the following:

4. FINANCIAL IMPLEMENTATION

Final report on the implementation of the annual programme

Table 1  
Detailed financial report

Member State: [...]  
Annual programme concerned: [...]  
Situation at: [day/month/year]

<i>(all figures in euro)</i>				Programmed by MS (as in the Commission approved annual programme)			Committed at the level of the MS			Actual figures accepted by the Responsible Authority (costs incurred by the beneficiaries and final EC contribution)					
Actions	Projects	Ref. priority	Ref. Specific priority <sup>(1)</sup>	Total programmed costs (a)	EC contribution (b)	% EC contribution (c = b/a)	Total eligible costs (d)	EC contribution (e)	% EC contribution (f = e/d)	Total eligible costs (g)	EC contribution (h)	% EC contribution (i = h/g)	Contributions from third parties (j)	Receipts generated by the project (k)	Payment/ Recovery to be made by the RA (l)
Action 1: [...]	project 1: [...]														
	project N: [...]														
Total Action 1															
Action...: [...]	project 1: [...]														
	project N: [...]														
Total Action...: [...]															
Action N: [...]	project 1: [...]														
	project N: [...]														
Total Action N															
Technical assistance															
Other operations <sup>(1)</sup>															
TOTAL				0	0	0 %	0	0	0 %	0	0	0 %	0		

<sup>(1)</sup> If applicable;

3.4. point 6 is replaced by the following:

'6. ANNEXES

Project eligible expenditure and income, compliance with the non-profit rule and project summary description.

Final report on the implementation of the annual programme							
Table 6 A							
Project eligible cost and sources of income. Compliance with the principle of non-profit as set out in item I.3.3 of Annex XI							
Situation at: day/month/year							
	Eligible cost			Sources of income			
	Direct costs	Indirect costs	Total eligible cost	Contribution from the EU	Contribution from third parties	Receipts generated by the project	Total income (as set out in item I.3.3 of Annex XI)
	(a)	(b)	(c) = (a) + (b)	(e)	(f)	(g)	(h)= (e) + (f) +(g)
Project reference							
Project reference							
Project reference							
etc.							
<b>TOTAL ACTION 1</b>							
Project reference							
Project reference							
Project reference							
etc.							
<b>TOTAL ACTION 2</b>							
Project reference							
Project reference							
Project reference							
etc.							
<b>TOTAL ACTION N</b>							
TECHNICAL ASSISTANCE							
TOTAL ANNUAL PROGRAMME							

<b>Final report on the implementation of the annual programme</b>	
<b>Table 6 B</b>	
<b>Report per project</b>	
Situation at: (day/month/year)	
Project reference and title:	<input type="text"/>
Final beneficiary:	<input type="text"/>
Action (number):	<input type="text"/>
Priority (number):	<input type="text"/>
If applicable, Specific Priority	<input type="text"/>
Short technical summary	<input type="text"/>
If applicable, justification of Specific Priority	<input type="text"/>
Indicator-based objectives and results — achievements of the project'	<input type="text"/>



4. Annex VIII is amended as follows:

4.1. the title is replaced by the following:

'MODEL CERTIFICATION FOR SECOND PRE-FINANCING';

4.2. in footnote 1 the word 'eligible' is deleted;

4.3. point 2 is replaced by the following:

'2. the expenditure declared has been incurred in respect of actions selected for funding in accordance with the criteria applicable to the annual programme;'

5. in Annex IX, the title is replaced by the following:

'MODEL CERTIFICATION FOR FINAL PAYMENT';

6. Annex XI is replaced by the following:

'ANNEX XI

#### **RULES ON THE ELIGIBILITY OF EXPENDITURE EUROPEAN RETURN FUND**

##### **I. General principles**

###### **I.1. Basic Principles**

1. In accordance with the basic act, for it to be eligible, expenditure must be:

- (a) within the scope of the Fund and within its objectives, as described in Articles 1, 2 and 3 of the basic act;
- (b) within the eligible actions and measures listed in Articles 4 and 5 of the basic act;
- (c) needed to carry out the activities covered by the project, forming part of the multiannual and annual programmes, as approved by the Commission;
- (d) reasonable and comply with the principles of sound financial management, in particular, value for money and cost-effectiveness;
- (e) incurred by the final beneficiary and/or the partners in the project, who shall be established and registered in a Member State, except in the case of international public sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations, the International Committee of the Red Cross (ICRC) and the International Federation of National Red Cross and Red Crescent Societies. With regard to Article 39(2) of this Decision, the rules applicable to the final beneficiary shall apply *mutatis mutandis* to the partners in the project;
- (f) linked to the target groups defined in Article 7 of the basic act;
- (g) incurred in accordance with the specific provisions in the grant agreement.

2. In the case of multiannual actions within the meaning of Article 15(6) of the basic act, only the part of the action co-financed by an annual programme is considered to be a project for the application of these eligibility rules.

3. Projects supported by the Fund shall not be financed by other sources covered by the Community budget. Projects supported by the Fund shall be co-financed by public or private sources.

###### **I.2. Budget of a project**

The budget of a project shall be presented as follows:

Expenditure	Income
+ Direct costs (DC)	+ Contribution from the EC ( <i>defined as the lowest of the three amounts indicated in Article 12 of this Decision</i> )
+ Indirect costs ( <i>fixed percentage of DC, defined in the grant agreement</i> )	+ Contribution from the final beneficiary and the partners in the project
	+ Contribution from third parties
	+ Receipts generated by the project
<b>= Total Eligible Cost (TEC)</b>	<b>= Total Income (TI)</b>

The budget shall be balanced: Total Eligible Cost shall be equal to Total Income.

### I.3. *Income and Non-Profit Principle*

1. Projects supported by the Fund must be of a non-profit-making nature. If, at the end of the project, the sources of income, including receipts, exceed expenditure, the contribution to the project from the Fund shall be reduced accordingly. All sources of income for the project must be recorded in the final beneficiary's accounts or tax documents, and must be identifiable and controllable.
2. Project income shall come from all financial contributions granted to the project by the Fund, from public or private sources, including the final beneficiary's own contribution, and from any receipts generated by the project. "Receipts" for the purpose of this rule covers revenue received by a project during the eligibility period as described in point I.4, from sales, rentals, services, enrolment/fees or other equivalent income.
3. The Community contribution resulting from the application of the principle of non-profit, as referred to under Article 12(c) of this Decision, will be the "total eligible cost" minus the "contribution from third parties" and "receipts generated by the project".

### I.4. *Eligibility Period*

1. Costs relating to a project must be incurred and the respective payments (except for depreciation) made after 1 January of the year referred to in the financing decision approving the annual programmes of the Member States. The eligibility period is until 30 June of the year N (\*) + 2, meaning that the costs relating to a project must be incurred before this date.
2. An exception to the eligibility period provided for in paragraph 1 is made for technical assistance for Member States (refer to point IV.3).

(\*) Where "N" is the year referred to in the financing decision approving the annual programmes of the Member States.

### I.5. *Record of expenditure*

1. Expenditure shall correspond to payments made by the final beneficiary. These must be in the form of financial (cash) transactions, with the exception of depreciation.
2. As a rule, expenditure shall be justified by official invoices. Where this cannot be done, expenditure shall be supported by accounting documents or supporting documents of equivalent evidential value.
3. Expenditure must be identifiable and verifiable. In particular,
  - (a) it must be recorded in the accounting records of the final beneficiary;

(b) it must be determined in accordance with the applicable accounting standards of the country where the final beneficiary is established and with the usual cost accounting practices of the final beneficiary; and

(c) it must be declared in accordance with the requirements of applicable tax and social legislation.

4. As necessary, the final beneficiaries are obliged to keep certified copies of the accounting documents justifying income and expenditure incurred by the partners in relation to the project concerned.

5. The storage and processing of records provided for in paragraphs 2 to 4 must comply with the national data protection legislation.

#### I.6. *Territorial scope*

1. Expenditure for actions and measures described in Articles 4 and 5 of the basic act must be:

(a) incurred by the final beneficiaries defined in point I.1.1(e); and

(b) incurred in the territory of the Member States or of third countries.

2. Partners in the project registered and established in third countries may participate in projects only on a no-cost basis, except in the case of international public sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations, the International Committee of the Red Cross (ICRC) and the International Federation of National Red Cross and Red Crescent Societies.

### II. **Categories of eligible costs (at project level)**

#### II.1. *Direct eligible costs*

The direct eligible costs of the project are costs that, with due regard to the general conditions of eligibility set out in part I, are identifiable as specific costs directly linked to the implementation of the project. Direct costs shall be included in the estimated overall budget of the project.

The following direct costs are eligible:

##### II.1.1. *Staff costs*

1. The cost of staff assigned to the project, comprising actual salaries plus social security charges and other statutory costs is eligible, provided that this corresponds to the beneficiary's usual policy on remuneration.

2. For International organisations, the eligible staff cost may include provisions to cover statutory obligations and entitlements relating to remuneration.

3. The corresponding salary costs of staff of public bodies are eligible to the extent that they relate to the cost of activities which the relevant public body would not carry out if the project concerned were not undertaken; this staff shall be seconded or assigned to the implementation of the project by a written decision of the final beneficiary.

4. Staff costs shall be detailed in the forward budget, indicating functions and number of staff.

##### II.1.2. *Travel and subsistence costs*

1. Travel and subsistence costs are eligible as direct costs for staff or other persons who participate in the activities of the project and whose travel is necessary for the implementation of the project.

2. Travel costs shall be eligible on the basis of the actual costs incurred. Reimbursement rates shall be based on the cheapest form of public transport and flights shall, as a rule, be permitted only for journeys over 800 km (return trip), or where the geographical destination justifies travelling by air. Where a private car is used, reimbursement is normally made either on the basis of the cost of public transport, or on the basis of mileage rates in accordance with published official rules in the Member State concerned or used by the final beneficiary.

3. Subsistence costs shall be eligible on the basis of real costs or a daily allowance. Where an organisation has its own daily rates (subsistence allowances), they shall be applied within ceilings established by the Member State in accordance with national legislation and practice. Subsistence allowances are normally understood to cover local transport (including taxis), accommodation, meals, local telephone calls and sundries.

### II.1.3. Equipment

#### II.1.3.1. General rules

1. Costs pertaining to the acquisition of equipment are only eligible if they are essential to the implementation of the project. Equipment shall have the technical properties needed for the project and comply with applicable norms and standards.
2. The choice between leasing, rental or purchase must always be based on the least expensive option. However, if leasing or renting is not possible because of the short duration of the project or the rapid depreciation in value, purchase is accepted.

#### II.1.3.2. Renting and leasing

Expenditure in relation to renting and leasing operations is eligible for co-financing subject to the rules established in the Member State, national legislation and practice and the duration of the rental or lease for the purpose of the project.

#### II.1.3.3. Purchasing

1. Where equipment is purchased during the lifetime of the project, the budget must specify if the full costs or only the portion of equipment depreciation corresponding to the duration of use for the project and the rate of actual use for the project is included. The latter shall be calculated in compliance with the national rules applicable.
2. Equipment that was purchased before the lifetime of the project, but which is used for the purpose of the project, is eligible on the basis of depreciation. However these costs are ineligible if the equipment was originally purchased through a Community grant.
3. For individual items costing below EUR 20 000 the full purchase cost is eligible, provided, that the equipment is purchased before the last 3 months of the project. Individual items costing EUR 20 000 or more are only eligible on the basis of depreciation.

### II.1.4. Real estate

#### II.1.4.1. General rules

In the case of either purchase of real estate, construction or renovation of real estate, or rental of real estate, it shall have the technical properties needed for the project and comply with the applicable norms and standards.

#### II.1.4.2. Purchase, construction or renovation

1. Where the acquisition of real estate is essential for implementation of the project and is clearly linked with its objectives, the purchase of real estate, i.e. buildings already constructed, or construction of real estate, is eligible for co-financing under the conditions set out below, without prejudice to the application of stricter national rules:
  - (a) a certificate is obtained from an independent qualified valuer or duly authorised official body establishing that the price does not exceed the market value, either attesting that the real estate is in conformity with national regulations or specifying the points which are not in conformity that the final beneficiary plans to rectify as part of the project;
  - (b) the real estate has not been purchased through a Community grant at any time prior to the implementation of the project;

(c) the real estate is to be used solely for the purpose stated in the project for a period of at least 5 years after the end date of the project;

(d) only the portion of the depreciation of these assets corresponding to the duration of use for the project and the rate of actual use for the project is eligible; depreciation shall be calculated according to national accounting rules.

2. Subject to condition (c) in paragraph 1, the full cost of refurbishment, modernisation or renovating works to buildings is eligible up to a maximum value of EUR 100 000. Above this threshold, conditions (c) and (d) in paragraph 1 apply.

#### II.1.4.3. Rental

Rental of real estate is eligible for co-financing where there is a clear link between the rental and the objectives of the project concerned, under the conditions set out below and without prejudice to the application of stricter national rules:

(a) the real estate has not been purchased through a Community grant;

(b) the real estate is to be used solely for implementation of the project. If not, only the portion of the costs corresponding to the use for the project is eligible.

#### II.1.5. Consumables, supplies and general services

The costs of consumables, supplies and general services are eligible provided that they are identifiable and directly necessary for the implementation of the project.

#### II.1.6. Subcontracting

1. As a general rule, final beneficiaries must have the capacity to manage the projects themselves. The amount corresponding to tasks to be subcontracted under the project will have to be clearly indicated in the grant agreement.

2. Expenditure relating to the following subcontracts is not eligible for co-financing by the Fund:

(a) subcontracting of tasks relating to the overall management of the project;

(b) subcontracting that adds to the cost of the project without adding proportionate value to it;

(c) subcontracting with intermediaries or consultants where payment is defined as a percentage of the total cost of the project, unless such payment is justified by the final beneficiary by reference to the actual value of the work or services provided.

3. For all subcontracts, subcontractors shall undertake to provide all audit and control bodies with all the necessary information relating to subcontracted activities.

#### II.1.7. Costs deriving directly from the requirements linked to Union co-financing

Costs needed to meet the requirements linked to Union co-financing, such as publicity, transparency, evaluation of the project, external audit, bank guarantees, translation costs, etc., are eligible as direct costs.

#### II.1.8. Expert fees

Legal consultancy fees, notarial fees and costs of technical and financial experts are eligible.

#### II.1.9. Specific expenses in relation to the target groups

1. Specific expenses for the target groups in accordance with the measures listed in Article 5 of the basic act will consist of full or partial support in the form of:

(a) costs incurred by the beneficiary for the target groups;

(b) costs incurred by returnees which are then reimbursed by the final beneficiary; or

(c) non-reimbursable lump sums (as in the case of limited start-up support for economic activities and cash incentives for returnees, as described in Article 5(8) and (9) of the basic act).

2. These costs are eligible under the following conditions:

- (a) the final beneficiary shall keep the necessary information and evidence that the persons correspond to the specific target groups and situations defined in Article 5 of the basic act making them eligible to receive such assistance;
- (b) the final beneficiary shall keep the necessary information on the returnees receiving this assistance to allow proper identification of these persons, the date of their return to their country, and evidence that these persons have received this assistance;
- (c) the final beneficiary shall keep evidence of the support provided (such as invoices and receipts) and in the case of lump sums evidence must be kept that the persons have received this support;

The storage and processing of the above-mentioned information must comply with national data protection legislation.

3. Assistance measures following the return to the third country, such as training and employment assistance, short-term measures necessary for the reintegration process and post-return assistance as described in Article 5(5), (8) and (9) of the basic act respectively shall not exceed the duration of 12 months following the date of the return of the third-country national.

#### II.2. *Indirect eligible costs*

- 1. The eligible indirect costs for the action are those costs which, with due regard for the conditions of eligibility described in point I.1.1, are not identifiable as specific costs directly linked to performance of the project.
- 2. By way of derogation from point I.1.1(e) and point 1.5, the indirect costs incurred in carrying out the action may be eligible for flat rate funding fixed at not more than 7 % of the total eligible direct costs.
- 3. Organisations receiving an operating grant from the Union budget cannot include indirect costs in their forward budget.

### III. **Ineligible expenditure**

The following costs are not eligible:

- (a) VAT, except where the final beneficiary can show that he is unable to recover it;
- (b) return on capital, debt and debt service charges, debit interest, foreign exchange commissions and exchange losses, provisions for losses or potential future liabilities, interest owed, doubtful debts, fines, financial penalties, litigation costs, and excessive or reckless expenditure;
- (c) entertainment costs exclusively for project staff; reasonable hospitality costs at social events justified by the project, such as an event at the end of the project or meetings of the project steering group, are permitted;
- (d) costs declared by the final beneficiary and covered by another project or work programme receiving a Community grant;
- (e) purchase of land;
- (f) contributions in kind.

### IV. **Technical assistance at the initiative of Member States**

- 1. All the costs necessary for the implementation of the Fund by the responsible authority, delegated authority, audit authority, certifying authority or other bodies assisting in the tasks listed in paragraph 2 are eligible under technical assistance within the limits specified in Article 17 of the basic act.
- 2. This includes the following measures:
  - (a) expenditure relating to the preparation, selection, appraisal, management and monitoring of actions;
  - (b) expenditure relating to audits and on-the-spot checks of actions or projects;
  - (c) expenditure relating to evaluations of actions or projects;

- (d) expenditure relating to information, dissemination and transparency in relation to actions;
  - (e) expenditure on the acquisition, installation and maintenance of computerised systems for the management, monitoring and evaluation of the Funds;
  - (f) expenditure on meetings of monitoring committees and sub-committees relating to the implementation of actions; this expenditure may also include the costs of experts and other participants in these committees, including third-country participants, where their presence is essential to the effective implementation of actions;
  - (g) expenditure for the reinforcement of the administrative capacity for the implementation of the Fund.
3. Activities linked to technical assistance must be performed and the corresponding payments made after 1 January of the year referred to in the financing decision approving the annual programmes of the Member States. The eligibility period lasts until the deadline for the submission of the final report on the implementation of the annual programme.
4. Any procurement must be carried out in accordance with national procurement rules established in the Member State.
5. Member States may implement technical assistance measures for this Fund together with technical assistance measures for some or all of the four Funds. However, in that case only the portion of the costs used to implement the common measure corresponding to this Fund shall be eligible for financing under this Fund, and Member States shall ensure that:
- (a) the portion of costs for common measures is charged to the corresponding Fund in a reasonable and verifiable manner; and
  - (b) there is no double financing of costs.
-











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