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Contents

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[1] 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.

EN

[1] Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 13 May 2011

on the conclusion of an Agreement between the European Union and the Kingdom of Morocco establishing a dispute settlement mechanism

(2011/392/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(6)(a)(v), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) On 24 February 2006 the Council authorised the Commission to open negotiations with partners in the Mediterranean region in order to establish a dispute settlement mechanism related to trade provisions.

(2) Negotiations have been conducted by the Commission in consultation with the committee appointed under Article 207 of the Treaty and within the framework of the negotiating directives issued by the Council.

(3) These negotiations have been concluded and an Agreement between the European Union and the Kingdom of Morocco establishing a Dispute Settlement Mechanism ('the Agreement') was initialled on 9 December 2009.

(4) The Agreement was signed on behalf of the Union on 13 December 2010.

(5) The Agreement should be concluded,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Kingdom of Morocco establishing a Dispute Settlement Mechanism ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall give, on behalf of the Union, the notification provided for in Article 23 of the Agreement [1].

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 13 May 2011.

For the Council
The President
MARTONYI J.

[1] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT

between the European Union and the Kingdom of Morocco establishing a dispute settlement mechanism

THE EUROPEAN UNION, hereinafter referred to as 'the Union',

of the one part, and

THE KINGDOM OF MOROCCO, hereinafter referred to as 'Morocco',

of the other part,

HAVE AGREED AS FOLLOWS:

CHAPTER I

OBJECTIVE AND SCOPE

Article 1

Objective

The objective of this Agreement is to avoid and settle any trade dispute between the Parties with a view to arrive at, where possible, a mutually agreed solution.

Article 2

Application of the Agreement

1. The provisions of this Agreement apply with respect to any dispute concerning an alleged violation of the provisions of Title II (with the exception of Article 24) of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (hereinafter 'the association Agreement') ([1]) or of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part. The procedures of this Agreement shall apply if, 60 days after a dispute has been referred to the Association Council pursuant to Article 86 of the Association Agreement, the Association Council has failed to settle the dispute.

2. Article 86 of the Association Agreement applies to disputes relating to the application and interpretation of other provisions of the Association Agreement.

3. For the purposes of paragraph 1, a dispute shall be deemed to be resolved when the Association Council has taken a decision as provided for in Article 86.2 of the Association Agreement, or when it has declared that there is no longer a dispute.

([1]) The provisions of this Agreement are without prejudice to Article 34 of the Protocol concerning the definition of the concept of 'originating products' and methods of administrative cooperation.

CHAPTER II

CONSULTATIONS AND MEDIATION

Article 3

Consultations

1. The Parties shall endeavour to resolve any difference regarding the interpretation and application of the provisions referred to in Article 2 by entering into consultations in good faith with the aim of reaching a prompt, equitable and mutually agreed solution. In these consultations, the Parties will also discuss the impact that the alleged breach would have on their trade.

2. A Party shall seek consultations by means of a written request to the other Party, copied to the subcommittee 'industry, trade and services', identifying any measure at issue and the provisions of the agreements referred to in Article 2 that it considers breached.

3. Consultations shall be held within 40 days of the date of receipt of the request and take place, unless the Parties agree otherwise, on the territory of the Party complained against. The consultations shall be deemed concluded within 60 days of the date of receipt of the request, unless both Parties agree to continue consultations. Consultations, in particular all information disclosed and positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

4. Consultations on matters of urgency, including those regarding perishable or seasonal goods shall be held within 15 days of the date of receipt of the request, and shall be deemed concluded within 30 days of the date of receipt of the request.

5. If the Party to which the request is made does not respond to the request for consultations within 20 working days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if consultations have been concluded and no agreement has been reached on a mutually agreed solution, the complaining Party may request the establishment of an arbitration panel in accordance with Article 5.

Article 4

Mediation

1. If consultations fail to produce a mutually agreed solution, the Parties may, by mutual agreement, seek recourse to a mediator. Any request for mediation must be made in writing to Party complained against and the subcommittee 'industry, trade and services' and state any measure which has been the subject of consultations as well as the mutually agreed terms of reference for the mediation. Each Party undertakes to accord sympathetic consideration to requests for mediation.

2. Unless the Parties agree on a mediator within 10 working days of the date of receipt of the request for mediation, the chairpersons of the subcommittee 'industry, trade and services', or the chairpersons' delegate, shall select by lot a mediator from the pool of individuals who are on the list referred to in Article 19 and are not nationals of either Party. The selection shall be made within 15 working days of the date of receipt of the request for mediation. The mediator will convene a meeting with the Parties no later than 30 days after being selected. The mediator shall receive the submissions of each Party no later than 15 days before the meeting and may request additional information from the Parties or from experts or technical advisors as she or he deems necessary. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments. The mediator shall notify an opinion no later than 45 days after having been selected.

3. The mediator's opinion may include one or more recommendations on how to resolve the dispute consistent with the provisions referred to in Article 2. The mediator's opinion is non-binding.

4. The Parties may agree to amend the time limits referred to in paragraph 2. The mediator may also decide to amend these time limits upon request of any of the Parties, given the particular difficulties experienced by the Party concerned or the complexities of the case.

5. The proceedings involving mediation, in particular the mediator's opinion and all information disclosed and positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

6. If the Parties agree, procedures for mediation may continue while the arbitration procedure proceeds.

7. Replacement of a mediator shall take place only for the reasons and according to the procedures detailed in rules 18 to 21 of the Rules of Procedure.

CHAPTER III

DISPUTE SETTLEMENT PROCEDURES

SECTION 1

Arbitration procedure

Article 5

Initiation of the arbitration procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 3, or by recourse to mediation as provided for in Article 4, the complaining Party may request the establishment of an arbitration panel.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the subcommittee 'industry, trade and services'. The complaining Party shall identify in its request the specific measure at issue, and it shall explain how such measure constitutes a breach of the provisions referred to in Article 2. The establishment of an arbitration panel shall be requested no later than 18 months from the date of receipt of the request for consultations, without prejudice to the rights of the complaining Party to request new consultations on the same matter in the future.

Article 6

Establishment of the arbitration panel

1. An arbitration panel shall be composed of three arbitrators.

2. Within 10 working days of the date of receipt by the Party complained against of the request for the establishment of an arbitration panel, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.

3. In the event that the Parties are unable to agree on its composition within the time frame laid down in paragraph 2, either Party may request the chairpersons of the subcommittee 'industry, trade and services', or the chairpersons' delegate, to select all three members by lot from the list established under Article 19, one among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure.

4. The chairpersons of the subcommittee 'industry, trade and services', or the chairpersons' delegate, shall select the arbitrators within five working days of the request referred to in paragraph 3.

5. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are selected.

6. Replacement of arbitrators shall take place only for the reasons and according to the procedures detailed in rules 18 to 21 of the Rules of Procedure.

Article 7

Interim panel report

The arbitration panel shall issue an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes, not later than 120 days from the date of establishment of the arbitration panel. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within 15 days of its notification. The findings of the final panel ruling shall include a discussion of the arguments made at the interim review stage.

Article 8

Arbitration panel ruling

1. The arbitration panel shall notify its ruling to the Parties and to the subcommittee 'industry, trade and services' within 150 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the subcommittee 'industry, trade and services' in writing, stating the reasons for the delay and the date on which the panel plans to conclude its work. Under no circumstances should the ruling be notified later than 180 days from the date of the establishment of the arbitration panel.

2. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall make every effort to notify its ruling within 75 days from the date of its establishment. Under no circumstance should it take longer than 90 days from its establishment. The arbitration panel shall give a preliminary ruling within 10 days of its establishment on whether it deems the case to be urgent.

3. The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding 12 months and shall resume its work at the end of this agreed period at the request of the complaining Party. If the complaining Party does not request the resumption of the arbitration panel's work before the expiry of the agreed suspension period, the procedure shall be terminated. The suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in another proceeding on the same matter.

SECTION II

Compliance

Article 9

Compliance with the arbitration panel ruling

Each Party shall take any measure necessary to comply with the arbitration panel ruling, and the Parties will endeavour to agree on the period of time to comply with the ruling.

Article 10

The reasonable period of time for compliance

1. No later than 30 days after the receipt of the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the subcommittee 'industry, trade and services' of the time it will require for compliance (reasonable period of time), if immediate compliance is not possible.

2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the receipt of the notification made under paragraph 1 by the Party complained against, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the subcommittee 'industry, trade and services'. The arbitration panel shall notify its ruling to the Parties and to the subcommittee 'industry, trade and services' within 30 days from the date of the submission of the request.

3. The reasonable period of time may be extended by mutual agreement of the Parties.

Article 11

Review of any measure taken to comply with the arbitration panel ruling

1. The Party complained against shall notify the other Party and the subcommittee 'industry, trade and services' before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

2. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 1 with the provisions referred to in Article 2, the complaining Party may request, in writing, the arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and it shall explain how such measure is inconsistent with the provisions referred to in Article 2. The arbitration panel shall notify its ruling within 90 days of the date of the submission of the request. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall notify its ruling within 45 days of the date of the submission of the request.

Article 12

Temporary remedies in case of non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 1(1) is inconsistent with that Party's obligations under the provisions referred to in Article 2, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.

2. If no agreement on compensation is reached within 30 days after the end of the reasonable period of time or of the arbitration panel ruling under Article 11 that a measure taken to comply is inconsistent with the provisions referred to in Article 2, the complaining Party shall be entitled, upon notification to the other Party and to the subcommittee 'industry, trade and services', to suspend obligations arising from any provision referred to in Article 2 at a level equivalent to the nullification or impairment caused by the violation. The complaining Party may implement the suspension 10 working days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3.

3. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request, in writing, the arbitration panel to rule on the matter. Such request shall be notified to the other Party and to the subcommittee 'industry, trade and services' before the expiry of the 10 working day period referred to in paragraph 2. The arbitration panel, having sought, if appropriate, the opinion of experts, shall notify its ruling on the level of the suspension of obligations to the Parties and to the institutional body responsible for trade matters within 30 days of the date of the submission of the request. Obligations shall not be suspended until the arbitration panel has notified its ruling, and any suspension shall be consistent with the arbitration panel ruling.

4. The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions referred to in Article 2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Article 13, or until the Parties have agreed to settle the dispute.

Article 13

Review of any measure taken to comply after the suspension of obligations

1. The Party complained against shall notify the other Party and the subcommittee 'industry, trade and services' of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of obligations applied by the complaining Party.

2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 2 within 30 days of the date of receipt of the notification, the complaining Party shall request, in writing, the arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the subcommittee 'industry, trade and services'. The arbitration panel ruling shall be notified to the Parties and to the subcommittee 'industry, trade and services' within 45 days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 2, the suspension of obligations shall be terminated.

SECTION III

Common provisions

Article 14

Mutually agreed solution

The Parties may reach a mutually agreed solution to a dispute under this Agreement at any time. They shall notify the subcommittee 'industry, trade and services' and the arbitration panel of any such solution. Upon notification of the mutually agreed solution, the panel shall terminate its work and the procedure shall be terminated.

Article 15

Rules of Procedure

1. Dispute settlement procedures under Chapter III of this Agreement shall be governed by the Rules of Procedure annexed to this Agreement.

2. Any meeting of the arbitration panel shall be open to the public in accordance with the Rules of Procedure, unless the Parties agree otherwise.

Article 16

Information and technical advice

At the request of a Party, or upon its own initiative, the arbitration panel may obtain information it deems appropriate for the arbitration panel proceeding. In particular, the arbitration panel also has the right to seek the relevant opinion of experts as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments. Unless the Parties agree otherwise, interested natural or legal persons established in the Parties are authorised to submit communications in writing to the arbitration panels in accordance with the Rules of Procedure. Such communications shall be limited to the factual aspects of the dispute and shall not address points of law.

Article 17

Rules of interpretation

Any arbitration panel shall interpret the provisions referred to in Article 2 in accordance with customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided in the provisions referred to in Article 2.

Article 18

Arbitration panel decisions and ruling

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case dissenting opinions of arbitrators shall be published.

2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations to physical or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions of the agreements set out in Article 2 and the basic rationale behind any findings and conclusions that it makes. The subcommittee 'industry, trade and services' shall make the arbitration panel ruling publicly available in its entirety unless it decides not to do so in order to ensure the confidentiality of business confidential information.

CHAPTER IV

GENERAL PROVISIONS

Article 19

Lists of arbitrators

1. The subcommittee 'industry, trade and services' shall, no later than 6 months after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as arbitrators. Each of the Parties shall propose at least five individuals to serve as arbitrators. The two Parties shall also select at least five individuals that are not nationals of either Party and who shall act as chairperson to the arbitration panel. The subcommittee 'industry, trade and services' will ensure that the list is always maintained at this level.

2. Arbitrators shall have specialised knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to this Agreement.

3. The subcommittee 'industry, trade and services' may establish additional lists of at least 15 individuals having a sectoral expertise in specific matters covered by the agreements referred to in Article 2. Each of the Parties shall propose at least five individuals to serve as arbitrators. The two Parties shall also select at least five individuals that are not nationals of either Party and who shall act as chairperson to the arbitration panel. When recourse is made to the selection procedure of Article 6(2), the chairpersons of the subcommittee 'industry, trade and services' may use a sectoral list upon agreement of both Parties.

Article 20

Relation with WTO obligations

1. When a Party seeks the settlement of a dispute concerning an obligation under the WTO Agreement, it shall have recourse to the relevant rules and procedures of the WTO Agreement, which apply notwithstanding the provisions of this Agreement.

2. When a Party seeks the settlement of a dispute concerning an obligation falling within the scope of this Agreement as defined in Article 2, it shall have recourse to the rules and procedures of this Agreement.

3. Unless the Parties otherwise agree, when a Party seeks the settlement of a dispute concerning an obligation falling within the scope of this Agreement as defined in Article 2, which is equivalent in substance to an obligation under the WTO, it shall have recourse to the relevant rules and procedures of the WTO Agreement, which apply notwithstanding the provisions of this Agreement.

4. Once dispute settlement procedures have been initiated, the forum selected in accordance with the paragraphs above, if it has not declined its jurisdiction, shall be used to the exclusion of the other.

5. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the Dispute Settlement Body of the WTO. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Agreement.

Article 21

Time limits

1. All time limits laid down in this Agreement, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified.

2. Any time limit referred to in this Agreement may be modified by mutual agreement of the Parties. The Parties undertake to accord sympathetic consideration to requests for extensions of any time limit by reason of difficulties faced by any Party in complying with the procedures of this Agreement. Upon request of a Party, the arbitration panel may modify the time limits applicable in the proceedings, taking into account the different level of development of the Parties.

Article 22

Review and modification of the Agreement

1. After the entry into force of this Agreement and its Annexes, the Association Council may at any time review their implementation, with a view to decide their continuation, modification or termination.

2. In this review, the Association Council may consider the possibility of creating an Appellate Body common to several Euro-Mediterranean Agreements.

3. The Association Council may decide to modify this Agreement and its Annexes.

Article 23

Entry into force

This Agreement will be approved by the Parties in accordance with their own procedures. This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other that the procedures referred to in this Article have been completed.

Done at Brussels, in duplicate, on the thirteenth day of December in the year two thousand and ten, in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Arabic languages, each of these texts being equally authentic.

За Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen

عن الإتحاد الأوروبي

За Кралство Мароко
Por el Reino de Marruecos
Za Marocké království
For Kongeriget Marokko
Für das Königreich Marokko
Maroko Kuningriigi nimel
Για το Βασίλειο του Μαρόκου
For the Kingdom of Morocco
Pour le Royaume du Maroc
Per il Regno del Marocco
Marokas Karalistes vārdā –
Maroko Karalystės vardu
A Marokkói Királyság részéről
Għar-Renju tal-Marokk
Voor het Koninkrijk Marokko
W imieniu Królestwa Maroka
Pelo Reino de Marrocos
Pentru Regatul Maroc
Za Marocké kráľovstvo
Za Kraljevino Maroko
Marokon kuningaskunnan puolesta
För Konungariket Marocko

عن المملكة المغربية

ANNEXES

ANNEX I: **RULES OF PROCEDURE FOR ARBITRATION**

ANNEX II: **CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND MEDIATORS**

ANNEX I

RULES OF PROCEDURE FOR ARBITRATION

General provisions

1. In this Agreement and under these rules:

   'adviser' means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;

   'complaining Party' means any Party that requests the establishment of an arbitration panel under Article 5 of this Agreement;

   'Party complained against' means the Party that is alleged to be in violation of the provisions referred to in Article 2 of this Agreement;

   'arbitration panel' means a panel established under Article 6 of this Agreement;

   'representative of a Party' means an employee or any person appointed by a government department or agency or any other public entity of a Party;

   'day' means a calendar day, unless otherwise specified.

2. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. However, the European Union shall bear the expenses derived from all organizational matters regarding consultations, mediation and arbitration, with the exception of the remuneration and the expenses to be paid to the mediators and arbitrators, which shall be shared.

Notifications

3. The Parties and the arbitration panel shall transmit any request, notice, written submission or other document by e-mail, with a copy submitted on the same day by facsimile transmission, registered post, courier, delivery against receipt, or any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, a message sent by e-mail and by facsimile shall be deemed to be received on the same date of its sending.

4. A Party shall provide an electronic copy of each of its written submissions to the other Party and to each of the arbitrators. A paper copy of the document shall also be provided.

5. All notifications shall be addressed to the Foreign Ministry of Morocco and to the Directorate-General for Trade of the European Commission, respectively.

6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.

7. If the last day for delivery of a document falls on an official holiday or rest day of Morocco or of the Union, the document may be delivered on the next business day. The Parties shall exchange a list of dates of their official holidays and rest days on the first Monday of every December for the following year. No documents, notifications or requests of any kind shall be deemed to be received on an official holiday or rest day. Moreover, for the count of all time limits laid expressed in this Agreement in terms of working days, only the working days common to both parties shall be taken into account.

8. Depending on the object of the provisions under dispute, all requests and notifications addressed to the sub-committee on industry, trade and services in accordance with this Agreement shall also be copied to the other relevant sub-committees established under the Association Agreement.

Commencing the arbitration

9. (a) If pursuant to Article 6 of this Agreement or to rules 19, 20 or 49 of these Rules of Procedure members of the arbitration panel are selected by lot, representatives of both Parties shall be present when lots are drawn.

   (b) Unless the Parties agree otherwise, they shall meet the arbitration panel within seven working days of its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators, which will be in accordance with WTO standards. Members of the arbitration panel and representatives of the Parties may take part in this meeting via telephone or video conference.

10. (a) Unless the Parties agree otherwise, within five working days from the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:

'to examine, in the light of the relevant provisions of the agreements referred to in Article 2 of the Agreement on Dispute Settlement, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions referred to in Article 2 of the Agreement on Dispute Settlement and to make a ruling in accordance with Article 8 of the Agreement on Dispute Settlement.'

(b) The Parties must notify the agreed terms of reference to the arbitration panel within five working days of their agreement.

Initial submissions

11. The complaining Party shall deliver its initial written submission no later than 20 days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 20 days after the date of delivery of the initial written submission.

Working of arbitration panels

12. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.

13. Unless otherwise provided in this Agreement, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.

14. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.

15. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and must not be delegated.

16. Where a procedural question arises that is not covered by the provisions of this Agreement and its Annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

17. When the arbitration panel considers that there is a need to modify any time limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the change or adjustment and of the period or adjustment needed. The arbitration panel may adopt such change or modification after consulting the Parties. The time limits of Article 8 paragraph 2 of this Agreement shall not be modified.

Replacement

18. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 6(3).

19. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason should be replaced, this Party should notify the other Party within 15 days from the time at which it came to know of the circumstances underlying the arbitrator's material violation of the Code of Conduct.

Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 6(3) of this Agreement.

If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, she or he shall select a new arbitrator by lot among the pool of individuals referred to under Article 19(1) of this Agreement of which the original arbitrator was a Member. If the original arbitrator was chosen by the Parties pursuant to Article 6(2) of this Agreement, the replacement shall be selected by lot among the pools of individuals that have been proposed by the complaining Party and by the Party complained against under Article 19(1) of this Agreement. The selection of the new arbitrator shall be done within five working days of the date of the submission of the request to the chairperson of the arbitration panel.

20. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the chairperson and select a replacement following the procedure set out in Article 6(3) of this Agreement.

If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to one of the remaining members of the pool of individuals selected to act as chairpersons under Article 19(1) of this Agreement. Her or his name shall be drawn by lot by the chairpersons of the subcommittee 'industry, trade and services', or the chairpersons' delegate. The decision by this person on the need to replace the chairperson shall be final.

If this person decides that the original chairperson does not comply with the requirements of the Code of Conduct, she or he shall select a new chairperson by lot among the remaining pool of individuals referred to under Article 19(1) of this Agreement who may act as chairpersons. This selection of the new chairperson shall be done within five working days of the date of the submission of the request referred to in this paragraph.

21. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in rules 18, 19 and 20.

Hearings

22. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings if the hearing is open to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.

23. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Morocco, and in Rabat if the complaining Party is the Union.

24. The arbitration panel may convene one additional hearing only in exceptional circumstances. No additional hearing shall be convened for the procedures established under Articles 10(2), 11(2), 12(3) and 13(2) of this Agreement.

25. All arbitrators shall be present during the entirety of any hearings.

26. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

(a) representatives of the Parties;

(b) advisers to the Parties;

(c) administrative staff, interpreters, translators and court reporters; and

(d) arbitrators' assistants.

Only the representatives and advisers of the Parties may address the arbitration panel.

27. No later than five working days before the date of a hearing, each Party shall deliver to the arbitration panel a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.

28. The hearings of the arbitration panels shall be open to the public, unless the Parties decide otherwise. If the Parties decide that the hearing is closed to the public, part of the hearing may, however, be open to the public if the arbitration panel, on application by the Parties, so decides. However the arbitration panel shall meet in closed session when the submission and arguments of a Party contains confidential commercial information.

29. The arbitration panel shall conduct the hearing in the following manner:

Argument:

(a) argument of the complaining Party;

(b) argument of the Party complained against.

Rebuttal Argument:

(a) argument of the complaining Party;

(b) counter-reply of the Party complained against.

30. The arbitration panel may direct questions to either Party at any time during the hearing.

31. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.

32. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 working days of the date of the hearing.

Questions in writing

33. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.

34. A Party shall also provide a copy of its written response to the arbitration panel's questions to the other Party. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five working days of the date of receipt.

Confidentiality

35. The Parties shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session, in accordance with rule 28. Each Party shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public no later than 15 days after the date of either the request or the submission, whichever is later. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public.

Ex parte contacts

36. The arbitration panel shall not meet or contact a Party in the absence of the other Party.

37. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

Amicus curiae submissions

38. Unless the Parties agree otherwise within 5 days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions, provided that they are made within 10 days of the date of the establishment of the arbitration panel, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the factual issue under consideration by the arbitration panel.

39. The submission shall contain a description of the person making the submission, whether natural or legal, including the nature of their activities and the source of its financing, and specify the nature of the interest that the person has in the arbitration proceeding. It shall be drafted in the languages chosen by the Parties in accordance with Rules 42 and 43 of these Rules of Procedure.

40. The arbitration panel shall list in its ruling all the submissions it has received that conform to the above rules. The arbitration panel shall not be obliged to address in its ruling the arguments made in such submissions. Any submission obtained by the arbitration panel under this rule shall be submitted to the Parties for their comments.

Urgent cases

41. In cases of urgency referred to in this Agreement, the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these rules as appropriate and shall notify the Parties of such adjustments.

Translation and interpretation

42. During the consultations referred to in Article 6(2) of this Agreement, and no later than the meeting referred to in Rule 9(b) of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.

43. If the Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions into the language chosen by the other Party

44. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.

45. Arbitration panel rulings shall be notified in the language or languages chosen by the Parties.

46. Any Party may provide comments on any translated version of a document drawn up in accordance with these rules.

Calculation of time limits

47. Where, by reason of the application of rule 7 of these Rules of Procedure, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

Other procedures

48. These Rules of Procedure are also applicable to procedures established under Articles 10(2), 11(2), 12(3) and 13(2) of this Agreement. However, the time limits laid down in these Rules of Procedure shall be adjusted in line with the special time limits provided for the adoption of a ruling by the arbitration panel in those other procedures.

49. In the event of the original panel, or some of its members, being unable to reconvene for the procedures established under Articles 10(2), 11(2), 12(3) and 13(2) of this Agreement, the procedures set out in Article 6 of this Agreement shall apply. The time limit for the notification of the ruling shall be extended by 15 days.

ANNEX II

CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND MEDIATORS

Definitions

1. In this Code of Conduct:

   (a) 'member' or 'arbitrator' means a member of an arbitration panel effectively established under Article 6 of this Agreement;

   (b) 'mediator' means a person who conducts a mediation in accordance with Article 4 of this Agreement;

   (c) 'candidate' means an individual whose name is on the list of arbitrators referred to in Article 19 of this Agreement and who is under consideration for selection as a member of an arbitration panel under Article 6 of this Agreement;

   (d) 'assistant' means a person who, under the terms of appointment of a member, conducts, researches or provides assistance to the member;

   (e) 'proceeding', unless otherwise specified, means an arbitration panel proceeding under this Agreement;

   (f) 'staff', in respect of a member, means persons under the direction and control of the member, other than assistants.

Responsibilities to the process

2. Every candidate and member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former members must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

Disclosure obligations

3. Prior to confirmation of her or his selection as a member of the arbitration panel under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. A candidate or member shall only communicate matters concerning actual or potential violations of this Code of Conduct to the subcommittee 'industry, trade and services' for consideration by the Parties.

5. Once selected, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires a member to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The member shall disclose such interests, relationships or matters by informing the subcommittee 'industry, trade and services', in writing, for consideration by the Parties.

Duties of members

6. Upon selection a member shall perform her or his duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.

7. A member shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.

8. A member shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.

9. A member shall not engage in ex parte contacts concerning the proceeding.

Independence and impartiality of members

10. A member must be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.

11. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.

12. A member may not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.

13. A member may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.

14. A member must avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of former members

15. All former members must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel.

Confidentiality

16. No member or former member shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.

17. A member shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with this Agreement.

18. A member or former member shall not at any time disclose the deliberations of an arbitration panel, or any member's view.

Expenses

19. Each member shall keep a record and render a final account of the time devoted to the procedure and of her or his expenses.

Mediators

20. The disciplines described in this Code of Conduct as applying to members or former members shall apply, mutatis mutandis, to mediators.

REGULATIONS

COMMISSION REGULATION (EU) No 647/2011

of 4 July 2011

correcting the Slovenian version of Regulation (EU) No 258/2010 imposing special conditions on the imports of guar gum originating in or consigned from India due to contamination risks by pentachlorophenol and dioxins, and repealing Decision 2008/352/EC

(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 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [1], and in particular Article 53 (1) (b) (ii) thereof,

Whereas:

(1) On 25 March 2010, the Commission adopted Regulation (EU) No 258/2010 [2] imposing special conditions on the imports of guar gum and repealing Decision 2008/352/EC. In the Slovenian language version of that Regulation, the wording 'feed and food business operators' was translated incorrectly and therefore a correction of that language version is necessary. The other language versions are not affected.

(2) Regulation (EU) No 258/2010 should therefore be corrected accordingly.

(3) 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

This correcting regulation concerns only the Slovenian language version.

Article 2

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

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

Done at Brussels, 4 July 2011.

For the Commission
The President
José Manuel BARROSO

[1] OJ L 31, 1.2.2002, p. 1.
[2] OJ L 80, 26.3.2010, p. 28.

COMMISSION IMPLEMENTING REGULATION (EU) No 648/2011

of 4 July 2011

amending Regulation (EC) No 1266/2007 as regards the period of application of the transitional measures concerning the conditions for exempting certain animals from the exit ban provided for in Council Directive 2000/75/EC

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue [1], and in particular Article 9(1)(c), Articles 11 and 12 and the third paragraph of Article 19 thereof,

Whereas:

(1) Commission Regulation (EC) No 1266/2007 of 26 October 2007 on implementing rules for Council Directive 2000/75/EC as regards the control, monitoring, surveillance and restrictions on movements of certain animals of susceptible species in relation to bluetongue [2] lays down rules for the control, monitoring, surveillance and restrictions on movements of animals, in relation to bluetongue, in and from the restricted zones.

(2) Article 8 of Regulation (EC) No 1266/2007 lays down conditions for exemption from the exit ban provided for in Directive 2000/75/EC. Article 8(1) of that Regulation provides that movements of animals, their semen, ova and embryos, from a holding or semen collection or storage centre located in a restricted zone to another holding or semen collection or storage centre are to be exempted from that exit ban provided that they comply with the conditions set out in Annex III to that Regulation or with any other appropriate animal health guarantees based on a positive outcome of a risk assessment of measures against the spread of the bluetongue virus and protection against attacks by vectors, required by the competent authority of the place of origin and approved by the competent authority of the place of destination, prior to the movement of such animals.

(3) Article 9(a)(1) of Regulation (EC) No 1266/2007 provides that, as a transitional measure and by way of derogation from the conditions set out in Annex III to that Regulation, Member States of destination may require that the movement of certain animals which are covered by the exemption, provided for in Article 8(1) thereof, be subjected to additional conditions, on the basis of a risk assessment taking into account the entomological and epidemiological conditions in which animals are being introduced. Those additional conditions specify that the animals must be less than 90 days old, they must have been kept since birth in vector protected confinement and they must have been subject to certain tests referred to in Annex III to that Regulation.

(4) Regulation (EC) No 1266/2007, as amended by Regulation (EU) No 1142/2010 [3], prolonged the period of application of the transitional measures provided for in Article 9(a) of Regulation (EC) No 1266/2007 for another 6 months, until 30 June 2011. At the time of adoption of Regulation (EU) No 1142/2010, it was expected that new rules on criteria for vector protected establishments would have been laid down in Annex III to Regulation (EC) No 1266/2007 and that those transitional measures would therefore no longer be necessary. However, those planned amendments to Annex III to that Regulation have not yet been made.

(5) Accordingly, it is necessary to prolong the period of application of the transitional measures provided for in Article 9(a)(1) of Regulation (EC) No 1266/2007 for another year, pending the adoption of the amendments to Annex III to Regulation (EC) No 1266/2007 on vector protected establishments.

(6) Regulation (EC) No 1266/2007 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

In the introductory phrase of Article 9a(1) of Regulation (EC) No 1266/2007, the date '30 June 2011' is replaced by '30 June 2012'.

[1] OJ L 327, 22.12.2000, p. 74.
[2] OJ L 283, 27.10.2007, p. 37.
[3] OJ L 322, 8.12.2010, p. 20.

Article 2

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

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

Done at Brussels, 4 July 2011.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 649/2011

of 4 July 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) [1],

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors [2], and in particular Article 136(1) thereof,

Whereas:

Implementing Regulation (EU) No 543/2011 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 XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 July 2011.

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

Done at Brussels, 4 July 2011.

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

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[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	AL	49,0
	AR	26,0
	EC	26,0
	MK	31,8
	TR	53,0
	US	26,0
	ZZ	35,3
0707 00 05	TR	95,0
	ZZ	95,0
0709 90 70	EC	28,8
	TR	112,4
	ZZ	70,6
0805 50 10	AR	62,6
	BR	42,9
	CL	88,7
	TR	68,0
	UY	56,9
	ZA	71,8
	ZZ	65,2
0808 10 80	AR	123,5
	BR	80,4
	CL	88,6
	CN	91,2
	NZ	112,3
	US	132,1
	UY	61,9
	ZA	78,7
	ZZ	96,1
0808 20 50	AR	79,1
	AU	65,1
	CL	113,0
	CN	53,5
	NZ	161,1
	ZA	88,4
	ZZ	93,4
0809 10 00	AR	89,7
	TR	276,6
	XS	152,4
	ZZ	172,9
0809 20 95	TR	295,1
	ZZ	295,1
0809 30	TR	179,1
	XS	55,8
	ZZ	117,5

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

COMMISSION IMPLEMENTING REGULATION (EU) No 650/2011

of 4 July 2011

amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EU) No 867/2010 for the 2010/11 marketing year

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) ([1]),

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ([2]), and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

(1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups for the 2010/11 marketing year are fixed by Commission Regulation (EU) No 867/2010 ([3]). These prices and duties have been last amended by Commission Implementing Regulation (EU) No 646/2011 ([4]).

(2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EU) No 867/2010 for the 2010/11 marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 July 2011.

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

Done at Brussels, 4 July 2011.

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

([1]) OJ L 299, 16.11.2007, p. 1.
([2]) OJ L 178, 1.7.2006, p. 24.
([3]) OJ L 259, 1.10.2010, p. 3.
([4]) OJ L 175, 2.7.2011, p. 8.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 5 July 2011

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 (1)	50,36	0,00
1701 11 90 (1)	50,36	0,00
1701 12 10 (1)	50,36	0,00
1701 12 90 (1)	50,36	0,00
1701 91 00 (2)	53,10	1,54
1701 99 10 (2)	53,10	0,00
1701 99 90 (2)	53,10	0,00
1702 90 95 (3)	0,53	0,20

(1) For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.
(2) For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.
(3) Per 1 % sucrose content.

DIRECTIVES

COUNCIL DIRECTIVE 2011/64/EU

of 21 June 2011

on the structure and rates of excise duty applied to manufactured tobacco

(codification)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

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

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directives 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes [1], 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes [2] and 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco [3] have been substantially amended several times [4]. In the interests of clarity and rationality the said Directives should be codified by assembling them in a single act.

(2) The Union's fiscal legislation on tobacco products needs to ensure the proper functioning of the internal market and, at the same time, a high level of health protection, as required by Article 168 of the Treaty on the Functioning of the European Union, bearing in mind that tobacco products can cause serious harm to health and that the Union is Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC). Account should be taken of the situation prevailing for each of the various types of manufactured tobacco.

(3) One of the objectives of the Treaty on European Union is to maintain an economic union, whose characteristics are similar to those of a domestic market, within which there is healthy competition. As regards manufactured tobacco, achievement of this aim presupposes that the application in the Member States of taxes affecting the consumption of products in this sector does not distort conditions of competition and does not impede their free movement within the Union.

(4) The various types of manufactured tobacco, distinguished by their characteristics and by the way in which they are used, should be defined.

(5) A distinction needs to be made between fine-cut tobacco for the rolling of cigarettes and other smoking tobacco.

(6) Rolls of tobacco capable of being smoked as they are after simple handling should also be deemed to be cigarettes for the purposes of uniform taxation of these products.

(7) A manufacturer needs to be defined as a natural or legal person who actually prepares tobacco products and sets the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption.

(8) In the interests of uniform and fair taxation, a definition of cigarettes, cigars and cigarillos and of other smoking tobacco should be laid down so that, respectively, rolls of tobacco which according to their length can be considered as two cigarettes or more are treated as two cigarettes or more for excise purposes, a type of cigar which is similar in many respects to a cigarette is treated as a cigarette for excise purposes, smoking tobacco which is similar in many respects to fine-cut tobacco intended for the rolling of cigarettes is treated as fine-cut tobacco for excise purposes, and tobacco refuse is clearly defined. In view of the economic difficulties that immediate implementation could cause for the German and Hungarian operators concerned, Germany and Hungary should be authorised to postpone the application of the definition of cigars and cigarillos until 1 January 2015.

[1] OJ L 316, 31.10.1992, p. 8.
[2] OJ L 316, 31.10.1992, p. 10.
[3] OJ L 291, 6.12.1995, p. 40.
[4] See Annex I, Part A.

(9) As far as excise duties are concerned, harmonisation of structures must, in particular, result in competition in the different categories of manufactured tobacco belonging to the same group not being distorted by the effects of the charging of the tax and, consequently, in the opening of the national markets of the Member States.

(10) The imperative needs of competition imply a system of freely formed prices for all groups of manufactured tobacco.

(11) The structure of the excise duty on cigarettes must include, in addition to a specific component calculated per unit of the product, a proportional component based on the retail selling price, inclusive of all taxes. The turnover tax on cigarettes has the same effect as an *ad valorem* excise duty and this fact should be taken into account when the ratio between the specific component of the excise duty and the total tax burden is being established.

(12) Without prejudice to the mixed tax structure and the maximum percentage of the specific component of the total tax burden, Member States should be given effective means to levy specific or minimum excise duty on cigarettes, so as to ensure that at least a certain minimum amount of taxation applies throughout the Union.

(13) For the proper functioning of the internal market, it is necessary to establish minimum excise duties for all categories of manufactured tobacco.

(14) As regards cigarettes, neutral conditions of competition for manufacturers should be assured, the partitioning of the tobacco markets should be reduced and health objectives should be underscored. Thus, a price related minimum requirement should refer to the weighted average retail selling price, whereas a monetary minimum should be applicable to all cigarettes. For the same reasons, the weighted average retail selling price should also serve as a reference for measuring the importance of specific excise duty within the total tax burden.

(15) As regards prices and excise levels, in particular for cigarettes — by far the most important category of tobacco products — as well as for fine cut-tobacco intended for the rolling of cigarettes, there are still considerable differences between Member States which may disturb the operation of the internal market. A certain degree of convergence between the tax levels applied in the Member States would help to reduce fraud and smuggling within the Union.

(16) Such convergence would also help to ensure a high level of protection for human health. The level of taxation is a major factor in the price of tobacco products, which in turn influences consumers' smoking habits. Fraud and smuggling undermine tax induced price levels, in particular of cigarettes and fine-cut tobacco intended for the rolling of cigarettes, and thus jeopardise the achievement of tobacco control and health protection objectives.

(17) As regards products other than cigarettes, a harmonised incidence of tax should be established for all products belonging to the same group of manufactured tobacco. The setting of an overall minimum excise duty expressed as a percentage, as an amount per kilogram or for a given number of items is the most appropriate for the functioning of the internal market.

(18) As regards fine-cut tobacco intended for the rolling of cigarettes, a Union price related minimum requirement should be expressed in such a way as to obtain effects similar to those in the field of cigarettes and should take the weighted average retail selling price as the point of reference.

(19) It is necessary to bring the minimum levels for fine-cut tobacco intended for the rolling of cigarettes closer to the minimum levels applicable to cigarettes, so as to better take account of the degree of competition existing between the two products, reflected in consumption patterns observed, as well as their equally harmful character.

(20) Portugal should be granted the possibility of applying a reduced rate for cigarettes made by small-scale producers and consumed in the most remote regions of the Azores and Madeira.

(21) Transitional periods should allow Member States to adapt smoothly to the levels of the overall excise duty, thus limiting possible side effects.

(22) In order to prevent damage to Corsica's economic and social equilibrium, it is both essential and justifiable to provide for a derogation, until 31 December 2015, by which France may apply a rate of excise duty that is lower than the national rate to cigarettes and other manufactured tobaccos released for consumption in Corsica. By that date, the tax rules for manufactured tobaccos released for consumption there should be brought fully into line with the rules for mainland France. Nevertheless, too abrupt a change should be avoided and there should therefore be a stepwise increase in the excise duty currently levied on cigarettes and fine-cut tobacco intended for the rolling of cigarettes in Corsica.

(23) A majority of Member States grant exemptions from excise duty or make refunds of excise duty in respect of certain types of manufactured tobacco depending on the use which is made of them, and the exemptions or refunds for particular uses need to be specified in this Directive.

(24) A procedure should be provided for to enable the rates or amounts laid down in this Directive to be reviewed periodically on the basis of a Commission report taking account of all the appropriate factors.

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

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

SUBJECT MATTER

Article 1

This Directive lays down general principles for the harmonisation of the structure and rates of the excise duty to which the Member States subject manufactured tobacco.

CHAPTER 2

DEFINITIONS

Article 2

1. For the purposes of this Directive manufactured tobacco shall mean:

(a) cigarettes;

(b) cigars and cigarillos;

(c) smoking tobacco:

(i) fine-cut tobacco for the rolling of cigarettes;

(ii) other smoking tobacco.

2. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in Article 3 or Article 5(1) shall be treated as cigarettes and smoking tobacco.

Notwithstanding the first subparagraph, products containing no tobacco and used exclusively for medical purposes shall not be treated as manufactured tobacco.

3. Notwithstanding existing Union provisions, the definitions referred to in paragraph 2 of this Article and Articles 3, 4 and 5 shall be without prejudice to the choice of system or the level of taxation which shall apply to the different groups of products referred to in these Articles.

Article 3

1. For the purposes of this Directive cigarettes shall mean:

(a) rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos within the meaning of Article 4(1);

(b) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette-paper tubes;

(c) rolls of tobacco which, by simple non-industrial handling, are wrapped in cigarette paper.

2. A roll of tobacco referred to in paragraph 1 shall, for excise duty purposes, be considered as two cigarettes where, excluding filter or mouthpiece, it is longer than 8 cm but not longer than 11 cm, as three cigarettes where, excluding filter or mouthpiece, it is longer than 11 cm but not longer than 14 cm, and so on.

Article 4

1. For the purposes of this Directive the following shall be deemed to be cigars or cigarillos if they can be and, given their properties and normal consumer expectations, are exclusively intended to be smoked as they are:

(a) rolls of tobacco with an outer wrapper of natural tobacco;

(b) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including, where appropriate, the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouthpiece, is not less than 2,3 g and not more than 10 g, and the circumference over at least one third of the length is not less than 34 mm.

2. By way of derogation from paragraph 1, the following subparagraph may continue to be applied by Germany and Hungary until 31 December 2014.

The following shall be deemed to be cigars or cigarillos if they can be smoked as they are:

(a) rolls of tobacco made entirely of natural tobacco;

(b) rolls of tobacco with an outer wrapper of natural tobacco;

(c) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar covering the product in full, including, where appropriate, the filter but not, in the case of tipped cigars, the tip, and a binder, both being of reconstituted tobacco, where the unit weight, not including filter or mouthpiece, is not less than 1,2 g and where the wrapper is fitted in spiral form with an acute angle of at least 30° to the longitudinal axis of the cigar;

(d) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including where appropriate the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouth-piece, is not less than 2,3 g and the circumference over at least one third of the length is not less than 34 mm.

3. Products which consist in part of substances other than tobacco but otherwise fulfil the criteria set out in paragraph 1 shall be treated as cigars and cigarillos.

Article 5

1. For the purposes of this Directive smoking tobacco shall mean:

(a) tobacco which has been cut or otherwise split, twisted or pressed into blocks and is capable of being smoked without further industrial processing;

(b) tobacco refuse put up for retail sale which does not fall under Article 3 and Article 4(1) and which can be smoked. For the purpose of this Article, tobacco refuse shall be deemed to be remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products.

2. Smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of less than 1,5 millimetre shall be deemed to be fine-cut tobacco for the rolling of cigarettes.

Member States may also deem smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of 1,5 millimetre or more and which was sold or intended to be sold for the rolling of cigarettes to be fine-cut tobacco for the rolling of cigarettes.

Article 6

A natural or legal person established in the Union who converts tobacco into manufactured products prepared for retail sale shall be deemed to be a manufacturer.

CHAPTER 3

PROVISIONS APPLICABLE TO CIGARETTES

Article 7

1. Cigarettes manufactured in the Union and those imported from third countries shall be subject to an *ad valorem* excise duty calculated on the maximum retail selling price, including customs duties, and also to a specific excise duty calculated per unit of the product.

Notwithstanding the first subparagraph, Member States may exclude customs duties from the basis for calculating the *ad valorem* excise duty on cigarettes.

2. The rate of the *ad valorem* excise duty and the amount of the specific excise duty must be the same for all cigarettes.

3. At the final stage of harmonisation of structures, the same ratio shall be established for cigarettes in all Member States between the specific excise duty and the sum of the *ad valorem* excise duty and the turnover tax, in such a way that the range of retail selling prices reflects fairly the difference in the manufacturers' delivery prices.

4. Where necessary, the excise duty on cigarettes may include a minimum tax component, provided that the mixed structure of taxation and the band of the specific component of the excise duty as laid down in Article 8 is strictly respected.

Article 8

1. The percentage of the specific component of excise duty in the amount of the total tax burden on cigarettes shall be established by reference to the weighted average retail selling price.

2. The weighted average retail selling price shall be calculated by reference to the total value of all cigarettes released for consumption, based on the retail selling price including all taxes, divided by the total quantity of cigarettes released for consumption. It shall be determined by 1 March at the latest of each year on the basis of data relating to all such releases for consumption made in the preceding calendar year.

3. Until 31 December 2013, the specific component of the excise duty shall not be less than 5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

(a) specific excise duty;

(b) the *ad valorem* excise duty and the value added tax (VAT) levied on the weighted average retail selling price.

4. From 1 January 2014, the specific component of the excise duty on cigarettes shall not be less than 7,5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

(a) specific excise duty;

(b) the *ad valorem* excise duty and the VAT levied on the weighted average retail selling price.

5. By way of derogation from paragraphs 3 and 4, where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the specific component of the excise duty, expressed as a percentage of the total tax burden, below the percentage of 5 % or 7,5 %, whichever is applicable, or above the percentage of 76,5 % of the total tax burden, the Member State concerned may refrain from adjusting the amount of the specific excise duty until 1 January of the second year following that in which the change occurs.

6. Subject to paragraphs 3, 4 and 5 of this Article and the second subparagraph of Article 7(1), Member States may levy a minimum excise duty on cigarettes.

Article 9

1. Member States shall apply to cigarettes minimum consumption taxes in accordance with the rules provided for in this Chapter.

2. Paragraph 1 shall apply to the taxes which, pursuant to this Chapter, are levied on cigarettes and which comprise:

(a) a specific excise duty per unit of the product;

(b) an *ad valorem* excise duty calculated on the basis of the maximum retail selling price;

(c) a VAT proportional to the retail selling price.

Article 10

1. The overall excise duty (specific duty and *ad valorem* duty excluding VAT) on cigarettes shall represent at least 57 % of the weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than EUR 64 per 1 000 cigarettes irrespective of the weighted average retail selling price.

However, Member States which levy an excise duty of at least EUR 101 per 1 000 cigarettes on the basis of the weighted average retail selling price need not to comply with the 57 % requirement set out in the first subparagraph.

2. From 1 January 2014, the overall excise duty on cigarettes shall represent at least 60 % of the weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than EUR 90 per 1 000 cigarettes irrespective of the weighted average retail selling price.

However, Member States which levy an excise duty of at least EUR 115 per 1 000 cigarettes on the basis of the weighted average retail selling price need not to comply with the 60 % requirement set out in the first subparagraph.

Bulgaria, Estonia, Greece, Latvia, Lithuania, Hungary, Poland and Romania shall be allowed a transitional period until 31 December 2017 in order to reach the requirements laid down in the first and second subparagraphs.

3. Member States shall gradually increase excise duties in order to reach the requirements referred to in paragraph 2 on the dates set therein.

Article 11

1. Where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the overall excise duty below the levels specified in the first sentence of paragraph 1 and in the first sentence of paragraph 2 of Article 10 respectively, the Member State concerned may refrain from adjusting that duty until 1 January of the second year following that in which the change occurs.

2. Where a Member State increases the rate of VAT on cigarettes, it may reduce the overall excise duty up to an amount which, expressed as a percentage of the weighted average retail selling price, is equal to the increase in the rate of VAT, also expressed as a percentage of the weighted average retail selling price, even if such an adjustment has the effect of reducing the overall excise duty to below the levels, expressed as a percentage of the weighted average retail selling price, laid down in the first sentence of paragraph 1 and in the first sentence of paragraph 2 of Article 10 respectively.

However, the Member State shall raise that duty again so as to reach at least those levels by 1 January of the second year after that in which the reduction took place.

Article 12

1. Portugal may apply a reduced rate of up to 50 % less than that laid down in Article 10 to cigarettes consumed in the most remote regions of the Azores and Madeira, made by small-scale manufacturers each of whose annual production does not exceed 500 tonnes.

2. By way of derogation from Article 10, France may continue to apply for the period from 1 January 2010 to 31 December 2015 a reduced rate of excise duty to cigarettes released for consumption in the departments of Corsica up to an annual quota of 1 200 tonnes. The reduced rate shall be:

(a) until 31 December 2012, at least 44 % of the price for cigarettes in the price category most in demand in those departments;

(b) from 1 January 2013, at least 50 % of the weighted average retail selling price of cigarettes released for consumption; the excise duty shall not be less than EUR 88 per 1 000 cigarettes irrespective of the weighted average retail selling price;

(c) from 1 January 2015, at least 57 % of the weighted average retail selling price of cigarettes released for consumption; the excise duty shall not be less than EUR 90 per 1 000 cigarettes irrespective of the weighted average retail selling price.

CHAPTER 4

PROVISIONS APPLICABLE TO MANUFACTURED TOBACCO OTHER THAN CIGARETTES

Article 13

The following groups of manufactured tobacco produced in the Union and imported from third countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 14:

(a) cigars and cigarillos;

(b) fine-cut tobacco intended for the rolling of cigarettes;

(c) other smoking tobaccos.

Article 14

1. Member States shall apply an excise duty which may be:

(a) either an *ad valorem* duty calculated on the basis of the maximum retail selling price of each product, freely determined by manufacturers established in the Union and by importers from third countries in accordance with Article 15; or

(b) a specific duty expressed as an amount per kilogram, or in the case of cigars and cigarillos, alternatively for a given number of items; or

(c) a mixture of both, combining an *ad valorem* element and a specific element.

In cases where excise duty is either *ad valorem* or mixed, Member States may establish a minimum amount of excise duty.

2. The overall excise duty (specific duty and/or *ad valorem* duty excluding VAT), expressed as a percentage, as an amount per kilogram or for a given number of items, shall be at least equivalent to the rates or minimum amounts laid down for:

(a) cigars or cigarillos: 5 % of the retail selling price inclusive of all taxes or EUR 12 per 1 000 items or per kilogram;

(b) fine-cut smoking tobacco intended for the rolling of cigarettes: 40 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or EUR 40 per kilogram;

(c) other smoking tobaccos: 20 % of the retail selling price inclusive of all taxes, or EUR 22 per kilogram.

From 1 January 2013, the overall excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 43 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 47 per kilogram.

From 1 January 2015 the overall excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 46 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 54 per kilogram.

From 1 January 2018, the overall excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 48 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 60 per kilogram.

From 1 January 2020, the overall excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 50 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 60 per kilogram.

The weighted average retail selling price shall be calculated by reference to the total value of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, based on retail selling price including all taxes, divided by the total quantity of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption. It shall be determined by 1 March at the latest of each year on the basis of data relating to all such releases for consumption made in the preceding calendar year.

3. The rates or amounts referred to in paragraphs 1 and 2 shall be effective for all products belonging to the group of manufactured tobaccos concerned, without distinction within each group as to quality, presentation, origin of the products, the materials used, the characteristics of the firms involved or any other criterion.

4. By way of derogation from paragraphs 1 and 2, France may continue to apply, for the period from 1 January 2010 to 31 December 2015, a reduced rate of excise duty to manufactured tobacco other than cigarettes released for consumption in the departments of Corsica. The reduced rate shall be:

(a) for cigars and cigarillos:

at least 10 % of the retail selling price, inclusive of all taxes;

(b) for fine-cut smoking tobacco intended for the rolling of cigarettes:

(i) until 31 December 2012, at least 27 % of the retail selling price, inclusive of all taxes;

(ii) from 1 January 2013, at least 30 % of the retail selling price, inclusive of all taxes;

(iii) from 1 January 2015, at least 35 % of the retail selling price, inclusive of all taxes;

(c) for other smoking tobacco:

at least 22 % of the retail selling price, inclusive of all taxes.

CHAPTER 5

DETERMINATION OF THE MAXIMUM RETAIL SELLING PRICE OF MANUFACTURED TOBACCO, COLLECTION OF EXCISE DUTY, EXEMPTIONS AND REFUNDS

Article 15

1. Manufacturers or, where appropriate, their representatives or authorised agents in the Union, and importers of tobacco from third countries shall be free to determine the maximum retail selling price for each of their products for each Member State for which the products in question are to be released for consumption.

The first subparagraph may not, however, hinder implementation of national systems of legislation regarding the control of price levels or the observance of imposed prices, provided that they are compatible with Union legislation.

2. In order to facilitate the levying of the excise duty, Member States may, for each group of manufactured tobacco, fix a scale of retail selling prices on condition that each scale has sufficient scope and variety to correspond in fact with the variety of products originating in the Union.

Each scale shall be valid for all the products belonging to the group of manufactured tobacco which it concerns, without distinction on the basis of quality, presentation, the origin of the products or of the materials used, the characteristics of the undertakings or of any other criterion.

Article 16

1. At the final stage of harmonisation of the excise duty, at the latest the rules for collecting the excise duty shall be harmonised. During the preceding stage, the excise duty shall, in principle, be collected by means of tax stamps. If they collect the excise duty by means of tax stamps, Member States shall be obliged to make these stamps available to manufacturers and dealers in other Member States. If they collect the excise duty by other means, Member States shall ensure that no obstacle, either administrative or technical, affects trade between Member States on that account.

2. Importers and Union manufacturers of manufactured tobacco shall be subject to the system set out in paragraph 1 as regards the detailed rules for levying and paying the excise duty.

Article 17

The following may be exempted from excise duty or excise duty already paid on them may be refunded:

(a) denatured manufactured tobacco used for industrial or horticultural purposes;

(b) manufactured tobacco which is destroyed under administrative supervision;

(c) manufactured tobacco which is solely intended for scientific tests and for tests connected with product quality;

(d) manufactured tobacco which is reworked by the producer.

Member States shall determine the conditions and formalities to which the abovementioned exemptions or refunds are subject.

CHAPTER 6

FINAL PROVISIONS

Article 18

1. The Commission shall publish once a year the value of the euro in national currencies to be applied to the amounts of the overall excise duty.

The exchange rates to be applied shall be those obtained on the first working day of October and published in the *Official Journal of the European Union* and shall apply from 1 January of the following calendar year.

2. Member States may maintain the amounts of the excise duties in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the excise duties expressed in euro would result in an increase of less than 5 % or less than EUR 5, whichever is the lower amount, in the excise duty expressed in national currency.

Article 19

1. Every four years, the Commission shall submit to the Council a report and, where appropriate, a proposal concerning the rates and the structure of excise duty laid down in this Directive.

The report by the Commission shall take into account the proper functioning of the internal market, the real value of the rates of excise duty and the wider objectives of the Treaty.

2. The report referred to in paragraph 1 shall be based in particular on the information provided by the Member States.

3. The Commission shall, in accordance with the procedure referred to in Article 43 of Council Directive 2008/118/EC [1], determine a list of statistical data needed for the report, excluding data relating to individual natural persons or legal entities. Apart from data readily available to Member States, the list shall only contain data the collection and assembly of which does not involve a disproportionate administrative burden on the part of the Member States.

4. The Commission shall not publish or otherwise divulge data where it would lead to the disclosure of a commercial, industrial or professional secret.

Article 20

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

Article 21

Directives 92/79/EEC, 92/80/EEC and 95/59/EC, as amended by the Directives listed in Annex I, Part A, are repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B.

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

Article 22

This Directive shall enter into force on 1 January 2011.

Article 23

This Directive is addressed to the Member States.

Done at Luxembourg, 21 June 2011.

For the Council
The President
FAZEKAS S.

[1] OJ L 9, 14.1.2009, p. 12.

ANNEX I

PART A

Repealed Directives with list of their successive amendments

(referred to in Article 21)

Council Directive 92/79/EEC (OJ L 316, 31.10.1992, p. 8)	
Council Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47)	only Article 1
Council Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26)	only Article 1
Council Directive 2003/117/EC (OJ L 333, 20.12.2003, p. 49)	only Article 1
Council Directive 2010/12/EU (OJ L 50, 27.2.2010, p. 1)	only Article 1
Council Directive 92/80/EEC (OJ L 316, 31.10.1992, p. 10)	
Council Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47)	only Article 2
Council Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26)	only Article 2
Council Directive 2003/117/EC (OJ L 333, 20.12.2003, p. 49)	only Article 2
Council Directive 2010/12/EU (OJ L 50, 27.2.2010, p. 1)	only Article 2
Council Directive 95/59/EC (OJ L 291, 6.12.1995, p. 40)	
Council Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47)	only Article 3
Council Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26)	only Article 3
Council Directive 2010/12/EU (OJ L 50, 27.2.2010, p. 1)	only Article 3

PART B

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

(referred to in Article 21)

Directive	Time-limit for transposition	Date of application
92/79/EEC	31 December 1992	—
92/80/EEC	31 December 1992	—
95/59/EC	—	—
1999/81/EC	1 January 1999	1 January 1999
2002/10/EC	1 July 2002 [1]	—
2003/117/EC	1 January 2004	—
2010/12/EU	31 December 2010	1 January 2011

[1] By way of derogation from the date set in Article 4(1) of Directive 2002/10/EC:
(a) the Federal Republic of Germany shall be authorised to bring into force the provisions necessary to comply with Article 3(1) of Directive 2002/10/EC by 1 January 2008 at the latest;
(b) the Kingdom of Spain and the Hellenic Republic shall be authorised to bring into force the provisions necessary to comply with Article 1(1) of Directive 2002/10/EC (with regard to Article 2(1), second sentence, of Directive 92/79/EEC) by 1 January 2008 at the latest.

ANNEX II

Correlation table

Directive 92/79/EEC	Directive 92/80/EEC	Directive 95/59/EC	This Directive
—	—	Article 1(1) and (2)	Article 1
—	—	Article 1(3)	—
—	—	Article 2(1), introductory phrase	Article 2(1), introductory phrase
—	—	Article 2(1)(a) and (b)	Article 2(1)(a) and (b)
—	—	Article 2(1)(c), first indent	Article 2(1)(c)(i)
—	—	Article 2(1)(c), second indent	Article 2(1)(c)(ii)
—	—	Article 2(1), final words	—
—	—	Article 2(2)	—
—	—	Article 7(2)	Article 2(2)
—	—	Article 2(3)	Article 2(3)
—	—	Article 4(1), first subparagraph	Article 3(1)
—	—	Article 4(1), second subparagraph	—
—	—	Article 4(2)	Article 3(2)
—	—	Article 3(1)	Article 4(1)
—	—	Article 3(2)	Article 4(2)
—	—	Article 7(1)	Article 4(3)
—	—	Article 5, introductory phrase	Article 5(1), introductory phrase
—	—	Article 5(1)	Article 5(1)(a)
—	—	Article 5(2)	Article 5(1)(b)
—	—	Article 6, first paragraph	Article 5(2), first subparagraph
—	—	Article 6, second paragraph	Article 5(2), second subparagraph
—	—	Article 9(1), first subparagraph	Article 6
—	—	Article 8(1)	Article 7(1), first subparagraph
—	—	Article 16(6)	Article 7(1), second subparagraph
—	—	Article 8(2), (3) and (4)	Article 7(2), (3) and (4)

Directive 92/79/EEC	Directive 92/80/EEC	Directive 95/59/EC	This Directive
—	—	Article 16(1) to (5)	Article 8(1) to (5)
—	—	Article 16(7)	Article 8(6)
Article 1	—	—	Article 9
Article 2(1) and (2)	—	—	Article 10(1) and (2)
Article 2(3)	—	—	—
Article 2(4)	—	—	Article 10(3)
Article 2*a*	—	—	Article 11
Article 3(1)	—	—	—
Article 3(2)	—	—	Article 12(1)
Article 3(3)	—	—	—
Article 3(4)	—	—	Article 12(2)
—	Article 1	—	Article 13
—	Article 2	—	—
—	Article 3(1), first and second subparagraph	—	Article 14(1)
—	Article 3(1), third subparagraph, introductory sentence	—	Article 14(2), first subparagraph, introductory sentence
—	Article 3(1), third subparagraph, first, second and third indent	—	—
—	Article 3(1), fourth and fifth subparagraph	—	—
—	Article 3(1), sixth subparagraph, introductory sentence	—	—
—	Article 3(1), sixth subparagraph, points (a), (b) and (c)	—	Article 14(2), first subparagraph, points (a), (b) and (c)
—	Article 3(1), seventh subparagraph	—	—
—	Article 3(1), eighth subparagraph	—	—
—	Article 3(1), ninth subparagraph	—	Article 14(2), second subparagraph
—	Article 3(1), tenth subparagraph	—	Article 14(2), third subparagraph
—	Article 3(1), eleventh subparagraph	—	Article 14(2), fourth subparagraph
—	Article 3(1), twelfth subparagraph	—	Article 14(2), fifth subparagraph

Directive 92/79/EEC	Directive 92/80/EEC	Directive 95/59/EC	This Directive
—	Article 3(1), thirteenth subparagraph	—	Article 14(2), sixth subparagraph
—	Article 3(1), fourteenth subparagraph	—	—
—	Article 3(2)	—	Article 14(3)
—	Article 3(3)	—	—
—	Article 3(4)	—	Article 14(4)
—	—	Article 9(1), second subparagraph	Article 15(1), first subparagraph
—	—	Article 9(1), third subparagraph	Article 15(1), second subparagraph
—	—	Article 9(2), first sentence	Article 15(2), first subparagraph
—	—	Article 9(2), second sentence	Article 15(2), second subparagraph
—	—	Article 10	Article 16
—	—	Article 11	Article 17
—	—	Article 12	—
—	—	Article 13	—
—	—	Article 14	—
—	—	Article 15	—
Article 2(5)	Article 5(1)	—	Article 18(1)
Article 2(6)	Article 5(2)	—	Article 18(2)
Article 4	Article 4	—	Article 19
Article 5(1)	Article 6(1)	—	—
Article 5(2)	Article 6(2)	Article 18	Article 20
—	—	Article 19(1)	Article 21, first paragraph
—	—	Article 19(2)	Article 21, second paragraph
—	—	Article 20	Article 22
Article 6	Article 7	Article 21	Article 23
—	—	Annex I	—
—	—	Annex II	—
—	—	—	Annex I
—	—	—	Annex II

DECISIONS

COMMISSION DECISION

of 8 March 2011

on measure C 18/10 (ex NN 20/10) implemented by the French Republic for aeronautic suppliers ('the Aero 2008 guarantee')

(notified under document C(2011) 1378)

(Only the French text is authentic)

(Text with EEA relevance)

(2011/393/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1],

Whereas:

I. PROCEDURE

(1) On 17 October 2008, the Commission of its own motion initiated the procedure in respect of the exchange rate guarantee granted by Coface to aeronautic suppliers ('the measure' or 'the Aero 2008 guarantee') (CP 294/08).

(2) Requests for information were sent to the French Republic on 4 November 2008, 15 May 2009 and 30 September 2009. The French Republic replied on 8 December 2008, 18 June 2009 and 30 October 2009 respectively. The replies were registered on those same days.

(3) A meeting between the Commission's services and the authorities of the French Republic took place on 17 December 2009. Following that meeting, the French Republic notified additional information on 22 February 2010.

(4) By letter of 20 July 2010, the Commission informed the French Republic that it had decided to initiate the procedure laid down in Article 108(2) TFEU in respect of the measure.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission called on interested parties to submit their comments on the measure in question.

(6) The Commission did not receive any comments from interested parties.

(7) On 20 September 2010, the French Republic sent its observations to the Commission.

(8) By letter of 15 November 2010, the Commission asked the French Republic for additional information. The French Republic replied by letter of 15 December 2010, registered on the same day by the Commission's services.

(9) The French Republic sent additional information by letter of 31 January 2011, registered on the same day by the Commission's services.

II. DESCRIPTION OF THE MEASURE

II.1. Legal basis

(10) The authorities of the French Republic submitted that the legal basis of the measure was Articles L 432-1, L 432-2, R 442-1 and R442-8-4 of the Insurance Code.

II.2. Beneficiaries

(11) The potential beneficiaries of the measure are aeronautic suppliers at Tier 2 or below [3].

[1] OJ C 268, 2.10.2010, p. 4.

[2] See footnote 1.

[3] This measure does not therefore concern Tier 1 and Super Tier 1, which are partners sharing the risk with aircraft manufacturers.

(12) There is no limit on the size of the beneficiaries. Suppliers in which an aircraft manufacturer holds more than a 25 % stake are not eligible.

(13) Firms in difficulty do not have access to the measure at issue.

(14) Suppliers operating in France, including those that have an establishment or their headquarters in France and supply aircraft manufacturers outside France, may be eligible for the measure. On the other hand, suppliers that do not have an establishment in France and supply an aircraft manufacturer established in a country other than France are not covered.

(15) According to information provided by France, the undertakings which have benefited from this provision to date are AD Industrie, Aerofonctions, Axon Cable and Exameca. These are aeronautic suppliers established in France to which Coface granted an exchange rate guarantee at the end of 2008.

II.3. **Economic background**

(16) According to France, aircraft manufacturers have increasingly required their suppliers to submit bids in dollars (USD). In the event of a weak dollar, medium-term or long-term supply contracts of this kind pose problems for both French and non-French suppliers who have their main cost base in the euro zone.

(17) France has explained that some aeronautic undertakings face difficulties in obtaining a EUR/USD exchange rate guarantee which meets their needs. Although exchange rate hedging products are common on the financial markets, the specific characteristics of the guarantees offered are not always adapted to the specific needs of undertakings. In particular, according to the French authorities, more often than not the banks offer hedging against fluctuations between EUR and USD for a maximum period of 2 years.

II.4. **Description of the measure**

(18) The Aero 2008 guarantee is a hedging mechanism against the risk of fluctuation in the USD-EUR exchange rate. Aeronautic suppliers which have entered into supply contracts denominated in dollars gain if the dollar is strong but suffer loss if it is weak. The guarantee enables them to insure against loss suffered as a result of a weak dollar while, to a certain extent, making gains if the dollar is strong.

(19) The measure at issue is administered by Coface. Coface is one of the principal French export credit insurance companies. It has belonged to the Natixis Group since 2002. Natixis is a subsidiary of the BPCE Group which arose from the 2009 merger of the Banque Populaire and the Caisse d'Epargne.

(20) The total volume to be financed is limited to the exchange rate risk in respect of supplies totalling EUR 500 million. The amounts actually covered to date represent only a small proportion (approximately EUR 10 million) of the maximum. The undertakings concerned may apply for the guarantee until 15 December 2012.

(21) Any aeronautic supplier interested in the Aero 2008 guarantee must apply for the exchange rate guarantee and prove that it relates to supplies invoiced in dollars. It will then receive an offer from Coface covering an amount of turnover in dollars and a 'guaranteed' exchange rate in relation to the dollar. The *Commission des garanties* determines those two conditions, taking into account the initial application lodged by the supplier. The amounts covered are limited to a proportion of all the dollar contracts entered into by the insured undertaking. The offer covers a maximum period of 5 years. The supplier may accept or refuse Coface's offer. The amount of turnover guaranteed cannot be amended after Coface gives its approval formalising the issue of the guarantee.

(22) If the dollar is weak in relation to the guaranteed rate, the undertakings which have taken out the guarantee will be refunded 100 % of the exchange rate loss. If the dollar is strong, the undertakings must repay a share of the gain to Coface. The insured undertaking can choose to receive 25 % or 50 % of the rise in the dollar when the rate is adjusted. The compensation which the undertaking must pay to Coface is then calculated using the adjusted rate. There are two variants of this profit-sharing payment:

— Variant 1: the adjusted rate is equal to the initial guaranteed rate less the difference between that initial rate and the exchange rate on the day the payment is booked (as given by the daily reference rate fixed by the ECB) subject to the guaranteed sharing percentage.

— Variant 2: as for Variant 1, but with a ceiling of 15 cents on the sharing payment (that is to say, the difference between the initial guaranteed rate and the exchange rate on the day the payment is booked),

(23) The amount which suppliers with an exchange rate guarantee have to pay will be less in the case of a strong dollar than the amount they receive if the dollar is comparably weak. Sharing the gain gives suppliers the opportunity to take advantage of a strong dollar to a certain extent. Waiving a part of the gain from a strong dollar allows in return a reduction in the cost of the premium necessary to cover them if the dollar is weak.

(24) The premiums which suppliers must pay in order to obtain the Aero 2008 guarantee are determined and invoiced upon subscription. Insured undertakings may opt for immediate payment or staggered payments. Suppliers who choose the latter option must pay 25 % of the premium when concluding the contract and the balance in respect of each year covered on 31 January of the year in question. In this case, a rate equivalent to the EURIBOR 12-month rate plus 60 base points is invoiced to cover the credit risk on the payment of the premium ([4]). Two of the four undertakings which took out the guarantee chose staggered payments: AD Industrie and Exameca.

(25) The suppliers must provide invoices as proof of the amounts paid in dollars.

(26) According to the French authorities, all the transactions carried out by Coface under Aero 2008 are on behalf of the French State. For those transactions, Coface uses a special bank account of the French State. Although the French State is the holder of the account, Coface has access to it for financial transactions such as the purchase of options. The premiums paid by the beneficiaries are transferred directly to this account. This means that Coface as such does not bear any risk since it administers the measure on behalf of the French State. It is the French State which, in this case, bears the financial risk of the measure.

(27) The premiums Coface charges are calculated on a case-by-case basis. According to France, they reflect the market prices for the underlying exchange rate risk instruments. The financial instruments bought by Coface in the name and on behalf of the French State cover all of its own exchange rate risk for the whole duration of the guarantee at the time the guarantee is offered to the supplier.

(28) If the dollar is strong, the supplier must reimburse Coface the amount resulting from the difference between the guaranteed rate and the reference rate on the date of payment. If the insured undertaking defaults, Coface will be required to fulfil its contractual obligation to honour the guarantee on behalf of the State. A third party who has bought the promise of payment in the event of a strong dollar will receive a payment from the bank account of the French State, which runs the risk of not being reimbursed at all or of not being reimbursed in full by the defaulting supplier.

(29) If the suppliers stagger a part of the payment of the premium, the French State also runs the risk of suffering a loss if the outstanding amount of premiums is not paid during the year covered.

(30) The measure was launched in the autumn of 2008. Eleven undertakings applied to Coface for a formal offer, which four of them accepted; two of them then revised downwards the amount initially requested. All those offers were accepted in November and December 2008. According to the information provided by the French authorities, no offers were accepted in 2009 or 2010.

(31) Two of the four guarantees apply until the end of 2013 (that is, for 5 years), one expired in 2010 (after 2 years) and one expired in 2009 (after 1 year). The guarantees which last until 2013 relate to annual batches of deliveries. The total value of supplies concerned is close to USD 19 million. Since some suppliers chose to cover only a part of their deliveries, the guarantees relate to some USD 12 million. Three of the four suppliers obtained cover for supplies of less than USD 2,8 million each. Axon Cable retains a 25 % 'share' of the gain if the dollar is strong, while the other suppliers retain 50 % of the gain.

(32) The table below was made available by France at the meeting held in December 2009. It summarises the suppliers involved, the guarantees granted each year and the annual guaranteed exchange rate. AD Industrie and Axon Cable did not accept the total amount offered by Coface.

	AD Industrie	Aerofonctions	Axon Cable	Exameca
2009	—	USD 0,264 million/[…] (*)	USD 0,256 million/[…]	—
2010	USD 2 million/[…]	—	USD 0,384 million/[…]	USD 2,712 million/[…]
2011	USD 2 million/[…]	—	USD 0,205 million/[…]	—
2012	USD 2 million/[…]	—	USD 0,511 million/[…]	—
2013	USD 2 million/[…]	—	USD 0,511 million/[…]	—
TOTAL	USD 8 million	USD 0,264 million	USD 1,866 million	USD 2,712 million

([4]) This information was supplied by France in its observations of 20 September 2010.

	AD Industrie	Aerofonctions	Axon Cable	Exameca
Maximum amount offered by Coface	USD 12,7 million	USD 0,264 million	USD 3,74 million	USD 2,712 million
Premiums	2,54 %	2,48 %	1,35 %	2,55 %
Interest	50 %	50 %	25 %	50 %

(*) Business secret.

II.5. **Summary of concerns which led to the opening of the formal investigation procedure**

(33) The reasons for the decision to initiate the procedure laid down in Article 108(2) TFEU was that there was uncertainty as to whether State aid was absent and as to whether or not the aid examined was compatible with the rules on State aid.

(34) First, the Commission had concerns as to whether the premiums paid by the beneficiary undertakings are consistent with market prices. Specifically, the Commission took the view that the French authorities had not shown that the premiums paid covered the following factors: the administrative costs of Coface for administering the guarantee, the risk of default by suppliers, the credit risk in respect of staggered payment of premiums and a profit margin. The possibility therefore remained that there was a selective economic advantage for suppliers which took out the guarantee. Given that the French State could be considered to be responsible for the Aero 2008 guarantee, it was possible that the measure may constitute State aid within the meaning of Article 107(1) TFEU.

(35) Secondly, the Commission was uncertain as to whether there was market failure in respect of hedging instruments against short-term and longer-term EUR/USD exchange rate fluctuations as regards SMES and large enterprises.

(36) Thirdly, the Commission was uncertain as to whether the measure had an incentive effect, since the suppliers were able to obtain the exchange rate guarantee even if their application was made after the date when the contract was signed.

(37) Fourthly, the Commission was uncertain as regards the proportionality of the measure, which is not limited to undertakings that are known to have difficulties in obtaining exchange rate guarantees from their banks.

(38) Fifthly, the Commission had concerns as to whether the potential positive impact of that aid could outweigh its negative impact, so as not to distort trading conditions to an extent contrary to the common interest.

III. **OBSERVATIONS SUBMITTED BY INTERESTED PARTIES**

(39) The Commission did not receive any comments from interested parties.

IV. **COMMENTS OF THE FRENCH REPUBLIC**

(40) France considers that the premiums invoiced under Aero 2008 reflect the market value of the exchange rate insurance granted and that the measure in question does not therefore constitute State aid within the meaning of Article 107(1) TFEU.

(41) The French authorities sent the Commission a detailed description of the methodology used to determine the amounts of the premiums invoiced under Aero 2008.

(42) France submitted information proving the exact market value of the financial products required to set up the guarantee. The guarantee is subdivided into financial instruments which in combination show its payment profile: forward purchases in EUR/USD, purchases and sales of options in EUR/USD.

(43) The market value of those financial instruments is calculated on the basis of data from Bloomberg software, one of the market leaders in financial information. France provided extracts from the Bloomberg software for all of the financial instruments making up the guarantees granted to the four suppliers which took out the Aero 2008 guarantee.

(44) The market values thus established include a profit margin for the financial institutions from which Coface buys those instruments. According to information provided by France, the exchange rate risk products offered by the banks do not in general include the payment of a premium since the banking sector earns money on the guaranteed rates and the option prices. The margins in question are in incorporated by design in the prices of the financial products making up the guarantee offered to the suppliers and are therefore covered by the premiums invoiced by Coface. Moreover, the guaranteed forward rate chosen is always higher than the forward rate for the year in which the rate is fixed by Coface.

(45) In order to cover the additional administrative costs related to the handling of the measure by Coface, a margin of 40 base points is included in the amount of the premium. That margin represents between 17 % and 32 % ([5]) of the total value of the premiums invoiced to the four undertakings which took out the Aero 2008 guarantee.

(46) The French authorities have also given a detailed explanation of how the risk of default by the supplier is taken into account in calculating the premiums invoiced. As described in recital 28, in the event of a strong dollar, the default of the supplier may lead to financial loss for the French State.

(47) The risk of default by the supplier is determined by Coface on the basis of the *Score@rating* rating system of French undertakings launched by Coface in 2002 which is based on its 20 years of experience in rating businesses. With its *Score@rating*, Coface obtained the status of External Credit Assessment Institution (ECAI) from the *Commission bancaire* for its rating activities in France. That approval was granted in accordance with the Basel II rules. The following table gives the equivalences between different recognised rating systems ([6]).

ECAI		Coface	Banque de France	Fitch	Moody's	S & P	Risk Weight
Basel mapping	1	10 to 9	3++ to 3+	AAA to AA-	Aaa to Aa3	AAA to AA-	20 %
	2	8	3	A+ to A-	A1 to A3	A+ to A-	50 %
—	3	7 to 6	4+	BBB+ to BBB-	Baa1 to Baa3	BBB+ to BBB-	100 %
Evaluation of long-term risk	4	5 to 4	4 to 5+	BB+ to BB-	Ba1 to Ba3	BB+ to BB-	100 %
	5	3	5 to 6	B+ to B-	B1 to B3	B+ to B-	150 %
	6	2 to 1	8 to 9	CCC+ and below	Caa1 and below	CCC+ and below	150 %

(48) *Score@rating* is a risk rating which divides probability of default into phases. The risk analysed is default by the undertaking under the terms of the law, or a failure to pay of equivalent seriousness. Each rating, measured on a scale of 1 to 10, corresponds to an average annual default rate. The table below shows the annual default rate corresponding to different *Score@rating* ratings ([7]):

	Very high risk			Average risk		Low risk				
Score@rating	1	2	3	4	5	6	7	8	9	10
Annual default rate	25 %	10 %	4 %	2 %	1,3 %	0,7 %	0,4 %	0,15 %	0,05 %	0 %

(49) In order to deal with the risk of default by the insured undertaking in the event of a strong dollar, Coface must be covered for the probability of default by financial instruments ([8]). The Bloomberg software can calculate the price of the instruments required to cover the credit risk on the day a guarantee is quoted. The premium is therefore adjusted according to the default risk determined on the basis of the *Score@rating* system and the cost of the instruments required to cover that risk.

([5]) The variation is explained by the fact that the margin in respect of administrative costs is fixed whereas other items making up the cost of the premium are variable on the basis of the risk specific to the undertaking and the costs of the necessary hedging instruments.

([6]) *Source*: Coface's Internet site at: http://www.Coface.fr/CofacePortal/ShowBinary/BEA%20Repository/FR_fr_FR/pages/home/wwd/i/_docs/Score@rating.pdf

([7]) Ibid.

([8]) This involves buying a EUR/USD put at a strike price equal to the forward rate guaranteed for (1 – sharing %) × the guaranteed dollar amount or buying a EUR/USD put at a strike price equal to the guaranteed forward rate less 15 cents for profit-sharing × the guaranteed dollar amount if there is a ceiling on the sharing rate.

(50) The factors described in recitals 40 to 49 form the basis for calculating the current premiums under the Aero 2008 guarantee. The French authorities have provided a detailed breakdown of the premiums invoiced to the four suppliers taking out the guarantee. This is illustrated in the table below:

	Axon Cable	Exameca	Ad Industrie	Aerofonction
Quotation date	5.12.2008	11.12.2008	14.11.2008	21.10.2008
Coface note on quotation	[…]	[…]	[…]	[…]
Year commencing	2009	2010	2010	2009
Year ending	2013	2010	2013	2009
Sharing percentage	25 %	50 %	50 %	50 %
15-cent ceiling?	Yes	Yes	Yes	yes
Payment period	3 months	2 months	3 months	3 months
Total amount USD	1 865 000	2 712 000	8 000 000	264 000
Market price of the guarantee	[…]	[…]	[…]	[…]
Credit risk	[…]	[…]	[…]	[…]
Margin for administrative costs	0,40 %	0,40 %	0,40 %	0,40 %
TOTAL	1,26 %	2,43 %	2,43 %	2,29 %
Coface premium	1,35 %	2,55 %	2,54 %	2,48 %
Difference related to execution risk [1]	0,09 %	0,12 %	0,11 %	0,19 %

[1] This involves a premium to cover market volatility between the time when the contract is concluded and the market conditions on the quotation date, ranging between 9 and 19 base points depending on market conditions on the quotation date.

(51) According to the French authorities, the structure of the premium as set out makes the guarantee less attractive than the products offered by the banking sector. The conditions offered under the Aero 2008 guarantee are therefore not more favourable than market conditions and the premiums clearly incorporate the market value of the financial products required to set up the guarantee, including a profit margin, Coface's administrative costs, and the value of the default risk of the supplier. France therefore argued that the measure does not involve selective economic advantage and so does not constitute State aid within the meaning of Article 107(1) TFEU.

(52) France also stated that seven of the eleven undertakings which received an offer from Coface decided to reject the offer. According to information provided by the French authorities, two of the undertakings in question stated that the banks' terms were more favourable (in particular, no premium) and two others stated that the terms offered by Coface were not advantageous (in particular, unattractive guaranteed rates). One undertaking stated that its terms of payment were incompatible with the guarantee offered, another stated that it had finally managed to enter into an agreement in EUR and a third undertaking stated that the negotiations with the purchaser had broken down at the end of the validity of the guarantee commitment.

V. **ASSESSMENT OF THE MEASURE**

(53) A measure constitutes State aid within the meaning of Article 107(1) TFEU if it fulfils four conditions: it must be granted by the State or through State resources, confer a selective advantage to some undertakings or economic activities, distort or threaten to distort competition, and be liable to affect trade between Member States.

(54) As stated in recital 34, the decision to initiate a formal investigation procedure was based, first, on the existence of concerns about whether the premiums paid by the beneficiary undertakings were consistent with market prices. Specifically, the Commission took the view that the French authorities did not show that the premiums paid covered the following factors: the administrative costs of Coface for administering the guarantee, the risk of default by suppliers, the credit risk in respect of staggered payment of premiums, and a profit margin. The possibility therefore remained that there was a selective economic advantage for suppliers who took out the guarantee.

(55) The Commission's services analysed the information provided by the French authorities following the opening of the procedure laid down in Article 108(2) TFEU with a view to determining whether the measure is consistent with the market economy private investor principle, that is to say, whether or not the conditions offered by Coface are consistent with the market conditions offered by private operators.

(56) The Commission notes, first, that the French authorities undertook to ensure that when Coface determines the applicable rate of the premium, it uses the same methodology for all undertakings applying for the guarantee, namely the methodology set out in Section IV ([9]).

(57) The Commission finds that products comparable to those offered by Coface are also available on the markets.

(58) The Commission then verified that the market price of the guarantee invoiced by Coface is consistent with the market price applied by private operators.

(59) The Commission takes the view that the price of the financial instruments required to set up the guarantee are in fact market prices, as shown by the extracts from the Bloomberg software provided by France, and that they are accurately reflected in the premiums invoiced by Coface.

(60) In addition, the market prices of those financial products include a profit margin for the financial institutions from which Coface bought the instruments in question.

(61) The French authorities also showed that an additional margin of 40 base points is invoiced in order to cover Coface's administrative costs. As set out in recital 45, that margin represents a substantial proportion of the value of the premiums invoiced. The Commission therefore considers that the premiums invoiced incorporate a profit margin and a margin to cover Coface's administrative costs, which removes the uncertainty expressed when the formal investigation procedure was initiated. The Commission observes that such an additional margin is not included by private banks, which merely receive the margin included in the Bloomberg database price. Accordingly, that margin may be considered to be consistent with the market price. The Commission takes the view that France has also succeeded in demonstrating that the default risk by the supplier ([10]) was reflected correctly in the calculation of the amount of the premiums invoiced. In order to deal with the risk of default by the insured undertaking, Coface must obtain cover for the probability of default by:

— buying a EUR/USD put at a strike price equal to the guaranteed forward rate for (1 − sharing %) × the guaranteed dollar amount, or

— buying a EUR/USD put at a strike price equal to the guaranteed forward rate less 15 cents for profit-sharing × the guaranteed dollar amount if there is a ceiling on the sharing rate.

(62) The value of the credit risk for a year's cover is therefore equal to the sum of the option price multiplied by the probability of default in respect of the year in question. That default probability is determined by an internationally recognised rating system, as described in recitals 47 and 48 and used by Coface and its clients in their commercial transactions. The Commission considers that the reason for the use by Coface of its own rather than external ratings is that it makes efficiency savings by doing so.

(63) On the basis of the additional information provided by the French authorities and the undertaking of the French authorities referred to in recital 56 of this Decision, the Commission concludes that Coface's price for the Aero 2008 guarantees is consistent with the market conditions offered by private operators.

(64) The Aero 2008 guarantee may therefore be considered to operate in accordance with the market economy investor principle. Accordingly, the suppliers who took out the guarantee did not obtain any economic advantage.

(65) It is not therefore necessary to analyse the other concerns on which the opening of the formal investigation procedure was based. Since the existence of selective economic advantage is a condition required to show that there is State aid, it may be concluded that the Aero 2008 guarantee does not constitute a State aid measure.

([9]) Letter from the French authorities of 20 September 2010.

([10]) Where Coface is liable to pay out compensation (weak dollar), default by the undertaking means that Coface does not have to pay it compensation, whereas when the guarantee leads to a repayment by the undertaking, the latter's default results in a corresponding loss for the State.

(66) As far as the conditions applied by Coface for staggered payment of premiums are concerned, the Commission considers, however, that the interest rate applied, that is to say, the 12-month EURIBOR rate plus 60 base points, cannot be regarded as a rate consistent with market practices. In particular, the premium of 60 base points is a fixed premium which is not adjusted in relation to the default risk of the supplier or the guarantee level. Since France has provided no specific justification, the Commission will, in order to establish the reference rate, apply the method for setting the reference and discount rates laid down in its Communication on the revision of the method for setting the reference and discount rates [11] ('the Communication on reference rates'). By letter of 31 January 2011, the French authorities gave an undertaking that the difference between the premiums obtained by applying Coface's interest rate and those determined on the basis of the reference rates in the Communication on reference rates would always remain under the *de minimis* threshold and that they would comply with all of the provisions of Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid [12].

(67) The Commission therefore concludes on the basis of that undertaking that the interest invoiced in respect of staggered payment does not fulfil all the conditions of Article 107(1) TFEU and does not therefore constitute a State aid measure.

VI. **CONCLUSION**

(68) In the light of the all of the foregoing, the Commission considers that the Aero 2008 guarantee does not constitute State aid within the meaning of Article 107(1) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The measure implemented by the French Republic to aeronautic suppliers ('the Aero 2008 guarantee') does not constitute State aid pursuant to Article 107(1) TFEU.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 8 March 2011.

For the Commission
Joaquín ALMUNIA
Vice-President

[11] OJ C 14, 19.1.2008, p. 6.
[12] OJ L 379, 28.12.2006, p. 5.

COMMISSION IMPLEMENTING DECISION

of 1 July 2011

amending Decision 2009/821/EC as regards the list of border inspection posts and veterinary units in Traces

(notified under document C(2011) 4594)

(Text with EEA relevance)

(2011/394/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [1], and in particular Article 20(1) and (3) thereof,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC [2], and in particular the second sentence of the second subparagraph of Article 6(4) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries [3], and in particular Article 6(2) thereof,

Whereas:

(1) Commission Decision 2009/821/EC of 28 September 2009 drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in TRACES [4] lays down a list of border inspection posts approved in accordance with Directives 91/496/EEC and 97/78/EC. That list is set out in Annex I to that Decision.

(2) Germany has communicated that the border inspection post at the port of Rostock has been closed on 31 March 2011. The entry for that border inspection post should therefore be deleted from the list set out in Annex I to Decision 2009/821/EC.

(3) Following communication from Spain, the current suspension of approval of the border inspection post at the airport of Almería should no longer apply. The entry for that border inspection post should therefore be amended accordingly. In addition, Spain has communicated that, at the border inspection post at the port of Vigo, the Inspection centre 'Pantalán 3' should be deleted and the name of the Inspection centre 'Vieirasa' should be changed to 'Puerto Vieira' in the entries for that border inspection post set out in Annex I to Decision 2009/821/EC.

(4) Following communication from France, certain categories of products of animal origin that can currently be checked at the border inspection post at the port of Brest should be added in the entries for that border inspection post set out in Annex I to Decision 2009/821/EC.

(5) Following communication from Italy, the border inspection posts at the port and airport of Reggio Calabria, at the port of Olbia and at the airports of Rimini and Palermo should be deleted. In addition, Italy has communicated that only a limited number of species of live animals are permitted at the border inspection post at the airport of Bologna-Borgo Panigale. The list of border inspection posts for Italy should therefore be amended accordingly.

(6) Following communication from Hungary, the name of the border inspection post at the airport of Budapest should be changed into 'Budapest-Liszt Ferenc Nemzetközi Repülőtér'.

(7) The Netherlands has communicated that only zoo animals are permitted at the Inspection centre 'MHS Live' at the border inspection post of Maastricht Airport. The entry for that border inspection post should therefore be amended accordingly.

(8) Following communication from Austria, the border inspection post of Linz Airport should be approved for all ungulates.

(9) Following communication from Portugal, the entries for the border inspection posts at the ports of Peniche and Setúbal should be deleted in the list of entries for that Member State as set out in Annex I to Decision 2009/821/EC.

[1] OJ L 224, 18.8.1990, p. 29.
[2] OJ L 268, 24.9.1991, p. 56.
[3] OJ L 24, 30.1.1998, p. 9.
[4] OJ L 296, 12.11.2009, p. 1.

(10) Annex II to Decision 2009/821/EC lays down the list of central units, regional units and local units in the integrated computerised veterinary system (Traces).

(11) Following communications from Germany, Ireland, France and Austria, certain changes should be brought to the list of central, regional and local units in Traces for those Member States laid down in Annex II to Decision 2009/821/EC.

(12) Decision 2009/821/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

Annexes I and II to Decision 2009/821/EC are amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 1 July 2011.

For the Commission

John DALLI

Member of the Commission

ANNEX

Annexes I and II to Decision 2009/821/EC are amended as follows:

(1) Annex I is amended as follows:

(a) in the part concerning Germany, the entry for the port of Rostock is deleted;

(b) the part concerning Spain is amended as follows:

(i) the entry for the airport of Almería is replaced by the following:

'Almería	ES LEI 4	A		HC(2), NHC(2)	O';

(ii) the entry for the port of Vigo is replaced by the following:

'Vigo	ES VGO 1	P	T.C. Guixar	HC, NHC-T(FR), NHC-NT	
			Frioya	HC-T(FR)(2)(3)	
			Frigalsa	HC-T(FR)(2)(3)	
			Pescanova	HC-T(FR)(2)(3)	
			Puerto Vieira	HC-T(FR)(3)	
			Fandicosta	HC-T(FR)(2)(3)	
			Frig. Morrazo	HC-T(FR)(3)';	

(c) in the part concerning France, the entry for the port of Brest is replaced by the following:

'Brest	FR BES 1	P		HC(1)(2), NHC';	

(d) the part concerning Italy is amended as follows:

(i) the following entries are deleted:

'Olbia	IT OLB 1	P		HC-T(FR)(3)'	
'Palermo(*)	IT PMO 4	A		HC-T (*)'	
'Reggio Calabria (*)	IT REG 1	P		HC (*), NHC (*)'	
'Reggio Calabria (*)	IT REG 4	A		HC (*), NHC (*)'	
'Rimini	IT RMI 4	A		HC(2) (*), NHC(2) (*)';	

(ii) the entry for the airport of Bologna-Borgo Panigale is replaced by the following:

'Bologna-Borgo Panigale	IT BLQ 4	A		HC(2), NHC(2)	O(14)';

(e) in the part concerning Hungary, the entry for the airport of Budapest is replaced by the following:

'Budapest-Liszt Ferenc Nemzetközi Repülőtér	HU BUD 4	A		HC(2), NHC-T(CH)(2), NHC-NT(2)	O';

(f) in the part concerning the Netherlands, the entry for the airport of Maastricht is replaced by the following:

'Maastricht	NL MST 4	A	MHS Products	HC(2), NHC(2)	
			MHS Live		U, E, O(14)';

(g) in the part concerning Austria, the entry for the airport of Linz is replaced by the following:

'Linz	AT LNZ 4	A		HC(2), NHC(2)	U, E, O';

(h) in the part concerning Portugal, the entries for the ports of Peniche and Setubal are deleted;

(2) Annex II is amended as follows:

(a) the part concerning Germany is amended as follows:

(i) the entry for the local unit 'DE47103 WOLFENBÜTTEL, LANDKREIS U. STADT SALZGITTER' is replaced by the following:

'DE47103 WOLFENBÜTTEL, LANDKREIS';

(ii) the entry for the local unit 'DE16203 GOSLAR, LANDKREIS' is replaced by the following:

'DE16203 GOSLAR, LANDKREIS U. SALZGITTER, STADT';

(b) the part concerning Ireland is amended as follows:

(i) the following entries for the local units are deleted:

'IE01100 LAOIS;

IE01800 MONAGHAN;

IE02400 WESTMEATH';

(ii) the entry for the local unit 'IE00900 KILDARE' is replaced by the following:

'IE00900 KILDARE/DUBLIN/LAOIS/WEST WICKLOW';

(iii) the entry for the local unit 'IE00200 CAVAN' is replaced by the following:

'IE00200 CAVAN/MONAGHAN';

(iv) the entry for the local unit 'IE01900 OFFALY' is replaced by the following:

'IE01900 OFFALY/WESTMEATH';

(c) in the part concerning France, the following local unit entry is deleted:

'FR16400 PYRÉNÉES-ATLANTIQUES (BAYONNE)';

(d) the part concerning Austria is amended as follows:

(i) the following local unit entries are added to the entries for the regional unit 'AT00100 BURGENLAND':

'AT00109 MAG. D. FREISTADT EISENSTADT;

AT00110 STADTGEMEINDE RUST';

(ii) the entry for the local unit 'AT00413 VOEÖCKLABRUCK' is replaced by the following:

'AT00413 VOECKLABRUCK'.

COMMISSION IMPLEMENTING DECISION

of 1 July 2011

repealing Decision 2006/241/EC concerning certain protective measures with regard to certain products of animal origin, excluding fishery products, originating in Madagascar

(notified under document C(2011) 4642)

(Text with EEA relevance)

(2011/395/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries [1], and in particular Article 22(6) thereof,

Whereas:

(1) Commission Decision 2006/241/EC of 24 March 2006 concerning certain protective measures with regard to certain products of animal origin, excluding fishery products, originating in Madagascar [2] provides that Member States are to prohibit imports of products of animal origin, excluding fishery products, snails and guano originating in Madagascar.

(2) Several Union legal acts govern imports of products of animal origin, such as Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption [3] and Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) [4].

(3) The current Union legislation on imports of animal origin ensures that only products of animal origin compliant with that legislation may be imported into the Union from Madagascar.

(4) Accordingly, Decision 2006/241/EC is no longer necessary and should be repealed.

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

HAS ADOPTED THIS DECISION:

Article 1

Decision 2006/241/EC is repealed.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 1 July 2011.

For the Commission

John DALLI

Member of the Commission

[1] OJ L 24, 30.1.1998, p. 9.
[2] OJ L 88, 25.3.2006, p. 63.
[3] OJ L 18, 23.1.2003, p. 11.
[4] OJ L 300, 14.11.2009, p. 1.

COMMISSION IMPLEMENTING DECISION

of 4 July 2011

authorising a laboratory in Japan to carry out serological tests to monitor the effectiveness of rabies vaccines

(notified under document C(2011) 4595)

(Text with EEA relevance)

(2011/396/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2000/258/EC of 20 March 2000 designating a specific institute responsible for establishing the criteria necessary for standardising the serological tests to monitor the effectiveness of rabies vaccines [1], and in particular Article 3(2) thereof,

Whereas:

(1) Decision 2000/258/EC designates the *Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail* (ANSES) in Nancy, France (previously known as the *Agence française de sécurité sanitaire des aliments*, AFSSA), as the specific institute responsible for establishing the criteria necessary for standardising the serological tests to monitor the effectiveness of rabies vaccines.

(2) That Decision also provides that the ANSES is to document the appraisal of laboratories in third countries that have applied to carry out serological tests to monitor the effectiveness of rabies vaccines.

(3) The competent authority of Japan has submitted an application for approval of a laboratory in that third country to perform such serological tests. That application is supported by a favourable report by the ANSES dated 4 February 2011 of the appraisal of that laboratory.

(4) That laboratory should therefore be authorised to carry out serological tests to monitor the effectiveness of rabies vaccines in dogs, cats and ferrets.

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

HAS ADOPTED THIS DECISION:

Article 1

In accordance with Article 3(2) of Decision 2000/258/EC, the following laboratory is authorised to perform the serological tests to monitor the effectiveness of rabies vaccines in dogs, cats and ferrets:

Laboratory Department, Animal Quarantine Service
Ministry of Agriculture, forestry and fisheries
11-1, Haramachi, Isogo-ku
Yokohama
Kanagawa 235-0008
JAPAN

Article 2

This Decision shall apply from 1 August 2011.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 4 July 2011.

For the Commission
John DALLI
Member of the Commission

[1] OJ L 79, 30.3.2000, p. 40.

DECISION OF THE EUROPEAN CENTRAL BANK

of 21 June 2011

on the environmental and health and safety accreditation procedures for the production of euro banknotes

(ECB/2011/8)

(2011/397/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 128(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 16 thereof,

Whereas:

(1) Article 128(1) of the Treaty and Article 16 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB') provide that the European Central Bank (ECB) has the exclusive right to authorise the issue of euro banknotes within the Union. This right includes the competence to take measures to protect the integrity of euro banknotes as a means of payment.

(2) The Union's environmental policy is based on the principle of environmental integration, as laid down in Article 11 of the Treaty, according to which environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development. Bearing this principle in mind, the Eurosystem promotes good environmental management based on the ISO 14000 series of standards.

(3) According to Article 9 of the Treaty, in defining and implementing its policies and activities, the Union shall take into account requirements, inter alia, linked to the protection of human health. Bearing this principle in mind, the avoidance and minimisation of any risks to the health and safety of the general public and of the workers involved in the production of euro banknotes or of euro banknote raw materials is of paramount importance to the Eurosystem. The Eurosystem supports good health and safety management in line with the policies of the European Agency for Safety and Health at Work [1] and the OHSAS 18000 series of standards.

(4) For these reasons, environmental and health and safety accreditation procedures should be put in place to ensure that only manufacturers that conform with minimum environmental and health and safety requirements are accredited to carry out a euro banknote production activity.

(5) In order to monitor the environmental and health and safety performance of the accredited manufacturers of euro banknotes and euro banknote raw materials as closely as possible, the ECB needs to regularly gather data from those manufacturers on the impact on the environment and on the health and safety of their production of euro banknotes and euro banknote raw materials,

HAS ADOPTED THIS DECISION:

SECTION I

GENERAL PROVISIONS

Article 1

Definitions

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

(a) 'NCB' means the national central bank of a Member State whose currency is the euro;

(b) 'euro banknote raw materials' means paper, ink, foil and thread used to produce euro banknotes;

(c) 'manufacturing site' means any premises that a manufacturer uses, or wishes to use, for the production of euro banknotes or euro banknote raw materials;

(d) 'manufacturer' means any entity that is, or wishes to be, involved in a euro banknote production activity;

(e) 'environmental accreditation' means the status, the scope of which is set out in Article 3, granted by the ECB to a manufacturer confirming that its euro banknote production activity is in conformity with the requirements laid down in Section II;

(f) 'health and safety accreditation' means the status, the scope of which is set out in Article 4, granted by the ECB to a manufacturer confirming that its euro banknote production activity is in conformity with the requirements laid down in Section III;

(g) 'accredited manufacturer' means a manufacturer which has been granted environmental accreditation and health and safety accreditation;

[1] Available on http://osha.europa.eu.

(h) 'certification authority' means an independent certification authority which evaluates manufacturers' environmental or health and safety management systems and is accredited to certify that the manufacturer fulfils the requirements of the ISO 14000 or OHSAS 18000 series of standards;

(i) 'euro banknote production activity' means the production of euro banknotes or of any euro banknote raw materials;

(j) 'ECB working day' means a day from Monday to Friday, excluding ECB public holidays;

(k) 'plate making' means the production of printing plates for the offset or intaglio printing technologies used for the production of euro banknotes;

(l) 'individual production' means production composed of several batches made out of the same raw materials from the same suppliers, whereby the composition is homogeneous throughout, and does not introduce new substances, or the same substances with above the limit concentration variations, as specified by the ECB separately.

Article 2

General principles

1. A manufacturer may only carry out a euro banknote production activity if the ECB grants it environmental accreditation and health and safety accreditation for that activity.

2. The ECB requirements for environmental and health and safety accreditation shall be minimum requirements. Manufacturers may adopt and implement stricter environmental and/or health and safety standards, but the ECB shall only assess the manufacturer's fulfilment of the requirements laid down in this Decision.

3. The Executive Board shall be competent to take all decisions relating to a manufacturer's environmental and health and safety accreditation, taking into account the views of the Banknote Committee, and shall inform the Governing Council thereof.

4. An accredited manufacturer may only carry out a euro banknote production activity at the manufacturing sites for which it has been granted: (a) environmental accreditation; and (b) health and safety accreditation, notwithstanding any other accreditation granted pursuant to any other ECB legal act.

5. Any costs and associated losses that a manufacturer incurs in connection with the application of this Decision shall be borne by the manufacturer.

6. The ECB shall lay down separately technical details of the requirements to be fulfilled by manufacturers to obtain environmental and health and safety accreditation.

Article 3

Environmental accreditation

1. Accreditation on the basis of the ISO 14000 series of standards on environmental management systems shall follow the procedure set out in Section II. A manufacturer may only carry out a euro banknote production activity if the ECB has granted it environmental accreditation for that activity.

2. A manufacturer may be granted environmental accreditation for a euro banknote production activity provided that it fulfils all of the following conditions:

(a) it conforms with the ISO 14001 standard at a particular manufacturing site for a particular euro banknote production activity and the certification authority has issued a certificate to that effect;

(b) where it is a printing works, its manufacturing site is located in a Member State;

(c) where it is not a printing works, its manufacturing site is located in a Member State or in a Member State of the European Free Trade Association.

3. The Executive Board may grant exemptions to the location requirement set out in paragraph 2(b) and (c) on a case-by-case basis, taking into account the views of the Banknote Committee. Any such decision shall be promptly notified to the Governing Council. The Executive Board shall abide by any decision of the Governing Council on this issue.

4. Environmental accreditation shall be granted to a manufacturer for 3 years, subject to any decision taken pursuant to Article 13 or 14.

5. The ECB's prior written consent shall be required for an environmental accredited manufacturer to outsource the production of euro banknotes or euro banknote raw materials to another manufacturing site or to any third party, including the manufacturer's subsidiaries and associated companies.

Article 4

Health and safety accreditation

1. Accreditation on the basis of the OHSAS 18001 standard on health and safety management systems shall follow the procedure set out in Section III. A manufacturer may only carry out a euro banknote production activity if the ECB has granted it health and safety accreditation for that activity.

2. A manufacturer may be granted health and safety accreditation for a euro banknote production activity provided that it fulfils all of the following conditions:

(a) it conforms with the OHSAS 18001 standard at a particular manufacturing site for a particular euro banknote production activity and the certification authority has issued a certificate to that effect;

(b) where it is a printing works, its manufacturing site is located in a Member State;

(c) where it is not a printing works, its manufacturing site is located in a Member State or in a Member State of the European Free Trade Association.

3. The Executive Board may grant exemptions to the location requirement set out in paragraph 2(b) and (c) on a case-by-case basis, taking into account the views of the Banknote Committee. Any such decision shall be promptly notified to the Governing Council. The Executive Board shall abide by any decision of the Governing Council on this issue.

4. Health and safety accreditation shall be granted to a manufacturer for 3 years, subject to any decision taken pursuant to Articles 13 or 14.

5. The ECB's prior written consent shall be required for a health and safety accredited manufacturer to outsource the production of euro banknotes or euro banknote raw materials to another manufacturing site or to any third party, including the manufacturer's subsidiaries and associated companies.

SECTION II

ENVIRONMENTAL ACCREDITATION PROCEDURE

Article 5

Initiation request

1. A manufacturer that wishes to carry out a euro banknote production activity shall make a written request to the ECB to initiate the environmental accreditation procedure. The initiation request shall include all of the following:

(a) a specification of the manufacturing site and its location;

(b) a copy of the ISO 14001 certificate for the specified site;

(c) a summary in English of the latest annual audit report issued by the certification authority;

(d) an annual report in English describing the performance of its internal environmental management system using a template provided by the ECB.

2. The ECB shall check whether the documentation provided by the manufacturer in its initiation request is complete. It shall inform the manufacturer of the outcome of this evaluation within 30 ECB working days from the date of receipt of the initiation request. The ECB may extend this time limit once, with written notice to the manufacturer. While the ECB is carrying out this evaluation, it may request complementary information from the manufacturer in relation to the requirements listed in paragraph 1. If the ECB requests complementary information, it shall inform the manufacturer of the outcome of the evaluation within 20 ECB working days from the date of receipt of the complementary information.

3. The ECB shall reject the initiation request and inform the manufacturer in writing of its decision to do so and the reasons within the time limits specified in paragraph 2 if any of the following applies:

(a) the manufacturer fails to provide the information required pursuant to paragraph 1;

(b) it fails to supply any complementary information requested by the ECB pursuant to paragraph 2 within a reasonable period to be mutually agreed;

(c) the environmental accreditation of the manufacturer has been revoked and the period of prohibition on reapplication specified in the revocation decision has not elapsed;

(d) the location of the manufacturing site does not meet the requirements laid down in Article 3(2)(b) or (c).

Article 6

Environmental accreditation

1. In the event of a positive evaluation by the ECB of the initiation request pursuant to Article 5(2), the manufacturer shall be granted environmental accreditation.

2. The ECB's decision granting the manufacturer environmental accreditation shall clearly identify:

(a) the name of the manufacturer;

(b) the manufacturing site for which environmental accreditation is granted and its exact address;

(c) the date of expiry of the environmental accreditation;

(d) any specific conditions relating to points (b) and (c).

3. Environmental accreditation shall be granted to a manufacturer for a renewable period of 3 years. If the environmental accredited manufacturer re-applies for environmental accreditation before the date of expiry of such accreditation, its environmental accreditation shall remain valid until the ECB has taken a decision pursuant to paragraph 1.

4. If the ECB rejects the request for environmental accreditation, the manufacturer may initiate the review procedure laid down in Article 15.

SECTION III

HEALTH AND SAFETY ACCREDITATION PROCEDURE

Article 7

Initiation request

1. A manufacturer that wishes to carry out a euro banknote production activity shall make a written request to the ECB to initiate the health and safety accreditation procedure. This initiation request shall include all of the following:

(a) a specification of the manufacturing site and its location;

(b) a copy of the OHSAS 18001 certificate for the specified site;

(c) a summary in English of the latest annual audit report issued by the certification authority;

(d) an annual report in English describing the performance of its internal management system on health and safety using a template provided by the ECB.

2. The ECB shall check whether the documentation provided by the manufacturer in its initiation request is complete. It shall inform the manufacturer of the outcome of this evaluation within 30 ECB working days from the date of receipt of the initiation request. The ECB may extend this time limit once with written notice to the manufacturer. While the ECB is carrying out this evaluation, it may request complementary information from the manufacturer in relation to the requirements listed in paragraph 1. If the ECB requests complementary information, it shall inform the manufacturer of the outcome of the evaluation within 20 ECB working days from the date of receipt of the complementary information.

3. The ECB shall reject the initiation request and inform the manufacturer in writing of its decision to do so and the reasons within the time limits specified in paragraph 2 if any of the following applies:

(a) the manufacturer fails to provide the information required pursuant to paragraph 1;

(b) it fails to supply any complementary information requested by the ECB pursuant to paragraph 2 within a reasonable period to be mutually agreed;

(c) the health and safety accreditation of the manufacturer has been revoked and the period of prohibition on reapplication specified in the revocation decision has not elapsed;

(d) the location of the manufacturing site does not meet the requirements laid down in Article 4(2)(b) or (c).

Article 8

Health and safety accreditation

1. In the event of a positive evaluation by the ECB of the initiation request pursuant to Article 7(2), the manufacturer shall be granted health and safety accreditation.

2. The ECB's decision granting the manufacturer health and safety accreditation shall clearly identify:

(a) the name of the manufacturer;

(b) the manufacturing site for which health and safety accreditation is granted and its exact address;

(c) the date of expiry of the health and safety accreditation;

(d) any specific conditions relating to points (b) and (c).

3. Health and safety accreditation shall be granted to a manufacturer for a renewable period of 3 years. If the health and safety accredited manufacturer re-applies for health and safety accreditation before the date of expiry of such accreditation, its health and safety accreditation shall remain valid until the ECB has taken a decision pursuant to paragraph 1.

4. If the ECB rejects the request for health and safety accreditation, the manufacturer may initiate the review procedure laid down in Article 15.

SECTION IV

CONTINUING OBLIGATIONS

Article 9

Continuing obligations of accredited manufacturers

1. An accredited manufacturer shall inform the ECB in writing and without undue delay of any of the following:

(a) the commencement of any procedure for the winding-up or reorganisation of the manufacturer or any analogous procedure;

(b) the appointment of a liquidator, receiver, administrator or similar officer in relation to the manufacturer;

(c) any intention to subcontract or to involve third parties in a euro banknote production activity for which the manufacturer has environmental and health and safety accreditation;

(d) any change that occurs after environmental and health and safety accreditation has been granted that affects, or may affect, the fulfilment of the requirements for environmental and health and safety accreditation;

(e) any change of control of the accredited manufacturer following a change in its ownership structure or for any other reason.

2. An accredited manufacturer shall provide the ECB for the relevant manufacturing site with:

(a) a copy of the certificates for its environmental and health and safety management systems each time the certificate referred to in Articles 3(2)(a) and 4(2)(a) is renewed;

(b) for each calendar year and within 4 months following the end of the year, the summaries, translated into English, of the latest environmental and health and safety external audit reports issued by the relevant certification authorities;

(c) for each calendar year and within 4 months following the end of the year, annual reports in English on the performance of its environmental and health and safety management systems following the templates referred to in Articles 5(1)(d) and 7(1)(d);

(d) for each calendar year and within 4 months following the end of the year, general information and environmental data on annual consumption and emissions caused by euro banknote production activity as established by the ECB Environmental Questionnaire provided by the ECB.

3. If the accredited manufacturer is a printing works, it shall also:

(a) perform analyses on the chemical substances specified in the list referred to in Article 10(1) conducted by the laboratories indicated on the list referred to in Article 10(2). These analyses shall be carried out on finished euro banknotes according to standard operating procedures laid down separately at least once per each individual production and additionally whenever the accredited manufacturer deems it appropriate to monitor conformity with the chemical substances' acceptance limits. The accredited manufacturer shall report to the ECB on each individual sample analysis by using the analysis report template provided by the ECB;

(b) report for each calendar year and within 4 months following the end of the year on the performance of the laboratories having carried out the analyses referred to in point (a) by using a performance report template provided by the ECB;

(c) conclude supply contracts with euro banknote raw material suppliers, which include the obligation for euro banknote raw material suppliers to ensure that any chemical substances contained in euro banknote raw materials produced by the latter do not, when analysed in finished euro banknotes pursuant to paragraph 3(a), exceed the acceptance limits referred to in Article 10(1). To fulfil this requirement, the accredited manufacturer shall provide the euro banknote raw material suppliers with all relevant documentation. Euro banknote raw materials suppliers may use the laboratories specified in the list referred to in Article 10(2) for their own analytical needs;

(d) ensure that any plate making company to which it outsources has valid ISO 14001 and OHSAS 18001 certificates for its relevant production sites.

4. An accredited manufacturer shall keep confidential the technical details relating to environmental and health and safety requirements referred to in Article 2(6).

Article 10

Continuing obligations of the ECB

1. The ECB shall establish a list of chemical substances to be analysed and their acceptance limits. Without prejudice to Article 19, exceeding these acceptance limits, including in the cases foreseen in Article 9(3)(c), shall have no impact on a manufacturer's health and safety accreditation.

2. The ECB shall maintain a list of laboratories to be used to analyse the presence and concentration of chemical substances on the list referred to in paragraph 1. The analysing methods to be applied shall be laid down separately.

3. The ECB shall inform accredited manufacturers of any updates to the lists referred to in paragraphs 1 and 2.

SECTION V

CONSEQUENCES OF NON-CONFORMITY

Article 11

Non-conformity

If the accredited manufacturer does not comply with any of the obligations laid down in Article 9 or if the information provided to the ECB according to Article 9(2)(b), (c) and (d) and Article 9(3)(a) and (b) is incomplete, this shall constitute a non-conformity by the manufacturer with the requirements for environmental or health and safety accreditation.

Article 12

Written observation

1. The ECB shall make a written observation to the accredited manufacturer in the event of non-conformity of the type referred to in Article 11, laying down the time limit for such manufacturer to remedy the non-conformity.

2. The written observation shall state that: (a) if the non-conformity has not been remedied within the time limit referred to in paragraph 1; or (b) if there is a second instance of non-conformity within the time limit referred to in paragraph 1, the ECB shall take a decision under Article 13.

Article 13

Suspension of environmental or health and safety accreditation in relation to new orders

1. If, within the time limit referred to in Article 12(1), either the non-conformity has not been remedied or there is a second instance of non-conformity, but the accredited manufacturer puts forward a reasonable case that it will be able to correct the non-conformity, the ECB shall take a decision:

(a) laying down, in consultation with the accredited manufacturer, a time limit for the accredited manufacturer to remedy the non-conformity;

(b) suspending the accredited manufacturer's accreditation with respect to its ability to accept new orders for the euro banknote production activity in question, including participation in tender procedures relating to a euro banknote production activity, until the time limit referred to in point (a) expires or, if the non-conformity has been remedied within this time limit, until the non-conformity has been remedied.

2. If however the accredited manufacturer does not put forward a reasonable case that it will be able to correct the non-conformity referred to in paragraph 1, the ECB shall take a decision pursuant to Article 14.

Article 14

Revocation of environmental or health and safety accreditation

1. The ECB shall revoke an accredited manufacturer's environmental or health and safety accreditation: (a) if the accredited manufacturer is not able to rectify its non-conformity within the time limit referred to in Article 13(1)(a); or (b) pursuant to Article 13(2).

2. In its revocation decision, the ECB shall specify the date from which the accredited manufacturer may reapply for accreditation.

Article 15

Review procedure

1. If the ECB has taken any of the following decisions:

(a) rejecting a request to initiate the environmental or health and safety accreditation procedure;

(b) refusing to grant environmental or health and safety accreditation;

(c) a decision pursuant to Articles 12 to 14,

the manufacturer or accredited manufacturer may, within 30 ECB working days of notification of such a decision, submit a written request to the Governing Council to review the decision. The manufacturer or accredited manufacturer shall include its reasons for such a request and all supporting information.

2. If the manufacturer or accredited manufacturer explicitly so requests, and gives reasons, the Governing Council may suspend the application of the decision that is to be reviewed.

3. The Governing Council shall review the decision and communicate its reasoned decision in writing to the manufacturer or accredited manufacturer within 2 months of receipt of the request.

4. The application of paragraphs 1 to 3 shall be without prejudice to any rights under Articles 263 and 265 of the Treaty.

SECTION VI

ENVIRONMENTAL PERFORMANCE

Article 16

Information on the accredited manufacturer's environmental performance

In order to better assess accredited manufacturers' environmental performance, the ECB may require accredited manufacturers for specific information or clarification in relation to the data provided in the ECB Environmental Questionnaire referred to in Article 9(2)(d). If necessary, the ECB may require a meeting with the accredited manufacturer at the ECB's premises. The ECB may also decide, with the permission of the accredited manufacturer and in conformity with all security requirements in force with regard to the accredited manufacturer, to carry out an on-site visit. The accredited manufacturer may also invite the ECB to an on-site visit to clarify the data provided in the ECB Environmental Questionnaire.

SECTION VII

FINAL PROVISIONS

Article 17

ECB accreditation register

1. The ECB shall keep a register of environmental and health and safety accreditations:

(a) listing the manufacturers which have been granted environmental and health and safety accreditation and the relevant manufacturing sites;

(b) indicating in respect of each manufacturing site the euro banknote production activity for which environmental and health and safety accreditation has been granted;

(c) recording the expiry of any environmental and health and safety accreditation.

2. If the ECB takes a decision under Article 13, it shall record the duration of the suspension.

3. If the ECB takes a decision pursuant to Article 14, it shall remove the name of the manufacturer from the register.

4. The ECB shall make available to NCBs and accredited manufacturers a list of accredited manufacturers contained in the register and any updates thereto.

Article 18

Annual report

1. The ECB shall, on the basis of the information provided by the accredited manufacturers, compile an annual report on the environmental impact of euro banknote production activity and its effects on health and safety.

2. The ECB shall disclose information to the public on the general environmental and health and safety impacts of euro banknote production activity in accordance with Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [1].

[1] OJ L 264, 25.9.2006, p. 13.

Article 19

Transitional provision

From the 2016 production of euro banknotes, NCBs shall not validate any printed euro banknotes with chemical substances exceeding the acceptance limits referred to in Article 10(1).

Article 20

Entry into force

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

It shall apply from the 2013 production of euro banknotes.

Done at Frankfurt am Main, 21 June 2011.

The President of the ECB

Jean-Claude TRICHET

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