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Price: EUR 3

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(¹) Text with EEA relevance

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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.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 66/2012

of 25 January 2012

amending Regulation (EC) No 318/2007 laying down the animal health conditions for imports of certain birds into the Community and the quarantine conditions thereof

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 92/65/EEC of 13 July 1992 laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(I) to Directive 90/425/EEC⁽¹⁾, and in particular Article 17(3)(a) thereof,

Whereas:

- (1) Commission Regulation (EC) No 318/2007⁽²⁾ lays down the animal health conditions for imports of certain birds into the Union. It provides that the birds covered by it are to be imported into the Union only if they originate from third countries or parts thereof referred to in Annex I thereto.
- (2) Annex I to Regulation (EC) No 318/2007 refers to the third countries or parts thereof which are listed in columns 1 and 3 of the table in Part 1 of Annex I to Commission Decision 2006/696/EC⁽³⁾ and from which imports of breeding or productive poultry other than ratites is permitted.
- (3) Decision 2006/696/EC was repealed and replaced by Commission Regulation (EC) No 798/2008 of 8 August 2008 laying down a list of third countries, territories, zones or compartments from which poultry

and poultry products may be imported into and transit through the Community and the veterinary certification requirements⁽⁴⁾. The references to that Decision in Annex I to Regulation (EC) No 318/2007 should therefore be replaced by references to Regulation (EC) No 798/2008.

- (4) In addition, Argentina has requested the Commission to authorise imports into the Union of certain captive bred birds pursuant to Regulation (EC) No 318/2007. An inspection carried out by the Commission's Food and Veterinary Office in Argentina including the follow-up actions undertaken by that third country demonstrated that Argentina provides appropriate guarantees as regards compliance with Union rules required for imports into the Union of such birds.
- (5) Argentina is currently listed in the table set out in Part 1 of Annex I to Regulation (EC) No 798/2008. However, imports of breeding or productive poultry other than ratites from that third country are not permitted. Argentina should therefore be included as a separate entry in the list set out in Annex I to Regulation (EC) No 318/2007.
- (6) 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

Annex I to Regulation (EC) No 318/2007 is replaced by the text in the Annex to this Regulation.

⁽¹⁾ OJ L 268, 14.9.1992, p. 54.

⁽²⁾ OJ L 84, 24.3.2007, p. 7.

⁽³⁾ OJ L 295, 25.10.2006, p. 1.

⁽⁴⁾ OJ L 226, 23.8.2008, p. 1.

Article 2

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

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

Done at Brussels, 25 January 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

'ANNEX I

LIST OF THIRD COUNTRIES FROM WHICH IMPORTS OF CAPTIVE BRED BIRDS ARE AUTHORISED

1. Third countries or parts thereof listed in columns 1 and 3 of the table in Part 1 of Annex I to Commission Regulation (EC) No 798/2008 (*), where column 4 of that table provides for a model veterinary certificate for breeding or productive poultry other than ratites (BPP);
2. Argentina.

(*) OJ L 226, 23.8.2008, p. 1.'

COMMISSION IMPLEMENTING REGULATION (EU) No 67/2012**of 25 January 2012****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:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multi-lateral 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.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

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 to this Regulation.

Article 2

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

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

Done at Brussels, 25 January 2012.

*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 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	IL	149,3
	MA	53,3
	TN	93,3
	TR	114,5
	ZZ	102,6
0707 00 05	EG	217,9
	JO	229,9
	MA	148,6
	TR	160,8
	ZZ	189,3
0709 91 00	EG	91,5
	ZZ	91,5
0709 93 10	MA	123,8
	TR	159,7
	ZZ	141,8
0805 10 20	AR	41,5
	EG	53,8
	MA	55,8
	TN	58,6
	TR	62,7
	ZA	41,5
	ZZ	52,3
0805 20 10	MA	85,8
	ZZ	85,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	61,5
	EG	79,2
	IL	98,8
	KR	91,7
	MA	124,7
	TR	97,8
	ZZ	92,3
0805 50 10	TR	61,6
	ZZ	61,6
0808 10 80	CA	126,3
	CL	58,2
	CN	85,2
	MK	30,8
	US	144,3
0808 30 90	ZZ	89,0
	CN	71,3
	TR	116,3
	US	120,1
	ZA	87,1
	ZZ	98,7

⁽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'.

DECISIONS

COUNCIL DECISION 2012/39/CFSP

of 25 January 2012

appointing the European Union Special Representative in Kosovo ⁽¹⁾

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28, Article 31(2) and Article 33 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 5 December 2011, the Council reaffirmed its unequivocal commitment to the European perspective of the Western Balkans, which remains essential for the stability, reconciliation and future of the region. It also reaffirmed the Union policy towards Kosovo as recalled in previous Council Conclusions.
- (2) On 5 May 2011, the Council adopted Decision 2011/270/CFSP ⁽²⁾ appointing Mr Fernando GENTILINI as the European Union Special Representative (EUSR) in Kosovo, whose mandate expires on 31 January 2012.
- (3) Mr Samuel ŽBOGAR should be appointed as EUSR in Kosovo from 1 February 2012 to 30 June 2013.
- (4) The Stabilisation and Association Process is the strategic framework of the Union's policy towards the Western Balkan region, and its instruments apply to Kosovo, including a European partnership, political and technical dialogue under the Stabilisation and Association Process dialogue, and related Union assistance programmes.
- (5) The mandate of the EUSR will be implemented in coordination with the Commission in order to ensure consistency with other relevant activities falling within Union competence.
- (6) The Council envisages that the powers and authorities of the EUSR and the powers and authorities of the Head of the European Union Office in Pristina shall be vested in the same person.

- (7) The EUSR will implement the mandate in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

European Union Special Representative

Mr Samuel ŽBOGAR is hereby appointed as the European Union Special Representative (EUSR) in Kosovo from 1 February 2012 to 30 June 2013. The mandate of the EUSR may be terminated earlier, if the Council so decides, on a proposal of the High Representative of the Union for Foreign Affairs and Security Policy (HR).

Article 2

Policy objectives

The mandate of the EUSR shall be based on the policy objectives of the Union in Kosovo. These include playing a leading role in promoting a stable, viable, peaceful, democratic and multi-ethnic Kosovo; strengthening stability in the region and contributing to regional cooperation and good neighbourly relations in the Western Balkans; promoting a Kosovo that is committed to the rule of law and to the protection of minorities and of cultural and religious heritage; supporting Kosovo's progress towards the Union in accordance with the European perspective of the region and in line with the relevant Council Conclusions.

Article 3

Mandate

In order to achieve the policy objectives, the mandate of the EUSR shall be to:

- (a) offer the Union's advice and support in the political process;
- (b) promote overall Union political coordination in Kosovo;
- (c) strengthen the presence of the Union in Kosovo and ensure its coherence and effectiveness;

⁽¹⁾ Under United Nations Security Council Resolution 1244 (1999).

⁽²⁾ OJ L 119, 7.5.2011, p. 12.

- (d) provide local political guidance to the Head of the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO), including on the political aspects of issues relating to executive responsibilities;
- (e) ensure consistency and coherence of Union action in Kosovo;
- (f) support Kosovo's progress towards the Union, in accordance with the European perspective of the region, through targeted public communication and Union outreach activities designed to ensure a broader understanding and support from the Kosovo public on issues related to the Union;
- (g) monitor, assist and facilitate progress on political, economic and European priorities, in line with respective institutional competencies and responsibilities;
- (h) contribute to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo, including with regard to women and children, in accordance with the Union's human rights policy and Union Guidelines on Human Rights;
- (i) assist in the implementation of the Belgrade-Pristina dialogue facilitated by the Union.

Article 4

Implementation of the mandate

1. The EUSR shall be responsible for the implementation of the mandate, acting under the authority of the HR.
2. The Political and Security Committee (PSC) shall maintain a privileged link with the EUSR and shall be the EUSR's primary point of contact with the Council. The PSC shall provide the EUSR with strategic guidance and political direction within the framework of the mandate, without prejudice to the powers of the HR.
3. The EUSR shall work in close coordination with the European External Action Service (EEAS).

Article 5

Financing

1. The financial reference amount intended to cover the expenditure related to the mandate of the EUSR in the period from 1 February 2012 to 30 June 2013 shall be EUR 2 410 000.
2. The expenditure shall be managed in accordance with the procedures and rules applicable to the general budget of the Union. Nationals of the countries of the Western Balkans region shall be allowed to tender for contracts.

3. The management of the expenditure shall be subject to a contract between the EUSR and the Commission. The EUSR shall be accountable to the Commission for all expenditure.

Article 6

Constitution and composition of the team

1. A dedicated staff shall be assigned to assist the EUSR to implement his mandate and to contribute to the coherence, visibility and effectiveness of Union action in Kosovo overall. Within the limits of his mandate and the corresponding financial means made available, the EUSR shall be responsible for constituting his team. The team shall include the expertise on specific policy issues as required by the mandate. The EUSR shall keep the Council and the Commission promptly informed of the composition of his team.
2. Member States, institutions of the Union and the EEAS may propose the secondment of staff to work with the EUSR. The salary of such seconded personnel shall be covered by the Member State, the institution of the Union concerned or the EEAS, respectively. Experts seconded by Member States to the institutions of the Union or the EEAS may also be posted to work with the EUSR. International contracted staff shall have the nationality of a Member State.
3. All seconded personnel shall remain under the administrative authority of the sending Member State, institution of the Union or the EEAS and shall carry out their duties and act in the interest of the mandate of the EUSR.

Article 7

Privileges and immunities of the EUSR and his staff

The privileges, immunities and further guarantees necessary for the completion and smooth functioning of the mission of the EUSR and the members of his staff shall be agreed with the host party/parties, as appropriate. Member States and the Commission shall grant all necessary support to such effect.

Article 8

Security of EU classified information

1. The EUSR and the members of his team shall respect the security principles and minimum standards established by Council Decision 2011/292/EU of 31 March 2011 on the security rules for protecting EU classified information ⁽¹⁾.
2. The HR shall be authorised to release to NATO/KFOR EU classified information and documents up to the level 'CONFIDENTIEL UE/EU CONFIDENTIAL' generated for the purposes of the action, in accordance with the security rules for protecting EU classified information.

⁽¹⁾ OJ L 141, 27.5.2011, p. 17.

3. The HR shall be authorised to release to the United Nations (UN) and the Organisation for Security and Cooperation in Europe (OSCE), in accordance with the operational needs of the EUSR, EU classified information and documents up to the level 'RESTREINT UE/EU RESTRICTED' which are generated for the purposes of the action, in accordance with the security rules for protecting EU classified information. Local arrangements shall be drawn up for this purpose.

4. The HR shall be authorised to release to third parties associated with this Decision EU non-classified documents related to the deliberations of the Council with regard to the action covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽¹⁾.

Article 9

Access to information and logistical support

1. Member States, the Commission and the General Secretariat of the Council shall ensure that the EUSR is given access to any relevant information.
2. The Union delegation and/or Member States, as appropriate, shall provide logistical support in the region.

Article 10

Security

In accordance with the Union's policy on the security of personnel deployed outside the Union in an operational capacity under Title V of the Treaty, the EUSR shall take all reasonably practicable measures, in conformity with his mandate and the security situation in his geographical area of responsibility, for the security of all personnel under his direct authority, notably by:

- (a) establishing a mission-specific security plan based on guidance from the EEAS, including mission-specific physical, organisational and procedural security measures, governing management of the secure movement of personnel to, and within, the mission area, as well as the management of security incidents and including a mission contingency and evacuation plan;
- (b) ensuring that all personnel deployed outside the Union are covered by high risk insurance as required by the conditions in the mission area;
- (c) ensuring that all members of his team to be deployed outside the Union, including locally contracted personnel, have received appropriate security training before or upon arriving in the mission area, based on the risk ratings assigned to the mission area by the EEAS;

⁽¹⁾ Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

- (d) ensuring that all agreed recommendations made following regular security assessments are implemented and providing the Council, the HR and the Commission with written reports on their implementation and on other security issues within the framework of the mid-term and mandate implementation reports.

Article 11

Reporting

The EUSR shall regularly provide the HR and the PSC with oral and written reports. The EUSR shall also report, as necessary, to Council working parties. Regular written reports shall be circulated through the COREU network. Upon recommendation of the HR or the PSC, the EUSR shall provide the Foreign Affairs Council with reports.

Article 12

Coordination

1. The EUSR shall promote overall Union political coordination. He shall help ensure that all Union instruments in the field are engaged coherently to attain the Union's policy objectives. The activities of the EUSR shall be coordinated with those of the Commission, as well as those of other EUSRs active in the region, as appropriate. The EUSR shall provide regular briefings to Member States' missions and Union delegations.
2. In the field, close liaison shall be maintained with the Heads of Union delegations in the region and Member States' Heads of Mission. They shall make every effort to assist the EUSR in the implementation of the mandate. The EUSR shall provide local political guidance to the Head of the EULEX KOSOVO, including on the political aspects of issues relating to executive responsibilities. The EUSR and the Civilian Operation Commander will consult each other as required.

3. The EUSR shall also liaise with relevant local bodies and other international and regional actors in the field.

4. The EUSR, with other Union actors present in the field, shall ensure the dissemination and sharing of information among Union actors in theatre with a view to achieving a high degree of common situation awareness and assessment.

Article 13

Review

The implementation of this Decision and its consistency with other contributions from the Union to the region shall be kept under regular review. The EUSR shall present the Council, the HR and the Commission with a progress report by the end of November 2012 and a comprehensive mandate implementation report at the end of the EUSR's mandate.

*Article 14***Entry into force**

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

It shall apply from 1 February 2012.

Done at Brussels, 25 January 2012.

For the Council
The President
N. WAMMEN

COMMISSION IMPLEMENTING DECISION

of 24 January 2012

amending Decision 2008/855/EC as regards the dispatch to other Member States of certain meat and meat products from holdings situated in the areas listed in Part III of the Annex thereto

(notified under document C(2012) 181)

(Text with EEA relevance)

(2012/40/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

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 ⁽²⁾, and in particular Article 10(4) thereof,

Whereas:

- (1) Commission Decision 2008/855/EC of 3 November 2008 concerning animal health control measures relating to classical swine fever in certain Member States ⁽³⁾ lays down certain control measures applicable in relation to classical swine fever in the Member States or regions thereof set out in the Annex thereto.
- (2) Article 7(1) of Decision 2008/855/EC provides that Member States concerned with areas listed in Part III of the Annex thereto are to ensure that no consignments of fresh pigmeat from holdings located in the areas listed in Part III of that Annex, and meat preparations and meat products consisting of or containing such meat are dispatched from those areas to other Member States.
- (3) Part III of that Annex currently lists the whole territory of Romania.
- (4) Romania has provided information to the Commission showing that the classical swine fever situation in that Member State has significantly improved since the adoption of Decision 2008/855/EC.
- (5) Romania has requested that the dispatch to other Member States of fresh pigmeat and meat preparations and meat products consisting of or containing fresh meat

from pigs kept in that Member State be permitted, provided that the safety of those commodities is ensured by means of a channelled system.

- (6) Such system would consist of holdings or one or more epidemiological units operating a common bio-security management system and an established supply chain, to ensure a distinct health status for classical swine fever for the subpopulation of pigs kept therein. Those holdings or epidemiological units are situated in areas in which surveillance, control and bio-security measures are being applied.
- (7) The holdings belonging to the channelled system and the establishments which are producing, storing and processing fresh pigmeat and meat preparations and meat products consisting of or containing such meat should be approved by the competent authority and notified to the Commission, provided that they meet the additional health conditions laid down in Decision 2008/855/EC.
- (8) In addition, the production, storage and processing of such meat and meat preparations and meat products consisting of or containing such meat should be carried out separately from that of other products consisting of or containing meat derived from pigs from holdings outside the channelling system located in the areas listed in Part III of the Annex to Decision 2008/855/EC.
- (9) In order to ensure the safety of meat, meat products and meat preparations produced under the channelling system, regular inspections should be carried out by the competent authority in the holdings which form part of the channelled system.
- (10) Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽⁴⁾ establishes the minimum Union measures for the control of classical swine fever. That Directive provides that, as soon as confirmation of a primary case of classical swine fever in feral pigs has taken place, in order to reduce the spread of the disease, the competent authority of a Member State is to immediately order a number of measures detailed in that Directive.
- (11) The regular inspections carried out by the competent authority in the holdings which form part of the channelled system should in particular verify that those measures are effectively applied.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ OJ L 302, 13.11.2008, p. 19.

⁽⁴⁾ OJ L 316, 1.12.2001, p. 5.

- (12) Commission Decision 2002/106/EC of 1 February 2002 approving a Diagnostic Manual establishing diagnostic procedures, sampling methods and criteria for evaluation of the laboratory tests for the confirmation of classical swine fever⁽¹⁾ identifies the most suitable sampling procedures and criteria for evaluation of the results of the laboratory tests for a proper diagnosis of this disease in different situations. Those procedures and criteria should therefore be used during the regular inspections carried out by the competent authority in the holdings which form part of the channelling system.
- (13) Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption⁽²⁾ provides that Member States are to ensure that official controls with respect to fresh meat take place in accordance with Annex I thereto. That Regulation also provides that health marks are to be applied when official controls have not identified any deficiencies that would make the meat unfit for human consumption. Consequently, fresh meat produced under the channelling system should, in order to be permitted for dispatch to other Member States, be marked with the health mark set out in Chapter III of Section I of Annex I to Regulation (EC) No 854/2004.
- (14) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin⁽³⁾ provides that food business operators are not to place on the market a product of animal origin handled in an establishment subject to approval in accordance with that Regulation, unless it has either a health mark applied in accordance with Regulation (EC) No 854/2004 or, when that Regulation does not provide for the application of a health mark, an identification mark applied in accordance with Annex II to Regulation (EC) No 853/2004. The meat preparations and meat products containing pigmeat produced under the channelling system should therefore be marked with the identification mark provided for in Section I of Annex II to Regulation (EC) No 853/2004, in order to be permitted for dispatch to other Member States.
- (15) The Food and Veterinary Office (FVO) carried out an audit in Romania in July 2011. A number of significant deficiencies were outlined in the implementation of the programme for the control and monitoring of classical swine fever as well as in the channelled system proposed by Romania. However, the conclusion of the report was that the implementation of such a system in that Member State has the potential to function effectively, given some relatively minor amendments. The FVO report made specific recommendations for the improvement of these deficiencies by the Romanian authorities. Following the audit, Romania has informed the Commission that the deficiencies identified during the audit have been corrected following the implementation of an action plan that addresses them. The Commission has examined these corrections and considers that they are sufficient for the channelled system to function effectively.
- (16) In addition, the programme for the control and monitoring of classical swine fever submitted by Romania was approved for the period from 1 January 2012 to 31 December 2012 by Commission Implementing Decision 2011/807/EU of 30 November 2011 approving annual and multiannual programmes and the financial contribution from the Union for the eradication, control and monitoring of certain animal diseases and zoonoses presented by the Member States for 2012 and following years⁽⁴⁾. Under that programme and in the context of the above referred action plan, Romania has implemented additional surveillance measures with regard to classical swine fever with favourable results.
- (17) In view of the data available, it is appropriate to permit the dispatch to other Member States of fresh pigmeat and meat preparations and meat products consisting of or containing such meat from pigs kept in Romania in accordance to the provisions laid down in this Decision, provided that the channelled system proposed by that Member State is in place.
- (18) Decision 2008/855/EC should therefore be amended accordingly.
- (19) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

The following Article 8c is inserted in Decision 2008/855/EC:

'Article 8c

Dispatch to other Member States of fresh pigmeat and meat preparations and meat products consisting of or containing such meat from the areas listed in Part III of the Annex

1. By way of derogation from Article 7(1), the Member States concerned with areas listed in Part III of the Annex may authorise the dispatch to other Member States of fresh pigmeat and meat preparations and meat products consisting of or containing such meat, provided that they:

(a) are derived from pigs which have been kept since birth in holdings:

(i) which are approved for that purpose by the competent authority and notified by it to the Commission and the other Member States;

⁽¹⁾ OJ L 39, 9.2.2002, p. 71.

⁽²⁾ OJ L 139, 30.4.2004, p. 206.

⁽³⁾ OJ L 139, 30.4.2004, p. 55.

⁽⁴⁾ OJ L 322, 6.12.2011, p. 11.

- (ii) which implement a bio-security plan approved by the competent authority;
- (iii) which have only introduced pigs from holdings:
- approved in accordance with this Decision, or
 - located in areas not listed in the Annex and not subject to any restrictions for classical swine fever in accordance with national or Union legislation during a period of 6 months prior to the introduction of the pigs; the period preceding the date of approval of the holding in accordance with this Decision is included in that six-month period;
- (iv) which are regularly inspected by the competent authority at intervals of not more than 3 months; during such inspections the competent authority must at least:
- follow the guidelines laid down in Chapter III of the Annex to Decision 2002/106/EC,
 - carry out a clinical examination in accordance with the checking and sampling procedures laid down in Part A of Chapter IV of the Annex to Decision 2002/106/EC,
 - verify the effective application of the provisions laid down in the second indent and in the fourth to seventh indents of Article 15(2)(b) of Directive 2001/89/EC,
 - immediately suspend or withdraw the approval in case of non-compliance;
- (v) where the animals have been subjected to laboratory testing for classical swine fever carried out with negative results on samples taken in accordance with the sampling procedures as laid down in the classical swine fever surveillance plan implemented by the competent authority for a period of at least 6 months prior to movement to the slaughterhouse referred to in point (b);
- (vi) which are located in the centre of an area of at least 10 km radius in which animals in the pig holdings have been subjected to laboratory testing for classical swine fever carried out with negative results on samples taken in accordance with the sampling procedures as laid down in the classical swine fever surveillance plan implemented by the competent authorities for at least the last 3 months prior to movement to the slaughterhouse referred to in point (b);
- (vii) which are located in a county in which:
- a programme for the control and monitoring of classical swine fever approved by the Commission is implemented,
 - the incidence and prevalence of classical swine fever in domestic and feral pigs has significantly decreased,
 - no evidence of classical swine fever virus circulation in pigs has been detected in the last 12 months;
- (b) were produced in slaughterhouses, cutting plants and meat processing establishments:
- (i) which are approved for that purpose by the competent authority and notified by it to the Commission and the Member States;
 - (ii) in which the production, storage and processing of the fresh meat and meat preparations and meat products consisting of or containing such meat eligible for dispatch to other Member States is carried out separately from the production, storage and processing of other products consisting of or containing fresh meat and meat preparations and meat products consisting of or containing meat derived from pigs originating in or coming from holdings other than those approved pursuant to point (a)(i).
2. The fresh pigmeat referred to in paragraph 1 shall be marked as provided for in Chapter III of Section I of Annex I to Regulation (EC) No 854/2004.
- The meat preparations and meat products consisting of or containing meat referred to in paragraph 1 shall be marked as provided for in Section I of Annex II to Regulation (EC) No 853/2004.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 24 January 2012.

For the Commission
John DALLI
Member of the Commission

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 176/11/COL

of 1 June 2011

to close the formal investigation procedure with regard to the financing of the fitness centre at the Kippermoen Leisure Centre (Norway)

THE EFTA SURVEILLANCE AUTHORITY (the Authority),

HAVING REGARD to the Agreement on the European Economic Area (the EEA Agreement) and in particular Articles 61 and 62 thereof,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the Surveillance and Court Agreement) and in particular Article 24 thereof,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement (Protocol 3) and in particular Article 1(2) of Part I and Article 4(4), Article 6 and Article 7(3) of Part II thereof,

HAVING called on interested parties to submit their comments pursuant to those provisions⁽¹⁾ and having regard to their comments,

Whereas:

I. FACTS**1. Procedure**

By letter of 27 January 2009 (Event No 506341), the Norwegian authorities notified the financing of the fitness centre at the Kippermoen Leisure Centre (the KLC), pursuant to Article 1(3) of Part I of Protocol 3.

After various exchanges of correspondence, by letter dated 16 December 2009 (Event No 538177) the Authority informed the Norwegian authorities that it had decided to initiate the procedure laid down in Article 1(2) of Part I of Protocol 3 in respect of the financing of the fitness centre at the KLC.

By letter dated 23 February 2010 (Event No 547864), the Norwegian authorities submitted comments to the opening decision.

The Authority's Decision No 537/09/COL to initiate the procedure was published in the *Official Journal of the European Union* and the EEA Supplement thereto⁽²⁾. The Authority called on interested parties to submit their comments thereon.

The Authority received comments from the Norwegian Association for Fitness (the NAF) (*Treningsforbundet*)⁽³⁾ and the European Health & Fitness Association (the EHFA). On 2 November 2010, the Authority held a meeting with the NAF. By letters dated 20 September 2010 (Event No 567099) and 9 November 2010 (Event No 576711) the Authority forwarded the comments and the information provided in the meeting to the Norwegian authorities, which submitted comments by letter dated 10 January 2011 (Event No 582713).

The Norwegian authorities submitted further comments by letters dated 14 March 2011 (Event No 590193) and 22 March 2011 (Event No 591454), and e-mail dated 28 March 2011 (Event No 592463).

2. The Kippermoen Leisure Centre (the KLC) and its fitness centre

As stated in Decision No 537/09/COL, the KLC was established in the 1970s. It is located in the municipality of Vefsn, in the county of Nordland. The centre is owned by the municipality and is not organised as a separate legal entity.

Initially, the KLC consisted of an indoor swimming pool with a solarium and a sports hall, in addition to a modestly equipped fitness centre. During the years 1997-1999 and again in 2006-2007, the KLC and its fitness centre were expanded.

⁽¹⁾ OJ C 184, 8.7.2010, p. 5 and EEA Supplement No 35, 8.7.2010, p. 1.

⁽²⁾ See footnote 1.

⁽³⁾ Formerly the Norwegian Association for Fitness Centres (NAFC) (*Norsk Treningscenterforbund*).

2.1. The financing of the KLC and its fitness centre

Since its establishment in the 1970s, the KLC has been financed by its users and the municipal budget. The users contribute to the financing by paying for access to the facilities. The municipality fully controls the prices, the types of tickets on offer and the allocation of the revenue. Although the ticket prices have been subject to adjustments throughout the years, the contributions from the users do not cover the full cost of operations of the KLC. The deficit is covered over the municipal budget in accordance with the budgetary decisions of the municipal council.

2.2. New information submitted by the Norwegian authorities

2.2.1. Charging fees from the users of the fitness centre

In Decision No 537/09/COL, the Authority noted that the KLC, since its foundation in the 1970s, has been financed by fees levied on its users and over the municipal budget⁽⁴⁾. In the context of the formal investigation procedure, the Norwegian authorities have clarified that users were only charged for accessing some of the facilities of the KLC (i.a. the swimming pool) but anyone could access the fitness centre free of charge until 1996 when the municipality started charging the users⁽⁵⁾.

2.2.2. Expansions in 1997-1999

In Decision No 537/09/COL, the Authority noted that the KLC as a whole was expanded in 1997 and that this expansion was financed i.a. by a NOK 10 million loan. The Authority had not received detailed information about the loan and to what extent, if any, the fitness centre at the KLC benefited from the loan⁽⁶⁾. During the formal investigation procedure, the Norwegian authorities clarified that the loan amounted to NOK 5,8 million instead of NOK 10 million as mentioned in the opening decision⁽⁷⁾. Furthermore, the Norwegian authorities clarified that the municipality did not obtain the loan in order to finance the expansions of the fitness centre, but in order to i.a. construct a new football arena known as *Mosjøhallen* at the total cost of NOK 14 million⁽⁸⁾.

In 1997-1999, the fitness centre was expanded and the KLC bought new equipment (weight-lifting equipment, stationary bicycles and various other fitness machines) for a total amount of approximately NOK 870 000 (approximately EUR 109 000)⁽⁹⁾.

2.2.3. Expansions in 2006-2007

The Norwegian authorities have furthermore submitted new information about the expansion of the KLC undertaken in 2006-2007.

⁽⁴⁾ Chapter I.2.2 of the Decision.

⁽⁵⁾ See e-mail from the Norwegian authorities dated 28.3.2011 (Event No 592463).

⁽⁶⁾ Chapters I.2.2 and II.1.3 of Decision No 537/09/COL.

⁽⁷⁾ See letter from the Norwegian authorities dated 23.2.2010 (Event No 547864), p. 6.

⁽⁸⁾ *Ibid.* pp. 2, 6 and 8.

⁽⁹⁾ *Ibid.* pp. 7-9.

In 2005, the municipality decided to expand the fitness centre, by constructing a new annex linking the existing buildings of the KLC. The intention was to make the centre more user-friendly in terms of access. The municipality furthermore decided to upgrade the existing facilities in the process⁽¹⁰⁾. The linking and upgrading of the existing buildings was undertaken in order to ensure that the standard of the facilities of the KLC would be on par with comparable centres⁽¹¹⁾.

In 2006-2007, the KLC and the fitness centre were consequently upgraded and expanded into a new annex (*Mellombygningen*). The total cost of the expansion was approximately NOK 14,2 million. A cost allocation plan was drawn up to in order to ensure that the fitness centre would carry its proportionate share (approximately 80%)⁽¹²⁾ of the expansion costs. The remaining share (approximately 20%) was to be covered by other means as these costs were not related to the fitness centre, but to other facilities at the KLC. In the decision to open the formal investigation procedure, the Authority noted that the fitness centre had not carried its full share of the loan cost for 2008 according to the cost allocation plan. The Norwegian authorities have subsequently clarified that the fitness centre did indeed cover the full cost of the loan in 2008 by allocating the annual profit to the municipality⁽¹³⁾.

2.2.4. No funding from the county municipality of Nordland

Based on the information available at the time of the decision to initiate the formal investigation procedure, the Authority was not able to exclude that the fitness centre at the KLC had received funding from the county municipality of Nordland⁽¹⁴⁾. The Norwegian authorities were therefore asked to provide information on this matter. The Norwegian authorities have clarified that the fitness centre at the KLC has not been funded by the county municipality of Nordland⁽¹⁵⁾.

3. Grounds for initiating the procedure

The Authority opened the formal investigation procedure, as it had doubts as to whether the financing of the fitness centre at the KLC constituted State aid within the meaning of Article 61 of the EEA Agreement. Furthermore, the Authority had doubts as to whether the financing of the fitness centre, if it were to be considered as State aid, could be held to be compatible with the EEA Agreement on the basis of either Article 59(2) as aid for a service of general economic interest or alternatively compatible on the basis of Article 61(3)(c) as aid to facilitate cultural or regional activities.

⁽¹⁰⁾ See Decisions 10/05 and 152/05 of the local council of Vefsn Municipality, Annex 2 to Event No 547864.

⁽¹¹⁾ See letter from the Norwegian authorities dated 23.2.2010 (Event No 547864), p. 10.

⁽¹²⁾ See letter from the Norwegian authorities dated 9.9.2009 (Event No 529846), pp. 2-4.

⁽¹³⁾ See letter from the Norwegian authorities dated 23.2.2010 (Event No 547864), p. 12.

⁽¹⁴⁾ Chapter II.1.1 of Decision No 537/09/COL.

⁽¹⁵⁾ See letter from the Norwegian authorities dated 23.2.2010 (Event No 547864), pp. 19-20.

The Norwegian authorities had notified the financing of the fitness centre in January 2009 and had not provided any information to justify the provisional conclusion that the financing of the fitness centre, if it were to be considered as State aid, constituted a system of existing aid within the meaning of Article 1(1) of Part I of Protocol 3. Consequently, in view of the doubts it had, the Authority initiated the formal investigation procedure provided for in Article 1(3) and (2).

4. Comments from third parties

The Authority received comments from two third parties, the EHFA and the NAF.

4.1. Comments from the European Health & Fitness Association (the EHFA)

The EHFA is an independent not-for-profit organisation representing the interests of the European health and fitness industry. It submits that fitness centres should be treated on equal terms regardless of whether they are privately or publicly owned, and that publicly owned fitness centres should not be granted advantages contrary to Article 59 of the EEA Agreement.

4.2. Comments from the Norwegian Association for Fitness (the NAF)

The NAF is a Norwegian organisation for commercial fitness centres. The NAF submits that State resources selectively benefiting fitness centres in the Norwegian market in general constitute State aid within the meaning of Article 61(1) of the EEA Agreement since such financing distorts competition and affects intra-EEA trade. To substantiate this, the NAF provided the Authority with general information on the Norwegian fitness centre market⁽¹⁶⁾.

The NAF furthermore argues that State aid to publicly owned fitness centres cannot be considered compatible with the functioning of the EEA Agreement on the basis of Article 59(2) as public service compensation or Article 61(3)(c) as aid to cultural or regional activities when the same aid is not offered to privately owned fitness centres on equal terms.

5. Comments by the Norwegian authorities

The Norwegian authorities consider that the financing of the fitness centre at the KLC does not constitute State aid within the meaning of Article 61(1) of the EEA Agreement for the following reasons: (i) the fitness centre does not receive a selective advantage stemming from state resources; (ii) the centre does not constitute an undertaking; and (iii) the financing of the fitness centre does not affect trade between the contracting parties of the EEA Agreement.

Additionally, the Norwegian authorities state that any municipal resources allocated to the fitness centre satisfies the

requirements of the *de minimis* regulation⁽¹⁷⁾ and does therefore not constitute State aid within the meaning of Article 61(1) of the EEA Agreement.

In the event that the Authority should find that the financing involves State aid, the Norwegian authorities consider such aid as existing aid since the KLC has been financed over the municipal budget and user fees since before the entry into force of the EEA Agreement and that this method of financing has remained unaltered since then.

Regardless of the above, the Norwegian authorities consider any potential aid to be compatible with the EEA Agreement on the basis of either Article 59(2) as aid for a service of general economic interest or alternatively compatible on the basis of Article 61(3)(c) as aid to facilitate cultural activities. Finally, the Norwegian authorities hold that the financing of the expansion of the fitness centre in 2006-2007 constitutes a form of regional aid compatible on the basis of Article 61(3)(c) and with reference to the Authority's Guidelines on National Regional Aid (2007-2013)⁽¹⁸⁾.

II. ASSESSMENT

1. The funding from the municipality of Vefsn

The Norwegian authorities notified the financing of the fitness centre to the Authority in January 2009. In the notification, the Norwegian authorities did not put forward any arguments to the effect that the financing of the fitness centre constituted existing aid, despite the fact that the notification included a copy of the writ of summons from the proceedings before the Norwegian courts wherein the applicant argued, at some length, that the financing of the fitness centre constituted new aid⁽¹⁹⁾.

In the Decision to open the formal investigation procedure, the Authority referred to the fact that the method of financing the fitness centre (covering the total deficit of the KLC over the municipal budget and allocation of revenue generated by ticket sales) was in place prior to the entry into force of the EEA Agreement, and could on this basis appear to constitute existing aid within the meaning of Article 1(b)(i) of Part II of Protocol 3⁽²⁰⁾. However, alterations to existing aid represent new aid, in line with Article 1(c) of the same Protocol.

⁽¹⁷⁾ 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 (OJ L 379, 28.12.2006, p. 5), incorporated into the EEA Agreement in paragraph 1ea of Annex 15 to the Agreement.

⁽¹⁸⁾ The Guidelines are available online at: <http://www.efitasurv.int/?1=1&showLinkID=15125&1=1>

⁽¹⁹⁾ See letter from the Norwegian authorities dated 27.1.2009 (Event No 506341), p. 40.

⁽²⁰⁾ Pursuant to Article 1(b)(i) of Part II of Protocol 3, existing aid is: 'all aid which existed prior to the entry into force of the EEA Agreement in the respective EEA States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the EEA Agreement.'

⁽¹⁶⁾ See letter from the Authority dated 9.11.2010 (Event No 576711).

In its Decision the Authority indicated that it had not received sufficiently specific information on the two expansions of the fitness centre and the changes to the system of allocation of ticketing revenue, and noted that these factors could have altered the existing system of aid into new aid within the meaning of Article 1(c) of the same Protocol ⁽²¹⁾.

In line with the principles laid down in the case law of the ECJ ⁽²²⁾, the Authority dealt with the measures within the framework of the rules pertaining to new aid.

Any assessment made in a decision to open the formal investigation procedure as to whether a potential aid measure constitutes new or existing aid is necessarily only of a preliminary nature. Even if the Authority, based on the information provided at the time, decided to open a formal investigation procedure on the basis of Article 1(2) of Part I of Protocol 3, it can still, in the decision concluding that procedure, find that the measure, if aid is involved, in fact constitutes existing aid ⁽²³⁾. Where existing aid is involved, the Authority has to follow the procedure for existing aid ⁽²⁴⁾. Accordingly, in such a case, the Authority would have to close the formal investigation procedure and open the different procedure for existing aid laid down in Articles 17-19 of Part II of Protocol 3 ⁽²⁵⁾. Under this latter procedure, and only under that, the Authority would assess whether a measure constitutes aid and if so, whether it is compatible with the functioning of the EEA Agreement.

As explained above in Chapter I.2 of this Decision, the Norwegian authorities have submitted additional factual information about the financing and expansions of the fitness centre at the KLC.

As the fitness centre has not been financed as a separate operation, its financing cannot be assessed independently of the financing of the KLC as such. Since its foundation in the 1970s, the KLC has been financed by fees levied on its users and over the municipal budget. Although the municipality did not introduce user fees for access to the fitness centre until 1996, since the 1970s it required such a fee from the users of parts of the KLC, in particular the swimming pool. On this basis, the Authority notes that the system of financing the KLC as such has not been changed.

The expansion of the fitness centre in 1997-1999 was of a smaller scale than what the information initially provided to the Authority indicated. The Norwegian authorities have

explained in the formal investigation that the municipality took a loan for NOK 5,8 million (instead of NOK 10 million) which was not used for the renovation of the fitness centre. On the contrary, a relatively modest expansion and re-furnishing of the fitness centre at a total cost of approximately NOK 870 000 that was carried out during this time was financed by the revenue stemming from fees levied on the users.

Although more substantial in scope, the 2006-2007 expansion only ensured that the service on offer would be on par with comparable fitness centres. Consequently, the type of activity carried out by the fitness centre, both before and after the expansions, remains the same and it is just adjusted to meet the evolution in the sector and the demands of the users. With the fitness centre at the KLC, the municipality has been active on the fitness centre market both before and after the entry into force of the EEA Agreement; it has occasionally expanded the fitness studio only to be able to provide a service to the population in line with what can be expected from a fitness centre. The system of financing (users fees and allocations from the municipal budget) and the aim pursued (providing fitness centre facilities to the population) have not changed ⁽²⁶⁾. Moreover, these expansions have not enabled the municipality to enter new markets. In that respect, the case at hand differs from the Commission Decision on the BBC Digital Curriculum ⁽²⁷⁾. That case concerned changes made to the existing system of aid benefiting the British public broadcaster, the BBC. In that case, the Commission found that changes made to the existing aid scheme involved new aid as they enabled the broadcaster to carry out activities that lacked a 'close association' to the existing scheme, and enabled the BBC to enter developed markets where the commercial players had little or no exposure to the BBC as a competitor ⁽²⁸⁾.

On the basis of the above, the Authority concludes that the financing of the fitness centre at the Kippermoen Leisure Centre with resources from the Municipality of Vefsn, in so far as it involves State aid, constitutes a system of existing aid. A separate procedure for existing aid is laid down in Article 1(1) of Part I of Protocol 3. Pursuant to that provision, the Authority shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

2. The funding from the County Municipality of Nordland

As noted above, the Norwegian authorities have clarified that the fitness centre at the KLC has not received funding from the county municipality of Nordland. Accordingly, there was no transfer of State resources from the county municipality of Nordland, which is the first of the four cumulative criteria

⁽²¹⁾ Chapter II.1.3 of Decision No 537/09/COL.

⁽²²⁾ Case C-400/99 *Italy v Commission* [2005] ECR I-3657.

⁽²³⁾ *Ibid.* paragraphs 47 and 54-55.

⁽²⁴⁾ Case T-190/00 *Regione Siciliana v Commission* [2003] ECR II-5015, paragraph 48.

⁽²⁵⁾ Case C-312/90 *Spain v Commission* [1992] ECR I-4117, paragraphs 14-17 and Case C-47/91 *Italy v Commission* [1992] ECR I-4145, paragraphs 22-25.

⁽²⁶⁾ See Opinion of AG Trabucchi in Case 51/74 *Hulst* [1975] ECR 79.

⁽²⁷⁾ Case N 37/2003 (UK), available online: http://ec.europa.eu/eu_law/state_aids/comp-2003/n037-03.pdf

⁽²⁸⁾ *Ibid.* paragraph 36.

to be fulfilled for a measure to constitute State aid within the meaning of Article 61(1) of the EEA Agreement. On the basis of the information newly provided by the Norwegian authorities, the Authority concludes that the fitness centre at the KLC, within this context, has not received any State aid within the meaning of Article 61(1) of the EEA Agreement in the form of advantages stemming from state resources (the county municipality of Nordland).

3. Conclusion

According to the new information provided by the Norwegian authorities, the county municipality of Nordland did not grant economic advantages to the fitness centre at the KLC in the period covered by the current formal investigation procedure. On this basis the Authority concludes that the fitness centre at the KLC has not received State aid stemming from the county municipality of Nordland in the relevant period.

The Authority has furthermore concluded that, in so far as resources stemming from the municipality of Vefsn have contributed to the financing of the fitness centre at the KLC and these resources constitute State aid, such aid has been granted under a system of existing aid. On the basis of the above assessment, the Authority has decided to close the formal investigation procedure and will initiate the procedure for the review of existing aid provided for in Article 1(1) and (2) of Part I of Protocol 3,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure with regard to the financing of the fitness centre at the Kippermoen Leisure Centre with funds stemming from the county municipality of Nordland during the period under assessment is without object and therefore closed.

Article 2

The formal investigation procedure with regard to the financing of the fitness centre at the Kippermoen Leisure Centre with funds stemming from the municipality of Vefsn is closed.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

Done at Brussels, 1 June 2011.

For the EFTA Surveillance Authority

Per SANDERUD
President

Sabine MONAUNI-TÖMÖRDY
College Member

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