

Official Journal

of the European Union

L 184

Volume 50

14 July 2007

English edition

Legislation

Contents

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

REGULATIONS

- ★ **Council Regulation (EC) No 824/2007 of 10 July 2007 opening and providing for the management of autonomous Community tariff quotas for certain fishery products for the period 2007 to 2009 ⁽¹⁾** 1
- Statement by the Commission and the Council 5
- Commission Regulation (EC) No 825/2007 of 13 July 2007 establishing the standard import values for determining the entry price of certain fruit and vegetables 6
- Commission Regulation (EC) No 826/2007 of 13 July 2007 concerning the 35th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EC) No 1898/2005, Chapter II 8
- Commission Regulation (EC) No 827/2007 of 13 July 2007 fixing the import duties in the cereals sector applicable from 16 July 2007 9
- ★ **Commission Regulation (EC) No 828/2007 of 13 July 2007 concerning the permanent and provisional authorisation of certain additives in feedingstuffs ⁽¹⁾** 12

DIRECTIVES

- ★ **Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies** 17
- ★ **Directive 2007/38/EC of the European Parliament and of the Council of 11 July 2007 on the retrofitting of mirrors to heavy goods vehicles registered in the Community** 25

⁽¹⁾ Text with EEA relevance

(Continued overleaf)

DECISIONS

Commission

2007/496/EC:

- ★ **Commission Decision of 13 July 2007 amending Decision 2006/415/EC concerning certain protection measures in relation to highly pathogenic avian influenza of the subtype H5N1 in poultry in the Community** (notified under document number C(2007) 3327) ⁽¹⁾ 29

European Central Bank

2007/497/EC:

- ★ **Decision of the European Central Bank of 3 July 2007 laying down the Rules on Procurement (ECB/2007/5)** 34

Notice to readers (see page 3 of the cover)



⁽¹⁾ Text with EEA relevance

I

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

REGULATIONS

COUNCIL REGULATION (EC) No 824/2007

of 10 July 2007

opening and providing for the management of autonomous Community tariff quotas for certain fishery products for the period 2007 to 2009

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 26 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Community supplies of certain fishery products currently depend on imports from third countries. It is in the Community's interest to suspend in part or in whole the customs duties for those products, within Community tariff quotas of an appropriate volume. In order not to jeopardise the development prospects of those products in the Community and in order to ensure an adequate supply to satisfy user industries, such quotas should be opened, applying variable customs duties in accordance with the sensitivity of the product in question on the Community market.

(2) Equal and uninterrupted access to those quotas should be ensured for all Community importers and the rates laid down for the quotas should be applied without interruption to all imports of the products concerned into all Member States until the quotas have been used up.

(3) To ensure the efficiency of a common management of the quotas, Member States should be permitted to draw from the quota amount the necessary quantities corre-

sponding to their actual imports. Since that method of management requires close cooperation between the Member States and the Commission, the latter should in particular be able to monitor the rate at which the quotas are used up and should inform the Member States accordingly.

(4) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽¹⁾ provides for a system of tariff quota management which follows the chronological order of the dates of acceptance of the declarations of release for free circulation. The tariff quotas opened by this Regulation should be managed by the Commission and the Member States in accordance with that system.

(5) Council Regulation (EC) No 379/2004 of 24 February 2004 opening and providing for the management of autonomous Community tariff quotas for certain fishery products ⁽²⁾ expired on 31 December 2006. No autonomous tariff quotas were available for the period between 1 January 2007 and the entry into force of this Regulation. Furthermore, given the fact that all quotas opened by this Regulation are subject to end use conditions in order to benefit from the favourable tariff treatment, a retro-active implementation of this Regulation is not possible. Therefore, in order to ensure a certain continuity with the previous quota system, a successor regime should be foreseen which allows to grant a reduction on import duties for fishery products released into free circulation between 1 January 2007 and the entry into force of this Regulation. The successor regime should take due account of the end use conditions and the available quantities of the specific quotas.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 214/2007 (OJ L 62, 1.3.2007, p. 6).

⁽²⁾ OJ L 64, 2.3.2004, p. 7. Regulation as amended by Regulation (EC) No 1723/2006 (OJ L 324, 23.11.2006, p. 1).

- (6) Given the urgency of the matter, it is important to grant an exception to the six-week period mentioned in paragraph 1(3) of the Protocol on the role of national parliaments in the European Union annexed to the Treaty on European Union and to the Treaties establishing the European Communities,

HAS ADOPTED THIS REGULATION:

Article 1

1. Import duties on the products listed in the Annex shall be suspended, within tariff quotas, at the rates for the periods, and up to the amounts, indicated therein.
2. Imports of the products listed in the Annex shall be covered by the quotas referred to in paragraph 1 only if the declared customs value is at least equal to the reference price fixed, or to be fixed, in accordance with Article 29 of Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products ⁽¹⁾.

Article 2

The tariff quotas referred to in Article 1 shall be managed by the Commission in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 3

The Commission and the Member States shall cooperate closely to ensure that this Regulation is complied with.

Article 4

1. Customs duties for fishery products released into free circulation between 1 January 2007 and 17 July 2007 which fall within the product scope of one of the tariff quotas listed in the Annex may be reduced on request of the declarant in accordance with the rates of duty set out therein.
2. The request shall be submitted by 14 August 2007 to the customs office in charge of the release into free circulation of the product in question, indicating the quota concerned. It shall be accompanied with all relevant documentation which prove that the imported product falls within the scope of the quota and that it had been or will be used in accordance with the end use conditions set out in the Annex for the tariff quota concerned.
3. This Article shall apply only where the balance of the relevant tariff quota so permits at the date of acceptance of the duly justified request. Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93 shall apply *mutatis mutandis*.

Article 5

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, 10 July 2007.

For the Council

The President

F. TEIXEIRA DOS SANTOS

⁽¹⁾ OJ L 17, 21.1.2000, p. 22. Regulation as last amended by Regulation (EC) No 1759/2006 (OJ L 335, 1.12.2006, p. 3).

ANNEX

Order No	CN code	TARIC code	Description	Annual amount of quota (tons)	Quota duty	Quota period
09.2759	ex 0302 50 10	20	Cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>), excluding livers and roes, fresh, chilled or frozen, for processing ^(a) ^(b)	80 000	0 %	1.1.2007-31.12.2009
	ex 0302 50 90	10				
	ex 0303 52 10	10				
	ex 0303 52 30	10				
	ex 0303 52 90	10				
09.2765	ex 0305 62 00	20	Cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>) and fish of the species <i>Boreogadus saida</i> , salted or in brine, but not dried or smoked, for processing ^(a) ^(b)	10 000	0 %	1.1.2007-31.12.2009
		25				
		29				
09.2761	ex 0305 69 10	10				
09.2760	ex 0304 29 91	10	Blue grenadier (<i>Macruronus</i> spp.), frozen fillets and other meat, for processing ^(a) ^(b)	20 000	0 %	1.1.2007-31.12.2009
		41				
		81				
		60				
		81				
09.2766	ex 0304 29 99	10	Hake (<i>Merluccius</i> spp. excluding <i>Merluccius merluccius</i> , <i>Urophycis</i> spp.), and Pink cusk-eel (<i>Genypterus blacodes</i>), frozen, for processing ^(a) ^(b)	15 000	0 %	1.1.2007-31.12.2009
		10				
		10				
		11				
		81				
		10				
		10				
09.2766	ex 0303 78 11	71	Southern blue whiting (<i>Micromesistius australis</i>), frozen fillets and other meat, for processing ^(a) ^(b)	2 000	0 %	1.1.2007-31.12.2009
		91				
09.2770	ex 0304 29 99	10	Anchovies (<i>Engraulis anchoita</i>), salted or in brine, but not dried or smoked, for processing ^(a) ^(b)	10 000	0 %	1.1.2007-31.12.2009
09.2778	ex 0305 63 00	10	Herrings (<i>Clupea harengus</i> , <i>Clupea pallasii</i>), of a weight exceeding 100 g per piece or flaps of a weight exceeding 80 g per piece, excluding livers and roes, for processing ^(a) ^(b)	20 000	0 %	1.1.2007-31.12.2007
		10				1.10.2008-31.12.2008
		10				1.10.2009-31.12.2009
		10				
09.2792	ex 0304 19 97	10	Herrings, spiced and/or vinegar-cured, in brine, preserved in barrels of at least 70 kg net drained weight, for processing ^(a) ^(b)	10 000	6 %	1.1.2007-31.12.2009
09.2790	ex 1604 12 99	20	Filets known as 'loins' of tunas and skipjack, for processing ^(a) ^(b)	8 000	6 %	1.1.2007-31.12.2007
		30		9 000	6 %	1.1.2008-31.12.2008
		95		10 000	6 %	1.1.2009-31.12.2009
09.2762	ex 1604 14 16	10	Rock lobster and other sea crawfish (<i>Palinurus</i> spp., <i>Panulirus</i> spp., <i>Jasus</i> spp.), frozen, for processing ^(a) ^(b) ^(c)	1 500	6 %	1.1.2007-31.12.2009
		10				

Order No	CN code	TARIC code	Description	Annual amount of quota (tons)	Quota duty	Quota period
09.2794	ex 1605 20 10 ex 1605 20 99	50 45	Shrimps and prawns of the species <i>Pandalus borealis</i> ; cooked and peeled, for processing ^(a) ^(b) ^(d)	20 000	6 %	1.1.2007-31.12.2009
09.2785	ex 0307 49 59 ex 0307 99 11	10 10	Tubes of squid (<i>Ommastrephes</i> spp. — excluding <i>Ommastrephes sagittatus</i> —, <i>Nototodarus</i> spp., <i>Sepioteuthis</i> spp.) and <i>Illex</i> spp., frozen, with skin and fins, for processing ^(a) ^(b)	45 000	0 %	1.1.2007-31.12.2009
09.2786	ex 0307 49 59 ex 0307 99 11	20 20	Squid (<i>Ommastrephes</i> spp. — excluding <i>Ommastrephes sagittatus</i> —, <i>Nototodarus</i> spp., <i>Sepioteuthis</i> spp.) and <i>Illex</i> spp., frozen whole or tentacles and fins, for processing ^(a) ^(b)	1 500	0 %	1.1.2007-31.12.2009
09.2772	ex 0304 99 10	10	Surimi, frozen, for processing ^(a) ^(b)	55 000	0 %	1.1.2007-31.12.2009
09.2774	ex 0304 29 58	10	Hake (<i>Merluccius productus</i>), frozen fillets for processing ^(a) ^(b)	15 000	4 %	1.1.2007-31.12.2009
09.2776	ex 0304 29 21 ex 0304 29 29 ex 0304 99 31 ex 0304 99 33	10 20 10 10	Cod, (<i>Gadus morhua</i> , <i>Gadus macrocephalus</i>), frozen fillets and meat, for processing ^(a) ^(b)	20 000	0 %	1.1.2007-31.12.2009
09.2778	ex 0304 29 99 ex 0304 99 99	65 65	Sole, frozen fillets and other fish meat (<i>Limanda aspera</i> , <i>Lepidopsetta bilineata</i> , <i>Pleuronectes quadrituberculatus</i>), for processing ^(a) ^(b)	5 000	0 %	1.1.2007-31.12.2009

^(a) Entry under this subheading is subject to conditions laid down in the relevant Community provisions (see Articles 291 to 300 of Commission Regulation (EEC) No 2454/93).

^(b) This quota is available for products intended to undergo any operation, unless it is solely for one or more of the following operations:

- cleaning, gutting, tailing, heading,
- cutting (excluding dicing, filleting, production of flaps or cutting of frozen blocks or splitting of frozen interleaved fillet blocks),
- sampling, sorting,
- labelling,
- packing,
- chilling,
- freezing,
- deep freezing,
- thawing, separation.

The quota is not available for products intended, in addition, to undergo treatment (or operations) which gives quota entitlement, where such treatment (or operations) is (are) carried out at retail or catering level. The reduction of customs duties shall apply only to fish intended for human consumption.

^(c) Products under CN codes 0306 11 10 10 and 0306 11 90 10 will, however, qualify for the quota if they undergo one or both of the following operations:

- dividing the frozen lobster,
- subjecting the frozen lobster to heat treatment to enable the removal of internal waste material.

^(d) Products under CN codes 1605 20 10 50 and 1605 20 99 45 will, however, qualify for the quota if they undergo the following operation:

- subjecting the shrimps and prawns to processed treatment by packaging gases as defined in European Parliament and Council Directive 95/2/EC of 20 February 1995 on food additives other than colours and sweeteners (OJ L 61, 18.3.1995, p. 1. Directive as last amended by Directive 2006/52/EC (OJ L 204, 26.7.2006, p. 10)).

STATEMENT BY THE COMMISSION AND THE COUNCIL

The Commission and the Council re-state that the practice of glazing is to be associated with the freezing of the product and may thus not constitute a processing operation giving quota entitlement in the sense of footnote (b).

COMMISSION REGULATION (EC) No 825/2007**of 13 July 2007****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 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 the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 July 2007.

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

Done at Brussels, 13 July 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 756/2007 (OJ L 172, 30.6.2007, p. 41).

ANNEX

to Commission Regulation of 13 July 2007 establishing the 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	MK	48,1
	TR	83,4
	XS	23,6
	ZZ	51,7
0707 00 05	TR	114,3
	ZZ	114,3
0709 90 70	TR	88,7
	ZZ	88,7
0805 50 10	AR	52,7
	UY	55,7
	ZA	57,0
	ZZ	55,1
0808 10 80	AR	87,5
	BR	83,0
	CL	88,0
	CN	100,8
	NZ	102,2
	US	108,3
	UY	60,7
	ZA	87,8
	ZZ	89,8
0808 20 50	AR	82,8
	CL	86,0
	NZ	144,9
	ZA	119,4
	ZZ	108,3
0809 10 00	TR	192,1
	ZZ	192,1
0809 20 95	TR	294,0
	US	359,1
	ZZ	326,6
0809 30 10, 0809 30 90	TR	152,4
	ZZ	152,4
0809 40 05	IL	128,3
	ZZ	128,3

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 826/2007**of 13 July 2007****concerning the 35th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EC) No 1898/2005, Chapter II**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/99 as regards measures for the disposal of cream, butter and concentrated butter on the Community market ⁽²⁾, the intervention agencies may sell by standing invitation to tender certain quantities of butter of intervention stocks that they hold and may grant aid for cream, butter and concentrated butter. Article 25 of that Regulation lays down that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further laid down

that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure. The amount of the processing security as referred to in Article 28 of Regulation (EC) No 1898/2005 should be fixed accordingly.

- (2) On the basis of the examination of the offers received, the tendering procedure should not proceed.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 35th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005 Chapter II, the tendering procedure should not proceed.

Article 2

This Regulation shall enter into force on 14 July 2007.

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

Done at Brussels, 13 July 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

COMMISSION REGULATION (EC) No 827/2007**of 13 July 2007****fixing the import duties in the cereals sector applicable from 16 July 2007**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 on rules of application (cereal sector import duties) for Council Regulation (EEC) No 1766/92 ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

(1) Article 10(2) of Regulation (EC) No 1784/2003 states that the import duty on products falling within CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002, ex 1005 other than hybrid seed, and ex 1007 other than hybrids for sowing, is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Article 10(3) of Regulation (EC) No 1784/2003 lays down that, for the purposes of calculating the import

duty referred to in paragraph 2 of that Article, representative cif import prices are to be established on a regular basis for the products in question.

(3) Under Article 2(2) of Regulation (EC) No 1249/96, the price to be used for the calculation of the import duty on products of CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002 00, 1005 10 90, 1005 90 00 and 1007 00 90 is the daily cif representative import price determined as specified in Article 4 of that Regulation.

(4) Import duties should be fixed for the period from 16 July 2007, and should apply until new import duties are fixed and enter into force,

HAS ADOPTED THIS REGULATION:

Article 1

From 16 July 2007, the import duties in the cereals sector referred to in Article 10(2) of Regulation (EC) No 1784/2003 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

Article 2

This Regulation shall enter into force on 16 July 2007.

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

Done at Brussels, 13 July 2007.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1816/2005 (OJ L 292, 8.11.2005, p. 5).

ANNEX I

Import duties on the products referred to in Article 10(2) of Regulation (EC) No 1784/2003 applicable from 16 July 2007

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	0,00
1005 10 90	Maize seed other than hybrid	13,96
1005 90 00	Maize, other than seed ⁽²⁾	13,96
1007 00 90	Grain sorghum other than hybrids for sowing	0,00

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

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

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

ANNEX II

Factors for calculating the duties laid down in Annex I

29.6.2007-12.7.2007

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

(EUR/t)

	Common wheat (*)	Maize	Durum wheat, high quality	Durum wheat, medium quality (**)	Durum wheat, low quality (***)	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	180,35	96,77	—	—	—	—
Fob price USA	—	—	191,58	181,58	161,58	154,83
Gulf of Mexico premium	—	14,82	—	—	—	—
Great Lakes premium	10,10	—	—	—	—	—

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

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

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

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

Freight costs: Gulf of Mexico–Rotterdam: 36,47 EUR/tonne

Freight costs: Great Lakes–Rotterdam: 32,62 EUR/tonne

COMMISSION REGULATION (EC) No 828/2007

of 13 July 2007

concerning the permanent and provisional authorisation of certain additives in feedingstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs ⁽¹⁾, and in particular Articles 3, 9d(1) and 9e(1) thereof,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽²⁾, and in particular Article 25 thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition.
- (2) Article 25 of Regulation (EC) No 1831/2003 lays down transitional measures for applications for the authorisation of feed additives submitted in accordance with Directive 70/524/EEC before the date of application of Regulation (EC) No 1831/2003.
- (3) The applications for the authorisation of the additives listed in the Annexes to this Regulation were submitted before the date of application of Regulation (EC) No 1831/2003.
- (4) Initial comments on those applications, as provided for in Article 4(4) of Directive 70/524/EEC, were forwarded to the Commission before the date of application of Regulation (EC) No 1831/2003. Those applications are therefore to continue to be treated in accordance with Article 4 of Directive 70/524/EEC.
- (5) The use of the preparation of endo-1,4-beta-xylanase produced by *Trichoderma longibrachiatum* (MUCL 39203) was provisionally authorised for the first time for chickens for fattening by Commission Regulation (EC)

No 1436/98 ⁽³⁾. New data were submitted in support of an application for authorisation without a time limit of that preparation for chickens for fattening. The assessment shows that the conditions laid down in Article 3a of Directive 70/524/EEC for such authorisation are satisfied. Accordingly, the use of that preparation, as specified in Annex I to this Regulation, should be authorised without a time limit.

- (6) The use of the preparation of endo-1,4-beta-xylanase produced by *Trichoderma longibrachiatum* (IMI SD 135) was provisionally authorised for the first time for turkeys for fattening by Commission Regulation (EC) No 1353/2000 ⁽⁴⁾. New data were submitted in support of an application for authorisation without a time limit of that preparation for turkeys. The assessment shows that the conditions laid down in Article 3a of Directive 70/524/EEC for such authorisation are satisfied. Accordingly, the use of that preparation, as specified in Annex II to this Regulation, should be authorised without a time limit.
- (7) Data were submitted in support of an application for authorisation for four years of the preparation Astaxanthin-rich *Phaffia rhodozyma* (ATCC SD-5340) for salmon and trout. The European Food Safety Authority (EFSA) expressed its opinion on the use of this preparation on 25 January 2006. The assessment shows that the conditions laid down in Article 9e(1) of Directive 70/524/EEC for such authorisation are satisfied. Accordingly, the use of that preparation, as specified in Annex III to this Regulation, should be provisionally authorised for four years.
- (8) The assessment of these applications shows that certain procedures should be required to protect workers from exposure to the additives set out in the Annexes. Such protection should be assured by the application of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ⁽⁵⁾.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

⁽¹⁾ OJ L 270, 14.12.1970, p. 1. Directive as last amended by Commission Regulation (EC) No 1800/2004 (OJ L 317, 16.10.2004, p. 37).

⁽²⁾ OJ L 268, 18.10.2003, p. 29. Regulation as amended by Commission Regulation (EC) No 378/2005 (OJ L 59, 5.3.2005, p. 8).

⁽³⁾ OJ L 191, 7.7.1998, p. 15.

⁽⁴⁾ OJ L 155, 28.6.2000, p. 15.

⁽⁵⁾ OJ L 183, 29.6.1989, p. 1. Directive as last amended by Directive 2007/30/EC of the European Parliament and of the Council (OJ L 165, 27.6.2007, p. 21).

HAS ADOPTED THIS REGULATION:

Article 1

The preparation belonging to the group 'Enzymes', as specified in Annex I, is authorised without a time limit as an additive in animal nutrition under the conditions laid down in that Annex.

Article 2

The preparation belonging to the group 'Enzymes', as specified in Annex II, is authorised without a time limit as an additive in animal nutrition under the conditions laid down in that Annex.

Article 3

The preparation belonging to the group 'Colorants, including pigments', as specified in Annex III, is authorised provisionally for four years as an additive in animal nutrition under the conditions laid down in that Annex.

Article 4

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

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

Done at Brussels, 13 July 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

Enzymes

EC No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
Enzymes								
E 1641	Endo-1,4-beta-xylanase EC 3.2.1.8	Preparation of endo-1,4-beta-xylanase produced by <i>Trichoderma longibrachiatum</i> (MUCL 39203) having a minimum activity of: Solid form: 1 500 AXC/g (!) Liquid form: 200 AXC/ml	Chickens for fattening	—	55 AXC	—	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting. 2. Recommended dose per kilogram of complete feedingsuff: 55-100 AXC. 3. For use in compound feed rich in non-starch polysaccharides (mainly arabinoxylans), e.g. containing more than 50 % wheat.	Without a time limit

(¹) 1 AXC is the amount of enzyme which liberates 17,2 micromoles of reducing sugars (maltose equivalents) from oat Xylan per minute at pH 4,7 and 30 °C.

⁽¹⁾ 1 AXC is the amount of enzyme which liberates 17,2 micromoles of reducing sugars (maltose equivalents) from oat Xylan per minute at pH 4,7 and 30 °C.

ANNEX III

EC No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
Colorants, including pigments								
E 161y	Astaxanthin-rich <i>Phaffia rhodozyma</i> (ATCC SD-5340)	Concentrated biomass of the yeast <i>Phaffia rhodozyma</i> (ATCC SD-5340), killed, and containing at least 10,0 g astaxanthin per kilogram of additive.	Salmon	—	—	100	The maximum content is expressed as astaxanthin. Use permitted only from the age of six months onwards. The mixture of the additive with canthaxanthin is allowed provided that the total concentration of astaxanthin and canthaxanthin does not exceed 100 mg/kg in the complete feedingstuff.	3 August 2011
			Trout		—	100		

DIRECTIVES

DIRECTIVE 2007/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 July 2007

on the exercise of certain rights of shareholders in listed companies

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

general meetings via electronic means and ensuring that cross-border voting rights are able to be exercised.

Having regard to the Treaty establishing the European Community, and in particular Articles 44 and 95 thereof,

Having regard to the proposal from the Commission,

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

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

Whereas:

(1) In its Communication to the Council and the European Parliament of 21 May 2003, entitled 'Modernising Company Law and enhancing Corporate Governance in the European Union — A Plan to Move Forward', the Commission indicated that new tailored initiatives should be taken with a view to enhancing shareholders' rights in listed companies and that problems relating to cross-border voting should be solved as a matter of urgency.

(2) In its Resolution of 21 April 2004 ⁽³⁾, the European Parliament expressed its support for the Commission's intention to strengthen shareholders' rights, in particular through the extension of the rules on transparency, proxy voting rights, the possibility of participating in

(3) Holders of shares carrying voting rights should be able to exercise those rights given that they are reflected in the price that has to be paid at the acquisition of the shares. Furthermore, effective shareholder control is a prerequisite to sound corporate governance and should, therefore, be facilitated and encouraged. It is therefore necessary to adopt measures to approximate the laws of the Member States to this end. Obstacles which deter shareholders from voting, such as making the exercise of voting rights subject to the blocking of shares during a certain period before the general meeting, should be removed. However, this Directive does not affect existing Community legislation on units issued by collective investment undertakings or on units acquired or disposed of in such undertakings.

(4) The existing Community legislation is not sufficient to achieve this objective. Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities ⁽⁴⁾ focuses on the information issuers have to disclose to the market and accordingly does not deal with the shareholder voting process itself. Moreover, Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market ⁽⁵⁾ imposes on issuers an obligation to make available certain information and documents relevant to general meetings, but such information and documents are to be made available in the issuer's home Member State. Therefore, certain minimum standards should be introduced with a view to protecting investors and promoting the smooth and effective exercise of shareholder rights attaching to voting shares. As regards rights other than the right to vote, Member States are free to extend the application of these minimum standards also to non-voting shares, to the extent that those shares do not enjoy such standards already.

⁽¹⁾ OJ C 318, 23.12.2006, p. 42.

⁽²⁾ Opinion of the European Parliament of 15 February 2007 (not yet published in the Official Journal) and Council Decision of 12 June 2007.

⁽³⁾ OJ C 104 E, 30.4.2004, p. 714.

⁽⁴⁾ OJ L 184, 6.7.2001, p. 1. Directive as last amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).

⁽⁵⁾ OJ L 390, 31.12.2004, p. 38.

- (5) Significant proportions of shares in listed companies are held by shareholders who do not reside in the Member State in which the company has its registered office. Non-resident shareholders should be able to exercise their rights in relation to the general meeting as easily as shareholders who reside in the Member State in which the company has its registered office. This requires that existing obstacles which hinder the access of non-resident shareholders to the information relevant to the general meeting and the exercise of voting rights without physically attending the general meeting be removed. The removal of these obstacles should also benefit resident shareholders who do not or cannot attend the general meeting.
- (6) Shareholders should be able to cast informed votes at, or in advance of, the general meeting, no matter where they reside. All shareholders should have sufficient time to consider the documents intended to be submitted to the general meeting and determine how they will vote their shares. To this end, timely notice should be given of the general meeting, and shareholders should be provided with the complete information intended to be submitted to the general meeting. The possibilities which modern technologies offer to make information instantly accessible should be exploited. This Directive presupposes that all listed companies already have an Internet site.
- (7) Shareholders should, in principle, have the possibility to put items on the agenda of the general meeting and to table draft resolutions for items on the agenda. Without prejudice to different time-frames and modalities which are currently in use across the Community, the exercise of those rights should be made subject to two basic rules, namely that any threshold required for the exercise of those rights should not exceed 5 % of the company's share capital and that all shareholders should in every case receive the final version of the agenda in sufficient time to prepare for the discussion and voting on each item on the agenda.
- (8) Every shareholder should, in principle, have the possibility to ask questions related to items on the agenda of the general meeting and to have them answered, while the rules on how and when questions are to be asked and answered should be left to be determined by Member States.
- (9) Companies should face no legal obstacles in offering to their shareholders any means of electronic participation in the general meeting. Voting without attending the general meeting in person, whether by correspondence or by electronic means, should not be subject to constraints other than those necessary for the verification of identity and the security of electronic communications. However, this should not prevent Member States from adopting rules aimed at ensuring that the results of the voting reflect the intentions of the shareholders in all circumstances, including rules aimed at addressing situations where new circumstances occur or are revealed after a shareholder has cast his vote by correspondence or by electronic means.
- (10) Good corporate governance requires a smooth and effective process of proxy voting. Existing limitations and constraints which make proxy voting cumbersome and costly should therefore be removed. But good corporate governance also requires adequate safeguards against a possible abuse of proxy voting. The proxy holder should therefore be bound to observe any instructions he may have received from the shareholder and Member States should be able to introduce appropriate measures ensuring that the proxy holder does not pursue any interest other than that of the shareholder, irrespective of the reason that has given rise to the conflict of interests. Measures against possible abuse may, in particular, consist of regimes which Member States may adopt in order to regulate the activity of persons who actively engage in the collection of proxies or who have in fact collected more than a certain significant number of proxies, notably to ensure an adequate degree of reliability and transparency. Shareholders have an unfettered right under this Directive to appoint such persons as proxy holders to attend and vote at general meetings in their name. This Directive does not, however, affect any rules or sanctions that Member States may impose on such persons where votes have been cast by making fraudulent use of proxies collected. Moreover, this Directive does not impose any obligation on companies to verify that proxy holders cast votes in accordance with the voting instructions of the appointing shareholders.
- (11) Where financial intermediaries are involved, the effectiveness of voting upon instructions relies, to a great extent, on the efficiency of the chain of intermediaries, given that investors are frequently unable to exercise the voting rights attached to their shares without the cooperation of every intermediary in the chain, who may not have an economic stake in the shares. In order to enable the investor to exercise his voting rights in cross-border situations, it is therefore important that intermediaries facilitate the exercise of voting rights. Further consideration should be given to this issue by the Commission in the context of a Recommendation, with a view to ensuring that investors have access to effective voting services and that voting rights are exercised in accordance with the instructions given by those investors.
- (12) While the timing of disclosure to the administrative, management or supervisory body as well as to the public of votes cast in advance of the general meeting electronically or by correspondence is an important matter of corporate governance, it can be determined by Member States.

(13) Voting results should be established through methods that reflect the voting intentions expressed by shareholders, and they should be made transparent after the general meeting at least through the company's Internet site.

(14) Since the objective of this Directive, namely to allow shareholders effectively to make use of their rights throughout the Community, cannot be sufficiently achieved by the Member States on the basis of the existing Community legislation and can therefore, by reason of the scale and effects of the measures, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(15) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter and scope

1. This Directive establishes requirements in relation to the exercise of certain shareholder rights attaching to voting shares in relation to general meetings of companies which have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State.

2. The Member State competent to regulate matters covered in this Directive shall be the Member State in which the company has its registered office, and references to the 'applicable law' are references to the law of that Member State.

3. Member States may exempt from this Directive the following types of companies:

(a) collective investment undertakings within the meaning of Article 1(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations

and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ⁽²⁾;

(b) undertakings the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of their underlying investments, provided that these collective investment undertakings are authorised and subject to the supervision of competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC;

(c) cooperative societies.

Article 2

Definitions

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

(a) 'regulated market' means a market as defined in Article 4(1), point 14, of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ⁽³⁾;

(b) 'shareholder' means the natural or legal person that is recognised as a shareholder under the applicable law;

(c) 'proxy' means the empowerment of a natural or legal person by a shareholder to exercise some or all rights of that shareholder in the general meeting in his name.

Article 3

Further national measures

This Directive shall not prevent Member States from imposing further obligations on companies or from otherwise taking further measures to facilitate the exercise by shareholders of the rights referred to in this Directive.

CHAPTER II

GENERAL MEETINGS OF SHAREHOLDERS

Article 4

Equal treatment of shareholders

The company shall ensure equal treatment for all shareholders who are in the same position with regard to participation and the exercise of voting rights in the general meeting.

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

⁽²⁾ OJ L 375, 31.12.1985, p. 3.

⁽³⁾ OJ L 145, 30.4.2004, p. 1.

*Article 5***Information prior to the general meeting**

1. Without prejudice to Articles 9(4) and 11(4) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ⁽¹⁾, Member States shall ensure that the company issues the convocation of the general meeting in one of the manners specified in paragraph 2 of this Article not later than on the 21st day before the day of the meeting.

Member States may provide that, where the company offers the facility for shareholders to vote by electronic means accessible to all shareholders, the general meeting of shareholders may decide that it shall issue the convocation of a general meeting which is not an annual general meeting in one of the manners specified in paragraph 2 of this Article not later than on the 14th day before the day of the meeting. This decision is to be taken by a majority of not less than two thirds of the votes attaching to the shares or the subscribed capital represented and for a duration not later than the next annual general meeting.

Member States need not apply the minimum periods referred to in the first and second subparagraphs for the second or subsequent convocation of a general meeting issued for lack of a quorum required for the meeting convened by the first convocation, provided that this Article has been complied with for the first convocation and no new item is put on the agenda, and that at least 10 days elapse between the final convocation and the date of the general meeting.

2. Without prejudice to further requirements for notification or publication laid down by the competent Member State as defined in Article 1(2), the company shall be required to issue the convocation referred to in paragraph 1 of this Article in a manner ensuring fast access to it on a non-discriminatory basis. The Member State shall require the company to use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. The Member State may not impose an obligation to use only media whose operators are established on its territory.

The Member State need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders, provided that the company is under an obligation to send the convocation to each of its registered shareholders.

In either case the company may not charge any specific cost for issuing the convocation in the prescribed manner.

3. The convocation referred to in paragraph 1 shall at least:

(a) indicate precisely when and where the general meeting is to take place, and the proposed agenda for the general meeting;

(b) contain a clear and precise description of the procedures that shareholders must comply with in order to be able to participate and to cast their vote in the general meeting. This includes information concerning:

(i) the rights available to shareholders under Article 6, to the extent that those rights can be exercised after the issuing of the convocation, and under Article 9, and the deadlines by which those rights may be exercised; the convocation may confine itself to stating only the deadlines by which those rights may be exercised, provided it contains a reference to more detailed information concerning those rights being made available on the Internet site of the company;

(ii) the procedure for voting by proxy, notably the forms to be used to vote by proxy and the means by which the company is prepared to accept electronic notifications of the appointment of proxy holders; and

(iii) where applicable, the procedures for casting votes by correspondence or by electronic means;

(c) where applicable, state the record date as defined in Article 7(2) and explain that only those who are shareholders on that date shall have the right to participate and vote in the general meeting;

(d) indicate where and how the full, unabridged text of the documents and draft resolutions referred to in points (c) and (d) of paragraph 4 may be obtained;

(e) indicate the address of the Internet site on which the information referred to in paragraph 4 will be made available.

4. Member States shall ensure that, for a continuous period beginning not later than on the 21 day before the day of the general meeting and including the day of the meeting, the company shall make available to its shareholders on its Internet site at least the following information:

(a) the convocation referred to in paragraph 1;

(b) the total number of shares and voting rights at the date of the convocation (including separate totals for each class of shares where the company's capital is divided into two or more classes of shares);

(c) the documents to be submitted to the general meeting;

⁽¹⁾ OJ L 142, 30.4.2004, p. 12.

- (d) a draft resolution or, where no resolution is proposed to be adopted, a comment from a competent body within the company, to be designated by the applicable law, for each item on the proposed agenda of the general meeting; moreover, draft resolutions tabled by shareholders shall be added to the Internet site as soon as practicable after the company has received them;
- (e) where applicable, the forms to be used to vote by proxy and to vote by correspondence, unless those forms are sent directly to each shareholder.

Where the forms referred to in point (e) cannot be made available on the Internet for technical reasons, the company shall indicate on its Internet site how the forms can be obtained on paper. In this case the company shall be required to send the forms by postal services and free of charge to every shareholder who so requests.

Where, pursuant to Articles 9(4) or 11(4) of Directive 2004/25/EC, or to the second subparagraph of paragraph 1 of this Article, the convocation of the general meeting is issued later than on the 21st day before the meeting, the period specified in this paragraph shall be shortened accordingly.

Article 6

Right to put items on the agenda of the general meeting and to table draft resolutions

1. Member States shall ensure that shareholders, acting individually or collectively:
 - (a) have the right to put items on the agenda of the general meeting, provided that each such item is accompanied by a justification or a draft resolution to be adopted in the general meeting; and
 - (b) have the right to table draft resolutions for items included or to be included on the agenda of a general meeting.

Member States may provide that the right referred to in point (a) may be exercised only in relation to the annual general meeting, provided that shareholders, acting individually or collectively, have the right to call, or to require the company to call, a general meeting which is not an annual general meeting with an agenda including at least all the items requested by those shareholders.

Member States may provide that those rights shall be exercised in writing (submitted by postal services or electronic means).

2. Where any of the rights specified in paragraph 1 is subject to the condition that the relevant shareholder or shareholders hold a minimum stake in the company, such minimum stake shall not exceed 5 % of the share capital.

3. Each Member State shall set a single deadline, with reference to a specified number of days prior to the general meeting or the convocation, by which shareholders may exercise the right referred to in paragraph 1, point (a). In the same manner each Member State may set a deadline for the exercise of the right referred to in paragraph 1, point (b).

4. Member States shall ensure that, where the exercise of the right referred to in paragraph 1, point (a) entails a modification of the agenda for the general meeting already communicated to shareholders, the company shall make available a revised agenda in the same manner as the previous agenda in advance of the applicable record date as defined in Article 7(2) or, if no record date applies, sufficiently in advance of the date of the general meeting so as to enable other shareholders to appoint a proxy or, where applicable, to vote by correspondence.

Article 7

Requirements for participation and voting in the general meeting

1. Member States shall ensure:
 - (a) that the rights of a shareholder to participate in a general meeting and to vote in respect of any of his shares are not subject to any requirement that his shares be deposited with, or transferred to, or registered in the name of, another natural or legal person before the general meeting; and
 - (b) that the rights of a shareholder to sell or otherwise transfer his shares during the period between the record date, as defined in paragraph 2, and the general meeting to which it applies are not subject to any restriction to which they are not subject at other times.
2. Member States shall provide that the rights of a shareholder to participate in a general meeting and to vote in respect of his shares shall be determined with respect to the shares held by that shareholder on a specified date prior to the general meeting (the record date).

Member States need not apply the first subparagraph to companies that are able to identify the names and addresses of their shareholders from a current register of shareholders on the day of the general meeting.

3. Each Member State shall ensure that a single record date applies to all companies. However, a Member State may set one record date for companies which have issued bearer shares and another record date for companies which have issued registered shares, provided that a single record date applies to each company which has issued both types of shares. The record date shall not lie more than 30 days before the date of the general meeting to which it applies. In implementing this provision and Article 5(1), each Member State shall ensure that at least eight days elapse between the latest permissible date for the convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included. In the circumstances described in Article 5(1), third subparagraph, however, a Member State may require that at least six days elapse between the latest permissible date for the second or subsequent convocation of the general meeting and the record date. In calculating that number of days those two dates shall not be included.

4. Proof of qualification as a shareholder may be made subject only to such requirements as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.

Article 8

Participation in the general meeting by electronic means

1. Member States shall permit companies to offer to their shareholders any form of participation in the general meeting by electronic means, notably any or all of the following forms of participation:

- (a) real-time transmission of the general meeting;
- (b) real-time two-way communication enabling shareholders to address the general meeting from a remote location;
- (c) a mechanism for casting votes, whether before or during the general meeting, without the need to appoint a proxy holder who is physically present at the meeting.

2. The use of electronic means for the purpose of enabling shareholders to participate in the general meeting may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and the security of the electronic communication, and only to the extent that they are proportionate to achieving those objectives.

This is without prejudice to any legal rules which Member States have adopted or may adopt concerning the decision-making process within the company for the introduction or implementation of any form of participation by electronic means.

Article 9

Right to ask questions

1. Every shareholder shall have the right to ask questions related to items on the agenda of the general meeting. The company shall answer the questions put to it by shareholders.

2. The right to ask questions and the obligation to answer are subject to the measures which Member States may take, or allow companies to take, to ensure the identification of shareholders, the good order of general meetings and their preparation and the protection of confidentiality and business interests of companies. Member States may allow companies to provide one overall answer to questions having the same content.

Member States may provide that an answer shall be deemed to be given if the relevant information is available on the company's Internet site in a question and answer format.

Article 10

Proxy voting

1. Every shareholder shall have the right to appoint any other natural or legal person as a proxy holder to attend and vote at a general meeting in his name. The proxy holder shall enjoy the same rights to speak and ask questions in the general meeting as those to which the shareholder thus represented would be entitled.

Apart from the requirement that the proxy holder possess legal capacity, Member States shall abolish any legal rule which restricts, or allows companies to restrict, the eligibility of persons to be appointed as proxy holders.

2. Member States may limit the appointment of a proxy holder to a single meeting, or to such meetings as may be held during a specified period.

Without prejudice to Article 13(5), Member States may limit the number of persons whom a shareholder may appoint as proxy holders in relation to any one general meeting. However, if a shareholder has shares of a company held in more than one securities account, such limitation shall not prevent the shareholder from appointing a separate proxy holder as regards shares held in each securities account in relation to any one general meeting. This does not affect rules prescribed by the applicable law that prohibit the casting of votes differently in respect of shares held by one and the same shareholder.

3. Apart from the limitations expressly permitted in paragraphs 1 and 2, Member States shall not restrict or allow companies to restrict the exercise of shareholder rights through proxy holders for any purpose other than to address potential conflicts of interest between the proxy holder and the shareholder, in whose interest the proxy holder is bound to act, and in doing so Member States shall not impose any requirements other than the following:

- (a) Member States may prescribe that the proxy holder disclose certain specified facts which may be relevant for the shareholders in assessing any risk that the proxy holder might pursue any interest other than the interest of the shareholder;
- (b) Member States may restrict or exclude the exercise of shareholder rights through proxy holders without specific voting instructions for each resolution in respect of which the proxy holder is to vote on behalf of the shareholder;
- (c) Member States may restrict or exclude the transfer of the proxy to another person, but this shall not prevent a proxy holder who is a legal person from exercising the powers conferred upon it through any member of its administrative or management body or any of its employees.

A conflict of interest within the meaning of this paragraph may in particular arise where the proxy holder:

- (i) is a controlling shareholder of the company, or is another entity controlled by such shareholder;
- (ii) is a member of the administrative, management or supervisory body of the company, or of a controlling shareholder or controlled entity referred to in point (i);
- (iii) is an employee or an auditor of the company, or of a controlling shareholder or controlled entity referred to in (i);
- (iv) has a family relationship with a natural person referred to in points (i) to (iii).

4. The proxy holder shall cast votes in accordance with the instructions issued by the appointing shareholder.

Member States may require proxy holders to keep a record of the voting instructions for a defined minimum period and to confirm on request that the voting instructions have been carried out.

5. A person acting as a proxy holder may hold a proxy from more than one shareholder without limitation as to the number

of shareholders so represented. Where a proxy holder holds proxies from several shareholders, the applicable law shall enable him to cast votes for a certain shareholder differently from votes cast for another shareholder.

Article 11

Formalities for proxy holder appointment and notification

1. Member States shall permit shareholders to appoint a proxy holder by electronic means. Moreover, Member States shall permit companies to accept the notification of the appointment by electronic means, and shall ensure that every company offers to its shareholders at least one effective method of notification by electronic means.

2. Member States shall ensure that proxy holders may be appointed, and that such appointment be notified to the company, only in writing. Beyond this basic formal requirement, the appointment of a proxy holder, the notification of the appointment to the company and the issuance of voting instructions, if any, to the proxy holder may be made subject only to such formal requirements as are necessary to ensure the identification of the shareholder and of the proxy holder, or to ensure the possibility of verifying the content of voting instructions, respectively, and only to the extent that they are proportionate to achieving those objectives.

3. The provisions of this Article shall apply *mutatis mutandis* for the revocation of the appointment of a proxy holder.

Article 12

Voting by correspondence

Member States shall permit companies to offer their shareholders the possibility to vote by correspondence in advance of the general meeting. Voting by correspondence may be made subject only to such requirements and constraints as are necessary to ensure the identification of shareholders and only to the extent that they are proportionate to achieving that objective.

Article 13

Removal of certain impediments to the effective exercise of voting rights

1. This Article applies where a natural or legal person who is recognised as a shareholder by the applicable law acts in the course of a business on behalf of another natural or legal person (the client).

2. Where the applicable law imposes disclosure requirements as a prerequisite for the exercise of voting rights by a shareholder referred to in paragraph 1, such requirements shall not go beyond a list disclosing to the company the identity of each client and the number of shares voted on his behalf.

3. Where the applicable law imposes formal requirements on the authorisation of a shareholder referred to in paragraph 1 to exercise voting rights, or on voting instructions, such formal requirements shall not go beyond what is necessary to ensure the identification of the client, or the possibility of verifying the content of voting instructions, respectively, and is proportionate to achieving those objectives.

4. A shareholder referred to in paragraph 1 shall be permitted to cast votes attaching to some of the shares differently from votes attaching to the other shares.

5. Where the applicable law limits the number of persons whom a shareholder may appoint as proxy holders in accordance with Article 10(2), such limitation shall not prevent a shareholder referred to in paragraph 1 of this Article from granting a proxy to each of his clients or to any third party designated by a client.

Article 14

Voting results

1. The company shall establish for each resolution at least the number of shares for which votes have been validly cast, the proportion of the share capital represented by those votes, the total number of votes validly cast as well as the number of votes cast in favour of and against each resolution and, where applicable, the number of abstentions.

However, Member States may provide or allow companies to provide that if no shareholder requests a full account of the voting, it shall be sufficient to establish the voting results only to the extent needed to ensure that the required majority is reached for each resolution.

2. Within a period of time to be determined by the applicable law, which shall not exceed 15 days after the general meeting, the company shall publish on its Internet site the voting results established in accordance with paragraph 1.

3. This Article is without prejudice to any legal rules that Member States have adopted or may adopt concerning the formalities required in order for a resolution to become valid or the possibility of a subsequent legal challenge to the voting result.

CHAPTER III

FINAL PROVISIONS

Article 15

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 August 2009 at the latest. They shall forthwith communicate to the Commission the text of those measures.

Notwithstanding the first paragraph, Member States which on 1 July 2006 had in force national measures restricting or prohibiting the appointment of a proxy holder in the case of Article 10(3), second subparagraph, point (ii), shall bring into force the laws, regulations and administrative provisions necessary in order to comply with Article 10(3) as concerns such restriction or prohibition by 3 August 2012 at the latest.

Member States shall forthwith communicate the number of days specified under Articles 6(3) and 7(3), and any subsequent changes thereof, to the Commission, which shall publish this information in the *Official Journal of the European Union*.

When Member States adopt the measures referred to in the first paragraph, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 16

Entry into force

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

Article 17

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 July 2007.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
M. LOBO ANTUNES

DIRECTIVE 2007/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 July 2007
on the retrofitting of mirrors to heavy goods vehicles registered in the Community

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1)(c) thereof,

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

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

Whereas:

(1) A number of accidents are caused by drivers of heavy goods vehicles who are not aware that other road users are very close to or beside their vehicle. These accidents are often related to a change of direction at crossings, junctions or roundabouts when drivers fail to detect other road users in the blind spots which exist in the area immediately around their vehicles. It is estimated that every year about 400 people in Europe are killed in such circumstances, most of them being vulnerable road users such as cyclists, motorcyclists and pedestrians.

(2) In its White Paper of 12 September 2001 'European transport policy for 2010: time to decide' the Commission set the target of halving the number of road fatalities in the EU by 2010. In its third Road Safety Action Programme the Commission committed itself to investigating the issue of retrofitting heavy goods vehicles already in circulation with devices for indirect vision in order to reduce their blind spots and thus to contribute to the reduction of road fatalities.

(3) In its 10 year roadmap in the Final Report 'A Competitive Automotive Regulatory System for the 21st

century', the CARS 21 High Level Group recommended an integrated approach with regard to road safety including the compulsory introduction of new safety features, such as mirrors to reduce the blind spots of heavy goods vehicles.

(4) Devices of indirect vision, such as wide-angle and close-proximity mirrors, cameras, monitors, or other type-approved systems of indirect vision, improve the driver's field of vision and increase vehicle safety.

(5) Directive 2003/97/EC of the European Parliament and of the Council of 10 November 2003 on the approximation of the laws of the Member States relating to the type approval of devices for indirect vision and of vehicles equipped with these devices ⁽³⁾, whilst having great potential for reducing the number of casualties affects only newly registered vehicles.

(6) Vehicles which are already in circulation are therefore not subject to the obligations set out in Directive 2003/97/EC. It can be estimated that those vehicles will not be fully replaced until 2023.

(7) In order to help reduce fatal and severe accidents caused by those vehicles and involving vulnerable road users, it is appropriate, in the meantime, to provide that the vehicles concerned be retrofitted with improved devices for indirect vision.

(8) Vehicles already in circulation should be equipped with mirrors reducing the lateral blind spots whilst fulfilling the technical requirements of Directive 2003/97/EC. That is technically feasible for the majority of the vehicles concerned.

(9) It is, however, appropriate and proportionate to provide exemptions and derogations for vehicles whose remaining lifespan is short, vehicles which are equipped with lateral mirrors whose field of vision covers only marginally less than the fields of vision laid down in Directive 2003/97/EC, and vehicles where fitting with mirrors complying with that Directive is not economically viable.

⁽¹⁾ Opinion of 14 March 2007 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 10 May 2007 (not yet published in the Official Journal) and Council Decision of 25 June 2007.

⁽³⁾ OJ L 25, 29.1.2004, p. 1. Directive as last amended by Council Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81).

- (10) Vehicles in categories N₂ and N₃ which were originally registered and/or type-approved and/or put into service before 1 January 2000 and which are operated mainly for their historical interest should not be affected by the rules and procedures laid down in this Directive.
- (11) For heavy goods vehicles which, for technical and/or economic reasons, cannot be made to fully comply with the requirements of this Directive, the competent authorities should allow for and approve alternative solutions. In such cases, Member States should communicate lists of permitted and approved technical solutions to the Commission, which should in turn make them available to all Member States.
- (12) So that the market can cope with a high demand for mirrors within a short period of time, a transitional period should be provided for.
- (13) Heavy goods vehicles retrofitted before the dates for transposition of Directive 2003/97/EC with devices of indirect vision which largely cover the field of vision required by that Directive should be exempted from the requirements of this Directive.
- (14) The retrofitting exercise should be accompanied by appropriate measures designed to raise awareness of the dangers linked to the existence of blind spots of heavy goods vehicles, including information efforts directed towards vulnerable road users and in relation to the correct adjustment and use of indirect vision devices.
- (15) Vehicles other than those covered by this Directive, such as light goods vehicles and buses, which are not equipped with improved devices for indirect vision are also involved in blind spot accidents. Therefore, Community legislation on active and passive safety requirements should be continually reviewed with a view to improving and promoting road safety.
- (16) In the interests of a more comprehensive analysis and a future strategy on reducing blind spot accidents, the Commission should, pursuant to Council Decision 93/704/EC of 30 November 1993 on the creation of a Community database on road accidents⁽¹⁾ and other relevant Community acts, such as Decision No 2367/2002/EC of the European Parliament and of the Council of 16 December 2002 on the Community statistical programme 2003 to 2007⁽²⁾, gather relevant data from the Member States and process it appropriately.
- (17) Council Directive 96/96/EC of 20 December 1996 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers⁽³⁾ provides for periodic roadworthiness tests for motor vehicles used for the carriage of goods and having a maximum permissible mass exceeding 3,5 tons, at least on a yearly basis. Heavy goods vehicles should, among others things, be fitted with rear-view mirrors complying with the requirements of this Directive in order to pass this roadworthiness test. Roadworthiness certificates issued by the Member States for vehicles registered on their territory are mutually recognised for the purpose of the free circulation of vehicles on Member State roads.
- (18) Since the objective of this Directive, namely the retrofitting of vehicles already in circulation in the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (19) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽⁴⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive lays down requirements for the fitting with systems of indirect vision of vehicles of categories N₂ and N₃ as referred to in point 2 of Annex II, Section A to Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers⁽⁵⁾ which are registered in the Community.

⁽¹⁾ OJ L 329, 30.12.1993, p. 63. Decision as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 358, 31.12.2002, p. 1. Decision as amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

⁽³⁾ OJ L 46, 17.2.1997, p. 1. Directive as last amended by Regulation (EC) No 1882/2003.

⁽⁴⁾ OJ C 321, 31.12.2003, p. 1.

⁽⁵⁾ OJ L 42, 23.2.1970, p. 1. Directive as last amended by Directive 2007/37/EC (OJ L 161, 22.6.2007, p. 60).

Article 2

1. This Directive shall apply to vehicles of categories N₂ and N₃ which are not type-approved or approved as a single vehicle under Directive 2003/97/EC.

2. This Directive shall not apply to any of the following:

(a) Vehicles of categories N₂ and N₃ registered before 1 January 2000;

(b) Vehicles of category N₂ having a maximum total permissible mass not exceeding 7,5 tons, where it is impossible to mount a class V mirror in a way that ensures that the following conditions are fulfilled:

(i) no part of the mirror is less than 2 m (a tolerance of + 10 cm may be applied) from the ground, regardless of the adjustment position, when the vehicle is under a load corresponding to its maximum technically permissible weight; and

(ii) the mirror is fully visible from the driving position;

(c) Vehicles of categories N₂ and N₃ that are subject to national measures which entered into force before the dates for transposition of Directive 2003/97/EC and which require fitment, on the passenger side, of other means of indirect vision covering not less than 95 % of the total field of vision at ground level of class IV and class V mirrors under that Directive.

Article 3

1. With effect from 6 August 2007, and not later than 31 March 2009, Member States shall require that all vehicles referred to in Article 2(1) be equipped, on the passenger side, with wide-angle and close-proximity mirrors which fulfil the requirements for class IV and class V mirrors under Directive 2003/97/EC respectively.

2. By way of derogation from paragraph 1, compliance with the requirements of this Directive shall be deemed to be achieved where vehicles are equipped, on the passenger side, with wide-angle and close-proximity mirrors, whose combination of fields of vision covers not less than 95 % of the field of vision at ground level of a class IV mirror and not less than 85 % of the field of vision at ground level of a class V mirror under Directive 2003/97/EC.

3. Vehicles referred to in Article 2 which, for want of available, economically viable, technical solutions, cannot be equipped with mirrors complying with the requirements set out in paragraphs 1 or 2 of this Article, may be equipped with supplementary mirrors and/or other devices of indirect vision, provided that the combination of such devices covers not less than 95 % of the field of vision at ground level of a class IV mirror and not less than 85 % of the field of vision at ground level of a class V mirror under Directive 2003/97/EC.

4. Member States shall communicate a list of technical solutions complying with this Article to the Commission. The Commission shall make the information notified publicly available, via its website or any other appropriate means, to all Member States.

Article 4

1. Compliance with the requirements set out in Article 3(1), (2) and (3) shall be established through proof furnished by a Member State in accordance with Article 3 of Directive 96/96/EC.

2. The Commission, assisted by the committees referred to in Article 8 of Directive 96/96/EC and Article 13(1) of Directive 70/156/EEC, each within their respective remits, shall take the appropriate measures to ensure that the equipment referred to in Article 3 of this Directive is installed and tested in order to establish its compliance and roadworthiness in accordance with the requirements of this Directive. These measures shall be taken not later than 6 August 2008.

Article 5

By 6 August 2011 the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Directive together with a study on blind spot accidents covering all vehicles and costs incurred, with the aim of improving road safety. On the basis of a more comprehensive cost-benefit analysis, the Commission's report shall be accompanied, if appropriate, by a proposal for the revision of existing legislation.

Article 6

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 August 2008. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 7

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

Article 8

This Directive is addressed to the Member States.

Done at Strasbourg, 11 July 2007.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
M. LOBO ANTUNES

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 13 July 2007

amending Decision 2006/415/EC concerning certain protection measures in relation to highly pathogenic avian influenza of the subtype H5N1 in poultry in the Community

(notified under document number C(2007) 3327)

(Text with EEA relevance)

(2007/496/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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,

Having regard to Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC ⁽³⁾, and in particular Articles 63(3) thereof,

Whereas:

(1) Commission Decision 2006/415/EC of 14 June 2006 concerning certain protection measures in relation to highly pathogenic avian influenza of the subtype H5N1

in poultry in the Community and repealing Decision 2006/135/EC ⁽⁴⁾ lays down certain protection measures to be applied in order to prevent the spread of that disease, including the establishment of areas A and B following a suspected or confirmed outbreak of the disease.

(2) Following an outbreak of highly pathogenic avian influenza of H5N1 subtype in the Czech Republic the Commission has adopted Decision 2007/434/EC of 21 June 2007 amending Decision 2006/415/EC concerning certain protection measures in relation to highly pathogenic avian influenza of the subtype H5 in poultry in the Czech Republic ⁽⁵⁾.

(3) In the following days the Commission has adopted Decision 2007/454/EC of 29 June 2007 amending Decision 2006/415/EC concerning protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in poultry in the Community ⁽⁶⁾ to confirm areas A and B in the Czech Republic and the duration of that regionalisation.

(4) Following an outbreak of highly pathogenic avian influenza of H5N1 subtype in Germany the Commission has adopted Decision 2007/483/EC of 9 July 2007 amending Decision 2006/415/EC concerning certain protection measures in relation to highly pathogenic avian influenza of the subtype H5N1 in poultry in Germany ⁽⁷⁾.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13. Directive as last amended by Directive 2004/41/EC of the European Parliament and of the Council (OJ L 157, 30.4.2004, p. 33); corrected version (OJ L 195, 2.6.2004, p. 12).

⁽²⁾ OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 2002/33/EC of the European Parliament and of the Council (OJ L 315, 19.11.2002, p. 14).

⁽³⁾ OJ L 10, 14.1.2006, p. 16.

⁽⁴⁾ OJ L 164, 16.6.2006, p. 51. Decision as last amended by Decision 2007/483/EC (OJ L 180, 10.7.2007, p. 43).

⁽⁵⁾ OJ L 161, 22.6.2007, p. 70.

⁽⁶⁾ OJ L 172, 30.6.2007, p. 87.

⁽⁷⁾ OJ L 180, 10.7.2007, p. 43.

- (5) The Commission has examined those measures in collaboration with Germany, and is satisfied that the borders of areas A and B established by the competent authority in that Member State are at a sufficient distance to the actual location of the outbreak. Areas A and B in Germany can therefore be confirmed and the duration of that regionalisation fixed.
- (6) The interim protective measures provided for in Decisions 2007/434/EC and 2007/483/EC need now to be confirmed. In addition, the epidemiological situation of the avian influenza outbreak in poultry in the Czech Republic requires a modification of the restricted areas and of the duration of the measures.
- (7) Furthermore, Hungary and the United Kingdom have notified to the Commission that all control measures in relation to outbreaks of highly pathogenic avian influenza of the subtype H5N1 on their territories have been ceased by 12 March 2007 and therefore the measures established in accordance with Article 4(2) for areas A and B are no longer necessary.
- (8) Decision 2006/415/EC should therefore be amended accordingly.

- (9) 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 Annex to Decision 2006/415/EC is replaced by the text in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 13 July 2007.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX

'ANNEX

Part A

Area A as established in accordance with Article 4(2):

ISO country code	Member State	Area A		Date until applicable Article 4(4) (b)(iii)
		Code (if available)	Name	
CZ	Czech Republic			31.7.2007
	Protection zone		BOHUŇOVICE CEREKVICE NAD LOUČNOU ČESKÉ HEŘMANICE CHOCEŇ (partly) DŽBÁNOV HORKY HRUŠOVÁ (partly) KOSOŘÍN TISOVÁ VRAČOVICE-ORLOV (partly) VYSOKÉ MÝTO ZÁLŠÍ	
	Surveillance zone		BĚSTOVICE BOHUŇOVICE BOROVNICE BOŠÍN BRANDÝS NAD ORLICÍ BUČINA CEREKVICE NAD LOUČNOU ČESKÉ HEŘMANICE CHOCEŇ CHOTOVICE (partly) DOBŘÍKOV DOLNÍ ÚJEZD DŽBÁNOV HORKY HRÁDEK HRUŠOVÁ JAVORNÍK JEHNĚDÍ KOLDÍN KOSTELECKÉ HORKY LEŠTINA (partly) LHOTY U PODŠTEJNA LIBECINA LITOMYŠL (partly) MAKOV MORAŠICE MOSTEK NASAVRKY NĚMČICE (partly) NOVÁ SÍDLA NOVÉ HRADY ORLICKÉ PODHŮŘÍ OSÍK OUCMANICE PLCHOVICE PODLEŠÍ PODLEŠÍ (partly) PŘÍLUKA PUSTINA ŘEPNÍKY ŘETOVÁ ŘETŮVKA (partly) ŘÍDKÝ SEČ	

ISO country code	Member State	Area A		Date until applicable Article 4(4) (b)(iii)
		Code (if available)	Name	
			SEDLIŠTĚ SKOŘENICE SLATINA SLOUPNICE SRUBY SUCHÁ LHOTA SUDISLAV NAD ORLICÍ SUDSLAVA SVATÝ JIŘÍ TISOVÁ TRŽEK TÝNIŠTKO ÚJEZD U CHOCNĚ ÚJEZDEC ÚSTÍ NAD ORLICÍ VELKÁ SKROVNICE VIDLATÁ SEČ VLČKOV (partly) VODĚRADY VRACLAV VRAČOVICE-ORLOV VYSOKÉ MÝTO ZÁDOLÍ ZÁLŠÍ ZÁMRSK ZÁŘECKÁ LHOTA	
DE	Germany		The communes of:	6.8.2007
			ALLENDORF ARNSGEREUTH BAD BLANKENBURG BECHSTEDT CURSDORF DEESBACH DÖSCHNITZ GRÄFENTHAL LICHTENHAIN MARKTGÖLITZ MELLENBACH-GLASBACH MEURA OBERHAIN OBERWEISSBACH PIESAU PROBSTZELLA REICHMANNSDORF ROHRBACH SAALFELD SAALFELDER HÖHE SCHMIEDEFELD SCHWARZBURG SITZENDORF UNTERWEISSBACH WITTGENDORF	

Part B

Area B as established in accordance with Article 4(2):

ISO country code	Member State	Area B		Date until applicable Article 4(4) (b)(iii)
		Code (if available)	Name	
CZ	Czech Republic	00053	PARDUBICKÝ KRAJ: OKRES: Chrudim, Pardubice Svitavy Ústí nad Orlicí	31.7.2007
		00052	KRÁLOVÉHRADECKÝ KRAJ: OKRES: Hradec Králové Rychnov nad Kněžnou	
DE	Germany		DRÖBISCHAU KAULSDORF KÖNIGSEE LEUTENBERG MEUSELBACH-SCHWARZMÜHLE ROTTENBACH RUDOLSTADT	6.8.2007'

EUROPEAN CENTRAL BANK

DECISION OF THE EUROPEAN CENTRAL BANK

of 3 July 2007

laying down the Rules on Procurement

(ECB/2007/5)

(2007/497/EC)

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

- (3) The ECB respects the general principles of procurement law as reflected in the Procurement Directive and the Financial Regulation,

Having regard to Article 11.6 of the Statute of the European System of Central Banks and of the European Central Bank,

HAS DECIDED AS FOLLOWS:

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank ⁽¹⁾, and in particular Article 19 thereof,

CHAPTER I

GENERAL RULES

Article 1

Definitions

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

Whereas:

- (1) The European Central Bank (ECB) is committed to the principle of cost-efficiency and seeks the best value for money from the procurement of goods, services and works.

- (2) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽²⁾ (Procurement Directive) and Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽³⁾ (Financial Regulation) do not apply to the ECB.

- (a) 'contracts' are contracts for pecuniary interest concluded in writing between the ECB with one or more suppliers and having as their object the execution of works, the supply of products or the provision of services;

- (b) 'works contracts' are contracts having as their object either the execution, or both the design and execution, of works. A 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function;

- (c) 'supply contracts' are contracts, other than those referred to in paragraph b, having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products. A contract having as its object the supply of products and which also covers, as an incidental matter, siting and installation operations shall be considered to be a 'supply contract';

⁽¹⁾ OJ L 80, 18.3.2004, p. 33.

⁽²⁾ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).

⁽³⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2005, p. 1).

- (d) 'service contracts' are contracts other than works or supply contracts having as their object the provision of services. A contract having as its object both products and services shall be considered to be a 'service contract' if the estimated value of the services in question exceeds that of the products covered by the contract. A contract having as its object services including activities related to works that are only incidental to the principal object of the contract shall be considered to be a service contract;
- (e) A 'framework agreement' is an agreement between the ECB and one or more suppliers, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged;
- (f) A 'supplier' is any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works, products or services;

A supplier who has submitted an application to participate in a restricted or negotiated procedure or a competitive dialogue shall be designated a 'candidate'. A supplier who has submitted a tender shall be designated a 'tenderer';

- (g) 'open procedure' is a tender procedure where any interested supplier may submit a tender;
- (h) 'restricted procedure' means a procedure in which any supplier may request to participate and whereby only those candidates invited by the ECB may submit a tender;
- (i) 'negotiated procedure' means a procedure in which the ECB consults the suppliers of its choice and negotiates the terms of contract with one or more of them;
- (j) 'competitive dialogue' is a procedure in which any supplier may request to participate and whereby the ECB conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements;
- (k) A 'dynamic purchasing system' is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the ECB. The system is limited in duration and open throughout its validity to any supplier which satisfies the selection criteria and has submitted an indicative tender that complies with the specification;

- (l) An 'electronic auction' is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods;
- (m) 'invitation to tender' is the invitation sent to candidates or suppliers to submit a tender and specifying the procedure, the ECB's requirements and the contractual terms and conditions;
- (n) 'written' or 'in writing' means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means;
- (o) 'days' mean calendar days.

Article 2

Scope

1. The ECB shall tender supply, service and works contracts for its own account in accordance with the rules laid down in this Decision.
2. The ECB may also carry out in accordance with this Decision joint tender procedures for its own account and for the account of one or several national central banks (NCBs) and/or Community institutions and bodies and/or international organisations. In such cases, the ECB shall specify in the tender documentation which other contracting authorities participate in the tender procedure and the envisaged structure of the contractual relationships.
3. This Decision shall not apply to contracts for:
 - (a) the provision of services and the supply of goods by NCBs to the ECB in the fulfilment of their Eurosystem/ESCB public tasks;
 - (b) procurement procedures organised by NCBs or Community institutions and bodies or international organisations in which the ECB participates provided that the rules governing these procurement procedures are in line with the general principles of procurement law;
 - (c) agreements with other Community institutions and bodies or international organisations that the ECB enters into in the fulfilment of its public tasks;

(d) the procurement of banknotes which is governed by Guideline ECB/2004/18 of 16 September 2004 on the procurement of euro banknotes ⁽¹⁾;

(e) the issue, sale, purchase or transfer of securities or other financial instruments and financial services in connection with these transactions;

(f) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;

(g) employment contracts between the ECB and its staff concluded in accordance with the ECB's Conditions of Employment;

(h) arbitration and conciliation services; and

(i) research and development services unless the benefits related to the services accrue exclusively to the ECB for its own use and the services provided are wholly remunerated by the ECB.

Article 3

General principles

Any procurement procedure shall be carried out in accordance with the general principles of transparency and publicity, equal access and equal treatment, as well as the principles of non-discrimination and fair competition.

Article 4

Thresholds

1. Contracts the estimated value of which, net of VAT, equals or exceeds the threshold amounts set out in paragraph 3, shall be tendered in accordance with the procedures laid down in Chapter II.

2. Contracts the estimated value of which, net of VAT, is below the threshold amounts shall be tendered in accordance with the procedures laid down in Chapter III.

3. The following threshold amounts shall apply:

(a) EUR 211 000 for supply and service contracts;

(b) EUR 5 300 000 for works contracts.

Article 5

Calculation of the estimated value of a contract

1. The calculation of the value of a contract shall be based on the total amount payable, net of VAT, as estimated by the ECB. The calculation shall include all ancillary costs, in particular costs in relation to option clauses, renewals of the contract, premium payments, interest, commission, travel and accommodation costs, prizes or payments to candidates or tenderers.

2. The estimate must be valid at the moment at which the ECB decides on the appropriate procurement procedure.

3. No procurement may be split up with the intention of avoiding the application of the procedures set out in this Decision.

4. The calculation of the estimated value of works contracts shall take account of the total costs related to the execution of the work including the value of supplies necessary for executing the works and placed at the contractor's disposal by the ECB. The costs related to the design and planning of the work shall also be included if they form part of the works contract.

5. With regard to contracts for the continuous supply of goods and services, the value to be taken as a basis for calculating the estimated contract value shall, where appropriate, be the following:

(a) in the case of fixed-term contracts: the total value for the full term;

(b) in the case of contracts without a fixed term: the monthly value multiplied by 48.

6. In the case of successive supply, service or works contracts of the same type the calculation of the estimated contract value shall be based on the total actual value of the successive contracts awarded during the preceding 12 months. The estimate shall be adjusted, if possible, to take account of the changes in quantity or value which are expected to occur in the course of the 12 months following the initial contract.

⁽¹⁾ OJ L 320, 21.10.2004, p. 21.

7. If a contract is divided into several lots, or if several contracts to be awarded are strictly interrelated and have the same tasks as their objective, the total value of all lots or individual contracts shall be considered. If the total value is equal to or exceeds the threshold amounts set out in Article 4(3), the procedures laid down in Chapter II of this Decision shall apply to all lots and contracts. The ECB may, however, apply the procedure laid down in Article 29 or, if applicable, in Article 31 in respect of lots/individual contracts the estimated value of which is less than EUR 80 000, net of VAT, for supplies and services and less than EUR 1 million, net of VAT, for works, provided that the total estimated value of all lots exempted does not exceed 20 % of the total estimated value of all lots.

8. The value of framework contracts shall be calculated on the basis of the maximum estimated value, net of VAT, of all the contracts envisaged for the total term of the framework agreement.

Article 6

Exceptions

1. In the following cases the ECB may award a contract directly to one supplier or deviate from specific procedural requirements:

- (a) when, for mandatory reasons, the contract can be awarded only to a particular supplier. The reasons may be of technical, artistic or legal nature, but not of economic nature;
- (b) when, for reasons of extreme urgency brought about by events unforeseeable for the ECB, the time limits for the procurement procedures cannot be complied with;
- (c) when the ECB has classified the contract as secret or when the performance of the contract must be accompanied by special security measures, in accordance with the ECB's rules on security or when the protection of the ECB's essential interests so requires;
- (d) in the case of supplies when the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
- (e) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations.

2. Irrespective of the contract value, the ECB may tender a contract in accordance with Article 29 if the main object of the contract is one of the following services:

- (a) hotel and restaurant services;
- (b) legal services;
- (c) personnel placement and supply services;
- (d) investigation and security services;
- (e) education and vocational education services;
- (f) recreational, cultural and sporting services.

Article 7

Duration and extensions

1. The term of a contract shall as a rule not exceed four years except in duly justified cases.

2. If a contract is concluded for a fixed-term, its term may be extended beyond that initial term under the following conditions:

- (a) the contract notice or, in the case of a procedure under Chapter III, the request for a proposal, provided for the possibility of extensions; and
- (b) the possible extensions are duly justified; and
- (c) the possible extensions were taken into account when calculating the value of the contract in accordance with Article 5 of this Decision.

The totality of all extensions shall not exceed the term of the initial contract.

3. Otherwise, the term of a fixed-term contract may only be extended under the conditions laid down in Article 6.

*Article 8***Additional supplies, services and works**

1. The ECB may order additional supplies, services or works from the contractor to whom the initial contract was awarded provided that:

- (a) the tender documentation provided for additional supplies, services or works as an option; and
- (b) the additional supplies, services or works were taken into account when calculating the value of the contract in accordance with Article 5 of this Decision.

2. In addition, the ECB may order from the initial contractor additional supplies, services or works which become necessary for the fulfilment of the purpose of the contract due to unforeseen circumstances, provided that:

- (a) the additional supplies, services or works cannot be technically or economically separated from the initial contract without major inconvenience; or
- (b) the supplies, services or works, although separable from the performance of the initial contract, are strictly necessary for its completion.

However, the aggregate value of additional supplies, services or works shall as a rule not exceed 50 % of the amount of the initial contract.

3. If the conditions set out in paragraphs 1 and 2 are not met, contracts for additional supplies, services or works may only be awarded in accordance with Articles 4 and 6 of this Decision.

CHAPTER II

PUBLIC TENDER PROCEDURES

SECTION 1

Types of procedure*Article 9***Overview**

1. The ECB shall award contracts the estimated value of which exceeds the threshold amounts set out above by open procedure. In justified cases the ECB may apply a restricted procedure, a negotiated procedure or competitive dialogue under the conditions set out below.

2. The ECB may also set up framework agreements or dynamic purchasing systems and award contracts on that

basis in accordance with the conditions set out below in Articles 15 and 16 respectively.

3. The procedures set out in paragraphs 1 and 2 may be supplemented by an electronic auction as described below in Article 17.

4. The ECB may also carry out design contests. The procedure for the design contest shall be laid down in the contest notice and comply with the general principles for design contests.

*Article 10***Publication of procurement opportunities**

1. If the ECB intends to carry out a tender procedure in accordance with the rules laid down in this Chapter II it shall publish a contract notice in the *Official Journal of the European Union* and via the ECB website. Whenever appropriate, the ECB may place advertisements in other relevant media. Announcements on the website and/or other media shall not precede publication of the notice in the Official Journal. In the case of discrepancies between the different versions of the notice, the version published in the Official Journal is authentic and shall take precedence over other versions.

2. The ECB may also publish a prior information notice indicating the estimated total value of contracts, by category of service or groups of products, and the essential characteristics of works contracts which it intends to award during a budgetary year. In such a case, the time limits for the submission of applications and tenders in accordance with Article 18(4) may be shortened for all procurements indicated in the notice.

*Article 11***Open procedure**

1. On publication of a contract notice, all interested suppliers may request the delivery of the invitation to tender if not made available by electronic means. The ECB shall provide the invitation to tender within six days from the receipt of the request provided that the request was made in good time before the time limit for the submission of tenders.

2. Interested tenderers shall submit their tender within the time limits set by the ECB and include all documentation requested by the ECB.

3. The ECB shall award the contract to the tenderer who best meets the award criteria set out in the contract notice/invitation to tender.

*Article 12***Restricted procedure**

1. The ECB may apply the restricted procedure if:

- (a) the ECB's requirements can be defined in such detail that tenders can be compared against each other and the contract can be awarded without further negotiations with the tenderers; and
- (b) it is necessary to restrict the number of tenders for administrative reasons or because of the nature of the procurement.

2. On publication of a contract notice interested suppliers may apply for participation in the restricted procedure. They must submit their application within the deadline specified in the contract notice and provide the documentation requested by the ECB.

3. The ECB shall verify the eligibility of candidates and evaluate the applications against the selection criteria set out in the contract notice. The ECB shall invite at least five eligible candidates who satisfy the selection criteria to submit a tender, provided that a sufficient number of candidates meeting the selection criteria is available. The invitation to tender shall be sent in writing and simultaneously to all candidates invited to submit a tender.

4. The tenderers invited shall submit their tender within the time limit set by the ECB and include all documentation requested by the ECB.

5. The ECB shall award the contract to the tenderer best meeting the award criteria set out in the invitation to tender.

*Article 13***Negotiated procedure**

1. The ECB may apply a negotiated procedure in the following exceptional cases:

- (a) when the nature of the works, supplies, or services or the risks attaching thereto do not permit prior overall pricing; or
- (b) where the nature of the services is such that specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender

according to the rules governing open or restricted procedures.

2. The ECB may also use the negotiated procedure where no acceptable tenders have been obtained in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the contract are not substantially altered. The ECB may refrain from publishing a new contract notice if it includes in the negotiated procedure exclusively all the tenderers who participated in the previous procedure, met the selection criteria and submitted their tenders in accordance with the formal tender requirements. If no tenders have been obtained or no tenders that meet the formal tender requirements the ECB may also start a negotiated procedure without notice in accordance with Article 29.

3. On publication of a contract notice, interested suppliers may apply for participation in the negotiated procedure. They must submit their application within the deadline specified in the contract notice and provide the documentation requested by the ECB.

4. The ECB shall verify the eligibility of candidates and evaluate the applications against the selection criteria set out in the contract notice. The ECB shall invite at least three eligible candidates who satisfy the selection criteria to submit a tender, provided that a sufficient number of candidates meeting the selection criteria is available. The invitation to tender shall be sent in writing and simultaneously to all candidates invited to submit a tender.

5. Following the evaluation of the tenders, the ECB may negotiate with tenderers in order to bring their tender in line with the ECB's requirements. The ECB may start negotiations either:

- (a) with the best-ranked tenderer. If the negotiations with the best-ranked tenderer fail, the ECB may take up negotiations with the next ranked tenderer; or
- (b) simultaneously with all tenderers having submitted a tender that essentially meets the ECB's technical and commercial requirements. In that case, the number of tenderers admitted to the negotiations may be reduced in successive stages by applying the award criteria set out in the contract notice or the invitation to tender.

Before starting negotiations, the ECB shall inform all tenderers on how the negotiations will be conducted.

6. The scope of the negotiations may include the tenderers' technical offers, commercial offers and the contractual terms and conditions provided that the scope of the tender procedure is not substantially altered. The ECB may also invite tenderers to submit a revised tender. During the negotiations the ECB shall ensure the equal treatment of all tenderers invited for negotiations.

7. Once the negotiations are closed, the ECB shall award the contract to the tenderer best meeting the award criteria set out in the contract notice or the invitation to tender.

Article 14

Competitive dialogue

1. The ECB may carry out a competitive dialogue in the case of particularly complex contracts where it is not possible to define the ECB's requirements in a way that the contract could be awarded through an open or restricted procedure.

2. On publication of a contract notice, interested suppliers may apply for participation in the dialogue. They must submit their application within the deadline specified in the contract notice and provide the documentation requested by the ECB.

3. The ECB shall verify the eligibility of candidates and evaluate the applications against the selection criteria set out in the contract notice. The ECB shall invite at least three eligible candidates to participate in the dialogue and provide them with a request for a proposal setting out the ECB's needs. The aim of the dialogue is to identify and define the solution best suited to satisfying the ECB's needs. The ECB may discuss all aspects of the contract with the chosen candidates.

4. During the dialogue, the ECB shall ensure equal treatment of all candidates. Furthermore, the ECB shall not reveal to the other candidates solutions proposed or other confidential information communicated by a candidate participating in the dialogue without their written agreement.

5. The ECB shall continue the dialogue until it can identify the solution or solutions, if necessary after comparing them, which are capable of meeting its needs. If so provided for in the contract notice or the request for a proposal, the ECB may carry out the dialogue in successive stages to reduce the number of solutions to be discussed during the dialogue stage. The ECB shall select the solutions to be considered by applying the award criteria set out in the contract notice or the request for a proposal.

6. Having declared that the dialogue is concluded, the ECB shall ask the candidates participating in the dialogue to submit their final tenders on the basis of the solutions presented and specified during the dialogue.

7. The ECB shall evaluate the tenders received against the award criteria laid down in the contract notice or the request for a proposal. The ECB may request the tenderers to clarify or specify certain aspects of their tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender and does not risk distorting competition or causing discrimination. Once the evaluation is completed, the ECB shall award the contract to the most economically advantageous tender.

Article 15

Framework agreements

1. The ECB may use framework agreements in cases where it regularly concludes contracts for similar supplies, services or works without being able to define the exact delivery times and/or the detailed requirements.

2. For the purpose of concluding a contract that is a framework agreement, the ECB shall follow the procedures set out above for all phases up to the award of the framework agreement. If the ECB intends to conclude a framework agreement with several suppliers it shall award at least three agreements provided that a sufficient number of suppliers meet the selection and award criteria. The contract notice shall specify the scope and number of framework agreements to be awarded.

The contracts based on the framework agreement shall be awarded in accordance with the procedures laid down in this Article.

3. Where a framework agreement is concluded with a single supplier, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. Insofar as necessary, the ECB may request the supplier in writing to supplement their initial tender. Such supplementary offers shall not entail substantial changes to terms and conditions laid down in the framework agreement.

4. Where framework agreements are concluded with several suppliers, contracts may be awarded either:

(a) by application of the criteria laid down in the framework agreements without reopening a competition; or

- (b) where no such criteria are defined, the ECB may reopen a competition among the suppliers with which a framework agreement exists.

In the latter case, the ECB shall award the contract in accordance with the following procedure:

- the ECB shall invite the suppliers in writing to submit a tender within the time limit specified in the request for a proposal. The request for a proposal shall also specify the criteria on the basis of which the contract will be awarded, and
- the suppliers must submit their tenders in writing within the time limit set by the ECB, and
- the ECB shall award the contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the request for a proposal.

Article 16

Dynamic purchasing systems

1. The ECB may procure commonly used goods, services and works through dynamic purchasing systems. Unless specified otherwise in this Article, the procedure shall follow the open procedure rules.

2. For the purposes of setting up a dynamic purchasing system, the ECB shall:

- (a) publish a contract notice stating that a dynamic purchasing system is being used and containing a reference to the Internet address where the tender conditions can be found; and
- (b) offer by electronic means, on publication of the notice and up to the expiry of the system, unrestricted, direct and full access to the tender conditions and to any additional documents; and
- (c) indicate in the tender conditions, amongst other matters, the selection and award criteria, the nature of the purchases envisaged under that system, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

3. The system shall be open throughout its duration to any supplier who satisfies the selection criteria and has submitted an indicative tender that complies with the tender conditions. Tenderers may improve their indicative tenders at any time

provided that they continue to comply with the tender conditions. No charges shall be levied from the tenderers.

4. On receipt of indicative tenders, the ECB shall verify within a reasonable time the tenderers' eligibility and compliance with the selection criteria. It shall also check whether the indicative tenders meet the tender conditions. The ECB shall inform the tenderers at the earliest possible opportunity of their admittance to the dynamic purchasing system or of their rejection.

5. Each specific contract the value of which is above the thresholds set out in Article 4(3) shall be the subject of a separate invitation to tender. Before issuing this invitation, the ECB shall publish a simplified contract notice in the Official Journal inviting all interested suppliers to submit an indicative tender, within a time limit that may not be less than 15 days from the date on which the simplified notice is sent. The ECB may not proceed with tendering until it has completed evaluation of all the indicative tenders received by that time limit.

6. On completion of the evaluation, the ECB shall invite all tenderers admitted to the system to submit a tender within a reasonable time. The ECB shall award the contract to the tenderer which submitted the best tender on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation to tender.

7. If the value of a specific contract is below the thresholds set out in Article 4(3) the ECB may invite five or three tenderers admitted to the system in accordance with the procedure set out in Article 29.

8. A dynamic purchasing system may not last for more than four years, except in duly justified cases.

Article 17

Electronic auctions

1. Except for competitive dialogues, the ECB may supplement the tender procedures set out above by an electronic auction provided that the specifications can be established with precision.

The electronic auction shall be based:

- (a) either solely on prices when the contract is awarded to the lowest price; or

(b) on prices and/or on the new values of the features of the tenders indicated in the specification when the contract is awarded to the most economically advantageous tender.

2. If the ECB intends to carry out an electronic auction it shall state that fact in the contract notice. Furthermore, the invitation to tender shall include, *inter alia*, the following details:

(a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;

(b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;

(c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

(d) the relevant information concerning the electronic auction process;

(e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

(f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

3. The electronic auction shall only be initiated after the submission and initial evaluation of the tenders. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

4. When the contract is to be awarded on the basis of the most economically advantageous tender, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tenderer. The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic rerankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the contract

notice or in the tender documents; for that purpose, any ranges shall, however, be reduced beforehand to a specified value. Where variants are authorised, a separate formula shall be provided for each variant.

5. Throughout each phase of an electronic auction the ECB shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. It may also communicate other information concerning other prices or values submitted, provided that that is stated in the tender documents. It may also at any time announce the number of participants in that phase of the auction. The ECB shall, however, not disclose the identities of the tenderers during any phase of an electronic auction.

6. The ECB shall close an electronic auction after expiry of the time limit indicated in the invitation to participate in the auction. The time limit may be expressed as a specific date and time or as a time period that has to elapse after submission of the last offer with new prices or values. The ECB shall specify in the invitation the timetable for any auctions carried out in phases.

7. After closing an electronic auction the ECB shall award the contract on the basis of the results of the electronic auction.

Article 18

Time limits for receipt of applications and for receipt of tenders

1. When fixing the time limits for the receipt of tenders and applications, the ECB shall take account in particular of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set by this Article.

2. In the case of open procedures, the minimum time limit for the receipt of tenders shall be 52 days from the date on which the contract notice is sent.

3. In the case of restricted procedures, negotiated procedures and the competitive dialogue:

(a) the minimum time limit for receipt of applications shall be 37 days from the date on which the contract notice is sent; and

(b) the minimum time limit for the receipt of tenders shall be 40 days from the date on which the invitation to tender is sent.

4. When the ECB has published a prior information notice in accordance with Article 10(2), which was sent at least 52 days before the contract notice, the minimum time limit for the receipt of tenders may, as a general rule, be shortened to 36 days, but under no circumstances to less than 22 days.

5. Where contract notices are drawn up and transmitted by electronic means in accordance with the format and procedures for transmission prescribed by the Office for Official Publications of the European Communities, the time limits for the receipt of tenders and applications may be shortened by seven days.

6. The time limits for receipt of tenders may be reduced by five days if the ECB offers unrestricted and direct access by electronic means to the invitation to tender from the date of publication of the contract notice and if the text of the notice specifies the Internet address at which this documentation is accessible. This reduction may be added to that referred to in paragraph 5.

7. If, in an open procedure, the invitation to tender, although requested in good time, is not supplied within six days, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the invitation to tender, the time limits for the receipt of tenders shall be extended so that all suppliers have sufficient time to prepare tenders.

8. In the case of restricted procedures and negotiated procedures, the ECB may apply an accelerated procedure, where urgency renders impracticable the time limits laid down in this Article. In such case the following minimum time limits shall apply:

(a) a time limit for the receipt of applications which may not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means, in accordance with the format and procedure for sending notices; and

(b) a time limit for the receipt of tenders which shall be not less than 10 days from the date of receipt of the invitation to tender.

9. Prior to the expiry date, the ECB may extend the time limits set out in the contract notice or tender documentation if it modifies the tender documentation or in other duly justified cases.

SECTION 2

Conduct of the procedure

Article 19

Communication with candidates and tenderers

1. During the tender procedure, candidates and tenderers shall communicate only with the contact person(s) indicated by the ECB. The ECB shall specify in the contract notice and/or invitation to tender the means of communication to be used. The means of communication shall be generally available and non-discriminatory.

2. Candidates/tenderers shall submit their applications/tenders in writing in accordance with the requirements set out in the contract notice/invitation to tender.

3. The ECB may carry out electronic tender procedures in line with the general requirements for electronic procurement as reflected in Article 42 of the Procurement Directive in connection with its Annex X. In such case, the contract notice shall specify in particular the formal requirements to be observed by the candidates/tenderers and how to access the electronic platform. The ECB may determine that it will accept only electronic applications/tenders.

4. Candidates or tenderers may submit in writing questions concerning the contract notice, the invitation to tender or the supporting documents to the ECB in accordance with the conditions laid down in the contract notice or the invitation to tender. The ECB shall reply to such questions within reasonable time limits, and shall communicate the answers to all candidates/tenderers on an anonymous basis if they are of relevance to all of them.

5. The ECB shall ensure that the information provided by candidates and tenderers is treated and stored in accordance with the principle of confidentiality and, to the extent personal data is provided, with Regulation (EC) No 45/2001 of the European Parliament and of the Council on data protection⁽¹⁾.

Article 20

Requests for additional documentation and clarification

After the ECB has opened applications or tenders, it may request candidates and tenderers to supplement the documentation provided or to clarify specific points. Such requests must not distort fair competition between or give rise to unequal treatment of the candidates/tenderers and must not lead to an alteration of the terms of the applications or tenders.

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

*Article 21***Rectification of tender documentation**

1. If the ECB discovers, before the expiry of the time limits for the submission of applications or tenders, an error, a lack of precision, an omission or any other type of error in the text of the contract notice, invitation to tender or supporting documents, it shall rectify the error and inform all candidates or tenderers in an appropriate manner.

2. If candidates or tenderers consider that the ECB's requirements laid down in the contract notice, the invitation to tender or supporting documents are incomplete, inconsistent or illegal they shall notify their concerns to the ECB in writing. The candidate/tenderer must notify its concerns without undue delay after they became aware of the irregularity or could have become aware of it. The ECB may then either correct or supplement the requirements as requested or reject the request indicating the reasons therefore. Objections to the ECB's requirements which were not communicated to the ECB without undue delay may not be raised at a later stage.

*Article 22***Invitation to tender**

1. As a rule, the invitation to tender shall contain at least:

- (a) a reference to the contract notice published;
- (b) the formal tender requirements, in particular the time limit for the receipt of the tenders, the address to which the tenders must be sent, the language or languages in which the tenders must be drawn up, the form in which the tender shall be submitted and the period during which a tender must remain valid; and
- (c) options concerning supplementary works, services and supplies, as well as the number of possible renewals and extensions, if any; and
- (d) the list of documents to be submitted by the tenderers; and
- (e) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if they are not given in the contract notice.

2. The invitation to tender shall include:

- (a) a copy of the specifications defining the ECB's requirements or, in the case of a competitive dialogue, a copy of the request for a proposal defining the ECB's needs; and
- (b) a copy of the draft contract, of the ECB's general terms and conditions or of the document specifying the key features of the contract; and
- (c) any other documentation which the ECB considers to be of relevance.

If these documents are made available by electronic means the invitation to tender shall specify how the tenderers can access them.

*SECTION 3***Evaluation***Article 23***General**

1. The ECB shall evaluate all tenders against the award criteria as referred to in Article 26 after having:

- verified the formal tender requirements, and
- verified the eligibility of tenderers as referred to in Article 24, and
- assessed the fulfilment of the selection criteria referred to in Article 25.

2. The ECB shall award the contract to the tenderer best meeting the award criteria.

3. The applications and tenders shall not be opened before expiry of the date for submission. The applications and tenders shall be opened in the presence of at least two members of staff; the opening shall be minuted. Unless specified otherwise, candidates or tenderers may not attend the opening.

4. The evaluation process and outcome shall be documented in an evaluation report.

Article 24

Eligibility of candidates/tenderers

1. Subject to the following paragraphs, all natural or legal persons resident or located in the EU are eligible to participate in tender procedures. Tender procedures shall also be open on equal terms to all natural and legal persons resident or located in a third country which has ratified the World Trade Organisation Agreement on Government Procurement or has concluded with the EU a bilateral agreement on procurement under the conditions laid down in the said agreements. Suppliers from other third countries may be admitted to participate at the ECB's sole discretion.

2. Temporary groupings of suppliers may participate in tender procedures under the conditions set out in the contract notice or the invitation to tender. The ECB may require temporary groupings to adopt a specific legal form if the contract is awarded to them, if this form is necessary for the proper performance of the contract.

3. The ECB shall exclude candidates or tenderers from participation in a tender procedure if they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, money laundering, involvement in a criminal organisation or any other illegal activity detrimental to the financial interests of the Communities, of the ECB or of the NCBs.

4. The ECB may exclude candidates or tenderers from participation at any time if they:

- (a) are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- (c) have been guilty of grave professional misconduct;
- (d) have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

(e) have been declared by a court or an arbitration tribunal to be in serious breach of contract for failure to comply with their contractual obligations following another tender procedure;

(f) their management, staff or agents are subject to a conflict of interest;

(g) they are guilty of misrepresentation in supplying the information required by the ECB;

(h) they contact other candidates or tenderers with the purpose of restraining competition.

5. Candidates or tenderers must certify that they are not in one of the situations listed above and/or provide the evidence specified in the contract notice or invitation to tender. If such circumstances arise in the course of the procedure the candidate/tenderer concerned shall inform the ECB without undue delay thereof.

Article 25

Selection criteria

1. The ECB shall specify in the contract notice the selection criteria for assessing the candidate's/tenderer's capacity to perform the contract. The selection criteria shall relate to the candidate's or tenderer's economic, financial, technical or professional capacity.

2. The ECB may lay down minimum capacity levels below which it cannot select candidates or tenderers. These minimum levels shall be specified in the contract notice.

3. Furthermore, the ECB may ask candidates or tenderers to prove that they are authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.

4. The ECB shall specify in the contract notice the documents to be submitted by candidates or tenderers as proof of their financial, economic, technical and professional capacity. The documentation requested shall not go beyond the subject of the contract and shall take account of the legitimate interests of the suppliers as regards in particular the protection of their technical and business secrets.

5. If, for some exceptional reason which the ECB considers justified, the tenderer or candidate is unable to provide the documents requested, it may prove its capacity by any other means which the ECB considers appropriate.

6. A supplier may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the ECB that it will have at its disposal the resources necessary for performance of the contract. Under the same conditions, a temporary grouping of suppliers may rely on the capacities of participants in the group.

Article 26

Award criteria

1. The ECB shall specify in the contract notice or the invitation to tender whether it intends to award the contract to the tenderer who submits the most economically advantageous tender or to the tenderer offering the lowest price.

2. Where the award is made to the most economically advantageous tender, the ECB shall specify in the contract notice or the invitation to tender or, in the case of a competitive dialogue, in the request for a proposal:

- (a) the qualitative criteria against which the tenders will be evaluated. Such criteria must be linked to the subject-matter of the contract in question and may include for example quality, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion; and
- (b) the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. Those weightings can be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the ECB, weighting is not possible for demonstrable reasons, it shall indicate the criteria in descending order of importance.

Article 27

Abnormally low tenders

1. The ECB may reject tenders which appear to be abnormally low in relation to the goods, works or service offered.

2. Before rejecting such tenders, the ECB shall request in writing the details of the constituent elements of the tender which it considers relevant. The details may relate in particular to:

- (a) the economics of the manufacturing process, of the provision of services or of the construction method; or
- (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer; or
- (c) the originality of the tender; or
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed.

The ECB shall verify those constituent elements taking into account the explanations and the evidence received.

3. If the tenderer has obtained State aid, the ECB may reject the tender on that ground alone unless the tenderer is able to prove, within a sufficient time limit fixed by the ECB, that the aid was granted legally in accordance with the procedures and decisions specified in the Community rules on State aid.

Article 28

Notification of decisions on the selection and award

1. At its earliest convenience, the ECB shall notify its decision in writing to all candidates or tenderers whose applications or tenders are rejected.

2. The notification shall be issued at least 15 days prior to the signature of the contract by the ECB.

3. Candidates and tenderers may within 15 days on receipt of the notification request the ECB to provide the reasons for rejecting their application or their tender. Unsuccessful tenderers whose tender was admissible may also ask for the name of the successful tenderer as well as the key characteristics and relative advantages of its offer.

4. However, the ECB may decide to withhold certain information where the release of such information would affect other suppliers' legitimate commercial interests, would hinder application of the law or would otherwise be contrary to the public interest.

5. In addition, the ECB shall publish an award notice in the Official Journal on the outcome of the procurement procedure. The notice shall be sent within 48 days after signature of the contract.

CHAPTER III

PROCUREMENTS BELOW THE THRESHOLDS

Article 29

Procedure without publication of a notice

1. Contracts the total estimated value of which is below the thresholds specified in Article 4(3) and service contracts listed in Article 6(2) shall be awarded in accordance with the following procedure.

2. If the value of the contract exceeds or is equal to EUR 50 000 for goods and services or EUR 500 000 for works the ECB shall invite at least five suitable suppliers, if available, to submit a tender within the time limit set by the ECB.

If the value of contract is below these thresholds but equal or above EUR 10 000 the ECB shall invite at least three suitable suppliers, if available, to submit a tender.

In both cases, the ECB shall provide the suppliers with a request for a proposal specifying the ECB's requirements and the criteria for the award of the contract. When fixing the time limit for the submission of tenders the ECB shall take account of the complexity of the contract and the time required to prepare a tender.

3. The ECB shall select the suppliers invited to participate in the tender procedure either among the tenderers admitted to a dynamic purchasing system or, where no such system is in place, from a list of registered suppliers or, where no such list is established, on the basis of a proper market analysis. The pre-selection of suitable suppliers is at the sole discretion of the ECB. The lists of registered suppliers shall be open to any interested supplier providing the type of supplies, services and works for which the list is established. The ECB shall regularly advertise by appropriate means the possibility to register for these lists.

4. Alternatively, the ECB may publish a contract notice on its website or using other appropriate media. In that case, the request for a proposal shall be sent to all suppliers that have declared their interest to participate within the time limit set by the ECB.

5. The tenders received shall be evaluated against the criteria set out in the request for a proposal. Following the evaluation

of the written tenders, the ECB may enter negotiations with the tenderers if that possibility was announced in the request for a proposal. The negotiations may be carried out as consecutive negotiations in the order of the tenderers' ranking or as parallel negotiations with all tenderers.

6. The ECB shall award the contract to the tenderer best meeting the criteria set out in the request for a proposal.

7. The procedure shall be carried out in accordance with the general principles set out in Article 3. Articles 19, 20, 21, 24 and 27 shall apply accordingly.

Article 30

Notification of tenderers and list of contractors

1. Following the award decision, the ECB shall inform the other tenderers within a reasonable time and in writing of the outcome of the tender procedure.

2. Tenderers may within 15 days on receipt of the notification request the ECB to provide the main reasons for rejecting their tender. Article 28(4) shall apply accordingly.

3. The ECB shall publish annually a list of contracts with a value of above EUR 50 000 that were awarded in accordance with Article 29 or for which an exception was granted in accordance with Article 6(1). The list shall specify the name of the contractors to whom contracts were awarded, the subject and the value of the contracts.

Article 31

Outright award

The ECB may award contracts on the basis of a single tender if the estimated value of the contract is less than EUR 10 000, net of VAT, or if an exception was granted in accordance with Article 6(1).

CHAPTER IV

FINAL PROVISIONS

Article 32

Cancellation of tender procedures

1. The ECB may cancel a tender procedure at any time before the contract is signed without the candidates or tenderers being entitled to claim any compensation.

2. The ECB's decision to cancel shall respect the general principles set out in Article 3.

3. The ECB shall substantiate the decision and bring it to the attention of the candidates or tenderers.

Article 33

Appeal procedure

1. In public tender procedures under Chapter II, candidates/tenderers may challenge in writing the ECB's decision to reject their application or tender within 15 days from the receipt of the information specified in Article 28(3) or, if no information is requested, within 15 days from the receipt of the notification. The appeal shall include all supporting information and reasoned objections.

2. The appeal shall be addressed by the ECB's Procurement Review Body (PRB). If the PRB considers that the decision to reject the appellant's application or tender infringes this decision or general principles of procurement law it shall either order that the tender procedure or parts of it are reiterated or take a final decision. Otherwise the appeal shall be rejected. The PRB shall notify the appellant in writing of its decision within one month following the receipt of the appeal. The decision shall state the reasons on which it is based.

3. The appeal shall not have suspensive effect. If deemed appropriate, the PRB may suspend the procurement procedure or the award of the contract.

Article 34

Jurisdiction

The Court of Justice of the European Communities shall have exclusive jurisdiction in any dispute between the ECB and a

supplier relating to this Decision or a specific procurement procedure. If an appeal procedure is available under Article 33 the appellant shall await the ECB's decision on the appeal before bringing the matter to the Court of Justice. Time limits set out in the Treaty shall begin to run from receipt of the appeal decision.

Article 35

Entry into force

1. This Decision shall enter into force on 1 August 2007 and shall repeal and replace Administrative Circular 05/2006 of 27 June 2006 on ECB procurement.

2. Tender procedures that were started before the entry into force of this Decision shall be completed in accordance with Administrative Circular 05/2006. For the purpose of this provision a tender procedure is deemed to be started on the day on which the contract notice was sent to the Official Journal or, in cases where no such notice is required, on the day when the ECB invited one or several suppliers to submit a tender.

Done at Frankfurt am Main, 3 July 2007.

The President of the ECB
Jean-Claude TRICHET

NOTICE TO READERS

In view of the situation which has arisen following enlargement, some editions of the Official Journal of 27, 29 and 30 December 2006 have been published, in a simplified manner, in the official languages of that date.

It has been decided to republish, as corrigenda and in the Official Journal's traditional presentation, Acts which appear in those Official Journals.

It is for this reason that Official Journals which contain only those corrigenda have been published in the pre-enlargement language versions. The translations of Acts in the languages of the new Member States will be published in a special edition of the *Official Journal of the European Union* comprising texts of the institutions and the European Central Bank adopted prior to 1 January 2007.

Given below is a list of the Official Journals published on 27, 29 and 30 December 2006 and their corresponding corrigenda.

OJ of 27 December 2006	Corrected OJ (2007)
L 370	L 30
L 371	L 45
L 373	L 121
L 375	L 70

OJ of 29 December 2006	Corrected OJ (2007)
L 387	L 34

OJ of 30 December 2006	Corrected OJ (2007)
L 396	L 136
L 400	L 54
L 405	L 29
L 407	L 44
L 408	L 47
L 409	L 36
L 410	L 40
L 411	L 27
L 413	L 50