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I

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

REGULATIONS

COUNCIL REGULATION (EC) No 37/2009

of 16 December 2008

amending Regulation (EC) No 1798/2003 on administrative cooperation in the field of value added tax, in order to combat tax evasion connected with intra-Community transactions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

(1) To combat VAT evasion more effectively, it is imperative that the Member States collect and exchange information on intra-Community transactions as rapidly as possible. A period of one month is the most appropriate response to this need, taking account of businesses' accounting and financial periods and the objectives of reducing the administrative burden on businesses.

(2) In view of the amendments to the period for declaring intra-Community transactions made by Council Directive 2008/117/EC of 16 December 2008 amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions ⁽³⁾, it is necessary to amend the references to that period in Council Regulation (EC) No 1798/2003 ⁽⁴⁾.

(3) Since the objectives of the proposed action to tackle VAT evasion cannot be sufficiently achieved by the Member States, whose action in the matter depends on information collected by the other Member States, and can therefore, by reason of the need to involve all Member States, 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 Regulation does not go beyond what is necessary in order to achieve those objectives.

(4) Since the amendments contained in this Regulation are necessary to adapt Regulation (EC) No 1798/2003 to the measures provided for in Directive 2008/117/EC, with which the Member States have to comply by 1 January 2010, this Regulation must enter into force on the same date.

(5) Regulation (EC) No 1798/2003 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1798/2003 is hereby amended as follows:

1. in Article 23, the second paragraph shall be replaced by the following:

'The values referred to in point 2 of the first paragraph shall be expressed in the currency of the Member State providing the information and shall relate to the periods for submission of the recapitulative statements specific to each taxable person which are established in accordance with Article 263 of Directive 2006/112/EC.;

⁽¹⁾ Opinion of 4.12.2008 (not yet published in the Official Journal).

⁽²⁾ Opinion of 22.10.2008 (not yet published in the Official Journal).

⁽³⁾ See page 7 of this Official Journal.

⁽⁴⁾ OJ L 264, 15.10.2003, p. 1.

2. In Article 24, the second paragraph shall be replaced by the following:

‘The values referred to in point 2 of the first paragraph shall be expressed in the currency of the Member State providing the information and shall relate to the periods for submission of the recapitulative statements specific to each taxable person which are established in accordance with Article 263 of Directive 2006/112/EC.’;

3. Article 25(1) and (2) shall be replaced by the following:

‘1. Where the competent authority of a Member State is obliged to grant access to information under Articles 23 and

24, it shall do so as soon as possible and, at the latest, within one month of the end of the period to which the information relates.

2. By way of derogation from paragraph 1, where information is added to a database in the circumstances provided for in Article 22, access to such additional information shall be granted as quickly as possible and no later than one month after the end of the period in which it was collected.’.

Article 2

This Regulation shall enter into force on 1 January 2010.

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

Done at Brussels, 16 December 2008.

For the Council
The President
R. BACHELOT-NARQUIN

COMMISSION REGULATION (EC) No 38/2009
of 19 January 2009
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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 20 January 2009.

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

Done at Brussels, 19 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	147,8
	JO	75,8
	MA	42,0
	TN	134,4
	TR	131,8
	ZZ	106,4
0707 00 05	JO	155,5
	MA	108,6
	TR	158,0
	ZZ	140,7
0709 90 70	MA	162,4
	TR	170,8
	ZZ	166,6
0805 10 20	EG	47,5
	IL	56,1
	MA	62,3
	TN	50,2
	TR	61,6
	ZZ	55,5
0805 20 10	MA	77,8
	TR	58,0
	ZZ	67,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	63,0
	EG	96,8
	IL	65,6
	JM	95,1
	TR	88,6
	ZZ	81,8
0805 50 10	MA	67,1
	TR	51,9
	ZZ	59,5
0808 10 80	CN	64,7
	MK	32,6
	TR	67,5
	US	109,6
	ZZ	68,6
0808 20 50	CN	71,5
	KR	148,7
	TR	97,0
	US	114,6
	ZZ	108,0

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

COMMISSION REGULATION (EC) No 39/2009
of 19 January 2009
on the issue of licences for the import of preserved mushrooms in 2009

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Whereas:

(1) The quantities for which licence applications have been lodged by traditional importers and/or by new importers between 2 and 8 January 2009 pursuant to Article 8 of Commission Regulation (EC) No 1979/2006 of 22 December 2006 opening and providing for the administration of tariff quotas for preserved mushrooms

imported from third countries ⁽³⁾ exceed the quantities available for products originating in China and other third countries.

(2) It is therefore necessary to establish the extent to which the licence applications sent to the Commission no later than 15 January 2009 can be met,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences lodged pursuant to Article 8 of Regulation (EC) No 1979/2006 between 2 and 8 January 2009 and sent to the Commission no later than 15 January 2009 shall be met at a percentage rate of the quantities applied for as set out in the Annex hereto.

Article 2

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

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

Done at Brussels, 19 January 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 368, 23.12.2006, p. 91.

ANNEX

Origin of products	Percentage allocations	
	China	Third countries other than China
— Traditional importers (Article 4(1) of Regulation (EC) No 1979/2006)	57,547896 %	—
— New importers (Article 4(2) of Regulation (EC) No 1979/2006)	5,656152 %	100 %

‘—’: No application for a licence has been sent to the Commission.

DIRECTIVES

COUNCIL DIRECTIVE 2008/117/EC

of 16 December 2008

amending Directive 2006/112/EC on the common system of value added tax to combat tax evasion connected with intra-Community transactions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Whereas:

- (1) The evasion of value added tax (VAT) has a significant impact on the Member States' tax revenue and distorts economic activity in the single market by creating unjustified flows of goods and by placing goods on the market at abnormally low prices.
- (2) The shortcomings of the intra-Community VAT arrangements, and in particular the system for the exchange of information on supplies of goods within the Community, as laid down by Council Directive 2006/112/EC ⁽³⁾, are one of the causes of this tax evasion. In particular, the time that elapses between a transaction and the corresponding exchange of information under the VAT information exchange system is an obstacle to the effective use of that information to tackle fraud.
- (3) In order to combat VAT evasion effectively, it is necessary for the administration of the Member State in which the VAT is chargeable to receive information on intra-Community supplies of goods within a deadline not exceeding one month.

- (4) In order for the cross-checking of information to be useful for combating fraud, intra-Community transactions should be declared for the same tax period by both the supplier and the purchaser or customer.
- (5) In view of changes in the business environment and operative tools, it is desirable to ensure that these declarations can be made by simple electronic procedures in order to reduce the administrative burden to a minimum.
- (6) In order to preserve the balance between the Community's objectives in combating tax evasion and reducing the administrative burden on economic operators, Member States should be allowed to authorise operators to submit on a quarterly basis the recapitulative statements concerning intra-Community supplies of goods where their amount is not significant. It is appropriate that Member States wishing to organise a progressive entry into application of this proposal could, on a transitory basis, set this amount at a higher level. Likewise, Member States should be allowed to authorise operators to submit the information on intra-Community supplies of services on a quarterly basis.
- (7) The impact of the speeding-up of the exchange of information on Member States' ability to combat VAT fraud as well as the option mechanisms should be assessed by the Commission after one year of application of the new measures, in particular with a view to determine whether these option mechanisms should be maintained.
- (8) Since the objectives of the proposed action to tackle VAT evasion cannot be sufficiently achieved by the Member States, whose action in the matter depends on information collected by the other Member States, and can therefore, by reason of the need to involve all Member States, 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 those objectives.

⁽¹⁾ Opinion of 4.12.2008 (not yet published in the Official Journal).

⁽²⁾ Opinion of 22.10.2008 (not yet published in the Official Journal).

⁽³⁾ OJ L 347, 11.12.2006, p. 1.

- (9) Directive 2006/112/EC should therefore be amended accordingly.
- (10) In accordance with point 34 of the Interinstitutional Agreement on better law-making ⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and their transposition measures, and to make them public.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is hereby amended as follows:

1. Article 64(2) shall be replaced by the following:

‘2. Supplies of services for which VAT is payable by the customer pursuant to Article 196, which are supplied continuously over a period of more than one year and which do not give rise to statements of account or payments during that period shall be regarded as being completed on expiry of each calendar year until such time as the supply of services comes to an end.

Member States may provide that, in certain cases other than those referred to in the previous paragraph, the continuous supply of goods or services over a period of time is to be regarded as being completed at least at intervals of one year.’;

2. in Article 66, the following subparagraph shall be added:

‘The derogation provided for in the first paragraph shall not, however, apply to supplies of services in respect of which VAT is payable by the customer pursuant to Article 196.’;

3. Article 263 shall be replaced by the following:

‘Article 263

1. The recapitulative statement shall be drawn up for each calendar month within a period not exceeding one month and in accordance with procedures to be determined by the Member States.

1a. However, Member States, in accordance with the conditions and limits which they may lay down, may allow taxable persons to submit the recapitulative statement for each calendar quarter within a time limit not

exceeding one month from the end of the quarter, where the total quarterly amount, excluding VAT, of the supplies of goods as referred to in Articles 264(1)(d) and 265(1)(c) does not exceed either in respect of the quarter concerned or in respect of any of the previous four quarters the sum of EUR 50 000 or its equivalent in national currency.

The option provided for in the first subparagraph shall cease to be applicable after the end of the month during which the total value, excluding VAT, of the supplies of goods as referred to in Article 264(1)(d) and 265(1)(c) exceeds, in respect of the current quarter, the sum of EUR 50 000 or its equivalent in national currency. In this case, a recapitulative statement shall be drawn up for the month(s) which has (have) elapsed since the beginning of the quarter, within a time limit not exceeding one month.

1b. Until 31 December 2011, Member States are allowed to set the sum mentioned in paragraph 1a at EUR 100 000 or its equivalent in national currency.

1c. In the case of supplies of services as referred to in Article 264(1)(d), Member States, in accordance with the conditions and limits which they may lay down, may allow taxable persons to submit the recapitulative statement for each calendar quarter within a time limit not exceeding one month from the end of the quarter.

Member States may, in particular, require the taxable persons who carry out supplies of both goods and services as referred to in Article 264(1)(d) to submit the recapitulative statement in accordance with the deadline resulting from paragraphs 1 to 1b.

2. Member States shall allow, and may require, the recapitulative statement referred to in paragraph 1 to be submitted by electronic file transfer, in accordance with conditions which they lay down.’;

4. Article 264(2) shall be replaced by the following:

‘2. The value referred to in paragraph 1(d) shall be declared for the period of submission established in accordance with Article 263(1) to (1c) during which VAT became chargeable.

The amounts referred to in paragraph 1(f) shall be declared for the period of submission established in accordance with Article 263(1) to (1c) during which the person acquiring the goods was notified of the adjustment.’;

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

5. Article 265(2) shall be replaced by the following:

‘2. The value referred to in paragraph 1(c) shall be declared for the period of submission established in accordance with Article 263(1) to (1b) during which VAT became chargeable.’

Article 2

On the basis of information provided by the Member States, the Commission shall present, no later than 30 June 2011, a report assessing the impact of Article 263(1) of Directive 2006/112/EC on Member States' ability to fight against VAT fraud connected with intra-Community supplies of goods and services as well as the usefulness of the options provided for in Article 263(1a) to (1c), as well as, depending on the conclusions of the report, the appropriate proposals.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 January 2010. 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 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 16 December 2008.

For the Council
The President
R. BACHELOT-NARQUIN

II

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

RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 22 December 2008

on the safe storage of metallic mercury no longer used in the chlor-alkali industry

(notified under document number C(2008) 8422)

(Only the English text is authentic)

(2009/39/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211, second indent, thereof,

Whereas:

- (1) The Commission has adopted a Community Strategy Concerning Mercury ⁽¹⁾.
- (2) Action 9 of the Strategy stipulates the storage of mercury from the chlor-alkali industry and commits the Commission to explore the scope for an agreement with industry.
- (3) On 24 June 2005, the Council adopted positive Conclusions on the Strategy, inviting the Commission to pursue the safe storage or disposal of mercury, *inter alia*, from the chlor-alkali industry to a timescale consistent with the intended phase out of mercury exports.
- (4) On 14 March 2006, the European Parliament adopted a Resolution welcoming the Strategy, asking the Commission to take action ensuring that all mercury coming from the chlor-alkali industry is safely stored.
- (5) The European Parliament and the Council adopted Regulation (EC) No 1102/2008 of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury ⁽²⁾.

- (6) Euro Chlor, the association of the chlor-alkali industry in Europe, with the support of its member companies, has adopted a commitment on the safe storage of mercury that is no longer needed in the chlor-alkali production process (decommissioned mercury). All companies of the chlor-alkali industry operating within the Community can sign up to this commitment on objective and non-discriminatory terms.

- (7) The Commission is satisfied with the undertakings given by Euro Chlor in its commitment which complements the provisions of the Regulation.

- (8) The commitment fulfils the criteria laid down in the Communication from the Commission on Environmental Agreements at Community Level within the Framework of the Action Plan on the Simplification and Improvement of the Regulatory Environment ⁽³⁾,

HEREBY RECOMMENDS:

1. The members of Euro Chlor as well as other companies of the chlor-alkali industry operating within the Community which will adhere to the Euro Chlor Voluntary Agreement on the Safe Storage of Decommissioned Mercury should use utmost care in selecting storage facilities for decommissioned mercury (i.e. metallic mercury that is not required for the future operation of plants based on the mercury cell process) and undertake to have contracts in place with the operators of such storage facilities that are classified and authorised for the disposal of hazardous waste. Such contracts should be based on objective and non-discriminatory requirements.

⁽¹⁾ COM(2005) 20 final, 28.1.2005.

⁽²⁾ OJ L 304, 14.11.2008, p. 75.

⁽³⁾ COM(2002) 412 final, 17.7.2002.

2. The members of Euro Chlor should engage to respect a high standard of technical requirements with respect to the containment of mercury, the preparation and filling operations as well as the loading and unloading of containers.
3. Euro Chlor should provide relevant data related to decommissioned mercury on an annual basis.

This Recommendation is addressed to Euro Chlor.

Done at Brussels, 22 December 2008.

For the Commission
Stavros DIMAS
Member of the Commission

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.