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⁽¹⁾ Text with EEA relevance

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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 616/2011

of 21 June 2011

terminating the expiry review and 'the new exporter' review of the anti-dumping measures concerning imports of certain magnesite bricks originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community⁽¹⁾ ('the basic Regulation'), and in particular Article 9 and Article 11(2), (4), (5) and (6) thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Measures in force

- (1) In October 2005, pursuant to Regulation (EC) No 1659/2005⁽²⁾, the Council imposed definitive anti-dumping duties ranging from 2,7 % to 39,9 % on imports of certain magnesite bricks originating in the People's Republic of China ('the PRC'). Following two interim reviews requested by Chinese exporting producers, the Regulation was amended in 2009 by Council Regulations (EC) No 825/2009⁽³⁾ and (EC) No 826/2009⁽⁴⁾. Following the reviews, the anti-dumping duties imposed by Regulation (EC) No 1659/2005 currently range from 0 % to 39,9 %.

1.2. Request for an expiry review

- (2) Following the publication of a notice of impending expiry⁽⁵⁾ of the anti-dumping measures in force on imports of certain magnesite bricks originating in the

PRC, the Commission received on 9 July 2010 a request for review pursuant to Article 11(2) of the basic Regulation. The request was lodged by the Magnesite Bricks Production Defence Coalition ('MBPDC') ('the applicant') on behalf of producers representing a major proportion, in this case more than 25 %, of the total Union production of certain magnesite bricks.

- (3) The request contained prima facie evidence of the likelihood of continuation of dumping and recurrence of injury which was considered sufficient to justify the initiation of an expiry review proceeding. The applicant also claimed that an Austrian-based company, RHI AG ('RHI'), should be excluded from the definition of the Union industry on the grounds that it had shifted its core business activities to the PRC, where it has a related company producing the product concerned and increased its business activities relating to the product concerned in the PRC.

1.3. Initiation of the expiry review

- (4) On 8 October 2010 the Commission, after consultation of the Advisory Committee, announced, by a notice published in the *Official Journal of the European Union* ('the notice of initiation')⁽⁶⁾, the initiation of an expiry review proceeding concerning imports into the Union of certain magnesite bricks originating in the PRC.

1.4. Investigation period of the expiry review

- (5) In view of the apparent large number of parties involved in the proceeding, the Commission announced in the notice of initiation that it may apply sampling in accordance with Article 17 of the basic Regulation. In order to enable it to decide whether sampling was necessary and, if so, to select a sample, exporting producers, importers and Union producers were required to provide certain information for the period 1 July 2009 to 30 June 2010 ('the investigation period' or 'IP').

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 267, 12.10.2005, p. 1.

⁽³⁾ OJ L 240, 11.9.2009, p. 1.

⁽⁴⁾ OJ L 240, 11.9.2009, p. 7.

⁽⁵⁾ OJ C 111, 30.4.2010, p. 29.

⁽⁶⁾ OJ C 272, 8.10.2010, p. 5.

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (6) The product concerned is chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, currently falling within CN codes ex 6815 91 00 and ex 6815 99 00.
- (7) The like product is defined as chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, produced and sold in the Union market.
- (8) Magnesite bricks are manufactured using magnesite minerals as the main raw material. They are normally produced to standard chemical specifications which are then altered to fit the demands of the end-user. Magnesite bricks are normally used in steel production as a lining for the vessels in which the steel is melted.

3. PARTIES CONCERNED BY THE INVESTIGATION

- (9) The Commission officially advised the applicant, other known producers in the Union, the known exporting producers in the PRC, the representatives of the exporting country concerned and known importers and users of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.
- (10) In view of the large number of parties involved sampling was envisaged in the notice of initiation for the Chinese exporting producers, unrelated Union importers and Union producers. Of the seventy-eight exporting producers contacted at initiation only four provided the information for the selection of the sample requested in the notice of initiation.
- (11) With regard to Union producers, a total of ten companies, including the producers on behalf of whom MBPDC requested the review, submitted the requested information. The Union producers requesting the review are heavily dependent on the supply of a major raw material from the PRC and have requested confidential treatment for their company names in view of possible retaliatory action.
- (12) The Commission services had contacted all Union producers of magnesia bricks prior to initiation to obtain information on their production levels and to

determine their support or opposition to the investigation. One of the companies that replied, RHI AG, expressed its opposition to the expiry review prior to initiation.

- (13) Following initiation, RHI claimed that the facts presented by the applicant in the request for review, especially in regard to RHI's production volume, were not accurate and that, on the contrary, RHI should be included in the definition of the Union industry as had been done in the original proceeding in 2005. It consequently disputed the definition of the Union industry which had led to the initiation of the proceeding on the grounds that the requirements of Article 5(4) of the basic Regulation were not met, since it is the largest Union producer, accounting for more than 50 % of total Union production, and is opposed to the initiation.

4. INVESTIGATION

- (14) As mentioned in recital 3 above, the applicant had considered that RHI AG should be excluded from the definition of the Union industry on the grounds that it had shifted its core business activities to the PRC. In view of this and the fact that RHI AG expressed opposition to the review, the Commission asked RHI to provide additional information in order to examine whether or not it should be included in the definition of the Union industry. The requested information concerned the company's business activities both in the EU and in the PRC and included data on its production capacity, production volumes, sales value and volumes in and outside the EU and the PRC and imports value and volume of the product concerned in the Union market. The company provided the additional information and an on-spot verification visit took place at the company's headquarters in Vienna.
- (15) In the original investigation initiated in July 2004, RHI was one of the complainant Union producers. At that time RHI was also importing the product concerned from its related company in the PRC and it was examined whether the company should be excluded from the definition of the Union industry pursuant to Article 4(1)(a) of the basic Regulation.
- (16) It is recalled that the assessment of RHI's situation was made in Commission Regulation (EC) No 552/2005 of 11 April 2005 imposing a provisional duty on imports of certain magnesia bricks originating in the People's Republic of China ⁽¹⁾ and confirmed by Regulation (EC) No 1659/2005. For the purpose of the assessment, the following criteria were examined:
 - the location of the company's headquarters, research and development (R & D) centre and main production sites,

⁽¹⁾ OJ L 93, 12.4.2005, p. 6.

- the volume/value of the product concerned imported from the PRC compared to the total sales volume and value,
 - the impact the imported sales had on the company's total Union sales, in particular by comparing the profitability of RHI's sales in the EU of the imported product concerned with the profitability rates of the cooperating Union producers.
- (17) At that time it was found that the company's core business was situated in the Union as regards the product concerned (its headquarters, R & D centre and biggest production sites were all located in the Union). Moreover, the vast majority of RHI's sales on the Union market were produced in the Union and only a minor part was produced in the PRC (5 % of its total sales volume in the Union) as the production of the related company in the PRC was mainly aimed at the fast-growing Asian market. In addition, it was found that these imports were resold at prices comparable to those of the Union industry and therefore the company was not enjoying substantial beneficial effects, in terms of profitability, by reselling the imported product. Finally, it was explicitly mentioned that RHI's Union production company was a separate legal entity from its Chinese production company. It was found that, although RHI AG was a global group with a production site in the PRC constituting a separate legal entity, it still produced the vast majority of its magnesite bricks, which were subsequently sold on the Union market, at its Union production sites. On these grounds it was concluded that RHI AG, which supported the imposition of measures at that time, formed part of the Union industry.
- (18) During the on-spot verification in the course of the current proceeding, it was found that the company's core business was still situated in the Union. The company's headquarters, shareholders and R & D centre were located in the Union. The company has five plants in the Union producing the product concerned and during the period 2005 to 30 June 2010, the end of the investigation period, the production capacity in these plants increased. The figures provided by RHI concerning its production capacity in the Union of the like product and the production volumes per plant in the investigation period were verified and found to be correct.
- (19) The company also continued to invest in its EU plants and, for the period 2007 to the end of the investigation period, the investments relating to the like product represented a significant portion of the company's total investments in the EU.
- (20) RHI has several related companies in the PRC involved in the production and trading of refractory products including magnesite bricks of which RHI Refractories Liaoning Co. Ltd, a separate legal entity, produces the product concerned. This company is a joint venture with a Chinese company and started production in 1997. It has only one plant. Although the plant's production capacity increased substantially during the period from 2005 to the end of the investigation period, it still does not represent a major proportion of the RHI's total production capacity (EU and Chinese plants combined).
- (21) With regard to the imports volume of the product concerned, following the imposition of the measures in 2005, the company imported only one small shipment from its related company in the PRC in the investigation period, as it is subject to the highest anti-dumping duty rate of 39,9 %.
- (22) RHI provided its sales value and volume for the like product produced in the Union and for the product concerned produced in the PRC. The company demonstrated that the majority of the sales of its related company in the PRC during the investigation period were for export to countries other than the EU, with the remainder being sold on the Chinese market.
- (23) Concerning the impact the sales of the imported product concerned had on the company's total Union sales, the volume of these imports compared to the company's total sales volume in the Union market was insignificant and thus the impact on the company's sales negligible.
- (24) Based on the data verified on-spot it is concluded that RHI should not be excluded from the definition of the Union industry. The company's situation has not changed substantially since the original investigation, when it was found that the three criteria were met and concluded that the company was part of the Union industry.
- (25) The findings confirm that the company still has its core business activities (headquarters, R & D centre and main production sites) in the EU. The increase in the production capacity of the plant in the PRC in the period 2005 to the end of the investigation period cannot be considered as a shift of the company's core activities to the PRC. Therefore the applicant's argument that RHI should be excluded on the basis that it has a related company in the PRC producing the product concerned and increasing business activities in the PRC is rejected.
- (26) The information supplied by the applicant did not accurately reflect the situation of RHI as a Union producer, in particular with regard to its production volume and production capacity in the Union, and its

production capacity in the PRC. Thus, by including RHI's production volume in the total Union production figure the applicant's output constitutes less than 50 % of the total Union production. Furthermore, as explained above, (i) RHI should be considered as part of the Union industry within the meaning of Article 4 of the basic Regulation; (ii) RHI produces over 50 % of total Union production within the meaning of Article 5(4), second sentence, of the basic Regulation; and (iii) RHI is opposed to the expiry review. Therefore, the proceeding should be terminated.

5. TERMINATION OF THE PROCEEDING

- (27) In the light of the above, it is considered that the present proceeding should be terminated in accordance with Article 9 and Article 11(2), (5) and (6) of the basic Regulation.
- (28) The applicant was informed accordingly and was given the opportunity to comment. The applicant strongly contested the conclusions of the Commission and expressed doubts that RHI's production during the investigation period exceeded the production of the remaining Union producers supporting the complaint. In particular the applicant provided various press releases concerning RHI's activities to substantiate its claims that the company no longer views the production in the Union as its core business and that there is a clear shift in the group's strategy as it announced massive extensions of its production capacities in the PRC. However, it was found that such press releases refer to the company's general overall business activities and do not relate specifically to the product investigated. The applicant did not provide any other evidence of any shift in RHI's core activities with regard to the period from 2005 to the end of the investigation period that would lead to the conclusion that RHI should be excluded from the definition of the Union industry.
- (29) It is therefore considered that the expiry review proceeding concerning imports into the Union of certain magnesia bricks originating in the PRC should be terminated.
- (30) Due to the precise circumstances explained in recital 26 above, the definitive anti-dumping duties paid or entered in the accounts pursuant to Regulation (EC) No 1659/2005 on imports of certain magnesia bricks originating in the People's Republic of China released for free circulation as from 14 October 2010, the date of expiry of the anti-dumping measures, should exceptionally be repaid or remitted.
- (31) Repayment or remission must be requested from national customs authorities in accordance with applicable customs legislation.

- (32) In the view of the circumstances described above in particular in recital 21, the Commission will monitor the export and import flows of the product concerned as well as the relevant CN Codes. Should the flows appear to change, the Commission will give consideration to the action to be taken.

6. TERMINATION OF THE 'NEW EXPORTER' REVIEW

- (33) On 27 May 2010 the Commission received an application for a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The application was lodged by TRL China Ltd ('TRL'), an exporting producer in the PRC.
- (34) TRL claimed that it operated under market economy conditions as defined in Article 2(7)(c) of the basic Regulation or alternatively claimed individual treatment in conformity with Article 9(5) of the basic Regulation. It further claimed that it did not export the product concerned to the Union during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 April 2003 to 31 March 2004 ('the original investigation period') and that it was not related to any of the exporting producers of the product which are subject to the anti-dumping measures mentioned above in recital 1.
- (35) TRL further claimed that it had begun exporting the product concerned to the Union after the end of the original investigation period.
- (36) On 28 September 2010 the Commission, after consultation of the Advisory Committee, announced, by Regulation (EU) No 850/2010⁽¹⁾, the initiation of a 'new exporter' review of Regulation (EC) No 1659/2005, the repeal of the duty with regard to imports from TRL and the subjection of these imports to registration.
- (37) The investigation period for the 'new exporter' review was from 1 July 2009 to 30 June 2010.
- (38) In view of the termination of the expiry review and given the fact that TRL did not import the product concerned between the date of the entry into force of Regulation (EU) No 850/2010 and the date of expiry of the anti-dumping measures (13 October 2010), it is considered that the 'new exporter' review concerning imports into the Union of certain magnesia bricks originating in the PRC should therefore also be terminated.
- (39) Interested parties were given the opportunity to make their views known and to request a hearing within the time limit set out in the notice of initiation,

⁽¹⁾ OJ L 253, 28.9.2010, p. 42.

HAS ADOPTED THIS REGULATION:

Article 1

The anti-dumping measures concerning imports of chemically bonded, unfired magnesia bricks, whose magnesia component contains at least 80 % MgO, whether or not containing magnesite, originating in the People's Republic of China, currently falling within CN codes ex 6815 91 00 and ex 6815 99 00, are hereby repealed and the proceeding concerning these imports is terminated.

Article 2

The definitive anti-dumping duties paid or entered in the accounts pursuant to Article 1(2) of Regulation (EC) No 1659/2005 on imports of certain magnesia bricks originating in the People's Republic of China released for free circulation as from 14 October 2010 shall be repaid or remitted.

Repayment and remission shall be requested from national customs authorities in accordance with applicable customs legislation.

Article 3

The 'new exporter' review initiated by Regulation (EU) No 850/2010 is hereby terminated.

Article 4

The customs authorities are hereby directed to cease the registration of imports carried out pursuant to Article 3 of Regulation (EU) No 850/2010.

Article 5

This Regulation shall enter into force on the 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 Luxembourg, 21 June 2011.

For the Council

The President

FAZEKAS S.

COMMISSION IMPLEMENTING REGULATION (EU) No 617/2011**of 24 June 2011****amending Regulation (EC) No 900/2008 laying down the methods of analysis and other technical provisions necessary for the application of the arrangements for imports of certain goods resulting from the processing of agricultural products**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1216/2009 of 30 November 2009 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ⁽¹⁾, and in particular Article 18 thereof,Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ⁽²⁾, and in particular Article 9(1)(a) thereof,

Whereas:

(1) Commission Regulation (EC) No 900/2008 ⁽³⁾ lays down the methods of analysis and other technical provisions necessary for the application of Regulation (EC) No 1216/2009 and Commission Implementing Regulation (EU) No 514/2011 of 25 May 2011 laying down the detailed rules for implementing the preferential trade arrangements applicable to certain goods resulting from the processing of agricultural products, as provided for in Article 7(2) of Council Regulation (EC) No 1216/2009 ⁽⁴⁾. Those methods and provisions apply to imports of certain processed agricultural products in order to determine their reduced agricultural components and to classify those products in the Combined Nomenclature.

(2) In the interest of clarity, it is necessary to update the scope of Regulation (EC) No 900/2008 and to adapt it to the measures laid down in that Regulation.

(3) In order to ensure consistent application of Regulation (EC) No 900/2008, it is necessary to provide that the formulas, procedures and methods laid down therein for the purpose of applying Annexes II and III to Regulation (EU) No 514/2011 are also to be used for the determination of milk fat content, milk protein content, starch/glucose content and sucrose/invert sugar/isoglucose content for the purpose of selecting the appropriate agricultural element, additional duties for sugar

and additional duties for flour in the case of non-preferential imports as provided for in Part Two and in Part Three, Section I, Annex 1, of Annex I to Regulation (EEC) No 2658/87.

(4) In order to ensure effective application of Regulation (EC) No 900/2008, it is necessary to provide that the methods and procedures laid down therein for classifying certain goods falling within certain CN codes for the purposes of applying Annex I to Regulation (EU) No 514/2011 should also be used for classifying those goods in the case of non-preferential imports as provided for in Annex I to Regulation (EEC) No 2658/87.

(5) In order to take account of amendments to the Combined Nomenclature, it is necessary to adapt certain references to CN codes.

(6) Regulation (EC) No 900/2008 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 900/2008 is amended as follows:

(1) Article 1 is replaced by the following:

*'Article 1***Scope**

This Regulation lays down the following:

(a) the methodology and methods of analysis to be used for determining the content of the agricultural products within the meaning of Article 2(1)(a) of Council Regulation (EC) No 1216/2009 ^(*) or their specific components considered to have been incorporated in imported goods within the meaning of Article 2(1)(b) of Regulation (EC) No 1216/2009;

⁽¹⁾ OJ L 328, 15.12.2009, p. 10.

⁽²⁾ OJ L 256, 7.9.1987, p. 1.

⁽³⁾ OJ L 248, 17.9.2008, p. 8.

⁽⁴⁾ OJ L 138, 26.5.2011, p. 18.

(b) the necessary methods of analysis to be used for the implementation of Regulation (EC) No 1216/2009 as far as imports of certain goods are concerned, of Annex I to Regulation (EEC) No 2658/1987 and of Commission Implementing Regulation (EU) No 514/2011^(*) or in the absence of a method of analysis, the nature of the analytical operations to be carried out or the principle of a method to be applied.

(*) OJ L 328, 15.12.2009, p. 10.

(**) OJ L 138, 26.5.2011, p. 18.;

(2) Article 2 is amended as follows:

(a) the following title is added: '**Calculation of contents**';

(b) the introductory phrase is replaced by the following:

'In accordance with the definitions set out in footnotes 1, 2 and 3 of Annex III to Regulation (EU) No 514/2011 and in footnotes 1, 2 and 3 of Part Three, Section I, Annex 1, Table 1 of Annex I to Regulation (EEC) No 2658/87 concerning milk protein content, starch/glucose content and sucrose/invert sugar/isoglucose content, the following formulas, procedures and methods shall be used:

(a) for the application of Annexes II and III to Regulation (EU) No 514/2011;

(b) for the determination of milk fat content, milk protein content, starch/glucose content and sucrose/invert sugar/isoglucose content for the purpose of selecting the appropriate agricultural element, additional duties for sugar and additional duties for flour in the case of non-preferential imports as provided for in Part Two and in Part Three, Section I, Annex 1, of Annex I to Regulation (EEC) No 2658/87.;

(3) Article 3 is amended as follows:

(a) the following title is added: '**Classification of Goods**';

(b) the introductory phrase is replaced by the following:

'For the purpose of applying Annex I to Regulation (EU) No 514/2011 and Annex I to Regulation (EEC) No 2658/87, the following methods and procedures shall be used for the classification of the following goods:'

(c) points 2 and 3 are replaced by the following:

'2. For the purposes of classifying goods falling within CN codes 1704 10 10 and 1704 10 90 and 1905 20 10 to 1905 20 90, the sucrose content, including invert sugar expressed as sucrose, shall be determined using the HPLC method (invert sugar expressed as sucrose is calculated as the sum of equal quantities of glucose and fructose multiplied by 0,95);

3. For the purposes of classifying goods falling within CN codes 1806 10 15 to 1806 10 90, the sucrose/invert sugar/isoglucose content shall be determined in accordance with the formulas, method and procedures set out in point 2 of Article 2 of this Regulation.;

(4) in Article 4 the following title is added: '**Test report**';

(5) in Article 5 the following title is added: '**Final provision**'.

Article 2

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

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

Done at Brussels, 24 June 2011.

For the Commission

The President

José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 618/2011**of 24 June 2011****withdrawing the suspension of submission of applications for import licences for sugar products
under tariff quota 09.4380**

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Regulation (EC) No 891/2009 of 25 September 2009 opening and providing for the administration of certain Community tariff quotas in the sugar sector ⁽²⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) No 302/2011 of 28 March 2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year ⁽³⁾ suspends the import duties for sugar falling within CN 1701 and with order number 09.4380 for a quantity of 300 000 tonnes.
- (2) Submission of applications for import licences concerning order number 09.4380 were suspended as from 20 April 2011 by Commission Implementing Regulation (EU) No 393/2011 of 19 April 2011 fixing the allocation coefficient for the issuing of import licences applied for from 1 to 7 April 2011 for sugar

products under certain tariff quotas and suspending submission of applications for such licences ⁽⁴⁾, in accordance with Regulation (EC) No 891/2009.

- (3) Commission Implementing Regulation (EU) No 589/2011 of 20 June 2011 amending Implementing Regulation (EU) No 302/2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year ⁽⁵⁾, increased by 200 000 tonnes the quantities for which import duties for sugar falling within CN 1701 and with order number 09.4380 shall be suspended until 30 September 2011.
- (4) The suspension of applications should therefore be withdrawn.
- (5) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

The suspension laid down by Implementing Regulation (EU) No 393/2011 of submission of applications for import licences for order number 09.4380 as from 20 April 2011 is withdrawn.

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, 24 June 2011.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 254, 26.9.2009, p. 82.

⁽³⁾ OJ L 81, 29.3.2011, p. 8.

⁽⁴⁾ OJ L 104, 20.4.2011, p. 39.

⁽⁵⁾ OJ L 161, 21.6.2011, p. 7.

COMMISSION REGULATION (EU) No 619/2011**of 24 June 2011****laying down the methods of sampling and analysis for the official control of feed as regards presence of genetically modified material for which an authorisation procedure is pending or the authorisation of which has expired****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and in particular Article 11(4) thereof,

Whereas:

(1) Commission Regulation (EC) No 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of feed ⁽²⁾ does not provide for special rules for the control of material which contains, consists of or is produced from GMOs (GM material) for which an EU authorisation procedure is pending or GM material the authorisation of which has expired. Experience has shown that in the absence of such rules, the official laboratories and the competent authorities apply different methods of sampling and different rules for the interpretation of the results of the analytical tests. This may lead to different conclusions as regards the compliance of a product with Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed ⁽³⁾. As a result of the lack of harmonised rules, economic operators are faced with legal uncertainty and there is a risk that the functioning of the internal market will be affected.

(2) Different international information exchange mechanisms providing information on the safety assessments performed by countries authorising the commercialisation of GMOs are in place. In accordance with the Cartagena Protocol on Biosafety to the Convention on Biological Diversity of which all Member States are

Parties, Parties to the Protocol have to inform the other Parties through the Biosafety Clearing House (BCH) on any final decision regarding domestic use, including placing on the market, of a GMO that may be subject to transboundary movement for direct use as food or feed or for processing. This information shall contain, inter alia, a risk assessment report. Countries which are not Parties to the Protocol may also provide such information on a voluntary basis. International information exchange mechanisms regarding the authorisation of GMOs and their safety assessments are also provided by FAO and OECD.

(3) The EU imports significant quantities of commodities produced in third countries where GMO cultivation is widespread. While these imported commodities are used both in the production of food and feed, the majority of the commodities likely to contain GMOs are destined for the feed sector thereby entailing a higher risk of trade disruption for that sector in cases where Member States apply different rules for official controls. It appears therefore appropriate to limit the scope of this Regulation to the feed sector which, in comparison with other sectors related to the production of foodstuffs, has a higher likelihood for GM presence.

(4) Regulation (EC) No 1829/2003 provides that the placing on the market of genetically modified feed is subject to an authorisation procedure. The authorisation procedure includes the publication of an EFSA opinion of which the main component is a safety assessment. In giving its opinion, EFSA consults Member States upon receipt of a valid application and Member States have 3 months to make their opinions known. The opinion of EFSA has also to include a method for detection validated by the European Union Reference Laboratory (EU-RL).

(5) In practice, the validation by the European Union Reference Laboratory (EU-RL) is carried out independently of the other elements provided for in the authorisation procedure. Generally the method is validated and published before all of the other elements are fulfilled for completing the EFSA opinion. These methods are published on the website of the EU-RL and are available to the competent authorities as well as to any interested parties.

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.

⁽²⁾ OJ L 54, 26.2.2009, p. 1.

⁽³⁾ OJ L 268, 18.10.2003, p. 1.

- (6) A method may only be validated if it complies with the detailed rules for the fitness of the method set out in Commission Regulation (EC) No 641/2004 of 6 April 2004 on detailed rules for the implementation of Regulation (EC) No 1829/2003 of the European Parliament and of the Council as regards the application for the authorisation of new genetically modified food and feed, the notification of existing products and adventitious or technically unavoidable presence of genetically modified material which has benefited from a favourable risk evaluation⁽¹⁾. In addition, as required by that Regulation, common criteria for minimum performance requirements for analytical methods for GMO testing have been set⁽²⁾.
- (7) The methods of analysis validated by the EU-RL in the context of the authorisation procedure and for the placing on the market, use and processing of existing products within the meaning of Article 20 of Regulation (EC) No 1829/2003 are event-specific quantitative methods. They are validated through a collaborative trial in accordance with the principles of ISO 5725 International standard and/or the International Union of Pure and Applied Chemistry (IUPAC) protocol. As a matter of fact, the EU-RL is currently the sole laboratory in the world validating quantitative event-specific methods in accordance with the above mentioned standards in the context of pre-marketing authorisation procedures. These quantitative methods are considered to be more appropriate than qualitative methods for the purpose of ensuring the harmonisation of the official controls. Indeed testing procedures using qualitative methods require other sampling schemes as they are otherwise associated with higher risks to provide diverging results regarding the presence or absence of genetically modified material. It is therefore appropriate to use the methods of analysis validated by the EU-RL in the context of the authorisation procedure to prevent diverging analytical results amongst Member States.
- (8) Certified reference material should also be available to enable control laboratories to perform their analysis.
- (9) Accordingly, the scope of this Regulation should cover the detection in feed of GM material authorised for commercialisation in a third country and for which an authorisation procedure is pending for more than 3 months under Regulation (EC) No 1829/2003 where the event-specific quantitative methods of analysis submitted by the applicant have been validated by the EU-RL and provided that the certified reference material is available.
- (10) The scope of this Regulation should also cover GM material the authorisation of which has expired. It should therefore apply to feed containing, consisting of or produced from SYN-EV176-9 and MON-ØØØ21-9xMON-ØØ81Ø-6 maize and ACS-BNØØ4-7xACS-BNØØ1-4, ACS-BNØØ4-7xACS-BNØØ2-5 and ACS-BNØØ7-1 oilseed rape for which a quantitative method has been validated by the European Union Reference Laboratory provided that the certified reference material is available. These GM materials were placed on the market before the application of Regulation (EC) No 1829/2003 and were notified as existing products under Article 20 of that Regulation. As the seeds were no more commercialised at global scale, the respective notifiers informed the Commission that they had no intention to submit an application for the renewal of the authorisation of the products concerned. As a consequence, the Commission adopted Decisions 2007/304/EC⁽³⁾, 2007/305/EC⁽⁴⁾, 2007/306/EC⁽⁵⁾, 2007/307/EC⁽⁶⁾ and 2007/308/EC⁽⁷⁾ on the withdrawal from the market of the products concerned (obsolete products). These Decisions provide a tolerance for the presence in products of material which contain, consist of or are produced from SYN-EV176-9 and MON-ØØØ21-9xMON-ØØ81Ø-6 maize and ACS-BNØØ4-7xACS-BNØØ1-4, ACS-BNØØ4-7xACS-BNØØ2-5 and ACS-BNØØ7-1 oilseed rape provided that this presence is adventitious or technically unavoidable and in a proportion no higher than 0,9 % for a limited period which expires on 25 April 2012. It is appropriate to ensure that at the time of the expiry of the tolerance period set out in Decisions 2007/304/EC, 2007/305/EC, 2007/306/EC, 2007/307/EC and 2007/308/EC this Regulation applies also to the detection of these obsolete products in feed. It should also apply to any other GM material the authorisation of which is not renewed at the expiry of the authorisation due to the phasing out of the product.
- (11) Harmonisation of the official controls of feed for the detection of GM material falling under the scope of this Regulation should also be ensured through the adoption of common methods of sampling.
- (12) These methods should be based on recognised scientific and statistical protocols and, when available, on international standards and should cover the different steps of sampling, including the rules applicable to the sampling of the material, the precautions to be taken in the course of sampling and preparation of samples, the conditions to be applied for taking incremental samples and replicate laboratory samples, the handling of laboratory samples and the sealing and labelling of samples. To ensure adequate representativeness of the samples taken for official control purposes, specific conditions adapted to the fact that the lot of feed is presented in bulk agricultural commodities, pre-packaging or retail should also be adopted.

⁽¹⁾ OJ L 102, 7.4.2004, p. 14.

⁽²⁾ http://gmo-crl.jrc.ec.europa.eu/doc/Min_Perf_Requirements_Analytical_methods.pdf

⁽³⁾ OJ L 117, 5.5.2007, p. 14.

⁽⁴⁾ OJ L 117, 5.5.2007, p. 17.

⁽⁵⁾ OJ L 117, 5.5.2007, p. 20.

⁽⁶⁾ OJ L 117, 5.5.2007, p. 23.

⁽⁷⁾ OJ L 117, 5.5.2007, p. 25.

- (13) It is also appropriate to harmonise the rules for the interpretation of the results of the analysis, to ensure that throughout the European Union the same conclusion is drawn from the same analytical results. In this context, it is also necessary to take into account the technical constraints associated with any method of analysis, in particular at trace levels since analytical uncertainty increases with decreasing levels of GM material.
- (14) To take these constraints into account, as well as the need to ensure that controls are both feasible, robust and proportionate, as set out in Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾, it is appropriate to set as a Minimum Required Performance Limit (MRPL) the lowest level of GM material which is considered by the EU-RL for the validation of quantitative methods. This level corresponds to 0,1 % related to mass fraction of GM material in feed and is the lowest level where results are satisfactorily reproducible between official laboratories when appropriate sampling protocols and methods of analysis for measuring feed samples are applied.
- (15) The methods validated by the EU-RL are specific to each transformation event irrespective of the fact that the transformation event is present in one or several GMOs containing one or several transformation events. The MRPL should thus apply to the whole GM material containing the measured transformation event.
- (16) Measurement uncertainty should be determined by each official laboratory and confirmed as described in the guidance document on Measurement Uncertainty for GMO testing laboratories⁽²⁾ developed by the Joint Research Centre of the Commission (JRC).
- (17) A decision of non-compliance of the feed should therefore only be taken when GM material falling under the scope of this Regulation is present at levels equal or above the MRPL, measurement uncertainty being taken into account.
- (18) The rules established by this Regulation should not affect the possibility for the Commission, or where applicable for a Member State, to adopt emergency measures in accordance with Articles 53 and 54 of Regulation (EC) No 178/2002.
- (19) These implementing rules should be adapted if this becomes necessary to take account of new developments in particular as regards their impact on the internal market and on food and feed operators.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee for the Food Chain and Animal Health and neither the European Parliament nor the Council has opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

1. For the purposes of this Regulation, the following definitions apply:

- (1) 'Precision — Relative Repeatability Standard Deviation (RSDr)': The relative standard deviation of test results obtained under repeatability conditions. Repeatability conditions are conditions where test results are obtained with the same method, on identical test items, in the same laboratory, by the same operator, using the same equipment within short intervals of time;
- (2) 'Minimum Required Performance Limit (MRPL)': the lowest amount or concentration of analyte in a sample that has to be reliably detected and confirmed by official laboratories;
- (3) 'GM material': material which contains, consists of or is produced from GMOs.

2. The definitions set out in Article 2 of Regulation (EC) No 1829/2003 and in Annex I to Regulation (EC) No 152/2009 apply.

Article 2

Scope

This Regulation shall apply to the official control of feed with respect to the presence of the following material:

- (a) GM material authorised for commercialisation in a third country and for which a valid application has been submitted under Article 17 of Regulation (EC) No 1829/2003 and for which the authorisation procedure has been pending for more than 3 months provided that:
- (i) it has not been identified by EFSA as susceptible to have adverse effects on health or the environment when present under the MRPL;

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ http://www.irmm.jrc.be/html/reference_materials_catalogue/user_support/EUR22756EN.pdf

- (ii) the quantitative method requested under that Article has been validated and published by the European Union Reference Laboratory; and
- (iii) that the certified reference material fulfils the conditions set out in Article 3;
- (b) after 25 April 2012, GM material notified under Article 20 of Regulation (EC) No 1829/2003 of which the authorisation has expired and for which a quantitative method has been validated and published by the European Union Reference Laboratory provided that certified reference material fulfils the conditions set out in Article 3; and
- (c) GM material for which the authorisation has expired due to the fact that no application for renewal in accordance with Article 23 of Regulation (EC) No 1829/2003 has been submitted provided that certified reference material fulfils the conditions set out in Article 3.

Article 3

Certified reference material

1. Certified reference material must be available to Member States and any third party.
2. Certified reference material shall be produced and certified in accordance with ISO guides 30 to 35.
3. The information accompanying the certified reference material shall include information on the breeding of the plant which has been used for the production of the certified reference material and on the zygosity of the insert(s). The certified value of the GMO content shall be given in mass fraction and, where available, in copy number per haploid genome equivalent.

Article 4

Methods of sampling

Samples for the official control of feed as regards the presence of the GM material referred to in Article 2, shall comply with the methods of sampling, as set out in Annex I.

Article 5

Sample preparation, methods of analysis and interpretation of results

The preparation of laboratory samples, the methods of analysis and the interpretation of results shall comply with the requirements set out in Annex II.

Article 6

Measures in case of detection of GM material referred to in Article 2

1. Where results of analytical tests indicate the presence of GM material referred to in Article 2 are at or above the MRPL as defined in accordance with the rules of interpretation set out in Annex II Part B, the feed shall be considered as non-compliant with Regulation (EC) No 1829/2003. Member States shall immediately notify this information through the RASFF in accordance with Article 50 of Regulation (EC) No 178/2002.
2. Where results of analytical tests indicate the presence of GM material referred to in Article 2 is below the MRPL as defined in accordance with the rules of interpretation set out in Annex II Part B, Member States shall record this information and notify the Commission and the other Member States by 30 June of each year. Recurrent findings over a period of time of 3 months shall be notified without delay.
3. The Commission shall or a Member State may, where appropriate, adopt emergency measures in accordance with Articles 53 and 54 of Regulation (EC) No 178/2002.

Article 7

List of GM material referred to in Article 2

The Commission shall publish the list of GM material complying with the conditions set out in Article 2 on its website. The list shall include information as to the place where the certified reference material can be accessed as required by Article 17(3)(j) of Regulation (EC) No 1829/2003 and, if applicable, information on the measures adopted in accordance with paragraph 3 of Article 6 of this Regulation.

Article 8

Review

The Commission shall monitor the application of this Regulation and its impact on the internal market as well as on feed, livestock and other operators, and, if necessary, bring forward proposals to review this Regulation.

Article 9

Entry into force

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

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

Done at Brussels, 24 June 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX I

METHODS OF SAMPLING

1. For the purpose of applying Annex I to Regulation (EC) No 152/2009, GM material shall be considered as a substance likely to be distributed non-uniformly throughout the feed.
2. By derogation from points 5.B.3., 5.B.4 and 6.4 of Annex I to Regulation (EC) No 152/2009, the size of the aggregate samples for feed materials shall be not less than the weight corresponding to 35 000 grains/seeds and the final sample shall be not less than the weight corresponding to 10 000 grains/seeds.

The mass equivalent of 10 000 grains/seeds is provided in Table 1 below.

Table 1

Mass equivalent of 10 000 grains/seeds for different plants

Plant	Mass, in grams, corresponding to 10 000 grain/seed
Barley, Millet, Oat, Rice, Rye, Wheat	400
Maize	3 000
Soybean	2 000
Rape seed	40

ANNEX II

CRITERIA FOR SAMPLE PREPARATION AND METHODS OF ANALYSIS

In order to detect the presence in feed of the GM material referred to in Article 2, the official laboratories shall use the methods of analysis and control requirements described in this Annex.

A. PREPARATION OF SAMPLES FOR ANALYSIS

In addition to the requirements of Annex II Part A to Regulation (EC) No 152/2009, the following provisions shall apply.

1. Treatment of the final samples

Official laboratories shall use the standard EN ISO 24276, ISO 21570, ISO 21569 and ISO 21571 that indicate strategies for the homogenisation of the final sample (also designated as the 'laboratory sample' in the ISO standards), the reduction of the final sample to the sample for analysis, the preparation of the test sample and the extraction and the analysis of target analyte.

2. Size of the sample for analysis

The sample for analysis shall be of a size which ensures the quantification of GM material at a presence corresponding to the MRPL with a statistical degree of confidence of 95 %.

B. APPLICATION OF METHODS OF ANALYSIS AND EXPRESSION OF THE RESULTS

By derogation from Part C of Annex II to Regulation (EC) No 152/2009, the following rules for the application of methods of analysis and expression of results shall apply.

1. General conditions

Official laboratories shall comply with the requirements of ISO 17025 and use quantitative methods of analysis that have been validated by the European Union Reference Laboratory in collaboration with the European Network of GMO Laboratories. They shall ensure that, considering the whole analytical method starting with the treatment of the laboratory sample of feed, they are in position to carry out the analysis at the level of 0,1 % related to mass fraction of GM material in feed with an adequate precision (relative repeatability standard deviation less than or equal to 25 %).

2. Rules for interpretation of results

To ensure a level of confidence of approximately 95 %, the outcome of the analysis shall be reported as $x \pm U$ whereby x is the analytical result for one measured transformation event and U is the appropriate expanded measurement uncertainty.

U shall be specified by the official laboratory for the whole analytical method and confirmed as described in the guidance document on Measurement Uncertainty for GMO testing laboratories ⁽¹⁾ developed by JRC.

A feed material, feed additive or, in the case of compound feed each of the feed material and feed additive of which it is composed shall be considered as non-compliant with Regulation (EC) No 1829/2003 when the analytical result (x) for one measured transformation event minus the expanded measurement uncertainty (U) equals or exceeds the level of 0,1 % related to mass fraction of GM material. When results are primarily expressed as GM-DNA copy numbers in relation to target taxon specific DNA copy numbers calculated in terms of haploid genomes, they shall be translated into mass fraction in accordance with the information provided in each validation report of the EU-RL.

⁽¹⁾ http://www.irmm.jrc.be/html/reference_materials_catalogue/user_support/EUR22756EN.pdf

COMMISSION IMPLEMENTING REGULATION (EU) No 620/2011**of 24 June 2011****amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, and in particular Article 9(1)(d) thereof,

Whereas:

- (1) Further to a complaint brought in the World Trade Organisation (WTO) by certain countries, a WTO panel report adopted by the WTO Dispute Settlement Body on 21 September 2010⁽²⁾ concluded that the European Union had acted, inter alia, inconsistently with the General Agreement on Tariffs and Trade 1994 (GATT 1994) by according tariff treatment less favourable than that provided in the tariff bindings with regard to certain information technology products made by the European Union pursuant to the Information Technology Agreement (ITA). Annex I to Regulation (EEC) No 2658/87 should be amended in order to bring it into conformity with the international obligations of the European Union under the GATT 1994. The required amendments are in accordance with Council Decision 97/359/EC of 24 March 1997 concerning the elimination of duties on information technology products⁽³⁾, which approved the ITA.
- (2) Following the WTO Panel Report, digital copying should not constitute photocopying under the GATT 1994 and copying speed should not be the sole classification criterion. Subheading 8443 31 of Annex I to Regulation (EEC) No 2658/87 and the corresponding duty rate should therefore be amended accordingly.
- (3) The wording of subheading 8528 71 15 of the CN (previously 8528 71 13) should be amended in order to include set-top boxes which, besides the function of

communication, may be capable of performing the additional functions of recording or reproducing, provided that, as a result, they do not lose the essential character of a set-top box which has a communication function.

- (4) This regulation should enter into force on 1 July 2011 at the end of the reasonable period of time agreed by the European Union with the complaining parties for the European Union to bring itself into conformity with its WTO obligations.
- (5) As recommendations in reports adopted by the WTO's Dispute Settlement Body only have prospective effect, this regulation should not have retroactive effects nor provide interpretative guidance on a retroactive basis. Since it cannot operate to provide interpretative guidance for classification of goods which have been released for free circulation prior to 1 July 2011 it should not serve as a basis for the reimbursement of any duties paid prior to that date.
- (6) The Customs Code Committee has not issued an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Part Two, Section XVI of Annex I to Regulation (EEC) No 2658/87 is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 July 2011.

It shall have neither retroactive effect nor provide interpretative guidance on a retroactive basis.

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

Done at Brussels, 24 June 2011.

*For the Commission,
On behalf of the President,
Algirdas ŠEMETA
Member of the Commission*

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ WT/DS375/R, WT/DS376/R, WT/DS377/R.

⁽³⁾ OJ L 155, 12.6.1997, p. 1.

ANNEX

Part Two, Section XVI of Annex I to Regulation (EEC) No 2658/87 is amended as follows:

(1) Chapter 84 is amended as follows:

- (a) the row for CN code 8443 31 10 is deleted;
- (b) between the row for CN code 8443 31 10 and the row for CN code 8443 31 91 '--- Other' is deleted;
- (c) the following row for CN code 8443 31 20 is inserted:

'8443 31 20	--- Machines having digital copying as principal function, where the copying is performed by scanning the original and printing the copies by means of an electrostatic print engine	2,2 %	p/st'
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(d) the following row for CN code 8443 31 80 is inserted:

'8443 31 80	--- Other	Free	p/st'
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- (e) the row for CN code 8443 31 91 is deleted;
- (f) the row for CN code 8443 31 99 is deleted;

(2) Chapter 85 is amended as follows:

- (a) the row for CN code 8528 71 13 is deleted;
- (b) the following row for CN code 8528 71 15 is inserted:

'8528 71 15	---- Apparatus with a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange, capable of receiving television signals (so-called "set-top boxes which have a communication function", including those incorporating a device performing a recording or reproducing function, provided that they retain the essential character of a set-top box which has a communication function)	Free	p/st'
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- (c) the row for CN code 8528 71 90 is deleted;
- (d) the following rows are inserted after CN code 8528 71 19:

'8528 71 91	---- Apparatus with a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange, capable of receiving television signals (so-called "set-top boxes which have a communication function", including those incorporating a device performing a recording or reproducing function, provided that they retain the essential character of a set-top box which has a communication function)	Free	p/st
8528 71 99	---- Other	14	p/st'

COMMISSION IMPLEMENTING REGULATION (EU) No 621/2011**of 24 June 2011****amending for the 151st time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan,⁽¹⁾ and in particular Article 7(1)(a), 7a(1) and 7a(5) thereof,

Whereas:

- (1) Annex I to Regulation (EC) No 881/2002 lists the persons, groups and entities covered by the freezing of funds and economic resources under that Regulation.
- (2) On 14 June 2011 the Sanctions Committee of the United Nations Security Council decided to remove two natural

persons from the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. On 16 June 2011 it decided to add one natural person to the list and to amend one entry on the list.

- (3) Annex I to Regulation (EC) No 881/2002 should therefore be updated accordingly.
- (4) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 881/2002 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 24 June 2011.

*For the Commission,
On behalf of the President,
Head of the Service for Foreign Policy Instruments*

⁽¹⁾ OJ L 139, 29.5.2002, p. 9.

ANNEX

Annex I to Regulation (EC) No 881/2002 is amended as follows:

(1) The following entries under the heading 'Natural persons' are deleted:

- (a) 'Tarek Ben Al-Bechir Ben Amara **Al-Charaabi** (*alias* (a) Tarek Sharaabi, (b) Haroun, (c) Frank). Address: Vordere Gasse 29, 7012 Felsberg, Switzerland. Date of birth: 31.3.1970. Place of birth: Tunis, Tunisia. Nationality: Tunisian. Passport No: L579603 (Tunisian passport number issued in Milan on 19.11.1997, expired on 18.11.2002). National identification No: 007-99090. Other information: (a) Italian fiscal code: CHRTRK70C31Z352U, (b) Mother's name is Charaabi Hedia. Date of designation referred to in Article 2a (4) (b): 24.4.2002.'
- (b) 'Safet Ekrem **Durguti**. Address: 175 Bosanska Street, Travnik, Bosnia and Herzegovina. Date of birth: 10.5.1967. Place of birth: Orahovac, Kosovo. Nationality: Bosnia and Herzegovina. Passport No: 6371551 (Bosnia and Herzegovina biometric passport issued in Travnik, issued on 9.4.2009, valid until 4.9.2014. National identification: (a) JMB 1005967953038 (Bosnia and Herzegovina personal identification number), (b) 04DFC71259 (Bosnia and Herzegovina identity card), (c) 04DFA8802 Bosnia and Herzegovina driving license issued by the Ministry of Interior of the Central Bosnia Canton, Travnik, Bosnia and Herzegovina). Other information: (a) Father's name is Ekrem; (b) Founder and head of Al-Haramain Islamic Foundation from 1998 until 2002; (c) Working as a teacher at Elci Ibrahim Pasha's Madrasah, Travnik, Bosnia and Herzegovina. Date of designation referred to in Article 2a (4) (b): 26.12.2003.'

(2) The following entry shall be added under the heading 'Natural persons':

Othman Ahmed Othman **Al-Ghamdi** (*alias* (a) Othman al-Ghamdi, (b) Uthman al-Ghamdi, (c) Uthman al-Ghamidi, (d) Othman bin Ahmed bin Othman Alghamdi, (e) Othman Ahmed Othman Al Omairah, (f) Uthman Ahmad Uthman al-Ghamdi, (g) Othman Ahmed Othman al-Omirah, (h) Al Umairah al-Ghamdi, (i) Othman Bin Ahmed Bin Othman). Address: Yemen. Date of birth: (a) 27.5.1979, (b) 1973 (Othman Ahmed Othman Al Omairah). Place of birth: (a) Saudi Arabia, (b) Yemen (Othman Ahmed Othman Al Omairah). Nationality: (a) Saudi Arabian, (b) Yemeni (Othman Ahmed Othman Al Omairah). National identification No.: 1089516791 (Saudi Arabian national identity card). Other information: (a) Father's name is Ahmed Othman Al Omirah, (b) Operational commander of Al-Qaida in the Arabian Peninsula (AQAP). Has been involved in raising funds and stockpiling arms for AQAP operations and activities in Yemen, (c) Known associate of Qasim Yahya Mahdi al-Rimi and Fahd Mohammed Ahmed al-Quso, (d) INTERPOL Orange Notice (file number 2009/52/OS/CCC, #14). INTERPOL Red Notice (Control Number A-596/3-2009, File Number 2009/3731), (e) Date of designation referred to in Article 2a(4)(b): 16.6.2011.

(3) The entry 'Al-Haramain Islamic Foundation (*alias* (a) Vazir, (b) Vezir). Address: (a) 64 Poturmahala, Travnik, Bosnia and Herzegovina; (b) Sarajevo, Bosnia and Herzegovina. Other information: Employees and associates include Najib Ben Mohamed Ben Salem Al-Waz and Safet Durguti. Date of designation referred to in Article 2a (4) (b): 13.3.2002.' under the heading 'Legal persons, groups and entities' shall be replaced by the following:

'Al-Haramain Islamic Foundation (*alias* (a) Vazir, (b) Vezir). Address: (a) 64 Poturmahala, Travnik, Bosnia and Herzegovina; (b) Sarajevo, Bosnia and Herzegovina. Other information: Employees and associates include Najib Ben Mohamed Ben Salem Al-Waz. Date of designation referred to in Article 2a (4) (b): 13.3.2002.'

COMMISSION IMPLEMENTING REGULATION (EU) No 622/2011**of 24 June 2011****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 25 June 2011.

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

Done at Brussels, 24 June 2011.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	AR	23,1
	MK	54,8
	TR	73,2
	ZZ	50,4
0707 00 05	TR	83,7
	ZZ	83,7
0709 90 70	TR	97,5
	ZZ	97,5
0805 50 10	AR	62,3
	BR	40,6
	TR	65,0
	UY	65,6
	ZA	110,3
	ZZ	68,8
0808 10 80	AR	132,6
	BR	78,0
	CA	105,9
	CL	99,5
	CN	118,6
	NZ	109,7
	US	166,4
	UY	91,7
	ZA	92,9
	ZZ	110,6
0809 10 00	AR	89,7
	TR	241,9
	ZZ	165,8
0809 20 95	TR	327,3
	XS	382,4
	ZZ	354,9
0809 30	EC	116,4
	TR	179,1
	ZZ	147,8

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

DECISIONS

COUNCIL DECISION

of 9 June 2011

amending the Schengen consultation network (technical specifications)

(2011/369/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications ⁽¹⁾, and in particular Article 1(2) thereof,

Having regard to the initiative by the Kingdom of Belgium,

Whereas:

- (1) The Schengen consultation network (technical specifications) has been established to allow consultation between the central authorities of the Member States in relation to visa applications submitted by nationals from certain third countries.
- (2) The heading formats of the forms transmitted with a view to the consultation between Member States should be amended and, with certain exceptions, the updated list of three-letter codes of the International Civil Aviation Organisation (ICAO) ('three-letter codes (ICAO)') for States, entities, territories, nationalities and organisations should be used in the framework of that consultation in line with the list established by Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement ⁽²⁾. The use of the three-letter codes (ICAO) with certain exceptions does not affect and is without prejudice to Member States' competence with regard to the recognition or non-recognition of States or entities. The codes set up for the Former Yugoslav Republic of Macedonia and Kosovo ⁽³⁾ are only for the purpose of VISION consultation.
- (3) The technical specifications of the Schengen consultation network (technical specifications) should be amended accordingly.

- (4) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (5) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁵⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (6) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of 6 months after the Council has decided on this Decision whether it will implement it in its national law.
- (7) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽⁶⁾ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽⁷⁾.

⁽¹⁾ OJ L 116, 26.4.2001, p. 2.

⁽²⁾ OJ L 81, 21.3.2001, p. 1.

⁽³⁾ Under United Nations Security Council Resolution 1244 (1999).

⁽⁴⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁵⁾ OJ L 64, 7.3.2002, p. 20.

⁽⁶⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁷⁾ OJ L 176, 10.7.1999, p. 31.

- (8) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁾ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽²⁾.
- (9) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽³⁾ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU ⁽⁴⁾.
- (10) As regards Cyprus, this Decision constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession.
- (11) This Decision constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession.
- (12) In accordance with Article 58(4) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) ⁽⁵⁾, until the date referred to in

Article 46 of Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) ⁽⁶⁾, the procedure set out in Article 1(2) of Council Regulation (EC) No 789/2001 should continue to apply, if necessary, for the amendments of certain parts of the Schengen consultation network (technical specifications),

HAS ADOPTED THIS DECISION:

Article 1

Parts 1, 2 and 3 of the Schengen consultation network (technical specifications) are hereby amended as set out in the Annexes I, II and III.

Article 2

This Decision shall enter into force on 9 June 2011.

It shall apply from 10 July 2011.

Article 3

This Decision is addressed to the Member States in accordance with the Treaties.

Done at Luxembourg, 9 June 2011.

For the Council

The President

PINTÉR S.

⁽¹⁾ OJ L 53, 27.2.2008, p. 52.

⁽²⁾ OJ L 53, 27.2.2008, p. 1.

⁽³⁾ OJ L 160, 18.6.2011, p. 3.

⁽⁴⁾ OJ L 160, 18.6.2011, p. 1.

⁽⁵⁾ OJ L 243, 15.9.2009, p. 1.

⁽⁶⁾ OJ L 218, 13.8.2008, p. 60.

ANNEX I

Point 1.3 of Part 1 of the Schengen consultation network (technical specifications) is replaced by the following:

'1.3. DEFINING MESSAGE CHARACTERISTICS

For every message to be sent via the network, the following structural characteristics should be met:

The 'From' item of the message contains the senders applications address.

For example:

From: vision@vision-mailer.nl

The 'To' item of the message contains the recipients application address.

For example:

To: vision@vision-mailer.de

Implementation tip: be aware that it is possible to make use of multiple recipients delimited by commas. But if the application does so, on received FORMs R it has to determine the FORM R sender, because it will receive references to identical message-identifiers (heading '000'). Sending separate messages to each partner State with different '000' headings is less confusing.

The 'Subject' item of the message contains a 'file number' and a full stop ('.') followed by the form-type identifier (Letter: 'A', 'B', 'C', 'E', 'F', 'G', 'H' or 'R'). For the respective forms, the 'file number' equals the content of its heading: '001' in FORM 'A', 'B', 'C', 'F', 'G', 'H' and the content of heading '048' in a FORM E. For heading definitions see 2.1.2.

Examples:

Subject:AUT0000010106AJKT00.B

Subject:FRA2007022457471104.E

If a Member State receives a message with an incorrectly formulated subject, it has to discard that message without processing it. If the problem persists it has to be solved bilaterally by the technical staff.

The mail body has to be structured as follows:

— 'text/plain' is used as the 'Media Type' or 'Mime Type' see RFC2046 (<http://tools.ietf.org/html/rfc2046>),

— 'ISO-8859-15' is used as the 'charset'.

Hence in the 'Header' of every mail, the following line will appear:

Content-Type: text/plain; charset = ISO-8859-15.'

ANNEX II

Point 2.2.1 of Part 2 of the Schengen consultation network (technical specifications) is replaced by the following:

‘2.2.1. Three-letter codes (ICAO)

Codes for States, entities, territories, nationalities and organisations as well as further designations for the VISION consultation procedure.

Three-letter codes, as set out in ICAO Document 9303 on Machine-Readable Travel Documents, shall be used except in the following cases:

1. for the Former Yugoslav Republic of Macedonia, XXG shall be used;
2. for Kosovo ⁽¹⁾, XXD shall be used;
3. for the Federal Republic of Germany, DEU shall be used.

Two lists will be made available on CIRCA:

1. An ICAO-based code list ⁽²⁾: the latest version of the ICAO-based codes with the three exceptions mentioned above to be used for VISION consultation. This list shall be used in line with the list established by Regulation (EC) No 539/2001.
2. A special VISION code list: the limited list of special VISION three-letter codes for specific cases.

Both lists will contain, next to the appropriate three-letter codes to be used for VISION consultation ‘valid from’ and ‘valid until’-values for these codes:

- Valid-Until: Date from which the code becomes obsolete for VISION consultation,
- Valid-From: Date from which the code becomes applicable to be used for VISION consultation.

If ICAO-updates are detected by a Member State or the Commission, it will immediately notify the General Secretariat of the Council. The ICAO-based code list will be updated by the Presidency as follows:

- new ICAO-codes shall be added with a ‘valid from’ date 30 days after publication of the updated list on CIRCA,
- for removed ICAO-codes the ‘valid until’ date shall be set 30 days after publication of the updated list on CIRCA and shall be kept for archival purposes.

If, for technical reasons (e.g. old passports that are still valid), an expired ICAO-code has to be used further in the VISION Consultation Network, or in general if, for technical reasons, a new three-letter code is deemed necessary, this code shall be added to the special VISION code list after agreement in the Visa/VISION Working Party.

The General Secretariat of the Council shall notify Member States every time an updated list has been published on CIRCA.

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

⁽²⁾ A table containing the current ICAO-codes can be found at the ICAO web site.’.

ANNEX III

The last paragraph of point 3.2.5 of Part 3 of the Schengen consultation network (technical specifications) is deleted.

COUNCIL DECISION
of 20 June 2011
appointing a Spanish alternate member of the Committee of the Regions
(2011/370/EU)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Spanish Government,

Whereas:

(1) On 22 December 2009 and on 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.

(2) An alternate member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Albert MORENO HUMET,

Article 1

The following is hereby appointed to the Committee of the Regions as an alternate member for the remainder of the current term of office, which runs until 25 January 2015:

— Mr Senén FLORENSA I PALAU, *Secretario de Asuntos Exteriores, Generalitat de Catalunya*.

Article 2

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

Done at Luxembourg, 20 June 2011.

For the Council
The President
MATOLCSY Gy.

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COUNCIL DECISION
of 20 June 2011
appointing an Austrian alternate member of the Committee of the Regions
(2011/371/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal from the Austrian Government,

Whereas:

- (1) On 22 December 2009 and 18 January 2010, the Council adopted Decisions 2009/1014/EU ⁽¹⁾ and 2010/29/EU ⁽²⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2010 to 25 January 2015.
- (2) An alternate member's seat on the Committee of the Regions has become vacant following the end of the term of office of Ms Johanna MIKL-LEITNER,

HAS ADOPTED THIS DECISION:

Article 1

The following is hereby appointed to the Committee of the Regions as alternate member for the remainder of the current term of office, which runs until 25 January 2015:

— Ms Barbara SCHWARZ, *Amt der NÖ Landesregierung*.

Article 2

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

Done at Luxembourg, 20 June 2011.

For the Council

The President

MATOLCSY Gy.

⁽¹⁾ OJ L 348, 29.12.2009, p. 22.

⁽²⁾ OJ L 12, 19.1.2010, p. 11.

COMMISSION IMPLEMENTING DECISION

of 24 June 2011

exempting exploration for oil and gas and exploitation of oil in Italy from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

*(notified under document C(2011) 4253)***(Only the Italian text is authentic)****(Text with EEA relevance)**

(2011/372/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ⁽¹⁾, and in particular Article 30(5) and (6) thereof,

Whereas:

setting up of adequate infrastructure for future production (oil platforms, pipelines, terminals, etc.). Furthermore, established Commission practice also found that 'the development, production and sales of crude oil' constitutes 'one relevant product market' ⁽³⁾. Thus, for the purposes of this Decision, 'production' will be taken as including both 'development' as well as (first) sale of oil.

- (3) Assomineraria is a trade association which, in this context, acts on behalf of the main undertakings operating in the exploration and production of hydrocarbons sector in Italy. The four main companies affiliated to the association are ENI SpA, Edison SpA, Shell Italia E&P SpA and Total E&P Italia SpA.

I. FACTS

- (1) On 23 March 2011 the Italian Petroleum and Mining Industry Association – Assomineraria transmitted a request pursuant to Article 30(5) of Directive 2004/17/EC to the Commission by e-mail. In accordance with Article 30(5) first subparagraph, the Commission informed the Italian authorities thereof by letter of 1 April 2011, to which the said authorities answered on 19 April 2011. The request submitted by Assomineraria concerns the exploration for oil and gas and exploitation of oil in Italy. In line with previous Commission Merger Decisions ⁽²⁾, two distinct activities have been described in the request, namely:

(a) exploration for oil and natural gas; and

(b) production of oil.

- (2) In accordance with the abovementioned Commission Decisions, 'production' will for the purposes of this Decision be taken to include also 'development', i.e. the

II. LEGAL FRAMEWORK

- (4) Article 30 of Directive 2004/17/EC provides that contracts intended to enable the performance of one of the activities to which Directive 2004/17/EC applies shall not be subject to that Directive if, in the Member State in which it is carried out, the activity is directly exposed to competition on markets to which access is not restricted. Direct exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned. Access is deemed to be unrestricted if the Member State has implemented and applied the relevant EU legislation opening a given sector or a part of it.
- (5) Since Italy has implemented and applied Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons ⁽⁴⁾, access to the market should be deemed not to be restricted in accordance with the first subparagraph of Article 30(3) of Directive 2004/17/EC. Direct exposure to competition

⁽¹⁾ OJ L 134, 30.4.2004, p. 1.

⁽²⁾ See in particular Commission Decision 2004/284/EC of 29 September 1999 declaring a concentration compatible with the common market and the EEA Agreement (Case No IV/M.1383 — Exxon/Mobil) and subsequent decisions, inter alia, Commission Decision of 3 May 2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4545 — STATOIL/HYDRO) according to Council Regulation (EEC) No 139/2004.

⁽³⁾ See, inter alia, Commission Decision 2001/45/EC of 29 September 1999 declaring a concentration to be compatible with the common market and the EEA Agreement (Case IV/M.1532. BP Amoco/Arco), point 14.

⁽⁴⁾ OJ L 164, 30.6.1994, p. 3.

in a particular market should be evaluated on the basis of various criteria, none of which are, necessarily and per se, decisive.

larger investments are needed to explore for oil and gas in the North Sea than is the case for exploration in, e.g. the Middle East.

- (6) For the purposes of assessing whether the relevant operators are subject to direct competition in the markets concerned by this Decision, the market share of the main players and the degree of concentration of those markets shall be taken into account. As the conditions vary for the different activities that are concerned by this Decision, a separate assessment shall be undertaken for each activity/market.
- (7) This Decision is without prejudice to the application of the rules on competition.

III. ASSESSMENT

- (8) Each of the two activities that are the subject of this request (exploration for oil and natural gas and production of oil) have been considered to constitute separate product markets in the previous Commission Decisions referred to in recitals 1 and 2 above. They should therefore be examined separately.

Exploration for oil and natural gas

- (9) According to Commission practice⁽¹⁾, exploration for oil and natural gas constitutes one relevant product market, since it is not possible from the outset to determine whether the exploration will result in finding oil or natural gas. On the exploration market, exploration companies acquire exploration licenses granted by 'host countries' usually via bidding procedures⁽²⁾. It has furthermore been established through the same, long-standing, Commission practice, that the geographical scope of that market is worldwide. Given that there is no indication that the definition would be different in this case, it will be maintained for the purposes of this Decision.
- (10) The market shares of operators active in exploration can be measured by reference to three variables: the capital expenditure, proven reserves and expected production. The use of capital expenditure to measure the market shares of operators on the exploration market has been found to be unsuitable, inter alia, because of the large differences between the required levels of investments that are necessary in different geographic areas. Thus,

- (11) Two other parameters have typically been applied to assess the market shares of economic operators within this sector, namely, their share of proven reserves and of the expected production⁽³⁾.
- (12) As of 31 December 2009, the global, proven oil and gas reserves amounted to a total of 385,58 billion standard cubic metres oil equivalent (in the following Sm³ o. e.) worldwide, according to the available information⁽⁴⁾. As of 1 January 2010, the combined, proven oil and gas reserves in Italy amounted to slightly more than 0,205 billion Sm³ o. e.⁽⁵⁾, or slightly more than 0,05 %. The share thereof of the individual contracting entities operating in Italy is necessarily even smaller. According to the available information, there is a direct correlation between proven reserves of oil and gas and expected future production. Nothing in the available information therefore indicates that the market share of the individual contracting entities operating in Italy would be substantially different if measured in terms of expected production rather than in terms of its share of proven reserves. Given the links between proven reserves and actual production these facts can be taken as an indication also of the state of competition on the market concerned here.

- (13) The exploration market is not highly concentrated. Apart from the state-owned companies, the market is characterised by the presence of international vertically integrated private players named the super majors (BP and ExxonMobil and Shell) as well as a certain number of so-called 'majors'. These elements are an indication of direct exposure to competition.

Production of oil

- (14) According to established Commission practice⁽⁶⁾, development, production and sales of (crude) oil is a separate product market whose geographic scope is worldwide. Given that there is no indication that the definition would be different in this case it will be maintained for the purposes of this Decision.

⁽¹⁾ See in particular the abovementioned Exxon/Mobil Decision and, more recently, Commission Decision of 19 November 2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4934 – KAZMUNAIGAZ/ROMPETROL) according to Council Regulation (EEC) No 139/2004.

⁽²⁾ M.1532 BP Amoco/Arco, paragraphs 9 and 10.

⁽³⁾ See in particular the abovementioned Exxon/Mobil Decision (paragraphs 25 and 27).

⁽⁴⁾ See point 5.2.1 of the application and the sources quoted there, in particular the BP Statistical Review of World Energy, June 2010, in the following referred to as '2010 BP Statistics', annexed to it. The Canadian oil sands were not taken into account for reasons of consistency with previous Article 30 Decisions.

⁽⁵⁾ According to 2010 BP Statistics, p. 8.

⁽⁶⁾ See in particular the abovementioned Exxon/Mobil Decision and, more recently, Commission Decision of 19 November 2007 declaring a concentration to be compatible with the common market (Case No COMP/M.4934 – KAZMUNAIGAZ/ROMPETROL) according to Council Regulation (EEC) No 139/2004.

- (15) According to the available information ⁽¹⁾, the total, daily production of oil worldwide amounted to 79,948 million barrels in 2009. That same year, a total of 0,095 million barrels per day were produced in Italy giving it a market share of 0,11 %. Looking at the 2009 share of the individual contracting entities operating in Italy, the situation is as follows: with a worldwide production of 1 007 thousand ⁽²⁾ barrels per day, ENI has a share of 1,26 % of oil production worldwide; Shell's worldwide production of 1 581 thousand barrels of oil per day ⁽³⁾ gives it a market share amounting to 1,98 % of oil production in the world; Total has a worldwide production of 1 381 thousand barrels of oil per day ⁽⁴⁾ which gives it a market share amounting to 1,73 % of oil production worldwide; finally Edison has a worldwide daily production of 5 thousand barrels of oil per day ⁽⁵⁾ which gives it a market share amounting to 0,006 % of oil production in the world.
- (16) For the purposes of this analysis, it is important to have regard to the degree of concentration in the relevant market as a whole. In this view, the Commission notes that the market for crude oil production is characterised by the presence of big state-owned companies and three international vertically integrated private players (the so called 'super majors': BP, ExxonMobil and Shell whose parts of oil production in 2009 amounted to: 3,2 %, 3,0 % and 2,0 % respectively ⁽⁶⁾) as well as a certain number of so-called 'majors' ⁽⁷⁾. These factors suggest that the market comprises a number of players between whom effective competition can be presumed.

IV. CONCLUSIONS

- (17) In view of the factors examined in recitals 8 to 16 the condition of direct exposure to competition laid down in Article 30(1) of Directive 2004/17/EC should be considered to be met in Italy in respect of the following services:
- (a) exploration for oil and natural gas; and
- (b) production of oil.
- (18) Since the condition of unrestricted access to the market is deemed to be met, Directive 2004/17/EC should not apply when contracting entities award contracts intended to enable the services listed in points (a) and (b) of recital

17 to be carried out in Italy, nor when design contests are organised for the pursuit of such an activity in those geographic areas.

- (19) According to the application, in Italy most of exploitation fields produce both oil and gas, in different percentages ⁽⁸⁾. The production of gas is not subject to this exemption request, and for this sector the provisions of Directive 2004/17/EC continue to apply. In this context, it is recalled that procurement contracts covering several activities shall be treated in accordance with Article 9 of Directive 2004/17/EC. This means that, when a contracting entity is engaged in 'mixed' procurement, that is procurement used to support the performance of both, activities exempted from the application of Directive 2004/17/EC and activities not exempted, regard shall be had to the activities for which the contract is principally intended. In the event of such mixed procurement, where the purpose is principally to support the production of gas, the provision of Directive 2004/17/EC shall apply. If it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with the rules referred to in paragraphs (2) and (3) of Article 9 of Directive 2004/17/EC.
- (20) This Decision is based on the legal and factual situation as of March 2011 to April 2011 as it appears from the information submitted by Assomineraria, and BP Statistical Review of World Energy 2010 and the Italian authorities. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 30(1) of Directive 2004/17/EC are no longer met.
- (21) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee for Public Contracts,

HAS ADOPTED THIS DECISION:

Article 1

Directive 2004/17/EC shall not apply to contracts awarded by contracting entities and intended to enable the following services to be carried out in Italy:

- (a) exploration for oil and natural gas; and
- (b) production of oil.

⁽¹⁾ See p. 8 of 2010 BP Statistics, annexed to request.

⁽²⁾ Of which 56 thousand barrels per day are produced daily in Italy.

⁽³⁾ Of which 30 thousand barrels per day are produced daily in Italy.

⁽⁴⁾ Total does not produce oil in Italy.

⁽⁵⁾ The entire oil production of Edison takes place in Italy.

⁽⁶⁾ See point 5.2.3 of the application, p. 18.

⁽⁷⁾ E.g.: Total, Chevron, Eni and Conoco, whose market shares are smaller than those of the super majors.

⁽⁸⁾ See point 2.1 of the application.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 24 June 2011.

For the Commission

Michel BARNIER

Member of the Commission

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