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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 22 June 2012

on the position to be taken by the European Union within the Committee on Trade and Sustainable Development set up by the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, as regards the operation of the Civil Society Forum and the establishment of the Panel of Experts to examine the matters in the areas falling within the scope of the Committee on Trade and Sustainable Development

(2012/488/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 23 April 2007 the Council authorised the Commission to negotiate a free trade agreement with the Republic of Korea on behalf of the European Union and its Member States.
- (2) The Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part ⁽¹⁾ ('the Agreement'), was signed on 6 October 2010.
- (3) Pursuant to Article 15.10(5) of the Agreement, the Agreement has been provisionally applied since 1 July 2011 subject to its conclusion at a later date.
- (4) Article 13.13(1) of the Agreement provides that the parties shall agree by decision of the Committee on Trade and Sustainable Development (TSD) ('the EU-Korea Committee on Trade and Sustainable Development') on the operation of the Civil Society Forum no later than one year after the entry into force of the Agreement.
- (5) Article 13.15(3) foresees the establishment of a list of persons who could be called to serve in a Panel of Experts to examine any matter arising under the TSD chapter that could not be satisfactorily addressed through government consultations.

- (6) The Union should determine the position to be taken with regard to the operation of the Civil Society Forum and the list of persons who could be called to serve as experts,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Union in the EU-Korea Committee on Trade and Sustainable Development set up by the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, as regards:

- (a) the operation of the Civil Society Forum foreseen in Article 13.13(1) of the Agreement; and
- (b) the establishment of a list of qualified individuals to serve as panellists, in accordance with Article 13.15(3) of the Agreement;

shall be based on the draft decisions of the EU-Korea Committee on Trade and Sustainable Development attached to this Decision.

Article 2

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

Done at Luxembourg, 22 June 2012.

For the Council
The President
M. VESTAGER

⁽¹⁾ OJ L 127, 14.5.2011, p. 6.

DRAFT

DECISION No .../2012 OF THE EU-KOREA COMMITTEE ON TRADE AND SUSTAINABLE DEVELOPMENT**of ...****on the adoption of the rules of operation of the Civil Society Forum as required by Article 13.13 of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part**

THE EU-KOREA COMMITTEE ON TRADE AND SUSTAINABLE DEVELOPMENT,

HAS ADOPTED THIS DECISION:

Article 1

Having regard to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, signed in Brussels on 6 October 2010 ('the Agreement'), and in particular Article 13.13 thereof,

The rules of operation of the Civil Society Forum, as set out in the Annex to this Decision, are hereby established.

Article 2

Whereas:

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

- (1) Article 13.13 of the Agreement provides that members of the Domestic Advisory Group(s) from each Party shall meet at a Civil Society Forum.
- (2) The composition of the Civil Society Forum shall ensure a balanced representation of members of the Domestic Advisory Group(s).
- (3) The Parties shall agree by decision of the EU-Korea Committee on Trade and Sustainable Development on the operation of the Civil Society Forum no later than one year after the entry into force of the Agreement,

Done at ... on ...

For the EU-Korea Committee on Trade and Sustainable Development

*Co-chair of the EU-Korea
Committee on Trade and
Sustainable Development of the
Republic of Korea*

*Co-chair of the EU-Korea
Committee on Trade and
Sustainable Development of the
European Union*

ANNEX

RULES OF OPERATION OF THE CIVIL SOCIETY FORUM*Article 1*

The Civil Society Forum will be composed of 12 members of the EU Domestic Advisory Group and 12 members of the Domestic Advisory Groups of Korea designated by the Domestic Advisory Groups themselves. Members may be accompanied by expert advisors. Representatives of the Civil Society Forum from each Party shall include at least three representatives of business organisations, trade unions and environmental non-governmental organisations respectively.

Article 2

The Civil Society Forum shall have an EU and a Korean co-chair. The co-chairs will be appointed by the EU Domestic Advisory Group and the Korean Domestic Advisory Group(s), respectively, among their participants in the Civil Society Forum.

The co-chairs will draw up the agenda of the Civil Society Forum meetings, based on requests by their respective Domestic Advisory Groups. In addition, the agenda shall include the following regular items:

- (a) Information by the Parties on the implementation of the Chapter on Trade and Sustainable Development;
- (b) Reports of consultations undertaken under Article 13.14 and about work undertaken by Panel of experts under Article 13.15.

Article 3

The Civil Society Forum shall meet at least once a year, alternating between Brussels and Seoul, unless otherwise agreed by the Parties. An extraordinary meeting may be held upon request of one of the Domestic Advisory Groups.

DRAFT

DECISION No .../2012 OF THE EU-KOREA COMMITTEE ON TRADE AND SUSTAINABLE DEVELOPMENT**of ...****on the establishment of a Panel of Experts referred to in Article 13.15 of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part**

THE EU-KOREA COMMITTEE ON TRADE AND SUSTAINABLE DEVELOPMENT,

HAS ADOPTED THIS DECISION:

Article 1

Having regard to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, signed in Brussels on 6 October 2010 ('the Parties' and 'the Agreement'), and in particular Article 13.15 thereof,

The list of experts who may serve as panellists for the purposes of Article 13.15 of the Agreement is set out in the Annex to this Decision, and is hereby agreed.

Article 2

Whereas:

This Decision shall enter into force on the date of its adoption and shall be reported to the EU-Korea Trade Committee.

(1) A Party may request that a Panel of Experts be convened to examine a matter that has not been satisfactorily addressed through government consultations.

Done at ... on ...

(2) The implementation of the recommendations of the Panel of Experts shall be monitored by the EU-Korea Committee on Trade and Sustainable Development.

For the EU-Korea Committee on Trade and Sustainable Development

(3) The Parties have developed a list of 18 names, as specified in the Annex to this Decision,

*Co-chair of the EU-Korea
Committee on Trade and
Sustainable Development of the
Republic of Korea*

*Co-chair of the EU-Korea
Committee on Trade and
Sustainable Development of the
European Union*

ANNEX

LIST OF EXPERTS**Experts proposed by Korea**

Kee-whahn CHAH

Young Gil CHO

Weon Jung KIM

Suh-Yong CHUNG

Taek-Whan HAN

Won-Mog CHOI

Experts proposed by the EU

Eddy LAURIJSSEN

Jorge CARDONA

Karin LUKAS

Hélène RUIZ FABRI

Laurence BOISSON DE CHAZOURNES

Geert VAN CALSTER

Chairpersons

Thomas P. PINANSKY

Nguyen Van TAI

Le HA THANH

Jill MURRAY

Ricardo MELÉNDEZ-ORTIZ

Nathalie BERNASCONI-OSTERWALDER

REGULATIONS

COMMISSION REGULATION (EU) No 775/2012

of 23 August 2012

establishing a prohibition of fishing for black scabbardfish in EU and international waters of VIII, IX and X by vessels flying the flag of Spain

THE EUROPEAN COMMISSION,

HAS ADOPTED THIS REGULATION:

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

Article 1

Quota exhaustion

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2012 shall be deemed to be exhausted from the date set out in that Annex.

Whereas:

Article 2

Prohibitions

(1) Council Regulation (EU) No 1225/2010 of 13 December 2010 fixing for 2011 and 2012 the fishing opportunities for EU vessels for fish stocks of certain deep-sea fish species ⁽²⁾, lays down quotas for 2012.

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

(2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2012.

Article 3

Entry into force

(3) It is therefore necessary to prohibit fishing activities for that stock,

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

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

Done at Brussels, 23 August 2012.

*For the Commission,
On behalf of the President,*

Lowri EVANS
Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ OJ L 336, 21.12.2010, p. 1.

ANNEX

No	19/DSS
Member State	Spain
Stock	BSF/8910-
Species	Black scabbardfish (<i>Aphanopus carbo</i>)
Zone	EU and international waters of VIII, IX and X
Date	6.8.2012

COMMISSION IMPLEMENTING REGULATION (EU) No 776/2012

of 27 August 2012

on advances to be paid from 16 October 2012 of the direct payments listed in Annex I to Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 ⁽¹⁾, and in particular Article 29(4)(a) thereof,

Whereas:

(1) Article 29(2) of Regulation (EC) No 73/2009 provides that payments under support schemes listed in Annex I to that Regulation are to be made within the period from 1 December to 30 June of the following calendar year. However, Article 29(4)(a) of that Regulation permits the Commission to provide for advances.

(2) In 2012 unfavourable weather conditions in Europe, with an extreme drought in some Member States and a very harsh winter and rainfalls in others, have caused serious damages on the crop and fodder production. Severe financial difficulties have been encountered by farmers as a result, in particular by cattle producers. These difficulties are compounded by the effects of the ongoing financial crisis which have caused many farmers to be confronted with serious liquidity problems. In order to help to alleviate these difficulties it is appropriate to allow for farmers to receive advance payments of up to 50 % of the support schemes listed in Annex I to Regulation (EC) No 73/2009. Regarding the beef and veal payments provided for in Section 11 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, Member States should also be authorised to increase the payment of advances as referred to in Article 82 of

Commission Regulation (EC) No 1121/2009 of 29 October 2009 laying down detailed rules for the application of Council Regulation (EC) No 73/2009 as regards the support schemes for farmers provided for in Titles IV and V thereof ⁽²⁾, to up to 80 % of the payment.

(3) In order to ensure that the advance payments will be accounted for under the 2013 budget year, they should be made from 16 October 2012. The necessary verification of eligibility conditions under Article 29(3) of Regulation (EC) No 73/2009 should nevertheless be carried out before payment of the advances in the interests of good financial management.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Member States may pay, from 16 October 2012, advances to farmers of up to 50 % of the direct payments listed in Annex I to Regulation (EC) No 73/2009 in respect of applications made in 2012, provided that the verification of the eligibility conditions pursuant to Article 20 of Regulation (EC) No 73/2009 has been finalised.

Regarding the beef and veal payments provided for in Section 11 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, Member States shall be authorised to increase the amount referred to in the first paragraph to up to 80 %.

Article 2

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

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

Done at Brussels, 27 August 2012.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 30, 31.1.2009, p. 16.

⁽²⁾ OJ L 316, 2.12.2009, p. 27.

COMMISSION IMPLEMENTING REGULATION (EU) No 777/2012
of 27 August 2012
amending Council Regulation (EC) No 872/2004 concerning further restrictive measures in relation to Liberia

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 872/2004 of 29 April 2004 concerning further restrictive measures in relation to Liberia ⁽¹⁾, and in particular Article 11(a) thereof,

Whereas:

(1) Annex I to Regulation (EC) No 872/2004 lists the natural and legal persons, bodies and entities covered by the freezing of funds and economic resources under that Regulation.

(2) On 3, 10 and 20 July 2012, the Sanctions Committee of the United Nations Security Council established pursuant

to resolution 1521 (2003) concerning Liberia decided to amend the list of persons, groups and entities to whom the freezing of funds and economic resources should apply. Annex I should therefore be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 872/2004 is hereby amended as set out in the Annex to this Regulation.

Article 2

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 the Member States in accordance with the Treaties.

Done at Brussels, 27 August 2012.

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

⁽¹⁾ OJ L 162, 30.4.2004, p. 32.

ANNEX

Annex I to Regulation (EC) 872/2004 is amended as follows:

The following natural persons shall be removed:

- (1) 'Leonid Yukhimovich Minin (*alias* (a) Blavstein, (b) Blyuvshstein, (c) Blyafshtein, (d) Bluvshstein, (e) Blyufshtein, (f) Vladimir Abramovich Kerler (g) Vladimir Abramovich Kerler, (h) Vladimir Abramovich Popilo-Veski (i) Vladimir Abramovich Popiloveski, (j) Vladimir Abramovich Popela, (k) Vladimir Abramovich Popelo, (l) Wulf Breslan, (m) Igor Osols). Date of birth: (a) 14.12.1947, (b) 18.10.1946. Place of birth: Odessa, USSR (now Ukraine). Nationality: Israeli. Forged German passports (name: Minin): (a) 5280007248D, (b) 18106739D. Israeli passports: (a) 6019832 (valid 6.11.1994 to 5.11.1999), (b) 9001689 (valid 23.1.1997 to 22.1.2002), (c) 90109052 (issued on 26.11.1997). Russian passport: KI0861177; Bolivian passport: 65118; Greek passport: no details. Other information: owner of Exotic Tropical Timber Enterprises.'
 - (2) 'Valeriy Naydo (*alias* Valerii Naido). Address: c/o CET Aviation, P.O. Box 932-20C, Ajman, United Arab Emirates. Date of birth: 10.8.1957. Nationality: Ukraine. Passport No: (a) AC251295 (Ukraine), (b) KC024178 (Ukraine). Other information: (a) a pilot, (b) one of the directors of Air Pass (Pietersburg Aviation Services and Systems), (c) Chief Executive Officer of CET Aviation.'
 - (3) 'Edwin M., Snowe jr. Address: Elwa Road, Monrovia, Liberia. Date of birth: 11.2.1970. Place of birth: Mano River, Grand Cape Mount, Liberia. Nationality: Liberian. Passport number: (a) OR/0056672-01, (b) D/005072, (c) D005640 (diplomatic passport), (d) D-00172 (ECOWAS-DPL Passport, valid 7.8.2008-6.7.2010). Other information: Representative, Liberian House of Representatives. Managing Director of the Liberian Petroleum and Refining Corporation (LPRC). Date of designation referred to in Article 6(b): 10.9.2004.'
 - (4) 'Agnes Reeves Taylor (*alias* Agnes Reeves-Taylor). Date of birth: 27.9.1965. Nationality: Liberian. Other information: former wife of former President Charles Taylor. Former Permanent Representative of Liberia to the International Maritime Organisation; Former Senior Member of the Liberian Government. (c) Currently resident in the United Kingdom.'
 - (5) 'Tupee Enid Taylor. Date of birth: (a) 17.12.1960, (b) 17.12.1962. Passports No: (a) L014670 (Liberian passport, valid 28.12.2009-28.12.2014) (b) D/002216 (Liberian diplomatic passport, valid 17.10.2007-17.10.2009). Other information: former wife of former President Charles Taylor'
 - (6) 'Jewell Howard Taylor (*alias* Howard Taylor). Date of birth: 17.1.1963. Liberian diplomatic passport: (a) D/003835-04 (valid 4.6.2004 to 3.6.2006), (b) D/00536307. Other information: Wife of former President Charles Taylor.'
 - (7) 'Myrtle Francelle Gibson. Date of birth: 3.11.1952. Other information: former Senator, advisor to former Liberian President Charles Taylor.'
 - (8) 'Martin George. Other information: (a) Former Ambassador of Liberia to the Federal Republic of Nigeria; (b) Associate of former President Charles Taylor with ongoing ties to him; (c) Alleged to have provided funds to former President Taylor. Date of designation referred to in Article 6(b): 9.6.2005.'
 - (9) 'Cyril A. Allen. Date of birth: 26.7.1952. Other information: former Chairman, National Patriotic Party.'
 - (10) 'Randolph Cooper (*alias* Randolph Cooper). Date of birth: 28.10.1950. Other information: former Managing Director of Robertsfield International Airport.'
 - (11) 'Reginald B. Goodridge (Senior) (*alias* Goodrich). Date of Birth: 11.11.1952. Other information: former Minister for Culture, Information, Tourism.'
 - (12) 'Emmanuel (II) Shaw. Date of birth: (a) 26.7.1956, (b) 26.7.1946. Other information: director of Lonestar Airways. Associated with Lone Star Communication Cooperation.'
-

COMMISSION IMPLEMENTING REGULATION (EU) No 778/2012**of 27 August 2012****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 27 August 2012.

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

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MK	43,1
	ZZ	43,1
0707 00 05	TR	91,2
	ZZ	91,2
0709 93 10	TR	108,7
	ZZ	108,7
0805 50 10	AR	74,3
	CL	88,4
	TR	94,0
	UY	97,0
	ZA	104,9
	ZZ	91,7
0806 10 10	BA	56,0
	CL	206,9
	EG	200,5
	TR	143,9
	XS	91,2
	ZZ	139,7
0808 10 80	AR	114,4
	BR	85,6
	CL	142,3
	NZ	108,6
	US	141,5
	UY	68,3
	ZA	104,4
0808 30 90	ZZ	109,3
	CN	71,7
	TR	136,4
	ZA	139,1
0809 30	ZZ	115,7
	TR	160,2
0809 40 05	ZZ	160,2
	BA	62,7
	IL	61,4
	MK	67,5
	ZZ	63,9

⁽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

COMMISSION IMPLEMENTING DECISION

of 24 August 2012

amending Decision 2007/453/EC as regards the BSE status of Austria, Belgium, Brazil, Colombia, Croatia and Nicaragua*(notified under document C(2012) 5860)***(Text with EEA relevance)**

(2012/489/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽¹⁾, and in particular the third subparagraph of Article 5(2) thereof,

Whereas:

- (1) Regulation (EC) No 999/2001 lays down rules for the prevention, control and eradication of transmissible spongiform encephalopathies (TSEs) in animals. For that purpose, the bovine spongiform encephalopathy (BSE) status of Member States or third countries or regions thereof ('countries or regions') is to be determined by classification into one of three categories depending on the BSE risk involved, namely a negligible BSE risk, a controlled BSE risk and an undetermined BSE risk.
- (2) The Annex to Commission Decision 2007/453/EC of 29 June 2007 establishing the BSE status of Member States or third countries or regions thereof according to their BSE risk ⁽²⁾ lists countries or regions according to their BSE risk status.
- (3) The World Organisation for Animal Health (OIE) plays a leading role in the categorisation of countries or regions according to their BSE risk. The list in the Annex to Decision 2007/453/EC takes account of Resolution No 17 — Recognition of the Bovine Spongiform Encephalopathy Risk Status of Members — adopted by the OIE in May 2011 regarding the BSE status of Member States and third countries.

(4) In May 2012, the OIE adopted Resolution No 16 — Recognition of the Bovine Spongiform Encephalopathy Risk Status of Member Countries. That Resolution recognised Austria, Belgium, Brazil and Colombia as having a negligible BSE risk, and Croatia and Nicaragua as having a controlled BSE risk. The list in the Annex to Decision 2007/453/EC should therefore be amended to be brought into line with that Resolution as regards those Member States and third countries.

(5) Decision 2007/453/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2007/453/EC is replaced by the text in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 24 August 2012.

For the Commission

John DALLI

Member of the Commission

⁽¹⁾ OJ L 147, 31.5.2001, p. 1.

⁽²⁾ OJ L 172, 30.6.2007, p. 84.

ANNEX

‘ANNEX

LIST OF COUNTRIES OR REGIONS

A. Countries or regions with a negligible BSE risk*Member States*

- Belgium
- Denmark
- Austria
- Finland
- Sweden

EFTA countries

- Iceland
- Norway

Third countries

- Argentina
- Australia
- Brazil
- Chile
- Colombia
- India
- New Zealand
- Panama
- Paraguay
- Peru
- Singapore
- Uruguay

B. Countries or regions with a controlled BSE risk*Member States*

- Bulgaria, Czech Republic, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, United Kingdom

EFTA countries

- Liechtenstein
- Switzerland

Third countries

- Canada
- Croatia
- Japan
- Mexico
- Nicaragua
- South Korea
- Taiwan
- United States

C. Countries or regions with an undetermined BSE risk

- Countries or regions not listed in point A or B of this Annex.'
-

COMMISSION DECISION

of 24 August 2012

on amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks

(Text with EEA relevance)

(2012/490/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ⁽¹⁾, and in particular Article 23(2) thereof,

Whereas:

- (1) Regulation (EC) No 715/2009 sets non-discriminatory rules for access conditions to natural gas transmission systems to ensure the proper functioning of the internal market in gas. Since the duplication of gas transmission systems is in most cases not economic and efficient, competition in natural gas markets is stimulated by third-party access opening infrastructure to all suppliers in a transparent and non-discriminatory way. The frequent occurrence of contractual congestion where network users cannot gain access to gas transmission systems in spite of the physical availability of the capacity is an obstacle on the road towards completing the internal energy market.
- (2) The practice has shown that despite the application of certain congestion-management principles such as the offering of interruptible capacities as provided for by Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks ⁽²⁾ and Regulation (EC) No 715/2009, contractual congestion in the Union gas transmission networks remains an obstacle to the development of a well-functioning internal market in gas. Therefore it is necessary to amend the guidelines on the application of congestion-management procedures in the event of contractual congestion. In accordance with Article 23(3) of Regulation (EC) No 715/2009 the proposed guidelines should reflect differences between national gas systems and may set minimum requirements to be met to achieve non-discriminatory and transparent network access conditions with respect to congestion management procedures.
- (3) The congestion-management procedures should apply in the event of contractual congestion and are aimed at

resolving those events by bringing unused capacity back to the market to be reallocated in the course of the regular allocation processes.

- (4) Where an interconnection point is frequently subject to the occurrence of physical congestion, congestion management procedures may often be of no avail. In those cases a solution should be examined from a network planning and investment point of view.
- (5) In accordance with Regulation (EC) No 713/2009 of the European Parliament and of the Council ⁽³⁾ the Agency for the Cooperation of Energy Regulators ('the Agency') should monitor and analyse the implementation of these guidelines. It is necessary that transmission system operators publish the information necessary to identify the occurrence of contractual congestion in a workable format.
- (6) In accordance with Article 24 of Regulation (EC) No 715/2009 the national regulatory authorities ensure compliance with those guidelines.
- (7) In order to ensure that congestion management procedures are applied in the most effective way at all interconnection points and with a view to maximising available capacities in all adjacent entry-exit systems, it is of great importance that national regulatory authorities and transmission system operators from different Member States and within Member States closely cooperate amongst themselves and with each other. In particular national regulatory authorities and transmission system operators should have regard to best practices and endeavour to harmonise processes for the implementation of these Guidelines. Acting in accordance with Article 7 of Regulation (EC) No 713/2009 the Agency and the national regulatory authorities should ensure that the most effective congestion management procedures are implemented at the applicable entry and exit points across the Union.
- (8) Whereas transmission system operators possess detailed information about the physical use of the system and are best placed to assess future flows, it is appropriate for them to determine an amount of additional capacity to be made available in addition to the calculated technical capacity. By offering more firm capacity than technically available through taking into consideration flow scenarios and contracted capacities, transmission system

⁽¹⁾ OJ L 211, 14.8.2009, p. 36.

⁽²⁾ OJ L 289, 3.11.2005, p. 1.

⁽³⁾ OJ L 211, 14.8.2009, p. 1.

operators take a risk that should be rewarded accordingly. For the purpose of determining transmission system operators' revenues, such additional capacity should however only be allocated if all other capacity, including capacity resulting from the application of other congestion-management procedures, has been allocated. Transmission system operators should closely cooperate to set the technical capacity. In order to resolve a potential situation of physical congestion the transmission system operators should apply the most cost-effective measure, including either buying back capacity or taking other technical or commercial measures.

- (9) Regulation (EC) No 715/2009 should therefore be amended accordingly.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 51 of Directive 2009/73/EC of the European Parliament and of the Council ⁽¹⁾,

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Regulation (EC) No 715/2009 is amended in accordance with the Annex to this Decision.

Article 2

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

Done at Brussels, 24 August 2012.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 211, 14.8.2009, p. 94.

ANNEX

Annex I to Regulation (EC) No 715/2009 is amended as follows:

1. point 2.2 is replaced by the following:

‘2.2. Congestion management procedures in the event of contractual congestion

2.2.1. General Provisions

1. The provisions of point 2.2 shall apply to interconnection points between adjacent entry-exit systems, irrespective of whether they are physical or virtual, between two or more Member States or within the same Member State in so far as the points are subject to booking procedures by users. They may also apply to entry points from and exit points to third countries, subject to the decision of the relevant national regulatory authority. Exit points to end-consumers and distribution networks, entry points from LNG terminals and production facilities, and entry-exit points from and to storage facilities are not subject to the provisions of point 2.2.
2. On the basis of the information published by the transmission system operators pursuant to Section 3 of this Annex and, where appropriate, validated by national regulatory authorities, the Agency shall publish by 1 March of every year, commencing with the year 2014, a monitoring report on congestion at interconnection points with respect to firm capacity products sold in the preceding year, taking into consideration to the extent possible capacity trading on the secondary market and the use of interruptible capacity.
3. Any additional capacity made available through the application of one of the congestion-management procedures as provided for in points 2.2.2, 2.2.3, 2.2.4 and 2.2.5 shall be offered by the respective transmission system operator(s) in the regular allocation process.
4. The measures provided for in points 2.2.2, 2.2.4 and 2.2.5 shall be implemented as of 1 October 2013. Points 2.2.3(1) to 2.2.3(5) shall apply as of 1 July 2016.

2.2.2. Capacity increase through oversubscription and buy-back scheme

1. Transmission system operators shall propose and, after approval by the national regulatory authority, implement an incentive-based oversubscription and buy-back scheme in order to offer additional capacity on a firm basis. Before implementation, the national regulatory authority shall consult with the national regulatory authorities of adjacent Member States and take account of the adjacent national regulatory authorities' opinions. Additional capacity is defined as the firm capacity offered in addition to the technical capacity of an interconnection point calculated on the basis of Article 16(1) of this Regulation.
2. The oversubscription and buy-back scheme shall provide transmission system operators with an incentive to make available additional capacity, taking account of the technical conditions, such as the calorific value, temperature and expected consumption, of the relevant entry-exit system and the capacities in adjacent networks. Transmission system operators shall apply a dynamic approach with regard to the recalculation of the technical or additional capacity of the entry-exit system.
3. The oversubscription and buy-back scheme shall be based on an incentive regime reflecting the risks of transmission system operators in offering additional capacity. The scheme shall be structured in such a way that revenues from selling additional capacity and costs arising from the buy-back scheme or measures pursuant to paragraph 6 are shared between the transmission system operators and the network users. National regulatory authorities shall decide on the distribution of revenues and costs between the transmission system operator and the network user.
4. For the purpose of determining transmission system operators' revenues, technical capacity, in particular surrendered capacity as well as, where relevant, capacity arising from the application of firm day-ahead use-it-or-lose-it and long term use-it-or-lose-it mechanisms, shall be considered to be allocated prior to any additional capacity.
5. In determining the additional capacity, the transmission system operator shall take into account statistical scenarios for the likely amount of physically unused capacity at any given time at interconnection points. It shall also take into account a risk profile for offering additional capacity which does not lead to excessive buy-back obligation. The oversubscription and buy-back scheme shall also estimate the likelihood and the costs of buying back capacity on the market and reflect this in the amount of additional capacity to be made available.
6. Where necessary to maintain system integrity, transmission system operators shall apply a market-based buy-back procedure in which network users can offer capacity. Network users shall be informed about the applicable buy-back procedure. The application of a buy-back procedure is without prejudice to the applicable emergency measures.
7. Transmission system operators shall, before applying a buy-back procedure, verify whether alternative technical and commercial measures can maintain system integrity in a more cost-efficient manner.

8. When proposing the oversubscription and buy-back scheme the transmission system operator shall provide all relevant data, estimates, and models to the national regulatory authority in order for the latter to assess the scheme. The transmission system operator shall regularly report to the national regulatory authority on the functioning of the scheme and, upon request of the national regulatory authority, provide all relevant data. The national regulatory authority may request the transmission system operator to revise the scheme.

2.2.3. Firm day-ahead use-it-or-lose-it mechanism

1. National regulatory authorities shall require transmission system operators to apply at least the rules laid down in paragraph 3 per network user at interconnection points with respect to altering the initial nomination if, on the basis of the yearly monitoring report of the Agency in accordance with point 2.2.1(2), it is shown that at interconnection points demand exceeded offer, at the reserve price when auctions are used, in the course of capacity allocation procedures in the year covered by the monitoring report for products for use in either that year or in one of the subsequent two years,
 - (a) for at least three firm capacity products with a duration of one month or
 - (b) for at least two firm capacity products with a duration of one quarter or
 - (c) for at least one firm capacity product with a duration of one year or more or
 - (d) where no firm capacity product with a duration of one month or more has been offered.
2. If, on the basis of the yearly monitoring report, it is shown that a situation as defined in paragraph 1 is unlikely to reoccur in the following three years, for example as a result of capacity becoming available from physical expansion of the network or termination of long-term contracts, the relevant national regulatory authorities may decide to terminate the firm day-ahead use-it-or-lose-it mechanism.
3. Firm renomination is permitted up to 90 % and down to 10 % of the contracted capacity by the network user at the interconnection point. However, if the nomination exceeds 80 % of the contracted capacity, half of the non-nominated volume may be renominated upwards. If the nomination does not exceed 20 % of the contracted capacity, half of the nominated volume may be renominated downwards. The application of this paragraph is without prejudice to the applicable emergency measures.
4. The original holder of the contracted capacity may renominate the restricted part of its contracted firm capacity on an interruptible basis.
5. Paragraph 3 shall not apply to network users — persons or undertakings and the undertakings they control pursuant to Article 3 of Regulation (EC) No 139/2004 — holding less than 10 % of the average technical capacity in the preceding year at the interconnection point.
6. On interconnection points where a firm day-ahead use-it-or-lose-it mechanism in accordance with paragraph 3 is applied, an evaluation of the relationship with the oversubscription and buy-back scheme pursuant to point 2.2.2 shall be carried out by the national regulatory authority, which may result in a decision by the national regulatory authority not to apply the provisions of point 2.2.2 at those interconnection points. Such a decision shall be notified, without delay, to the Agency and the Commission.
7. A national regulatory authority may decide to implement a firm day-ahead use-it-or-lose-it mechanism pursuant to paragraph 3 on an interconnection point. Before adopting its decision, the national regulatory authority shall consult with the national regulatory authorities of adjacent Member States. In adopting its decision the national regulatory authority shall take account of the adjacent national regulatory authorities' opinions.

2.2.4. Surrender of contracted capacity

Transmission system operators shall accept any surrender of firm capacity which is contracted by the network user at an interconnection point, with the exception of capacity products with a duration of a day and shorter. The network user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator and to the extent the capacity is not reallocated by the transmission system operator. Surrendered capacity shall be considered to be reallocated only after all the available capacity has been allocated. The transmission system operator shall notify the network user without delay of any reallocation of its surrendered capacity. Specific terms and conditions for surrendering capacity, in particular for cases where several network users surrender their capacity, shall be approved by the national regulatory authority.

2.2.5. Long-term use-it-or-lose-it mechanism

1. National regulatory authorities shall require transmission system operators to partially or fully withdraw systematically underutilised contracted capacity on an interconnection point by a network user where that user has not sold or offered under reasonable conditions its unused capacity and where other network users request firm capacity. Contracted capacity is considered to be systematically underutilised in particular if:
 - (a) the network user uses less than on average 80 % of its contracted capacity both from 1 April until 30 September and from 1 October until 31 March with an effective contract duration of more than one year for which no proper justification could be provided; or
 - (b) the network user systematically nominates close to 100 % of its contracted capacity and renominates downwards with a view to circumventing the rules laid down in point 2.2.3(3).
 2. The application of a firm day-ahead use-it-or-lose-it mechanism shall not be regarded as justification to prevent the application of paragraph 1.
 3. Withdrawal shall result in the network user losing its contracted capacity partially or completely for a given period or for the remaining effective contractual term. The network user shall retain its rights and obligations under the capacity contract until the capacity is reallocated by the transmission system operator and to the extent the capacity is not reallocated by the transmission system operator.
 4. Transmission system operators shall regularly provide national regulatory authorities with all the data necessary to monitor the extent to which contracted capacities with effective contract duration of more than one year or recurring quarters covering at least two years are used;.
2. point 3.1.1(1) is amended as follows:
- (a) point (e) is replaced by the following:

‘(e) in a downloadable format that has been agreed between transmission system operators and the national regulatory authorities — on the basis of an opinion on a harmonised format that shall be provided by the Agency — and that allows for quantitative analyses;’
 - (b) the following point (h) is added:

‘(h) all data shall be made available as of 1 October 2013 on one Union-wide central platform, established by ENTSOG on a cost-efficient basis;’
3. in point 3.3(1) the following points (h), (i), (j), (k) and (l) are added:
- ‘(h) occurrence of unsuccessful, legally valid requests for firm capacity products with a duration of one month or longer including the number and volume of the unsuccessful requests; and
 - (i) in the case of auctions, where and when firm capacity products with a duration of one month or longer have cleared at prices higher than the reserve price;
 - (j) where and when no firm capacity product with a duration of one month or longer has been offered in the regular allocation process;
 - (k) total capacity made available through the application of the congestion-management procedures laid down in points 2.2.2, 2.2.3, 2.2.4 and 2.2.5 per applied congestion-management procedure;
 - (l) points (h) to (k) shall apply from 1 October 2013.’
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