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⁽¹⁾ Text with EEA relevance

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II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) No 285/2013

of 21 March 2013

terminating the partial reopening of anti-dumping investigation concerning imports of ethanolamines originating in the United States of America and terminating the expiry review pursuant to Article 11(2) and the partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009

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(2) and Article 11(2) and (3) thereof,

Having regard to the proposal submitted by the European Commission after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Existing measures

- (1) On 2 February 1994, the Council imposed, by Regulation (EC) No 229/94⁽²⁾ (the 'original Regulation'), definitive anti-dumping duties on imports of ethanolamines ('product concerned') originating in the United States of America ('USA'). On 20 July 2000 and following an expiry review investigation, these measures were extended for five years by Council Regulation (EC) No 1603/2000⁽³⁾ (the 'first expiry review Regulation').
- (2) On 23 October 2006, following the second expiry review investigation, the measures were extended for five more years by Council Regulation (EC) No 1583/2006⁽⁴⁾ (the 'second expiry review Regulation').

- (3) On 19 January 2010 and following a third expiry review investigation, the anti-dumping duties on imports of ethanolamines originating in the USA were imposed for two more years by Council Implementing Regulation (EU) No 54/2010⁽⁵⁾ (the 'third expiry review Regulation').

- (4) On 9 April 2010, The Dow Chemical Company ('Dow Chemical') filed an application for partial annulment of Implementing Regulation (EU) No 54/2010.

- (5) On 12 March 2011, the European Commission (the 'Commission') published a Notice of impending expiry in the Official Journal⁽⁶⁾.

- (6) Following a request lodged by BASF AG, Ineos Europe AG, and Sasol Germany GmbH (the 'Union industry'), the Commission initiated an expiry review on 21 January 2012 (the 'fourth expiry review')⁽⁷⁾.

- (7) A partial interim review limited to dumping as regards Dow Chemical was initiated on 11 April 2012⁽⁸⁾.

- (8) Following an application lodged⁽⁹⁾ on 9 April 2010, the General Court annulled by its judgment of 8 May 2012 in Case T-158/10⁽¹⁰⁾ (the 'Judgment'), the third expiry review Regulation in so far as it concerns Dow Chemical.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ L 28, 2.2.1994, p. 40.

⁽³⁾ OJ L 185, 25.7.2000, p. 1.

⁽⁴⁾ OJ L 294, 25.10.2006, p. 2.

⁽⁵⁾ OJ L 17, 22.1.2010, p. 1.

⁽⁶⁾ OJ C 79, 12.3.2011, p. 20.

⁽⁷⁾ OJ C 18, 21.1.2012, p. 16.

⁽⁸⁾ OJ C 103, 11.4.2012, p. 8.

⁽⁹⁾ OJ C 161, 9.4.2010, p. 44.

⁽¹⁰⁾ Case T-158/10 *The Dow Chemical Company v Council* [2012] ECR II.

1.2. Partial reopening

- (9) Following the Judgment, a notice⁽¹⁾ was published concerning the partial reopening of the third expiry review investigation concerning imports of ethanolamines originating in the USA. The reopening was limited in scope to the implementation of the Judgment as far as the determination of a likelihood of a continuation or recurrence of dumping during the review investigation period (the 'RIP'), including the spare production capacity of ethanolamines in the USA, is concerned.
- (10) In that notice, parties were informed that, in view of the Judgment, imports into the European Union of ethanolamines manufactured by Dow Chemical are no longer subject to the anti-dumping duties imposed by the third expiry review Regulation and that definitive anti-dumping duties paid pursuant to that Regulation on imports of ethanolamines should be repaid or remitted in accordance with the applicable customs regulation.
- (11) The Commission officially advised the exporting producers, the importers and users known to be concerned and the Union industry of the partial reopening of the investigation. 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.
- (12) All parties who so requested within that time limit, and who demonstrated that there were particular reasons why they should be heard, were granted the opportunity to be heard.
- (13) Representations were received from two exporting producers, three Union producers and a user of the product concerned.

2. IMPLEMENTATION OF THE JUDGMENT

2.1. Preliminary remark

- (14) It is recalled that the reason for the annulment of the contested Regulation was the General Court's finding that the third expiry review Regulation contained two errors of assessment: (i) a finding of continued dumping during RIP and, therefore, on that basis, a finding of a likelihood of continuation of dumping; and (ii) the determination that the spare production capacity of ethanolamines in the United States amounted to 60 000 tonnes.

2.2. Comments of interested parties

- (15) The Union industry acknowledged that the Judgment questioned the methodologies employed by the Institutions to quantify the spare capacity production in the USA. However, the Union industry maintained its position that basing the actual production capacity on

90 % of the nameplate capacity, as the institutions had done, is overly conservative as it is common and accepted for companies to exceed the nameplate capacity. Basing themselves on published market data allegedly sourced from PCI Xylenes & Polyesters ('PCI'), they concluded that there was indeed spare capacity in 2008 and onwards.

- (16) Moreover, the Union industry considered that market conditions had not changed materially since the publication of the third expiry review Regulation and found several reasons to conclude that there is a likelihood of a recurrence of dumping. In this respect, it invoked the continuation of the US production capacity over domestic demand since the RIP; the material capacity expansions in third countries after 2009 which would have made US export markets increasingly self-sufficient; the existence of anti-dumping measures imposed or likely to be imposed soon in third countries; the increase of MEG (monoethylene glycol) capacity production from 2009 onwards; and the proposal in the USA to include some of the ethanolamines in the list of products with potential harmful effects to health which could ultimately have an impact in domestic consumption.
- (17) Dow Chemical expressed its doubts about the legality of the re-opening of the investigation, arguing that there is no specific provision in the basic Regulation allowing for that. This exporting producer also alleged that the re-opening would be in conflict with the 15-month statutory deadline set out in Article 11(5) of the basic Regulation for the completion of review investigations.
- (18) Dow Chemical further claimed that the Judgment would not require any implementing measure and that the Commission could not legally remedy the aspects of the contested Regulation since each of the substantive grounds that led to the adoption of the Regulation was either annulled by the General Court or contested. Dow Chemical therefore considered that the only legal way to remedy those aspects of the third expiry review Regulation would be to repeal the existing measures.
- (19) A user in the Union, Stepan Europe ('Stepan'), submitted that the legal consequence of the judgment could only be that the measures imposed by the third expiry review Regulation should be withdrawn as they had been imposed on the basis of an erroneous analysis. Similar views were expressed by the exporting producer Huntsman Petrochemical Corporation LLC ('Huntsman'). Indeed, Stepan and Huntsman argued that the Court held that, during the RIP, the country-wide dumping margin was negative and therefore no continuation of dumping could be established. Stepan considered that the institutions should hence have examined if there was a likelihood of recurrence of dumping; yet the third expiry review Regulation had been silent on this.

⁽¹⁾ OJ C 314, 18.10.2012, p. 12.

- (20) Moreover, Stepan stressed that, would the notion of continuation of dumping be interpreted on an individual company basis, the institutions should have concluded that there was no continuation of dumping for Dow Chemical as, according to the Court, the company represented more than 85 % of all imports from the USA, and therefore they should have considered whether dumping by Dow Chemical was likely to recur. For the other exporting companies, it was established that there had been dumping and therefore the institutions should have established whether dumping was likely to continue. The likelihood of continuation of dumping analysis was mainly based, according to Stepan, on a country-wide spare capacity in the USA of 60 000 tonnes. Given the Court's finding that the institutions erred in assessing the spare capacity in the USA and given that, according to Stepan, the spare capacity was closer to at the most 8 000 tonnes, it was no longer possible to sustain that the other exporting companies were likely to continue dumping. The institutions would have needed to also analyse and establish the likelihood of recurrence of dumping.
- (21) Huntsman also based its analysis on the assumption that the Judgment confirmed that there was no spare capacity in the USA during the RIP and that it was therefore unlikely that an increased amount of ethanolamines would be exported into the Union on that basis. They claimed that it was therefore also not necessary to analyse other factors such as the impact of trade defence measures in third countries, the possible development of demand in the USA and in other markets or the downward pressure of prices. Moreover, Huntsman argued that, in the light of the Court's finding of the lack of spare capacity in the USA during the RIP, it was no longer possible for the Commission to re-analyse the likelihood of recurrence of dumping and of injury and to conclude in the framework of this partial re-opening that there was a likelihood of recurrence of injurious dumping. Yet, were the Commission able to revisit the likelihood of recurrence of dumping and of injury, Huntsman considered that there would be no evidence to demonstrate that the requirements of Article 11(2) of the basic Regulation would be met. As regards the likelihood of recurrence of dumping, Huntsman opined that, on the basis of the finding that during the RIP there was no dumping for Dow Chemical, the biggest exporter by far, there was no likelihood of recurrence of dumping on a country-wide basis after the RIP if the anti-dumping duties would be withdrawn.
- (22) According to Huntsman, the recurrence of injury would be unlikely in view of the absence of unused production capacity which results in very little leeway for increasing exports to the Union after the RIP. Huntsman maintained that such conclusion is corroborated by the fact that, according to the SRI report⁽¹⁾, the expected growth of consumption in the USA does not differ significantly from that of the other markets.
- (23) Huntsman raised that if the Union industry would have suffered from any injury, this would have been attributed to the effects of the economic crisis and not to imports from the USA. The mere exacerbation of the negative impact of the crisis through imports could not permit a finding of a likely recurrence of injury caused by the mentioned imports.
- ### 2.3. Analysis of comments
- (24) In respect of the alleged illegality of the reopening (recitals 17-18), it is recalled that in case C-458/98 P (the 'IPS judgment'), the Court of Justice recognised that in cases where a proceeding consists of several administrative steps, the annulment of one of those steps does not annul the complete proceeding. The anti-dumping proceeding is an example of such a multi-step proceeding. Consequently, the annulment of the amending Regulation in relation to one party does not imply the annulment of the entire procedure prior to the adoption of that Regulation⁽²⁾. Moreover, according to Article 266 of the Treaty on the Functioning of the European Union (TFEU), the Union institutions are required to comply with the judgment. In the light of the above, the claim that there is no legal basis for the partial reopening of a review investigation was found to be unwarranted.
- (25) The claim that the introduction of deadlines to conclude anti-dumping investigations prevents the Commission from extending the investigation beyond the 15-months statutory limit (recital 17 above) was also found to be unwarranted. It is considered that this deadline is not relevant for the implementation of a Court judgment. Indeed, such deadline only governs the completion of the initial review investigation from the date of initiation to the date of definitive action, and does not concern any subsequent action that might have to be taken for instance as a result of judicial review. The consequence of accepting such claim would make it impossible for the institutions to take account of the General Court's findings (as Article 266 TFEU requires). Indeed, the General Court's judgment will always be handed down at a time when the deadline for the investigation has expired. Furthermore, it is noted that any other interpretation would mean that, for example, a successful legal action brought by one party would be without any practical effect for that party if the expiry of the time limit to conclude the original investigation would not permit the implementation of a judgment of the General Court. This would be at odds with the principle that all parties should have the right to effective judicial review.
- (26) Concerning the claim that the Commission would not be able to legally remedy the errors of assessment found to be contained in the contested Regulation and that the only mean to implement the judgment is to repeal the existing measures (recital 18 above), the following should

⁽¹⁾ *Chemical Economics Handbook Product Review*, 'Ethanolamines', SRI Consulting.

⁽²⁾ Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] ECR I-8147.

be noted. The Court has already established that the annulment of a Regulation also implies the possibility of remedying the aspects of the amending Regulation which led to its annulment, while leaving unchanged the uncontested parts which are not affected by the judgment — as was held in the IPS judgment. The institutions are therefore required to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part ⁽¹⁾. The procedure for replacing an illegal measure may thus be resumed ⁽²⁾. Hence, this claim is also considered to be unwarranted.

- (27) The General Court, as also noted by Stepan and Hunstman (see recital 19), found that, during the investigation that resulted in the adoption of the third expiry review Regulation, the institutions could not have come to the conclusion that dumping had continued during the RIP, nor that there was a likelihood of continuation of dumping. The vast majority of imports from the USA namely, as the Court noted, more than 85 % from Dow Chemical, had entered the Union at non-dumped prices. Moreover, that situation should have resulted in a finding that the weighted average margin for imports of the product at issue originating in the USA was negative. The Court concluded that the institutions were therefore obliged to demonstrate that there was a likelihood of a recurrence of dumping ⁽³⁾.
- (28) The analysis of the likelihood of the recurrence of dumping is in this case, as all interested parties recognise explicitly or implicitly, linked to the calculation of the spare production capacity in the USA. Some interested parties contend that the General Court confirmed that there was no significant spare capacity in the USA during the RIP. The Court found that the calculation methodology resulting in a spare production capacity of ethanolamines of 60 000 tonnes during the RIP was confusing and that the resulting number of 60 000 tonnes was in conflict with the evidence relied on in the case ⁽⁴⁾.
- (29) As mentioned in recital 15, the Union industry has submitted that, based on PCI data, there would be a country-wide spare capacity in 2008 exceeding 60 000 tonnes. It is however noted that, in the calculation submitted by the Union industry, the total US production capacity had been used, i.e. no downwards adjustment to 90 % thereof had been done.
- (30) As regards the allegations regarding the calculation of the spare capacity during the RIP, it is noted that two

exporting producers cooperated with the third expiry review investigation. During that investigation, it was established that INEOS Oxide LLC (INEOS) did not have any spare capacity during the RIP, whereas Dow Chemical had some. The verified information shows that Dow Chemical did not use its spare capacity to engage in low-price exports during the RIP although it could have done so given the low level of the measures when expressed at an *ad valorem* equivalent.

- (31) Moreover, the cooperating companies, Dow Chemical and INEOS, represented during the RIP together 91,6 % of exports from the US into the Union. The total exports of Dow Chemical and INEOS amounted to 30 000-35 000 tonnes; exports from non-cooperating companies were not more than 3 000-4 000 tonnes. The country-wide dumping margin during the RIP was *de minimis* and imports from non-cooperating companies represented less than 1 % of the Union market. For confidentiality reasons the above figures have either been given in the form of ranges or are not exact.
- (32) As mentioned in recital 16, the Union industry referred to various factors which would indicate that, according to them, there was still a likelihood of a recurrence of dumping after 2008. However, market conditions have not changed materially since the publication of the third expiry review Regulation. Those circumstances are also acknowledged by the Union industry. However, it should be noted that as mentioned in recitals 30 and 31, given the low level of the measures and the lack of spare capacity from INEOS as well as the absence of dumping from Dow Chemical, there is no indication that the repeal of the measure would be likely to change the situation.
- (33) An exporting producer commented that the third expiry review should not have concluded with Implementing Regulation (EU) No 54/2010 imposing measures. The exporting producer requested that measures be repealed with retroactive effect so that all duties paid since the date of entry into force of Implementing Regulation (EU) No 54/2010 be reimbursed to all importers who duly paid them.
- (34) That claim is rejected, as exporting producers other than Dow Chemical could also have brought an action for annulment against the Regulation — which was annulled only in so far as it concerned the applicant, Dow Chemical. Therefore, according to the principle of legal certainty and following the case-law of the Court ⁽⁵⁾, the Regulation became definitive as regards the other exporting producers.

⁽¹⁾ Case C-458/98 P *Industrie des Poudres Sphériques v Council*, paragraph 81.

⁽²⁾ Case C-458/98 P *Industrie des Poudres Sphériques v Council*, paragraph 82.

⁽³⁾ Case T-158/10 *The Dow Chemical Company v Council*, paragraph 45.

⁽⁴⁾ Case T-158/10 *The Dow Chemical Company v Council*, paragraph 54.

⁽⁵⁾ Case C-239/99 *Nachi Europe GmbH v Hauptzollamt Krefeld* [2001] ECR I-1220.

2.4. Conclusion

- (35) Taking account of the comments made by parties and the analysis thereof, it was concluded that the implementation of the Judgment implies that during the investigation that resulted in the adoption of Implementing Regulation (EU) No 54/2010, the institutions could not have come to the conclusion that dumping had continued during the RIP, nor that there was a likelihood of continuation of dumping. Moreover, the institutions should also have concluded that there was no likelihood of recurrence of dumping.
- (36) On the basis of the above, the anti-dumping duty on ethanolamines should not have been reintroduced. With respect to Dow Chemical, it should be recalled that Implementing Regulation (EU) No 54/2010 has already been annulled in so far as Dow Chemical is concerned by the judgment of the General Court in case T-158/10. Therefore, for the sake of clarity, it should be pointed out that, with regard to imports of ethanolamines from Dow Chemical, the anti-dumping duties are no longer in force as of the date of entry into force of Implementing Regulation (EU) No 54/2010 (23 January 2010).

3. FOURTH EXPIRY REVIEW

- (37) In light of the above, and recital 35 in particular, it is considered that the fourth expiry review should be terminated without reimposing a duty. With regard to Dow Chemical, the fourth expiry review was deprived of its object by the Judgment and no legal basis exists for the collection of anti-dumping duties on imports from Dow Chemical as of 23 January 2010.

4. PARTIAL INTERIM REVIEW

- (38) Taking account of the findings summarised in recital 35 above, it is considered that the review should be terminated, since the basis for the very existence of the measures, i.e., a finding of a likelihood of continuation or recurrence of injurious dumping, is missing.

5. COMMENTS RECEIVED

- (39) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be terminated. They were also granted a period within which they could make representations subsequent to that disclosure. Their comments were duly considered, but were not such as to change the conclusions.

6. CONCLUSIONS

- (40) It follows from the above that the partial reopening investigation should be terminated and that the anti-dumping measures on imports of ethanolamines originating in the USA should be repealed. With respect to imports of ethanolamines from Dow Chemical, since

Implementing Regulation (EU) No 54/2010 had already been annulled in so far as Dow Chemical is concerned, the measures are not in force as of the date of entry into force of Implementing Regulation (EU) No 54/2010 (23 January 2010).

- (41) The fourth expiry investigation concerning anti-dumping duties in force on imports of ethanolamines originating in the USA should also be terminated without reimposing a duty. With respect to imports from Dow Chemical, that expiry review has been deprived of its object.
- (42) The partial interim review limited in scope to the examination of dumping should be terminated on the basis of the repeal of the existing measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. The partial reopening of the anti-dumping investigation concerning imports of ethanolamines currently falling within CN codes ex 2922 11 00 (monoethanolamine) (TARIC code 2922 11 00 10), ex 2922 12 00 (diethanolamine) (TARIC code 2922 12 00 10) and 2922 13 10 (triethanolamine), originating in the United States of America is hereby terminated without reimposing the duties, and measures are repealed.

2. With respect to imports from The Dow Chemical Company, no legal basis exists for the collection of anti-dumping duties on imports from The Dow Chemical Company as of 23 January 2010.

Article 2

The expiry review investigation of the anti-dumping investigation concerning imports of ethanolamines from all exporting producers, currently falling within CN codes ex 2922 11 00 (monoethanolamine) (TARIC code 2922 11 00 10), ex 2922 12 00 (diethanolamine) (TARIC code 2922 12 00 10) and 2922 13 10 (triethanolamine), originating in the United States of America, initiated on 21 January 2012, is hereby terminated without imposition of measures. With respect to imports from The Dow Chemical Company, that expiry review has been deprived of its object.

Article 3

The partial interim review limited in scope to the examination of dumping concerning imports of ethanolamines from The Dow Chemical Company currently falling within CN codes ex 2922 11 00 (monoethanolamine) (TARIC code 2922 11 00 10), ex 2922 12 00 (diethanolamine) (TARIC code 2922 12 00 10) and 2922 13 10 (triethanolamine), originating in the United States of America is hereby terminated.

Article 4

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 Brussels, 21 March 2013.

For the Council

The President

P. HOGAN

COMMISSION IMPLEMENTING REGULATION (EU) No 286/2013**of 22 March 2013****on transitional measures to be adopted in respect of trade in agricultural products on the occasion of the accession of Croatia**

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty of Accession of Croatia, and in particular Article 3(4) thereof,

Having regard to the Act of Accession of Croatia, and in particular Article 41 thereof,

Whereas:

- (1) Transitional measures should be adopted in order to avoid the risk of deflection of trade, affecting the common organisation of agricultural markets due to the accession of Croatia to the European Union on 1 July 2013.
- (2) Trade deflections liable to disrupt the market organisations often involve products moved artificially with a view to benefit from enlargement of the Union and do not form part of the normal stocks of the acceding State concerned. Accumulation of such surplus quantities can also give rise to distortion of competition likely to affect the proper functioning of the common organisation of the markets. Surplus stocks may also result from national production. Provisions should, therefore, be made for effective, proportionate, and deterrent charges at the amount of the difference between import duties applicable in Croatia before accession and the import duties applicable in the Union increased with 20 %, to be levied on surplus stocks in Croatia.
- (3) It is necessary to prevent goods in respect of which export refunds were paid before 1 July 2013 from benefiting from a second export refund when exported to third countries after 30 June 2013.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1***Scope**

This Regulation shall apply to products set out in the Annex.

*Article 2***Definitions**

For the purposes of this Regulation 'products' means agricultural products and/or goods not included in Annex I to the Treaty on the Functioning of the European Union.

*Article 3***Charges on holders of products in free circulation**

1. Without prejudice to Section 3(a) of Annex IV to the Act of Accession, and where stricter legislation does not apply at national level, Croatia shall levy charges on holders of surplus stocks at 1 July 2013 of products in free circulation.

2. In order to determine the surplus stock of each holder, Croatia shall take into account:

- (a) averages of stocks available in the period from 1 July 2010 to 30 June 2013;
- (b) the pattern of trade in the period from 1 July 2010 to 30 June 2013;
- (c) the circumstances in which stocks were built up.

The notion 'surplus stocks' applies to products imported into or originating from Croatia and to such products outside the customs territory of Croatia but intended for the market in Croatia.

The recording of the stocks shall be performed on the basis of the Combined Nomenclature applicable on 1 July 2013.

3. The amount of the charge referred to in paragraph 1 shall, for each product concerned, be equal to the amount by which the import duty applicable in the Union in accordance with Annex I to Council Regulation (EEC) No 2658/87 ⁽¹⁾, including any applicable additional duty on 30 June 2013, exceeds the import duty applicable in Croatia on that date, plus 20 % of that amount. The revenue of the charge collected by national authorities shall be assigned to the national budget of Croatia.

4. Croatia shall, without delay, carry out an inventory of stocks available as on 1 July 2013. To this end, it shall use a system for identifying holders of surplus stocks based on a risk analysis taking account of the following criteria:

- (a) type of activity of the holder;

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

(b) capacity of storage facilities;

(c) level of activity.

Croatia shall notify the Commission any measures it has implemented prior to its accession, to avoid any speculative stock-piling due to the accession, in particular to monitor and track down import flows for products with high risk of stock-piling, by 1 July 2013.

Croatia shall notify the Commission of the quantity of products in surplus stocks, except of those quantities in public stocks as referred to in Article 4, by 31 March 2014.

5. Where a CN code covers products for which the import duty referred to in paragraph 3 is not the same, the inventory of stocks as referred to in paragraph 4 shall be made for each product or group of products subject to a different import duty.

Article 4

Census of public stocks

By 1 October 2013 at the latest, Croatia shall communicate the list and the quantities of goods which are in its public stocks as referred to in Section 3 of Annex IV to the Act of Accession.

Article 5

National security stocks

The stocks as referred to in Article 3(4) and Article 4 shall not include national security stocks which may possibly have been constituted by Croatia. Croatia shall inform the Commission of all changes made to national security stocks together with the conditions governing the changes for the purposes of establishing the Union supply balance.

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

Done at Brussels, 22 March 2013.

Article 6

Measures in the event of non-payment of charges

If any Member State suspects that the charges provided for in Article 3 have not been paid in respect of a product, it shall inform Croatia so as to enable it to take appropriate measures.

Article 7

Proof of non-payment of refunds

Products for which the declaration of export to third countries is accepted by Croatia during the period from 1 July 2013 to 30 June 2014 may qualify for an export refund if such refund has been fixed in accordance with Article 164 of Council Regulation (EC) No 1234/2007 ⁽¹⁾ provided that it is established that no export refund has already been paid in respect of those products or their constituents.

Article 8

No double payment of market support measures

Any product for which an export refund has been paid shall not be eligible for any intervention measure or aid as laid down in Article 3 of Council Regulation (EC) No 1290/2005 ⁽²⁾.

Article 9

Entry into force and applicability

This Regulation shall enter into force subject to and on the date of the entry into force of the Treaty of Accession of Croatia.

It shall apply until 30 June 2015.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 209, 11.8.2005, p. 1.

ANNEX

LIST OF PRODUCTS REFERRED TO IN ARTICLE 1

CN code	Description
0201	Meat of bovine animals, fresh or chilled
0202	Meat of bovine animals, frozen
0203 21	Meat of swine, fresh, chilled or frozen: – Frozen: -- Carcases and half-carcases
0203 22	-- Hams, shoulders and cuts thereof, with bone in
0203 29	-- Other
0204	Meat of sheep or goats, fresh, chilled or frozen
0206 10	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen: – Of bovine animals, fresh or chilled
0206 29	-- Other
0207 12	Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen – Of fowls of the species <i>Gallus domesticus</i> -- Not cut in pieces, frozen
0207 14	-- Cuts and offal, frozen
0207 25	– Of turkeys -- Not cut in pieces, frozen
0207 27	-- Cuts and offal, frozen
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal
0402 10	Milk and cream, concentrated or containing added sugar or other sweetening matter: – In powder, granules or other solid forms, of a fat content, by weight, not exceeding 1,5 %
0402 21	– In powder, granules or other solid forms, of a fat content, by weight, exceeding 1,5 %; -- Not containing added sugar or other sweetening matter
0402 29	-- Other
0405	Butter and other fats and oils derived from milk; dairy spreads
0406	Cheese and curd
0703 20 00	Garlic, fresh or chilled
0711 51 00	Mushrooms of the genus <i>Agaricus</i> , provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption

CN code	Description
0811 10 11	Strawberries, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing sugar or other sweetening matter, -- containing added sugar or other sweetening matter --- with a sugar content exceeding 13 % by weight
0811 10 19	Strawberries, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing sugar or other sweetening matter, -- containing added sugar or other sweetening matter --- other, with a sugar content not exceeding 13 % by weight
0811 10 90	Strawberries, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing sugar or other sweetening matter, - other than containing added sugar or other sweetening matter
1001	Wheat and meslin
1002	Rye
1003	Barley
1004	Oats
1005	Maize (corn)
1006 10	Rice in the husk (paddy or rough)
1006 20	Husked (brown) rice
1006 30	Semi-milled or wholly milled rice, whether or not polished or glazed
1006 40 00	Broken rice
1007	Grain sorghum
1008	Buckwheat, millet and canary seed; other cereals
1101 00	Wheat or meslin flour
1102	Cereal flours other than of wheat or meslin
1103	Cereal groats, meal and pellets
1104	Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground
1107	Malt, whether or not roasted
1108	Starches; inulin
1109 00 00	Wheat gluten, whether or not dried
1602	Other prepared or preserved meat, meat offal or blood
2003 10	Mushrooms of the genus <i>Agaricus</i> , prepared or preserved otherwise than by vinegar or acetic acid

CN code	Description
2008 30 55	Citrus fruit, otherwise prepared or preserved, not containing added spirit but containing added sugar, in immediate packings of a net content exceeding 1 kg: ----- Mandarins (including tangerines and satsumas); clementines, wilkings and other similar citrus hybrids
2008 30 75	Citrus fruit, otherwise prepared or preserved, not containing added spirit but containing added sugar, in immediate packings of a net content not exceeding 1 kg: ----- Mandarins (including tangerines and satsumas); clementines, wilkings and other similar citrus hybrids
Ex 2008 30 90	Mandarins (including tangerines and satsumas); clementines, wilkings and other similar citrus hybrids --- Not containing added sugar
2008 70 92	Peaches, including nectarines; --- Not containing added spirit and sugar, in immediate packings of a net content of 5 kg or more
2204 30	- Other grape must
2207	- Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher; ethyl alcohol and other spirits, denatured, of any strength
2208 90 91	-- Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol, in containers holding: --- 2 litres or less
2208 90 99	--- More than 2 litres

COMMISSION IMPLEMENTING REGULATION (EU) No 287/2013**of 22 March 2013****amending Annexes IV and VIII to Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy**

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 the 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 points (a) and (b) of Article 8(2) and the second subparagraph of Article 40(1) thereof,

Whereas:

- (1) Article 10b of Regulation (EC) No 73/2009 provides for the possibility for Member States having applied the voluntary modulation in respect of calendar year 2012 to continue reducing direct payments in respect of calendar year 2013. The United Kingdom notified the Commission of its decision to use this possibility, which resulted in Commission Implementing Decision 2013/146/EU of 20 March 2013 fixing the amount resulting from the application of voluntary adjustment in the United Kingdom for the calendar year 2013⁽²⁾. It is therefore appropriate to review the corresponding ceiling as referred to in Article 8 of Regulation (EC) No 73/2009.
- (2) Greece, Spain, Luxembourg, Malta and the United Kingdom notified the Commission of their intention to provide support to vine-growers for 2014 by allocating payment entitlements in accordance with Articles 103(o) of 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)⁽³⁾. The respective

national ceilings as referred to in Article 40(1) of Regulation (EC) No 73/2009 should therefore be adapted accordingly.

- (3) The information to be notified by the Member States in accordance with Article 188a(3) of Regulation (EC) No 1234/2007 on the areas grubbed up and in accordance with Article 40(1) of Regulation (EC) No 73/2009 on the regional average of the value of the entitlements of the grubbed up areas were not yet known when the net ceilings referred to in Article 8 of Regulation (EC) No 73/2009 were set out, for 2013, in Annex IV to that Regulation as amended by Regulation (EU) No 671/2012 of the European Parliament and of the Council⁽⁴⁾. The amounts of those ceilings were therefore based on estimates. Following the notifications of Germany, Greece, Spain, France, Italy Luxembourg, Austria, Portugal and Slovenia pursuant to Article 188a(3) of Regulation (EC) No 1234/2007 and Article 40(1) of Regulation (EC) No 73/2009, the amounts of the ceilings set out in Annex IV to Regulation (EC) No 73/2009 for 2013 should be reviewed.
- (4) Annexes IV and VIII to Regulation (EC) No 73/2009 should therefore be amended accordingly.
- (5) 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

Annexes IV and VIII to Regulation (EC) No 73/2009 are amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the seventh 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, 22 March 2013.

For the Commission

The President

José Manuel BARROSO

⁽¹⁾ OJ L 30, 31.1.2009, p. 16.

⁽²⁾ OJ L 82, 22.3.2013, p. 58.

⁽³⁾ OJ L 299, 16.11.2007, p. 1.

⁽⁴⁾ OJ L 204, 31.7.2012, p. 11.

ANNEX

Annexes IV and VIII to Regulation (EC) No 73/2009 are amended as follows:

(1) Annex IV is replaced by the following:

‘ANNEX IV

National net ceilings referred to in Article 8

(million EUR)

Calendar year	2009	2010	2011	2012	2013
Belgium	583,2	575,4	570,8	569,0	569,0
Czech Republic				825,9	903,0
Denmark	987,4	974,9	966,5	964,3	964,3
Germany	5 524,8	5 402,6	5 357,1	5 329,6	5 329,6
Estonia				92,0	101,2
Ireland	1 283,1	1 272,4	1 263,8	1 255,5	1 255,5
Greece	2 561,4	2 365,4	2 359,4	2 344,5	2 344,5
Spain	5 043,7	5 066,4	5 037,4	5 055,3	5 055,3
France	8 064,4	7 946,1	7 880,7	7 853,0	7 853,0
Italy	4 345,9	4 151,6	4 128,2	4 127,8	4 127,8
Cyprus				49,1	53,5
Latvia				133,9	146,4
Lithuania				346,7	379,8
Luxembourg	35,6	35,2	35,1	34,7	34,7
Hungary				1 204,5	1 313,1
Malta				5,1	5,5
Netherlands	836,9	829,1	822,5	830,6	830,6
Austria	727,6	721,7	718,2	715,7	715,7
Poland				2 787,1	3 043,4
Portugal	590,5	574,3	570,5	566,6	566,6
Slovenia				131,6	144,3
Slovakia				357,9	385,6
Finland	550,0	544,5	541,1	539,2	539,2
Sweden	733,1	717,7	712,3	708,5	708,5
United Kingdom	3 373,1	3 345,4	3 339,4	3 336,1	3 353,7

(2) Annex VIII is replaced by the following:

‘ANNEX VIII

National ceilings referred to in Article 40

Table 1

(thousand EUR)

Member State	2009	2010	2011	2012	2013	2014	2015	2016 and subsequent years
Belgium	614 179	611 817	611 817	614 855	614 855	614 855	614 855	614 855
Denmark	1 030 478	1 031 321	1 031 321	1 049 002	1 049 002	1 049 002	1 049 002	1 049 002
Germany	5 770 254	5 771 981	5 771 994	5 852 938	5 852 938	5 852 938	5 852 938	5 852 938
Greece	2 380 713	2 228 588	2 231 798	2 233 227	2 233 227	2 217 227	2 217 227	2 217 227
Spain	4 858 043	5 119 045	5 125 032	5 304 642	5 304 642	5 161 893	5 161 893	5 161 893
France	8 407 555	8 423 196	8 425 326	8 527 494	8 527 494	8 527 494	8 527 494	8 527 494
Ireland	1 342 268	1 340 521	1 340 521	1 340 869	1 340 869	1 340 869	1 340 869	1 340 869
Italy	4 143 175	4 210 875	4 234 364	4 379 985	4 379 985	4 379 985	4 379 985	4 379 985
Luxembourg	37 518	37 569	37 679	37 671	37 671	37 084	37 084	37 084
Netherlands	853 090	853 169	853 169	897 751	897 751	897 751	897 751	897 751
Austria	745 561	747 344	747 425	751 788	751 788	751 788	751 788	751 788
Portugal	608 751	589 811	589 991	606 551	606 551	606 551	606 551	606 551
Finland	566 801	565 520	565 823	570 548	570 548	570 548	570 548	570 548
Sweden	763 082	765 229	765 229	770 906	770 906	770 906	770 906	770 906
United Kingdom	3 985 895	3 976 425	3 976 482	3 988 042	3 988 042	3 987 922	3 987 922	3 987 922

Table 2 (*)

(thousand EUR)

Bulgaria	287 399	336 041	416 372	499 327	580 087	660 848	741 606	814 295
Czech Republic	559 622	654 241	739 941	832 144	909 313	909 313	909 313	909 313
Estonia	60 500	71 603	81 703	92 042	101 165	101 165	101 165	101 165
Cyprus	31 670	38 928	43 749	49 146	53 499	53 499	53 499	53 499
Latvia	90 016	105 368	119 268	133 978	146 479	146 479	146 479	146 479
Lithuania	230 560	271 029	307 729	346 958	380 109	380 109	380 109	380 109
Hungary	807 366	947 114	1 073 824	1 205 037	1 318 975	1 318 975	1 318 975	1 318 975
Malta	3 752	4 231	4 726	5 137	5 503	5 102	5 102	5 102
Poland	1 877 107	2 192 294	2 477 294	2 788 247	3 044 518	3 044 518	3 044 518	3 044 518
Romania	623 399	729 863	907 473	1 086 608	1 264 472	1 442 335	1 620 201	1 780 406
Slovenia	87 942	103 394	117 423	131 575	144 274	144 274	144 274	144 274
Slovakia	240 014	280 364	316 964	355 242	388 176	388 176	388 176	388 176

(*) Ceilings calculated taking into account of the schedule of increments provided for in Article 121.’

COMMISSION IMPLEMENTING REGULATION (EU) No 288/2013

of 25 March 2013

concerning the suspension of the authorisations of the preparation of *Bacillus cereus* var. *toyoi* (NCIMB 40112/CNCM I-1012) as provided for by Regulations (EC) No 256/2002, (EC) No 1453/2004, (EC) No 255/2005, (EC) No 1200/2005, (EC) No 166/2008 and (EC) No 378/2009

(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition⁽¹⁾, and in particular Article 13(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting, denying or suspending such authorisation. Article 10 of that Regulation provides for the re-evaluation of additives authorised pursuant to Council Directive 70/524/EEC⁽²⁾.
- (2) The preparation of *Bacillus cereus* var. *toyoi* (NCIMB 40112/CNCM I-1012) was authorised without a time limit in accordance with Directive 70/524/EEC as a feed additive for use for piglets under two months and sows by Commission Regulation (EC) No 256/2002⁽³⁾, for piglets from two to four months and pigs for fattening by Commission Regulation (EC) No 1453/2004⁽⁴⁾, for cattle for fattening by Commission Regulation (EC) No 255/2005⁽⁵⁾ and for rabbits for fattening and chickens for fattening by Commission Regulation (EC) No 1200/2005⁽⁶⁾. The preparation was subsequently entered in the European Union Register of feed additives as an existing product, in accordance with Article 10(1) of Regulation (EC) No 1831/2003.
- (3) That preparation was also authorised in accordance with Regulation (EC) No 1831/2003 for 10 years for turkeys for fattening by Commission Regulation (EC) No 166/2008⁽⁷⁾ and for rabbit breeding does by Commission Regulation (EC) No 378/2009⁽⁸⁾.
- (4) In accordance with Article 10(2) of Regulation (EC) No 1831/2003 in conjunction with Article 7 thereof, an application was submitted for the authorisation of the preparation of *Bacillus cereus* var. *toyoi* (NCIMB 40112/CNCM I-1012) as a feed additive for cattle for fattening, rabbits for fattening, chickens for fattening, piglets (weaned), pigs for fattening and sows for reproduction and, in accordance with Article 7 of that Regulation, an application was submitted for a new use of that preparation for calves for rearing, both applications requesting the additive to be classified in the additive category 'zootechnical additives'. Those applications were accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (5) The European Food Safety Authority ('the Authority') concluded in its opinion of 16 October 2012⁽⁹⁾ that the strain of *Bacillus cereus* harbours resistance determinants to two antibiotics used in human and veterinary medicine, one of which at least can now be ascribed to an acquired resistance. It was also determined that, because of the presence of genes having the same organisation as pathogenic *Bacillus cereus* strains, it has to be assumed that the *Bacillus cereus* strain contained in the preparation subject to the application has the capacity to elaborate functional toxins involved in foodborne diseases.
- (6) The information available does not allow one to exclude the risk that the preparation of *Bacillus cereus* var. *toyoi* (NCIMB 40112/CNCM I-1012) may spread resistance to those antibiotics to other micro-organisms and may expose to the risk of the toxins those handling the additive or consumers. Consequently, it has not been established that that preparation does not have an adverse effect on animal health or on human health, when used under the proposed conditions.
- (7) The conclusions from the Authority concerning the safety of the preparation apply to its use for all the animal species for which an authorisation has been granted, including for turkeys for fattening and for rabbit breeding does, as authorised by Regulations (EC) No 166/2008 and (EC) No 378/2009.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ OJ L 270, 14.12.1970, p. 1.

⁽³⁾ OJ L 41, 13.2.2002, p. 6.

⁽⁴⁾ OJ L 269, 17.8.2004, p. 3.

⁽⁵⁾ OJ L 45, 16.2.2005, p. 3.

⁽⁶⁾ OJ L 195, 27.7.2005, p. 6.

⁽⁷⁾ OJ L 50, 23.2.2008, p. 11.

⁽⁸⁾ OJ L 116, 9.5.2009, p. 3.

⁽⁹⁾ EFSA Journal 2012; 10(10):2924.

- (9) It is possible that supplementary data concerning the safety of use of the preparation of *Bacillus cereus* var. *toyoi* (NCIMB 40112/CNCM I-1012) bring new elements that would allow a re-consideration of the assessment carried out for that additive. In this respect, the applicant for the authorisation of that preparation argues that new evidence may be provided in order to demonstrate the safety of the additive. To this end, the applicant committed itself to produce supplementary data which, it states, should be available by April 2013. Those data would consist of new studies supporting a new taxonomical classification of the micro-organism as a new *Bacillus* species, the non-transferability of the antibiotic resistance and the non-functionality of the enterotoxin genes present in the genome of *Bacillus* var. *toyoi*.
- (10) In accordance with Article 13(2) of Regulation (EC) No 1831/2003, the authorisations of the preparation of *Bacillus cereus* var. *toyoi* (NCIMB 40112/CNCM I-1012) provided for by Regulations (EC) No 256/2002, (EC) No 1453/2004, (EC) No 255/2005, (EC) No 1200/2005, (EC) No 166/2008 and (EC) No 378/2009 should therefore be suspended, pending the submission and assessment of the supplementary data. The suspension measure should be reviewed after due assessment of those data by the Authority.
- (11) Since further use of the preparation as a feed additive may cause a risk to human and animal health, respective products should be withdrawn from the market as soon as possible. For practical reasons however, a limited transitional period should be allowed for the withdrawal from the market of the products concerned in order to enable operators to comply properly with the withdrawal obligation.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Suspension of the authorisation provided for by Regulation (EC) No 256/2002

The authorisation provided for by Regulation (EC) No 256/2002 concerning the preparation specified in entry E 1701 of Annex III to that Regulation is suspended.

Article 2

Suspension of the authorisation provided for by Regulation (EC) No 1453/2004

The authorisation provided for by Regulation (EC) No 1453/2004 concerning the preparation specified in entry E 1701 of Annex I to that Regulation is suspended.

Article 3

Suspension of the authorisation provided for by Regulation (EC) No 255/2005

The authorisation provided for by Regulation (EC) No 255/2005 concerning the preparation specified in entry E 1701 of Annex I to that Regulation is suspended.

Article 4

Suspension of the authorisation provided for by Regulation (EC) No 1200/2005

The authorisation provided for by Regulation (EC) No 1200/2005 concerning the preparation specified in entry E 1701 of Annex II to that Regulation is suspended.

Article 5

Suspension of the authorisation provided for by Regulation (EC) No 166/2008

The authorisation provided for in Article 1 of Regulation (EC) No 166/2008 is suspended.

Article 6

Suspension of the authorisation provided for by Regulation (EC) No 378/2009

The authorisation provided for in Article 1 of Regulation (EC) No 378/2009 is suspended.

Article 7

Transitional measures

Existing stocks of the preparation of *Bacillus cereus* var. *toyoi* (NCIMB 40112/CNCM I-1012) for use for cattle for fattening, rabbits for fattening, chickens for fattening, piglets, pigs for fattening, sows, turkeys for fattening and rabbit breeding does, and of premixtures containing that preparation, shall be withdrawn from the market by 14 June 2013. Feed materials and compound feed produced with that preparation or with premixtures containing that preparation before 14 June 2013 shall be withdrawn from the market by 15 October 2013.

Article 8

Review of the measure

This Regulation shall be reviewed by 15 April 2015.

Article 9

Entry into force

This Regulation shall enter into force on the twentieth 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, 25 March 2013.

For the Commission
The President
José Manuel BARROSO

COMMISSION IMPLEMENTING REGULATION (EU) No 289/2013**of 25 March 2013****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 25 March 2013.

*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	JO	97,3
	MA	75,4
	TN	97,3
	TR	123,1
	ZZ	98,3
0707 00 05	MA	152,2
	TR	120,1
	ZZ	136,2
0709 91 00	EG	66,7
	ZZ	66,7
0709 93 10	MA	41,5
	TR	128,0
	ZZ	84,8
0805 10 20	EG	57,4
	IL	68,7
	MA	56,9
	TN	59,9
	TR	67,2
	ZZ	62,0
0805 50 10	TR	83,1
	ZZ	83,1
0808 10 80	AR	115,4
	BR	89,7
	CL	123,2
	CN	77,2
	MK	27,2
	US	156,2
	ZA	113,5
	ZZ	100,3
0808 30 90	AR	114,0
	CL	137,7
	CN	85,7
	TR	184,8
	US	150,6
	ZA	112,3
	ZZ	130,9

⁽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

COUNCIL DECISION

of 21 March 2013

on the launch of automated data exchange with regard to DNA data in Malta

(2013/152/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime⁽¹⁾, in particular Article 2(3) and Article 25 thereof,

Having regard to Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA⁽²⁾, in particular Article 20 and Chapter 4 of the Annex thereto,

Whereas:

- (1) According to the Protocol on Transitional Provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, the legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted prior to the entry into force of the Treaty of Lisbon are preserved until those acts are repealed, annulled or amended in implementation of the Treaties.
- (2) Accordingly, Article 25 of Decision 2008/615/JHA is applicable and the Council must unanimously decide whether the Member States have implemented the provisions of Chapter 6 of that Decision.
- (3) Article 20 of Decision 2008/616/JHA provides that decisions referred to in Article 25(2) of Decision 2008/615/JHA are to be taken on the basis of an evaluation report based on a questionnaire. With respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA, the evaluation report is to be based on an evaluation visit and a pilot run.
- (4) Malta has informed the General Secretariat of the Council of the national DNA analysis files to which Articles 2 to 6 of Decision 2008/615/JHA apply and the conditions for automated searching as referred to in Article 3(1) of that Decision in accordance with Article 36(2) of that Decision.

- (5) According to Chapter 4, point 1.1 of the Annex to Decision 2008/616/JHA, the questionnaire drawn up by the relevant Council Working Group concerns each of the automated data exchanges and has to be answered by a Member State as soon as it believes it fulfils the prerequisites for sharing data in the relevant data category.
- (6) Malta has completed the questionnaire on data protection and the questionnaire on DNA data exchange.
- (7) A successful pilot run has been carried out by Malta with Austria.
- (8) An evaluation visit has taken place in Malta and a report on the evaluation visit has been produced by the Austrian evaluation team and forwarded to the relevant Council Working Group.
- (9) An overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning DNA data exchange has been presented to the Council,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of automated searching and comparison of DNA data, Malta has fully implemented the general provisions on data protection of Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from the day of the entry into force of this Decision.

Article 2

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

Done at Brussels, 21 March 2013.

For the Council
The President
P. HOGAN

⁽¹⁾ OJ L 210, 6.8.2008, p. 1.

⁽²⁾ OJ L 210, 6.8.2008, p. 12.

COUNCIL DECISION

of 21 March 2013

on the launch of automated data exchange with regard to dactyloscopic data in Malta

(2013/153/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ⁽¹⁾, in particular Article 25 thereof,

Having regard to Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA ⁽²⁾, in particular Article 20 and Chapter 4 of the Annex thereto,

Whereas:

- (1) According to the Protocol on Transitional Provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, the legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted prior to the entry into force of the Treaty of Lisbon are preserved until those acts are repealed, annulled or amended in implementation of the Treaties.
- (2) Accordingly, Article 25 of Decision 2008/615/JHA is applicable and the Council must unanimously decide whether the Member States have implemented the provisions of Chapter 6 of that Decision.
- (3) Article 20 of Decision 2008/616/JHA provides that decisions referred to in Article 25(2) of Decision 2008/615/JHA are to be taken on the basis of an evaluation report based on a questionnaire. With respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA, the evaluation report is to be based on an evaluation visit and a pilot run.
- (4) According to Chapter 4, point 1.1, of the Annex to Decision 2008/616/JHA, the questionnaire drawn up by the relevant Council Working Group concerns each of the automated data exchanges and has to be answered by

a Member State as soon as it believes it fulfils the prerequisites for sharing data in the relevant data category.

- (5) Malta has completed the questionnaire on data protection and the questionnaire on dactyloscopic data exchange.
- (6) A successful pilot run has been carried out by Malta with Austria and France.
- (7) An evaluation visit has taken place in Malta and a report on the evaluation visit has been produced by the Austrian/French evaluation team and forwarded to the relevant Council Working Group.
- (8) An overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning dactyloscopic data exchange has been presented to the Council,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of automated searching of dactyloscopic data, Malta has fully implemented the general provisions on data protection of Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from the day of the entry into force of this Decision.

Article 2

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

Done at Brussels, 21 March 2013.

For the Council
The President
P. HOGAN

⁽¹⁾ OJ L 210, 6.8.2008, p. 1.

⁽²⁾ OJ L 210, 6.8.2008, p. 12.

COMMISSION IMPLEMENTING DECISION

of 22 March 2013

exempting certain services in the postal sector in Hungary 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

*(notified under document C(2013) 1568)***(Only the Hungarian text is authentic)****(Text with EEA relevance)**

(2013/154/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:

I. FACTS

- (1) On 3 October 2012 Magyar Posta Zrt. 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 Hungarian authorities thereof by letter of 19 October 2012. The Commission requested additional information from the Hungarian authorities by e-mail of 22 November 2012, from the relevant national Regulatory Authority ⁽²⁾ by e-mail of 7 January 2013, and from the applicant by emails of 12 November 2012 and of 7 January 2013. Additional information was transmitted by the Hungarian authorities by e-mail of 13 January 2013, by the national Regulatory Authority on 21 January 2013 and by the applicant on 20 November 2012 and 15 January 2013 respectively.
- (2) The request submitted by Magyar Posta concerns certain postal services as well as certain services other than postal services provided by the Magyar Posta on the territory of Hungary. The services concerned are described as follows in the request:

(a) domestic standard consumer parcel services (hereinafter referred to as C2X), which comprise consumer to consumer standard parcel services (hereinafter referred to as C2C) and consumer to business standard parcel services (hereinafter referred to as C2B);

(b) domestic standard business parcel services (hereinafter referred to as B2X) which comprise business to business standard parcel services (hereinafter referred to as B2B) and business to consumer standard parcel services (hereinafter referred to as B2C);

(c) domestic express parcel services;

(d) domestic courier parcel services;

(e) domestic pallet services; and

(f) contract logistics services.

- (3) Magyar Posta provides the above services, with the exception of contract logistics and, to a certain extent, domestic pallet services, in the so-called Courier, Express and Parcel (CEP) sector of Hungary. The CEP sector is a segment of the freight transport market and postal market, which provides time guaranteed services, whereby the service provider undertakes an obligation to the sender to deliver the item within a specified period or at a specific point in time.

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

⁽¹⁾ OJ L 134, 30.4.2004, p. 1.

⁽²⁾ The National Media and Infocommunications Authority is the national Regulatory Authority designated in accordance with Article 22(1) of Directive 97/67/EC of the European Parliament and of the Council (OJ L 15, 21.1.1998, p. 14) as amended by Directive 2002/39/EC (OJ L 176, 5.7.2002, p. 21) and by Directive 2008/6/EC (OJ L 52, 27.2.2008, p. 3).

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. This legislation is listed in Annex XI to Directive 2004/17/EC, which, for the postal sector, refers to Directive 97/67/EC.

- (5) The application concerns postal services such as domestic standard consumer parcel services, domestic standard business parcel services, domestic express parcel services, domestic courier parcel services and also other services than postal services, namely those services referred to as domestic pallet services and contractual logistics.
- (6) Hungary has implemented and applied Directive 97/67/EC as amended by Directive 2002/39/EC and Directive 2008/6/EC, using the possibility pursuant to Article 3(1) of the latter to reserve certain items of correspondence ⁽¹⁾ until 31 December 2012 for the designated universal service provider, Magyar Posta ⁽²⁾. None of the services concerned by the present request were reserved at the time of the request. As Hungary has reached the level of market opening provided for under the legislation listed in Annex XI to Directive 2004/17/EC, access to the market should be deemed not to be restricted in accordance with the first subparagraph of Article 30(3) of that Directive. Direct exposure to competition in a particular market should be evaluated on the basis of various criteria, none of which are, *per se*, decisive.
- (7) In respect of the markets concerned by this decision, the market share of the main players on a given market constitutes one criterion which should be taken into account. Another criterion is the degree of concentration on those markets. As the conditions vary for the different activities that are concerned by this Decision, the examination of the competitive situation should take into account the different situations on different markets.
- (8) This Decision is without prejudice to the application of the rules on competition. In particular, the criteria and the methodology used to assess direct exposure to competition under Article 30 of Directive 2004/17/EC are not necessarily identical to those used to perform an assessment under Article 101 or 102 TFEU or

Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) ⁽³⁾.

III. ASSESSMENT

1. Relevant product market

- (9) The Commission has held in previous decisions taken on the basis of the Merger Regulation ⁽⁴⁾ that the market for parcel delivery services can be segmented as follows:
 - Express versus standard parcel delivery services. This segmentation takes into account that express services are on the whole faster and more reliable than a standard service, that each of these services require a different infrastructure and that express services comprise additional value added service features and are also more expensive.
 - Further distinction were also envisaged on the basis of type of customers and/or type of consignees: (i) a distinction parcel delivery services for consumers versus parcel delivery (C2X) ⁽⁵⁾ for businesses (B2X); (ii) within the B2X segment, a distinction between deliveries to businesses (B2B) and deliveries to consumers (B2C) since B2C delivery requires a denser network than B2B deliveries so that private consignees can be reached.
 - International versus domestic delivery services. In a recent decision ⁽⁶⁾, the Commission also distinguished international intra-EEA services and international extra-EEA services.
- (10) The applicant takes the view that the relevant product markets for parcel delivery services are those listed in recital 2 above. This approach is generally in line with Commission previous practice. Nevertheless, the applicant assessed the domestic B2X market as a whole (i.e. without distinguishing the B2B and B2C segments) which may not be fully in line with previous Commission practice ⁽⁷⁾.

⁽³⁾ OJ L 24, 29.1.2004, p. 1.

⁽⁴⁾ Case No COMP/M.5152 — Posten AB/Post Danmark A/S of 21 April 2009.

⁽⁵⁾ A distinction could be envisaged between C2C and C2B parcel services; however, because of this close substitutability on the supply-side, it is appropriate to treat these services as one C2X service. This is also consistent with analysis adopted for Austria, Finland and Sweden in, decisions adopted pursuant to Article 30 of Directive 2004/17/EC, respectively, Commission Decisions 2010/142/EC (OJ L 56, 6.3.2010, p. 8), 2007/564/EC (OJ L 215, 18.8.2007, p. 21) and 2009/46/EC (OJ L 19, 23.1.2009, p. 50).

⁽⁶⁾ Decision of 30 January 2013 prohibiting the planned acquisition of TNT Express by UPS.

⁽⁷⁾ Case No COMP/M.5152 — Posten AB/Post Danmark A/S of 21 April 2009.

⁽¹⁾ Items of correspondence with a weight of up to 50 g and 2,5 times the public tariff for an item of correspondence in the first weight step of the fastest category.

⁽²⁾ As of 1 January 2013, full market opening is implemented in Hungary and the formerly reserved area under Article 7 of Directive 97/67/EC as amended by Directive 2002/39/EC and Directive 2008/6/EC has been abolished.

- (11) The applicant argues that Magyar Posta does not differentiate between B2B and B2C services in terms of available prices, and that it does not distinguish the services on the basis of addressee groups. This argument is held up also by the Hungarian Authorities ⁽¹⁾, which in addition points out that according to the information available on websites of the main competitors of Magyar Posta, on the B2X standard post parcels, there is no distinction made in terms of published prices, as to whether parcel recipients are consumers or businesses.
- (12) Previous Decisions ⁽²⁾ under Article 30 of Directive 2004/17/EC, concerning post parcels made a distinction between B2B and B2C standard post parcels. However, in all cases the result of the assessment for both markets was the same, which may be seen as an indication of the fact that the product market definition could have been left open.
- (13) Moreover, it appears from the information provided by the National Regulatory Authority ⁽³⁾, that in both scenarios (if two separate markets are considered for B2B and B2C standard post parcels, or only one market for B2X standard post parcels) the result of the assessment of the competitive situation would be the same.
- (14) Based on the information on recitals 9 to 13, for the purposes of the assessment under this Decision and without prejudice to competition law, it can be considered that the relevant product market is B2X, while the precise definition of the relevant market can be left open as the result of the analysis remains the same whether it is based on a narrow or a broader definition.
- (15) Previous Commission Decisions under Article 30 of Directive 2004/17/EC ⁽⁴⁾ considered the express and courier parcels services as one product market. The applicant assumes that express and courier parcels services form part of different markets. For the purposes of the assessment under this Decision and without prejudice to competition law, it can be considered that the relevant product markets are express parcel services and courier parcel services, while the precise definition of the relevant market can be left open as the result of the analysis remains the same whether it is based on a narrow or a broader definition.
- (16) Domestic pallet services are part of the so-called freight forwarding markets, which have also been assessed in previous Decisions under the Merger Regulation. In previous cases, freight forwarding has been defined ⁽⁵⁾ as the 'organisation of transportation of items (...) on behalf of customers according to their needs'. Although some further product markets delineations were considered in previous cases (i.e. between domestic and international freight forwarding services ⁽⁶⁾, or between different modes of transport ⁽⁷⁾) in this stance, given that the market definition has no decisive impact on the outcome of the assessment under Article 30 of Directive 2004/17/EC, no further delineation of the market will be considered, for the purposes of this assessment.
- (17) Previous decisions under the Merger Regulation defined ⁽⁸⁾ contract logistics as: 'the part of the supply chain process that plans, implements and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customer's requirements'. The Commission assessed further possible distinctions ⁽⁹⁾ (i.e. between domestic and cross border services, by reference to the types of goods handled or the industry serviced, or between lead logistics providers and traditional contract logistics service providers) but in the end the precise scope of the product market definition was left open ⁽¹⁰⁾. The applicant follows also the Commission's position. In the present case, given that there are no indications that further distinction is needed, for the purposes of this decision and without prejudice to competition law, the product market is defined as contract logistics.

⁽¹⁾ Letter of the Hungarian Authorities of 13 January 2013 (page 9, paragraph 2).

⁽²⁾ Decision 2010/142/EC, Decision 2009/46/EC, Decision 2007/564/EC.

⁽³⁾ The e-mail of the national Regulatory Authority of 21 January 2013 provides estimates of the volumes of B2X, market and separately for B2B and B2C markets based on the data requested from Magyar Posta and from its first three competitors. According to this information, in 2011, on the B2X market Magyar Posta was the second market player (35 % of market shares) following the market leader (40 % of the market shares) and followed by the third market player (15 % of market shares). In the B2C market, Magyar Posta held 51 % of market shares, while its main competitors had 26 %, 11 % and 10 % market shares respectively. In the B2B market, Magyar Posta was the third market player (16 % of market shares), while the market leaders held 57 % and 22 % respectively.

⁽⁴⁾ Decision 2009/46/EC, Decision 2007/564/EC, Commission Decision 2007/169/EC (OJ L 78, 17.3.2007, p. 28).

(18) In conclusion, taking due account the above, for the purposes of this Decision, and without prejudice to competition law relevant product markets shall be those listed in recital 2.

⁽⁵⁾ Case No COMP/M. 1794 — Deutsche Post/Air Express International, of 7 February 2000, paragraph 8.

⁽⁶⁾ Case No COMP/M. 5152 — Posten AB/Post Danmark, of 21 April 2009, paragraph 108.

⁽⁷⁾ Case No COMP/M. 1794 — Deutsche Post/Air Express International, of 7 February 2000, paragraph 9.

⁽⁸⁾ Case No COMP/M. 3496 — TNT forwarding Holding AB/Wilson Logistics Holding AB.

⁽⁹⁾ Case No COMP/M. 1895 — Ocean Group/Exel, of 3 May 2000, paragraphs 8 and 9.

⁽¹⁰⁾ Case No COMP/M. 3971 — Deutsche Post/Exel, of 24 November 2005, paragraph 20.

2. Relevant geographical market

- (19) In its practice⁽¹⁾, the Commission has taken the view that the markets for domestic parcel delivery services and any segments thereof are national in scope. This segmentation is mainly based on the fact that such services are provided at national level. The applicant's position is in line with Commission practice.
- (20) Given that, in this case, there are no indications of a wider or smaller geographical scope, for the purposes of evaluating whether the conditions laid down in Article 30(1) of Directive 2004/17/EC are fulfilled, and without prejudice to competition law, the relevant geographic market is considered to be the territory of Hungary.
- (21) As regards, domestic pallet services and contract logistics, the applicant considers that the markets are national in scope. As the services concerned by the request are domestic services, and Magyar Posta is active only in Hungarian market, for the purposes of this decision, the relevant geographic market is considered to be the territory of Hungary.

3. Market analysis

- (22) It should be kept in mind that the aim of the present Decision is to establish whether the services concerned by the request are exposed to such a level of competition (on markets to which access is not restricted within the meaning of Article 30 of Directive 2004/17/EC) that this will ensure that, also in the absence of the discipline brought about by the detailed procurement rules set out in Directive 2004/17/EC, procurement for the pursuit of the activities concerned here will be carried out in a transparent, non-discriminatory manner based on criteria allowing purchasers to identify the solution which overall is the economically most advantageous one.
- (23) In this context, it should be recalled that the product markets defined above are generally characterised by a large number of operators. However, according to the available information⁽²⁾, out of these only Magyar Posta is a contracting entity in the sense of Directive 2004/17/EC. The procurement of Magyar Posta's competitors, for the purpose of carrying out the activities described above is not subject to the provisions of Directive 2004/17/EC. Consequently, for the purposes of this decision and without prejudice to competition law, the market analysis will not focus on the general degree of competition on a given market, but will assess whether or not the activities of Magyar Posta are exposed to competition on markets to which access is not restricted.

3.1. Domestic standard consumer parcel services (C2X)

- (24) Standard consumer parcel services must be considered apart, as they satisfy different needs of demand (universal postal service) in relation to commercial parcels, where the technological process of providing this service and operational solutions employed usually differ significantly. In respect of these services, Magyar Posta's market position is very strong with an estimated market share that has remained relatively stable over the period 2008-2011 at the order of around 80 % by value. The main competitor has a market share of approximately [...], while the rest of the main market players have market shares of under [...].
- (25) The Commission also notes that in spite of the continuous expansions of different competitor's networks, there is currently a considerable difference in size of Magyar Posta network compared to its competitors⁽³⁾.
- (26) It should therefore be concluded that the category of services examined here is not directly exposed to competition in Hungary. This is in line with the opinion of the Hungarian Authorities⁽⁴⁾. Consequently, Article 30(1) of Directive 2004/17/EC does not apply to contracts intended to enable the pursuit of those activities in Hungary.

3.2. Domestic standard business post parcels (B2X)

- (27) In respect of B2X standard parcel services, according to available information⁽⁵⁾, Magyar Posta's market share was around 35 % by volume in 2011, and it was second placed after the market leader who held 40 % of the market share, while the third competitor had also a 15 % market share. These factors should be taken as an indication of direct exposure to competition of Magyar Posta, on the B2X standard parcel services.

3.3. Domestic express parcel services

- (28) Magyar Posta's market share of the market for domestic express parcel services has been steadily falling over the period from 2008 to 2011, from approx. 55 % by value⁽⁶⁾ in 2008 to round 41 % in 2011, by value.

⁽¹⁾ Case No COMP/M.5152 — Posten AB/Post Danmark A/S, of 21 April 2009, Case No COMP/M.3971 — Deutsche Post/Exel, etc.

⁽²⁾ Letter of the Hungarian Authorities, of 13 January 2013, page 3.

⁽³⁾ According to page 20 of the application Magyar Posta has a network of 2735 postal outlets across the country. According to the letter received from Magyar Posta on 20 November 2012, the main competitor has a network of 372 collection points, while another competitor recently reached 400 points collection points.

⁽⁴⁾ Letter of the Hungarian Authorities, of 13 January 2013, page 8.

⁽⁵⁾ E-mail of the national Regulatory Authority of 21 January 2013.

⁽⁶⁾ When measured by volume, Post's market share in 2008 was of the order of approximately 43 %.

The aggregate market share of the two biggest competitors amounted to slightly over 22 % by value in 2008 and increased to around 30 % by value in 2011, i.e. almost three quarter of Magyar Posta's market share, at which level they would be able to bring a significant competitive pressure to bear on Magyar Posta⁽¹⁾. These factors should therefore be taken as an indication of direct exposure to competition.

3.4. Domestic courier parcel services

- (29) According to the applicant, the market for courier parcel services is not highly concentrated. Eight companies account for 60-67 % of the relevant market, by value. The market is dominated by three companies, but their cumulated market share is less than 50 % over the last four years.
- (30) Magyar Posta's market share of the market for domestic courier parcel services was between 2 and 3 % by value over the last four years. These factors should therefore be taken as an indication of direct exposure of Magyar Posta to competition.

3.5. Domestic pallet services

- (31) The market size of domestic pallet services is the second smallest one in the CEP sector in Hungary, and given its marginal importance, the market has only few permanent operators. Magyar Posta market share decreased, by value, from 67,6 % in 2008 to 38,7 % in 2010, and then increased in 2011 to 56,7 %, by value. The first competitor increased its market shares steadily between 2008 and 2011. The cumulated market shares of the second and third competitors ranged between 20 % and 49 % between 2008 and 2011, at which level they would be able to bring a significant competitive pressure on Magyar Posta.
- (32) Moreover, Magyar Posta's request refers only to services provided within the CEP sector. In addition, pallet services are also provided by undertakings outside the CEP sector.
- (33) The factors listed above in the above two recitals shall therefore be taken as an indication of direct exposure of Magyar Posta to competition. This opinion is also endorsed by the Hungarian Authorities⁽²⁾.

3.6. Contract logistics

- (34) The market shares of Magyar Posta in this segment are below 1 %. The market is characterised by a large number of market players⁽³⁾ and it is seen as a very dynamic market. These factors should therefore be taken as an indication of direct exposure to competition.

⁽¹⁾ The same reasoning was applied in previous Decisions, see e.g. recital 11 of Decision 2010/142/EC.

⁽²⁾ Letter of the Hungarian Authorities of 13 January 2013, page 10.

⁽³⁾ I.e. DHL Group, Kuhne Nagel Kft, Liegl&Dachser Kft, Gebrüder Weiss Szállítványozási és Logisztikai Kft; Waberer's Group; Trans-Sped Group; Masped Group, etc.

IV. CONCLUSIONS

- (35) In view of the factors examined in recitals 2 to 34, 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 Hungary in respect of the following services:
- (a) domestic standard business post parcels (B2X);
 - (b) domestic express parcel services;
 - (c) domestic courier parcel services;
 - (d) combined freight services; and
 - (e) contract logistics.
- (36) 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) to (e) of recital 35 to be carried out in Hungary, nor when design contests are organised for the pursuit of such an activity in this country.
- (37) This Decision is based on the legal and factual situation as of October 2012 to January 2013 as it appears from the information submitted by Magyar Posta and the Hungarian Authorities. It may be revised, should the conditions for the applicability of Article 30(1) of Directive 2004/17/EC be no longer met, following significant changes in the legal or factual situation.
- (38) Nevertheless, the condition of direct exposure to competition laid down in Article 30(1) of Directive 2004/17/EC should be considered not to be met with respect to domestic standard consumer parcel services, on the territory of Hungary.
- (39) Since the domestic standard consumer parcel services continue to be subject to Directive 2004/17/EC, it is recalled that procurement contracts covering several activities should be treated in accordance with Article 9 of Directive 2004/17/EC. This means that, where 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 must 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 domestic standard consumer parcel services, the provisions of Directive 2004/17/EC are to be applied. Where it is objectively impossible to determine for which activity the contract is principally intended, the contract is to be awarded in accordance with the rules referred to in Article 9(2) and (3) of Directive 2004/17/EC.

(40) The measures provided for in this Decision are in accordance with the opinion of the Advisory committee for Public Contracts.

(d) combined freight services; and

(e) contract logistics.

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 Hungary:

(a) domestic standard Business post parcels services (B2X);

(b) domestic express parcel services;

(c) domestic courier parcel services;

Article 2

This Decision is addressed to Hungary.

Done at Brussels, 22 March 2013.

For the Commission

Michel BARNIER

Member of the Commission

COMMISSION IMPLEMENTING DECISION

of 22 March 2013

as regards a Union financial aid for the year 2013 to European Union reference laboratories

(notified under document C(2013) 1628)

(Only the Danish, Dutch, English, French, German, Italian, Spanish and Swedish texts are authentic)

(2013/155/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2009/470/EC of 25 May 2009 on expenditure in the veterinary field ⁽¹⁾, and in particular Article 31(2) thereof,

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 ⁽²⁾, and in particular Article 32(7) thereof,

Whereas:

(1) Commission Implementing Regulation (EU) No 926/2011 of 12 September 2011 for the purposes of Council Decision 2009/470/EC as regards Union financial aid to the EU reference laboratories for feed and food and the animal health sector ⁽³⁾ provides that the financial aid from the Union is to be granted if the approved work programmes are implemented effectively and that the beneficiaries supply all the necessary information within certain time limits.

(2) The Commission services have assessed and approved the work programmes and corresponding budget estimates submitted in 2012 by the EU reference laboratories for the year 2013.

(3) As work programmes are being performed since 1 January 2013, the present Implementing Decision should apply from 1 January 2013.

(4) Accordingly, a Union financial aid should be granted to the EU reference laboratories designated in order to co-finance their activities to carry out the functions and

duties provided for in Article 32 of Regulation (EC) No 882/2004. The Union's financial aid should be at the rate of 100 % of eligible costs as defined in Implementing Regulation (EU) No 926/2011.

(5) Commission Implementing Regulation (EU) No 135/2013 ⁽⁴⁾ lays down eligibility rules for the workshops organised by the EU reference laboratories. It also limits the financial aid to a maximum of 32 participants, 3 invited speakers and 10 representatives of third countries in workshops. Derogations to that limitation should be provided for some European Union reference laboratories that need support for attendance by more than 32 participants in order to achieve the best outcome of its workshops. Derogations can be obtained in case an EU reference laboratory takes the leadership and responsibility when organising a workshop with another European Union reference laboratory.

(6) For the six EU reference laboratories designated within the Joint Research Centre, the relationship is laid down in an annual administrative arrangement supported by a work programme and its budget as the Joint Research Centre and the Directorate-General for Health and Consumers are both services of the Commission.

(7) In accordance with Article 3(2)(a) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽⁵⁾, animal disease eradication and control programmes (veterinary measures) shall be financed from the European Agricultural Guarantee Fund (EAGF). Second paragraph of Article 13 of that Regulation provides that in duly justified exceptional cases, for measures and programmes covered by Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field ⁽⁶⁾, expenditure relating to administrative and personnel costs incurred by Member States and beneficiaries of aid from the EAGF are to be borne by that Fund. For financial control purposes, Articles 9, 36 and 37 of Regulation (EC) No 1290/2005 are to apply.

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

⁽¹⁾ OJ L 155, 18.6.2009, p. 30.

⁽²⁾ OJ L 165, 30.4.2004, p. 1.

⁽³⁾ OJ L 241, 17.9.2011, p. 2.

⁽⁴⁾ OJ L 46, 19.2.2013, p. 8.

⁽⁵⁾ OJ L 209, 11.8.2005, p. 1.

⁽⁶⁾ OJ L 224, 18.8.1990, p. 19.

HAS ADOPTED THIS DECISION:

Article 1

The Union grants financial aid to the Laboratoire de sécurité des aliments (LSA), of the Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (ANSES), Maisons-Alfort, France, for the following activities regarding the period from 1 January 2013 to 31 December 2013:

- (a) for the analysis and testing of milk and milk products, that financial aid shall not exceed EUR 358 000;
- (b) for the analysis and testing of *Listeria monocytogenes*, that financial aid shall not exceed EUR 440 000;
- (c) for the analysis and testing of coagulase positive *Staphylococci*, including *Staphylococcus aureus*, that financial aid shall not exceed EUR 347 000.

Article 2

The Union grants financial aid to the Rijksinstituut voor Volksgezondheid en Milieu (RIVM), Bilthoven, the Netherlands, for the analysis and testing of zoonoses (salmonella).

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 492 000.

Article 3

The Union grants financial aid to the Laboratorio de Biotoxinas Marinas, Agencia Española de Seguridad Alimentaria y Nutrición (Ministerio de Sanidad y Política Social), Vigo, Spain, for the monitoring of marine biotoxins.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 330 000.

Article 4

The Union grants financial aid to the laboratory of the Centre for Environment, Fisheries and Aquaculture Science (CEFAS), Weymouth, United Kingdom, for the following activities regarding the period from 1 January 2013 to 31 December 2013:

- (a) for the monitoring of viral and bacteriological contamination of bivalve molluscs, that financial aid shall not exceed EUR 345 000;
- (b) for crustacean diseases, that financial aid shall not exceed EUR 145 000.

Article 5

The Union grants financial aid to the Istituto Superiore di Sanità (ISS), Rome, Italy, for the following activities regarding the period from 1 January 2013 to 31 December 2013:

- (a) for the analysis and testing of *Escherichia Coli*, including Verotoxigenic *E. Coli* (VTEC), that financial aid shall not exceed EUR 326 000;

- (b) for the analysis and testing of parasites (in particular *Trichinella*, *Echinococcus* and *Anisakis*), that financial aid shall not exceed EUR 374 000;

- (c) for residues of certain substances referred to in point 12(d) of Section I of Annex VII to Regulation (EC) No 882/2004, that financial aid shall not exceed EUR 316 000.

Article 6

The Union grants financial aid to the Statens Veterinärmedicinska Anstalt (SVA), Uppsala, Sweden, for the monitoring of *Campylobacter*.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 395 000.

Article 7

The Union grants financial aid to the Fødevareinstituttet, Danmarks Tekniske Universitet (DTU), Copenhagen, Denmark, for the monitoring of antimicrobial resistance.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 530 000.

Article 8

1. The Union grants financial aid to the Animal Health and Veterinary Laboratories Agency (ex-VLA), Addlestone, United Kingdom, for the monitoring of transmissible spongiform encephalopathies.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 495 000.

2. By way of derogation to Article 1(4) of Implementing Regulation (EU) No 135/2013, the laboratory referred to in paragraph 1 of this Article shall be entitled to claim financial aid for attendance by more than 32 participants at one of its workshops.

Article 9

The Union grants financial aid to the Centre Wallon de Recherches agronomiques (CRA-W), Gembloux, Belgium, for the analysis and testing of animal proteins in feedingstuffs.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 530 000.

Article 10

The Union grants financial aid to the Laboratoire de Fougères, de L'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (ANSES), Fougères, France for residues of certain substances referred to in point 12(b) of Section I of Annex VII to Regulation (EC) No 882/2004.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 500 000.

Article 11

The Union grants financial aid to the Bundesamt für Verbraucherschutz und Lebensmittelsicherheit (BVL), Berlin, Germany, for residues of certain substances referred to in point 12(c) of Section I of Annex VII to Regulation (EC) No 882/2004.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 500 000.

Article 12

The Union grants financial aid to RIKILT — Institute for Food Safety, part of Wageningen University & Research Centre, Wageningen, the Netherlands, for residues of certain substances referred to in point 12(a) of Section I of Annex VII to Regulation (EC) No 882/2004.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 500 000.

Article 13

The Union grants financial aid to the Chemisches und Veterinäruntersuchungsamt (CVUA) Freiburg, Germany for the following activities regarding the period from 1 January 2013 to 31 December 2013:

- (a) for the analysis and testing of residues of pesticides in food of animal origin and commodities with high fat content, that financial aid shall not exceed EUR 234 000;
- (b) for the analysis and testing of dioxins and PCBs in feed and food, that financial aid shall not exceed EUR 510 000.

Article 14

The Union grants financial aid to the Fødevareinstituttet, Danmarks Tekniske Universitet (DTU), Søborg, Denmark, for the analysis and testing of residues of pesticides in cereals and feedingstuffs.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 200 000.

Article 15

1. The Union grants financial aid to the Laboratorio Agrario de la Generalitat Valenciana (LAGV)/Grupo de Residuos de Plaguicidas de la Universidad de Almería (PRRG), Spain for the analysis and testing of residues of pesticides in fruits and vegetables, including commodities with high water and high acid content.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 538 000.

2. By way of derogation to Article 1(4) of Implementing Regulation (EU) No 135/2013, the laboratory referred to in

paragraph 1 shall be entitled to claim financial aid for attendance by more than 32 participants at one of its workshops.

Article 16

The Union grants financial aid to the Chemisches und Veterinäruntersuchungsamt (CVUA) Stuttgart, Germany, for the analysis and testing of residues of pesticides by single residue methods.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 398 000.

Article 17

The Union grants financial aid to the Laboratorio Central de Sanidad Animal de Algete, Algete (Madrid), Spain, for African horse sickness.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 110 000.

Article 18

The Union grants financial aid to the Animal Health and Veterinary Laboratories Agency (ex-VLA), New Haw, Weybridge, United Kingdom for the following activities regarding the period from 1 January 2013 to 31 December 2013:

- (a) for Newcastle disease, that financial aid shall not exceed EUR 98 000;
- (b) for avian influenza, that financial aid shall not exceed EUR 425 000.

Article 19

The Union grants financial aid to the Pirbright Institute (former AFRC Institute for Animal Health), Pirbright Laboratory, Pirbright, United Kingdom for the following activities regarding the period from 1 January 2013 to 31 December 2013:

- (a) for swine vesicular disease, that financial aid shall not exceed EUR 75 000;
- (b) for bluetongue, that financial aid shall not exceed EUR 240 000;
- (c) for foot-and-mouth disease, that financial aid shall not exceed EUR 400 000.

Article 20

The Union grants financial aid to the Technical University of Denmark, National Veterinary Institute, Department of Poultry, Fish and Fur Animals, Aarhus, Denmark, for fish diseases.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 310 000.

Article 21

The Union grants financial aid to l'Institut français de recherche pour l'exploitation de la mer (Ifremer), La Tremblade, France, for diseases of bivalve molluscs.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 170 000.

Article 22

The Union grants financial aid to the Institut für Virologie der Tierärztlichen Hochschule Hannover, Hannover, Germany, for classical swine fever.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 333 000.

Article 23

The Union grants financial aid to the Centro de Investigación en Sanidad Animal, Valdeolmos, Madrid, Spain, for African swine fever.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 236 000.

Article 24

The Union grants financial aid to the INTERBULL Centre, Department of Animal Breeding and Genetics — SLU, Swedish University of Agricultural Sciences, Uppsala, Sweden, for collaborating in rendering uniform the testing methods and the assessment of the results for pure-bred breeding animals of the bovine species.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 150 000.

Article 25

The Union grants financial aid to the ANSES, Laboratoire de santé animale, Maisons-Alfort, France, for brucellosis.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 285 000.

Article 26

The Union grants financial aid to the ANSES, Laboratoire de santé animale, Maisons Alfort/Laboratoire de pathologie équine, Dozulé, France, for equine diseases other than African horse sickness.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 555 000.

Article 27

The Union grants financial aid to the ANSES, Laboratoire de la rage et de la faune sauvage, Nancy, France, for rabies.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 282 000.

Article 28

The Union grants financial aid to the Laboratorio de Vigilancia Veterinaria (VISAVET) of the Facultad de Veterinaria, Universidad Complutense de Madrid, Madrid, Spain, for tuberculosis.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 248 000.

Article 29

The Union grants financial aid to the ANSES, Laboratoire de Sophia-Antipolis, France, for bee health.

For the period from 1 January 2013 to 31 December 2013, that financial aid shall not exceed EUR 384 000.

Article 30

The Union grants financial aid to the Joint Research Centre of the European Commission, Geel, Belgium, for the following activities regarding the period from 1 January 2013 to 31 December 2013:

- (a) the activities related to heavy metals in feed and food; that financial aid shall not exceed EUR 261 000;
- (b) the activities related to mycotoxins; that financial aid shall not exceed EUR 271 000;
- (c) the activities related to polycyclic aromatic hydrocarbons (PAH); that financial aid shall not exceed EUR 269 000;
- (d) the activities related to additives for use in animal nutrition; that financial aid shall not exceed EUR 71 000.

Article 31

The Union grants financial aid to the Joint Research Centre of the European Commission, Ispra, Italy, for the following activities regarding the period from 1 January 2013 to 31 December 2013:

- (a) the activities related to materials and articles in contact with foodstuffs; that financial aid shall not exceed EUR 341 000;
- (b) the activities related to GMOs; that financial aid shall not exceed EUR 472 000.

Article 32

The Union's financial aid referred to in Articles 1 to 31 shall be at the rate of 100 % of eligible costs as defined in Implementing Regulation (EU) No 926/2011.

Article 33

This Decision is addressed to the laboratories listed in the Annex.

Done at Brussels, 22 March 2013.

For the Commission

Tonio BORG

Member of the Commission

ANNEX

- Laboratoire de sécurité des aliments (LSA), of the Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (ANSES), 23 avenue du Général de Gaulle, 94700 Maisons-Alfort, France,
- Rijksinstituut voor Volksgezondheid en Milieu (RIVM), Anthony van Leeuwenhoeklaan 9, Postbus 1, 3720 BA Bilthoven, The Netherlands,
- Laboratorio de Biotoxinas Marinas, Agencia Española de Seguridad Alimentaria y Nutrición (Ministerio de Sanidad y Política Social), Estación Marítima, s/n, 36200 Vigo, Spain,
- Laboratory of the Centre for Environment, Fisheries and Aquaculture Science (CEFAS), Weymouth laboratory, Barrack Road, The Nothe, Weymouth, Dorset, DT4 8UB, United Kingdom,
- Istituto Superiore di Sanità (ISS), Viale Regina Elena 299, 00161 Roma, Italy,
- Statens Veterinärmedicinska Anstalt (SVA), Ulls väg 2 B, 751 89 Uppsala, Sweden,
- Fødevareinstituttet, Danmarks Tekniske Universitet (DTU), Bülowsvej 27, 1790 Copenhagen V, Denmark,
- Animal Health and Veterinary Laboratories Agency (AHVLA); Weybridge, New Haw, Addelstone Surrey KT15 3NB United Kingdom,
- Centre Wallon de Recherches agronomiques (CRA-W), Chaussée de Namur 24, 5030 Gembloux, Belgium,
- Laboratoire de Fougères de L'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (ANSES), Laboratoire de Fougères, 10B rue Claude Bourgelat, Javené, CS40608, 35306 Fougères, France,
- Bundesamt für Verbraucherschutz und Lebensmittelsicherheit (BVL), Mauerstrasse 39-42, 10117 Berlin, Germany,
- RIKILT — Institute for Food Safety, part of Wageningen University & Research Centre, Akkermaalsbos 2, Building No 123, 6708 WB Wageningen, the Netherlands,
- Chemisches und Veterinäruntersuchungsamt (CVUA), Postfach 100462, Bissierstrasse 5, 79114 Freiburg, Germany,
- Fødevareinstituttet, Danmarks Tekniske Universitet (DTU), Department of Food Chemistry, Moerkhoej Bygade 19, 2860 Soeborg, Denmark,
- Laboratorio Agrario de la Generalitat Valenciana (LAGV)/Grupo de Residuos de Plaguicidas de la Universidad de Almería (PRRG), Ctra. Sacramento s/n, La Canada de San Urbano, 04120 Almeria, Spain,
- Chemisches und Veterinäruntersuchungsamt (CVUA), Schaflandstrasse 3/2, 70736 Stuttgart, Germany,
- Laboratorio Central de Sanidad Animal, Ministerio de Agricultura, PESCA y Alimentación, Ctra. de Algete km. 8, Valdeolmos, 28110, Algete (Madrid), Spain,
- Animal Health and Veterinary Laboratories Agency (AHVLA) Weybridge, New Haw, Addelstone Surrey KT15 3NB United Kingdom,
- The Pirbright Institute, Pirbright Laboratory, Pirbright, Woking, Surrey GU24 0NF, United Kingdom,
- The Technical University of Denmark, National Veterinary Institute, Department of Poultry, Fish and Fur Animals, Hangøvej 2, 8200-Århus Denmark,
- Institut français de recherche pour l'exploitation de la mer (Ifremer), Avenue Mus de Loup, Ronces les Bains, 17390 La Tremblade, France,
- Institut für Virologie der Tierärztlichen Hochschule, Bischofsholer Damm 15, 3000 Hannover, Germany,
- Centro de Investigación en Sanidad Animal, Ctra. de Algete a El Casar, Valdeolmos 28130, Madrid, Spain,
- INTERBULL Centre, Department of Animal Breeding and Genetics SLU, Swedish University of Agricultural Sciences — SLU, Undervisningsplan E1-27; S-750 07 Uppsala Sweden,
- ANSES, Laboratoire de santé animale, 23 avenue du Général de Gaulle, 94706 Maisons-Alfort, Cedex France,
- ANSES, Laboratoire de santé animale/Laboratoire de pathologie équine, 23 avenue du Général de Gaulle, 94706 Maisons-Alfort, Cedex France,
- ANSES, Laboratoire de la rage et de la faune sauvage de Nancy, Domaine de Pixérécourt, 54220 Malzéville, France,

- VISAVET — Laboratorio de vigilancia veterinaria, Facultad de Veterinaria, Universidad Complutense de Madrid, Avda. Puerta de Hierro, s/n. Ciudad Universitaria, 28040, Madrid, Spain,
 - ANSES, Laboratoire de Sophia-Antipolis, 105 Route des Chappes, les Templiers, 06902 Sophia-Antipolis, France,
 - Joint Research Centre, Institute for Reference Materials and Measurements, Retieseweg 111, 2440 Geel, Belgium,
 - Joint Research Centre, Institute for Health and Consumer Protection, Via E. Fermi, 1, 21027 Ispra, Italy.
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