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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 829/2006**of 2 June 2006****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 3 June 2006.

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

Done at Brussels, 2 June 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 2 June 2006 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	78,4
	204	48,6
	999	63,5
0707 00 05	052	71,3
	999	71,3
0709 90 70	052	85,8
	999	85,8
0805 50 10	388	56,4
	508	52,4
	528	56,0
	999	54,9
0808 10 80	388	90,3
	400	114,3
	404	107,1
	508	73,8
	512	86,6
	524	88,5
	528	88,5
	720	103,9
	804	104,7
0809 10 00	999	95,3
0809 20 95	052	208,4
	999	208,4
0809 20 95	052	227,5
	999	227,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 830/2006**of 2 June 2006****amending Regulation (EC) No 1342/2003 as regards imports of cereals and rice**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular the second paragraph of Article 24 thereof,

Having regard to Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice ⁽²⁾, and in particular Article 25(2) thereof,

Whereas:

- (1) Council Regulation (EC) No 2007/2000 ⁽³⁾, which has introduced exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process, admits cereals and rice originating in Albania, Bosnia and Herzegovina and in the customs territories of Montenegro, Serbia or Kosovo for import into the Community without quantitative restrictions and with exemption from customs duties.
- (2) Article 16 of Commission Regulation (EC) No 1342/2003 of 28 July 2003 laying down special detailed rules for the application of the system of import and export licences for cereals and rice ⁽⁴⁾ provides for the communication by the Member States to the Commission of requests for import or export

licences. In these communications, the indication of the origin is not required for cereals other than common wheat.

- (3) In order to provide for a close follow-up of cereals and rice imports the Member States should communicate the origins indicated on the import licences for all cereals and rice.
- (4) Regulation (EC) No 1342/2003 should be amended accordingly.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for cereals,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 16 of Regulation (EC) No 1342/2003, the paragraph 2 is replaced by the following:

‘2. With regard to import licences issued, each day the Member States shall forward the quantities covered by licences by origin and product code and, in the case of common wheat, by quality grade. The origin shall also be indicated in the notifications of import licences for rice.’

Article 2

This Regulation shall enter into force on 1 July 2006.

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

Done at Brussels, 2 June 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

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

⁽²⁾ OJ L 270, 21.10.2003, p. 96. Regulation as amended by Regulation (EC) No 247/2006 (OJ L 42, 14.2.2006, p. 1).

⁽³⁾ OJ L 240, 23.9.2000, p. 1. Regulation as last amended by Regulation (EC) No 1946/2005 (OJ L 312, 29.11.2005, p. 1).

⁽⁴⁾ OJ L 189, 29.7.2003, p. 12. Regulation as last amended by Regulation (EC) No 1092/2004 (OJ L 209, 11.6.2004, p. 9).

COMMISSION REGULATION (EC) No 831/2006**of 2 June 2006****amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2320/2002 of the European Parliament and the Council of 16 December 2002 establishing common rules in the field of civil aviation security ⁽¹⁾ and in particular Article 4(2) thereof,

Whereas:

- (1) The Commission is required, by virtue of Regulation (EC) No 2320/2002, to adopt measures for the implementation of common basic standards for aviation security throughout the Community. Commission Regulation (EC) No 622/2003 of 4 April 2003 laying down measures for the implementation of the common basic standards on aviation security ⁽²⁾ was the first act laying down such measures.
- (2) There is a need for measures to make the common basic standards more precise.
- (3) As regards the measures for the implementation of the standards on airline materials and on cargo, courier and express parcels, the content of Regulation (EC) No 622/2003 should be revised in the light of experience gained.
- (4) Council Regulation (EEC) No 2913/92 of 12 October 1992, establishing the Community Customs Code ⁽³⁾ foresees appropriate security and safety standards to be fulfilled in order to be granted the status of Authorised

Economic Operator. The appropriate authority of a Member State should consider to take into account the relevant information provided by the customs authority when designating, approving or listing an agent as regulated agent.

- (5) In accordance with Regulation (EC) No 2320/2002 and in order to prevent acts of unlawful interference, the measures laid down in the Annex to Regulation (EC) No 622/2003 should be secret and should not be published. The same rule necessarily applies to any amending act.
- (6) Regulation (EC) No 622/2003 should be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Civil Aviation Security,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 622/2003 is amended as set out in the Annex to this Regulation.

Article 3 of that Regulation shall apply as regards the confidential nature of this Annex.

Article 2

This Regulation shall enter into force on 1 January 2007.

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

Done at Brussels, 2 June 2006.

For the Commission

Jacques BARROT

Vice-President

⁽¹⁾ OJ L 355, 30.12.2002, p. 1. Regulation as amended by Regulation (EC) No 849/2004 (OJ L 158, 30.4.2004, p. 1).

⁽²⁾ OJ L 89, 5.4.2003, p. 9. Regulation as last amended by Regulation (EC) No 240/2006 (OJ L 40, 11.2.2006, p. 3).

⁽³⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council (OJ L 117, 4.5.2005, p. 13).

ANNEX

In accordance with Article 1 the annex is secret and shall not be published in the *Official Journal of the European Union*.

COMMISSION REGULATION (EC) No 832/2006**of 2 June 2006****on the division between 'deliveries' and 'direct sales' of national reference quantities fixed for 2005/2006 in Annex I to Council Regulation (EC) No 1788/2003**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector ⁽¹⁾, and in particular Articles 6(4) and 8 thereof,

Whereas:

- (1) Article 6 of Regulation (EC) No 1788/2003 provides that the Member States are to establish the producers' individual reference quantities. Producers may have one or two individual reference quantities, one for deliveries and the other for direct sales and these quantities may be converted from one reference quantity to the other at the duly justified request of the producer.
- (2) Commission Regulation (EC) No 490/2005 of 29 March 2005 on the division between 'deliveries' and 'direct sales' of national reference quantities fixed for 2004/2005 in Annex I to Council Regulation (EC) No 1788/2003 ⁽²⁾ sets out the division between 'deliveries' and 'direct sales' for the period from 1 April 2004 to 31 March 2005 for Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Portugal, Slovakia, Finland, Sweden and the United Kingdom.
- (3) For Poland and Slovenia the basis for the individual reference quantities was set out in table (f) of Annex I to Regulation (EC) No 1788/2003.
- (4) In accordance with Article 25(2) of Commission Regulation (EC) No 595/2004 of 30 March 2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk

products sector ⁽³⁾, Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Hungary, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Finland and the United Kingdom have notified the quantities which have been definitively converted at the request of the producers between individual reference quantities for deliveries and for direct sales.

- (5) Article 6(4) of Regulation (EC) No 1788/2003 provides that the part of the Finnish national reference quantity allocated to deliveries referred to in Article 1 of that Regulation may be increased to compensate 'SLOM' producers, up to a maximum of 200 000 tonnes. In accordance with Article 6 of Commission Regulation (EC) No 671/95 of 29 March 1995 on the assignment of specific reference quantities to certain producers of milk and milk products in Austria and Finland ⁽⁴⁾, Finland has notified the quantities concerned for the 2005/06 marketing year.
- (6) It is therefore appropriate to establish the division between 'deliveries' and 'direct sales' of the national reference quantities applicable for the period from 1 April 2005 to 31 March 2006 fixed in Annex I to Regulation (EC) No 1788/2003.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The division between 'deliveries' and 'direct sales' of the national reference quantities applicable for the period from 1 April 2005 to 31 March 2006 fixed in Annex I to Regulation (EC) No 1788/2003 is set out in the Annex to this Regulation.

⁽¹⁾ OJ L 270, 21.10.2003, p. 123. Regulation as amended by Regulation (EC) No 2217/2004 (OJ L 375, 23.12.2004, p. 1).

⁽²⁾ OJ L 81, 30.3.2005, p. 38.

⁽³⁾ OJ L 94, 31.3.2004, p. 22.

⁽⁴⁾ OJ L 70, 30.3.1995, p. 2. Regulation as amended by Regulation (EC) No 1390/95 (OJ L 135, 21.6.1995, p. 4).

Article 2

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

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

Done at Brussels, 2 June 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX

(tonnes)		
Member States	Deliveries	Direct sales
Belgium	3 241 729,385	68 701,615
Czech Republic	2 678 931,873	3 211,127
Denmark	4 454 890,422	457,578
Germany	27 768 465,858	95 361,430
Estonia	604 421,618	20 061,382
Greece	819 675,000	838,000
Spain	6 049 899,450	67 050,550
France	23 880 183,860	355 614,140
Ireland	5 391 601,672	4 162,328
Italy	10 284 048,141	246 011,859
Cyprus	141 234,000	3 966,000
Latvia	677 568,191	17 826,809
Lithuania	1 520 288,261	126 650,739
Luxembourg	268 554,000	495,000
Hungary	1 801 879,062	145 400,938
Malta	48 698,000	0,000
Netherlands	11 000 292,000	74 400,000
Austria	2 636 060,676	114 329,036
Poland	8 637 939,612	326 077,388
Portugal ⁽¹⁾	1 911 803,000	8 658,000
Slovenia	518 213,850	42 210,150
Slovakia	1 004 991,065	8 324,935
Finland	2 399 925,465	7 862,542
Sweden	3 300 000,000	3 000,000
United Kingdom	14 486 038,657	123 708,344

⁽¹⁾ Except Madeira.

COMMISSION REGULATION (EC) No 833/2006**of 2 June 2006****fixing the compensatory aid for bananas produced and marketed in the Community in 2005 and the unit value of the advances for 2006**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

from production is significantly lower than the average for the Community.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas ⁽¹⁾, and in particular the first subparagraph of Article 12(6) and Article 14 thereof,

Whereas:

(1) Under Article 12(3) of Regulation (EEC) No 404/93, compensatory aid to Community producers for any loss of income is calculated on the basis of the difference between the flat-rate reference income and the average production income from bananas produced and marketed in the Community during the year in question.

(2) Article 2(2) of Commission Regulation (EEC) No 1858/93 of 9 July 1993 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the aid scheme to compensate for loss of income from marketing in the banana sector ⁽²⁾ fixes the flat-rate reference income at EUR 64,03 per 100 kilograms net weight of green bananas ex-packing shed.

(3) In 2005, the average production income, calculated on the basis of the average of the prices for bananas marketed outside the producer regions at the stage of delivery at first port of unloading (goods not unloaded), on the one hand, and the selling prices on local markets for bananas marketed in their producer region, on the other, less the flat-rate amounts laid down in Article 3(2) of Regulation (EEC) No 1858/93, was less than the flat-rate reference income fixed for 2005. The compensatory aid to be granted in respect of 2005 should be fixed accordingly.

(4) Under the second subparagraph of Article 12(6) of Regulation (EEC) No 404/93, supplementary aid is granted in one or more producer regions where the average income

(5) The annual average production income from the marketing of bananas produced in Martinique, Guadeloupe and Greece has proved to be significantly lower than the Community average during 2005. As a result, supplementary aid should be granted in the producer regions of Martinique, Guadeloupe and Greece. In view of the data for 2005, which point to very difficult production and marketing conditions, supplementary aid covering 75 % of the difference between the average income in the Community and the average income recorded on selling products in these regions should be fixed.

(6) The unit amount of the advances and the amount of the relevant security are established, in accordance with Article 4(2) and (3) of Regulation (EEC) No 1858/93, on the basis of the aid fixed for the preceding year.

(7) Given that not all the necessary data were available, it has not hitherto been possible to determine the compensatory aid for 2005. Provision should be made for the balance of the aid for 2005 and of the advances for bananas marketed during January and February 2006 to be paid within two months of the entry into force of this Regulation.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Bananas,

HAS ADOPTED THIS REGULATION:

Article 1

1. The compensatory aid provided for in Article 12 of Regulation (EEC) No 404/93 for fresh bananas falling within CN code ex 0803, excluding plantain bananas, produced and marketed in the Community in 2005 shall be EUR 5,90 per 100 kilograms.

2. The aid fixed in paragraph 1 shall be increased by EUR 11,27 per 100 kilograms for bananas produced in Martinique, by EUR 12,12 per 100 kilograms for bananas produced in Guadeloupe and by EUR 7,76 per 100 kilograms for bananas produced in Greece.

⁽¹⁾ OJ L 47, 25.2.1993, p. 1. Regulation last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 170, 13.7.1993, p. 5. Regulation last amended by Regulation (EC) No 789/2005 (OJ L 132, 26.5.2005, p. 13).

Article 2

The advance for bananas marketed from January to December 2006 shall amount to EUR 4,13 per 100 kilograms. The relevant security shall be EUR 2,06 per 100 kilograms.

Article 3

Notwithstanding Article 10 of Regulation (EEC) No 1858/93, the competent authorities of the Member States shall pay the balance of the compensatory aid to be granted in respect of

2005 and the advance for bananas marketed during January and February 2006 within two months of the entry into force of this Regulation, after the verifications provided for in Article 10 of Regulation (EEC) No 1858/93.

Article 4

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

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

Done at Brussels, 2 June 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 15 May 2006

authorising the Kingdom of Spain to apply a measure derogating from Article 11 and Article 28e of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2006/387/EC)

THE COUNCIL OF THE EUROPEAN UNION,

measure derogating from the provisions of Directive 77/388/EEC governing the taxable amount for value added tax (VAT) purposes.

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States in relation to turnover taxes — Common System of Value Added Tax; uniform basis of assessment ⁽¹⁾, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Under Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.
- (2) In a letter dated 21 June 2005 and received in the Secretariat-General of the Commission on 22 July 2005, the Kingdom of Spain sought authorisation to introduce a

(3) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States of the request made by the Kingdom of Spain in a letter dated 7 October 2005. In a letter dated 10 October 2005, the Commission notified the Kingdom of Spain that it had all the information it considered necessary for appraisal of the request.

(4) Article 11(A)(1)(a) of Directive 77/388/EEC establishes the taxable amount of a supply for VAT purposes to be everything which constitutes the consideration paid for the supply. Article 28e(1) of that Directive governs the taxable amount of intra-Community acquisitions, by reference to Article 11(A).

(5) The measure requiring a derogation is intended to counter tax losses arising from the manipulation of the taxable amount of supplies of goods, services and intra-Community acquisitions subject to VAT where a vendor charges a reduced price to a connected purchaser who does not have a right to full deduction.

(6) The measure should be targeted so that it applies only in cases of VAT avoidance or evasion and only when a number of conditions have been met. The measure is therefore proportionate to the aim pursued.

(7) Similar derogations have been granted to other Member States in order to counter tax avoidance or evasion and have been found to be effective.

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51, 22.2.2006, p. 12).

- (8) Derogations pursuant to Article 27 of Directive 77/388/EEC which counter VAT avoidance linked to the taxable amount of supplies between related parties are included in the Commission proposal of 16 March 2005 for a Directive rationalising some of the derogations pursuant to that Article ⁽¹⁾. It is therefore necessary to bring the application period of this derogation to an end when that Directive enters into force.
- (9) This derogation will safeguard the amount of VAT due at the final consumption stage and has no negative impact on the Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 11(A)(1)(a) and Article 28e of Directive 77/388/EEC, the Kingdom of Spain is hereby authorised to provide that the taxable amount of a supply of goods or services or of an intra-Community acquisition of goods shall be the same as the open-market value, as defined in Article 11(A)(1)(d) of the said Directive where the consideration is significantly lower than the open-market value and the recipient of the supply, or in the case of an intra-Community acquisition, the acquirer, does not have a right to full deduction under Article 17 of Directive 77/388/EEC.

This measure may only be used in order to prevent tax avoidance or evasion and when the consideration on which the taxable amount would otherwise be based has been influenced by family, management, ownership, financial or legal ties as defined in national legislation. For these purposes, legal ties shall include the formal relationship between employer and employee.

Article 2

The authorisation granted under Article 1 shall expire on the date of entry into force of a Directive rationalising the derogations pursuant to Article 27 of Directive 77/388/EEC which counter avoidance or evasion of VAT through the valuation of supplies between connected persons, or on 31 December 2009, whichever is the earlier.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 15 May 2006.

For the Council
The President
U. PLASSNIK

⁽¹⁾ OJ C 125, 24.5.2005, p. 12.

COUNCIL DECISION

of 15 May 2006

authorising the Republic of Lithuania to apply a measure derogating from Article 21 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2006/388/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ⁽¹⁾, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Under Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

(2) By letter registered with the Secretariat-General of the Commission on 28 June 2005, the Republic of Lithuania (hereinafter referred to as Lithuania) has requested to be authorised to introduce measures derogating from Article 21 of Directive 77/388/EEC.

(3) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States by letter dated 22 August 2005 of the request made by Lithuania. By letter dated 23 August 2005, the Commission notified Lithuania that it had all the information it considered necessary for appraisal of the request.

(4) Article 21(1) of Directive 77/388/EEC, in the version set out in Article 28g thereof, stipulates that, under the internal system, the taxable person supplying goods or services is normally liable to pay value added tax (VAT).

(5) The purpose of the derogation requested by Lithuania is to make, under certain conditions, the recipient liable for VAT due on the supply of goods and services in the case of insolvency procedures or of restructuring procedures subject to judicial oversight, of timber transactions, of supplies of ferrous and non-ferrous waste and of construction work.

(6) Taxable persons under insolvency procedures or restructuring procedures subject to judicial oversight are often prevented by financial difficulties from paying VAT invoiced on their supplies of goods and services. The recipient can nonetheless deduct VAT even though it has not been paid by the supplier.

(7) Problems are encountered in the timber market of Lithuania because of the nature of the market and the businesses involved. The market is dominated by small local companies, often resellers and intermediaries, which the tax authorities have found difficult to control. The most common form of evasion involves the invoicing of supplies followed by the disappearance of the business without paying tax but leaving the customer in receipt of a valid invoice for tax deduction.

(8) Similar problems of non-payment of invoiced VAT are encountered in the Lithuanian waste recycling sector of ferrous and non-ferrous metals.

(9) Comparable problems also occur in the Lithuanian construction sector, in particular in relation to VAT invoiced by subcontractors who subsequently disappear.

(10) By designating the recipient as the person liable for the VAT in the abovementioned cases that adversely affects public finances, the derogation removes the difficulties encountered without affecting the amount of tax due. This has the effect of simplifying the work of the tax authorities for charging the tax and of preventing certain types of tax evasion or avoidance.

(11) The measure is proportionate to the objectives pursued since it is not intended to apply generally, but only to specific operations and sectors which pose considerable problems in charging the tax or of tax evasion or avoidance.

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51, 22.2.2006, p. 12).

(12) Similar derogations have been granted to other Member States and have been found to be effective.

(13) The authorisation should be limited to 31 December 2009, so that in the light of the experience gleaned up to that date an assessment may be made whether or not the derogation remains justified. However, on 16 March 2005 the Commission proposed a Directive rationalising some of the derogations pursuant to Article 27 of Directive 77/388/EEC ⁽¹⁾. It is therefore necessary to bring the application period for those parts of this Decision which are covered by the proposal, to an end when that Directive enters into force.

(14) The derogation has no adverse impact on the Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 21(1)(a) of Directive 77/388/EEC, in the version set out in Article 28g thereof, Lithuania is hereby authorised to designate the taxable person, to whom the supplies of goods or services referred to in Article 2 are made, as the person liable to pay VAT.

Article 2

The recipient of the supply of goods or services may be designated as the person liable to pay VAT in the following instances:

1. supplies of goods and services by a taxable person while under an insolvency procedure or a restructuring procedure subject to judicial oversight;

2. supplies of timber;

3. supplies of ferrous waste and scrap, residues and other recyclable materials consisting of ferrous and non-ferrous metals;

4. supplies of construction work by a subcontractor to either a general contractor, another subcontractor or a company which carries out its own construction work.

Article 3

The authorisation granted under Article 1 shall expire on 31 December 2009. However, points (3) and (4) of Article 2 shall cease to have effect on the date of the entry into force of a Directive rationalising the derogations pursuant to Article 27 of Directive 77/388/EEC which includes a special scheme for the application of VAT to that sector, provided that date is before 31 December 2009.

Article 4

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 15 May 2006.

For the Council
The President
U. PLASSNIK

⁽¹⁾ OJ C 125, 24.5.2005, p. 12.

COUNCIL DECISION

of 15 May 2006

authorising the Republic of Lithuania to apply a measure derogating from Article 11 and Article 28e of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes

(2006/389/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common System of Valued Added Tax; uniform basis of assessment ⁽¹⁾, and in particular Article 27 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Under Article 27(1) of Directive 77/388/EEC, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from that Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

(2) In letters dated 3 August 2004 and 16 December 2004 the Republic of Lithuania (hereinafter referred to as Lithuania) sought authorisation to introduce a measure derogating from the provisions of Directive 77/388/EEC governing the taxable amount for value added tax (VAT) purposes.

(3) In accordance with Article 27(2) of Directive 77/388/EEC, the Commission informed the other Member States of the request made by Lithuania in a letter dated 7 June 2005. In a letter dated 14 June 2005, the Commission notified Lithuania that it had all the information it considered necessary for appraisal of the request.

(4) Article 11(A)(1)(a) of Directive 77/388/EEC establishes the taxable amount of a supply for VAT purposes to be everything which constitutes the consideration paid for the supply. Article 28e(1) of that Directive governs the taxable amount of intra-Community acquisitions, by reference to Article 11(A).

(5) The measure requiring a derogation is intended to counter tax losses arising from the manipulation of the taxable amount of supplies of goods, services and intra-Community acquisitions subject to VAT where one of the parties does not have a right to full deduction.

(6) The measure should be targeted so that it applies only in cases of VAT avoidance or evasion and only when a number of conditions have been met. The measure is therefore proportionate to the aim pursued.

(7) Similar derogations have been granted to other Member States in order to counter tax avoidance or evasion and have been found to be effective.

(8) Derogations pursuant to Article 27 of Directive 77/388/EEC which counter VAT avoidance linked to the taxable amount of supplies between related parties are included in the Commission proposal of 16 March 2005 for a Directive rationalising some of the derogations pursuant to that Article ⁽²⁾. It is therefore necessary to bring the application period of this derogation to an end when that Directive enters into force.

(9) This derogation will safeguard the amount of VAT due at the final consumption stage and has no negative impact on the Communities' own resources accruing from VAT,

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 11(A)(1)(a) and Article 28e of Directive 77/388/EEC, Lithuania is hereby authorised to provide that the taxable amount of a supply of goods or services or of an intra-Community acquisition of goods shall be the same as the open-market value, as defined in Article 11(A)(1)(d) of the said Directive, in either of the following circumstances:

(a) where the consideration is significantly lower than the open-market value and the recipient of the supply, or in the case of an intra-Community acquisition, the acquirer, does not have a right to full deduction under Article 17 of Directive 77/388/EEC;

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51, 22.2.2006, p. 12).

⁽²⁾ OJ C 125, 24.5.2005, p. 12.

(b) where the consideration is significantly higher than the open-market value and the supplier does not have a right to full deduction under Article 17 of Directive 77/388/EEC.

This measure may only be used in order to prevent tax avoidance or evasion and when the consideration on which the taxable amount would otherwise be based has been influenced by family, management, ownership, financial or legal ties as defined in national legislation. For these purposes, legal ties shall include the formal relationship between employer and employee.

Article 2

The authorisation granted under Article 1 shall expire on the date of entry into force of a Directive rationalising the derogations pursuant to Article 27 of Directive 77/388/EEC which

counter avoidance or evasion of VAT through the valuation of supplies between connected persons, or on 31 December 2009, whichever is the earlier.

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 15 May 2006.

For the Council
The President
U. PLASSNIK

COMMISSION

COMMISSION DECISION

of 24 May 2006

on the national provisions notified by the Czech Republic under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers

(notified under document number C(2006) 2036)

(Only the Czech version is authentic)

(Text with EEA relevance)

(2006/390/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

Whereas:

6. The Commission shall, within six months of the notification approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction to trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a Decision by the Commission within this period the national provisions referred to in paragraphs 4 (...) shall be deemed to have been approved.

I. FACTS

- (1) By letter of the Office of the Permanent Representation of the Czech Republic to the European Union of 1 December 2005, the Czech Government, referring to Article 95(4) of the Treaty, notified to the Commission its national provisions regarding the cadmium content in fertilisers that it deems necessary to maintain after the adoption of Regulation (EC) No 2003/2003 of the European Parliament and the Council of 13 October 2003 relating to fertilisers ⁽¹⁾.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.'

1. ARTICLE 95(4) AND (6) OF THE TREATY

- (2) Article 95(4) and (6) of the Treaty provides:

'4. If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

(...)

2. COMMUNITY LEGISLATION

- (3) Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers ⁽²⁾, as last amended by Directive 98/97/EC ⁽³⁾, laid down the requirements that fertilisers must fulfil in order to be placed on the market with the designation 'EC fertilisers'. Directive 76/116/EEC has been replaced by Regulation (EC) No 2003/2003.
- (4) Annex I to Regulation (EC) No 2003/2003 sets out the type designation and the corresponding requirements, e.g. with respect to its composition, that each EC-designated fertiliser must fulfil. EC-designated fertilisers included in this list are grouped into categories, depending on the content of the primary nutrients, i.e. the elements nitrogen, phosphorus and potassium.

⁽¹⁾ OJ L 304, 21.11.2003, p. 1.

⁽²⁾ OJ L 24, 30.1.1976, p. 21.

⁽³⁾ OJ L 18, 23.1.1999, p. 60.

- (5) The rules governing the composition of fertilisers covered by Regulation (EC) No 2003/2003 do not provide for a limit value for the cadmium content of EC-designated fertilisers.
- (6) Article 5 stipulates that Member States are not permitted on grounds of composition, identification, labelling or packaging, prohibit, restrict or hinder the marketing of fertilisers marked 'EC fertiliser' which comply with the provisions of this Regulation.
- (7) Recital 15 of the Regulation announces that the Commission will address the issue of unintentional cadmium content in mineral fertilisers and will, where appropriate, draw-up a proposal for a Regulation and will present it to the European Parliament and the Council.
- (8) Work is in progress to prepare a Commission proposal on cadmium in fertilisers.

3. NATIONAL DEROGATIONS GRANTED TO AUSTRIA, FINLAND AND SWEDEN

- (9) The environmental concerns caused by cadmium in fertilisers were raised at Community level during the negotiations for the Accession of Austria, Finland and Sweden to the European Union. In their Act of Accession these three countries were granted temporary derogations from Community legislation on fertilisers in order to allow a careful evaluation of the risks from cadmium in fertilisers at Community level.
- (10) On the basis of the conclusions of national risk assessments, the Commission renewed in 2002 the derogations to Austria ⁽⁴⁾, Finland ⁽⁵⁾ and Sweden ⁽⁶⁾ until 31 December 2005. Due to delays in the adoption of Community legislation concerning the content of cadmium in phosphorous fertilisers, the derogations were once again extended in January 2006.

⁽⁴⁾ Commission Decision 2002/366/EC of 15 May 2002 on the national provisions notified by the Republic of Austria under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers (OJ L 132, 17.5.2002, p. 65).

⁽⁵⁾ Commission Decision 2002/398/EC of 24 May 2002 on the national provisions notified by the Republic of Finland under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers (OJ L 138, 28.5.2002, p. 15).

⁽⁶⁾ Commission Decision 2002/399/EC of 24 May 2002 on the national provisions notified by the Kingdom of Sweden under Article 95(4) of the EC Treaty concerning the maximum admissible content of cadmium in fertilisers (OJ L 138, 28.5.2002, p. 24).

- (11) The following provisions are currently in place:

- Article 1 to Commission Decision 2006/349/EC ⁽⁷⁾ allows Austria to prohibit the placing on the national market of phosphorous mineral fertilisers with a cadmium content exceeding 75 mg/kg P₂O₅,
- Article 1 to Commission Decision 2006/348/EC ⁽⁸⁾ allows Finland to prohibit the placing on the national market of phosphorous mineral fertilisers with a cadmium content exceeding 50 mg for each kilogram of phosphorus,
- Finally, Article 1 to Commission Decision 2006/347/EC ⁽⁹⁾ allows Sweden to prohibit the placing on the national market of phosphorous mineral fertilisers with a cadmium content exceeding 100 grams per tonne of phosphorous.

- (12) These derogations shall apply until harmonised measures on cadmium in fertilisers are adopted at EU level.

4. CZECH NATIONAL LEGISLATION

- (13) The national provisions notified by the Czech Republic were introduced by the Fertilisers Act ⁽¹⁰⁾. Article 3, paragraph 2, point (c) stipulates that it is prohibited to place on the national market a fertiliser with a higher content of hazardous substances than that specified in the Decree.
- (14) Decree 474/2000 of 13 December 2000 laying down requirements for fertilisers ⁽¹¹⁾, sets, *inter alia*, the limit value for cadmium in mineral fertilisers. According to Annex I, the cadmium content of phosphorous mineral fertilisers (with 5 % P₂O₅ or more) cannot exceed 50 mg/kg of P₂O₅.
- (15) The Czech Republic acceded to the European Union on 1 May 2004. The Act of Accession does not contain transitional provisions concerning the use and marketing of cadmium in the national territory.

⁽⁷⁾ OJ L 129, 17.5.2006, p. 31.

⁽⁸⁾ OJ L 129, 17.5.2006, p. 25.

⁽⁹⁾ OJ L 129, 17.5.2006, p. 19.

⁽¹⁰⁾ Act 156/1998 of 12 June 1998 on fertilisers, supplementary soil substances, supplementary plant preparations and substrates and on agrochemical testing of agricultural land (Sbírka zákonů České Republiky No 54, 13.7.1998, p. 6709).

⁽¹¹⁾ Sbírka zákonů České Republiky No 137, 20.12.2000, p. 7404.

- (16) Decree 209/2005 of 20 May 2005 amending Decree 474/2000 on establishing the requirements for fertilisers⁽¹²⁾, brings the national provisions in line with Regulation (EC) No 2003/2003. Article 1, paragraph 1 of the Decree, stipulates that the market restriction on cadmium in fertilisers is only applicable to national fertilisers. It does not apply to 'EC-type' fertilisers.

II. PROCEDURE

- (17) By letter of 1 December 2005, the Czech authorities notified the Commission its national provisions on the cadmium content in fertilisers that it intends to maintain after the adoption of Regulation (EC) No 2003/2003.
- (18) By letter of 13 December 2005, the Commission informed the Czech Government that it had received the notification under Article 95(4) of the Treaty and that the six-month period for its examination under Article 95(6) started on 6 December 2005, the day following the day on which the notification was received.
- (19) By letter of 2 February 2006, the Commission informed the other Member States of the notification received from the Czech Republic. The Commission also published a notice regarding the notification in the *Official Journal of the European Union*⁽¹³⁾ in order to inform other interested parties of the national provisions that the Czech Republic intends to maintain as well as the grounds invoked to that effect.

III. ASSESSMENT

1. CONSIDERATION OF ADMISSIBILITY

- (20) Article 95(4) of the Treaty provides that, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.
- (21) The notification submitted by the Czech authorities on 1 December 2005 intends to obtain authorisation to maintain the application of national provisions incompatible with those concerning the composition of EC-denominated fertilisers contained in Regulation (EC) No 2003/2003.

- (22) As already indicated, Article 5 of Regulation (EC) No 2003/2003 prevents Member States from restricting the marketing of EC-denominated fertilisers because of their composition, but the rules governing composition do not set any limit value for cadmium content. This means that pursuant to Article 5, EC-denominated fertilisers complying with the requirements of that Regulation can be placed on the market regardless of their cadmium content.

- (23) In the light of the above mentioned, it is clear that the national provisions notified by the Czech Republic, in so far as they prohibit the placing on the market of EC-denominated phosphorus mineral fertilisers with a cadmium content exceeding 50 mg/kg P₂O₅, are more restrictive than those contained in Regulation (EC) No 2003/2003.

- (24) As indicated above, the Commission has already granted derogations to maintain the national legislation to Austria, Finland and Sweden. Although their Act of Accession already included transitional provisions, the derogations were renewed on the basis of the conclusions of risks assessments provided by the national authorities following a common methodology agreed by the European Commission.

- (25) Article 95(4) requires that the notification of the national provisions be accompanied by a description of the grounds relating to one or more of the major needs referred to in Article 30 or to the protection of the environment or the working environment. The application submitted by the Czech Republic contains the actual wording of the national provisions, together with a study⁽¹⁴⁾ to assess risks resulting from the use of phosphate fertilisers containing cadmium which, in the opinion of the Czech authorities, justify the maintenance of its national provisions. The national risk assessment follows the methodology agreed by the European Commission.

- (26) In the light of the foregoing, the Commission is of the opinion that the notification submitted by the Czech Republic in order to obtain approval for maintaining national provisions derogating from the provisions of Regulation (EC) No 2003/2003 is therefore to be considered admissible under Article 95(4) of the EC Treaty.

⁽¹²⁾ Sbírka zákonů České Republiky No 75, 20.5.2005, p. 3928.

⁽¹³⁾ OJ C 29, 4.2.2006, p. 8.

⁽¹⁴⁾ Čupr, P., Sáníka, M., Holoubek, I.: Study to assess risks to the environment and health resulting from the use of phosphate fertilisers containing cadmium, November 2005; RECETOX Research Centre for Environmental Chemistry and Ecotoxicology, Masaryk University; TOCOEN REPORT No 285. <http://europa.eu.int/comm/enterprise/chemicals/legislation/fertilizers/cadmium/sctee.pdf>

2. ASSESSMENT OF MERITS

- (27) In accordance with Article 95 of the Treaty, the Commission has to ensure that all the conditions enabling a Member State to avail itself of the possibilities of derogation provided for in this article are fulfilled.
- (28) In particular, the Commission has to assess whether the provisions notified by the Member States are justified on grounds of major needs referred to in Article 30 of the Treaty, or relating to the protection of the environment or the working environment.
- (29) In addition, pursuant to Article 95(6) of the Treaty, where it considers that the national provisions are justified, the Commission must check whether or not those national provisions are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.
- (30) The Czech Republic has based its request on the need of protection of human health and the environment. Cadmium in fertilisers is deemed to pose a threat to the environment and human health. In support of its request, the Czech Republic makes reference to the conclusions of a national study, which contains an assessment of the risks posed by cadmium-containing fertilisers.

2.1. JUSTIFICATION ON GROUNDS OF MAJOR NEEDS
REFERRED TO IN ARTICLE 30 OR RELATING TO THE
PROTECTION OF THE ENVIRONMENT OR WORKING
ENVIRONMENT

2.1.1. *General information on cadmium*

- (31) Cadmium is a heavy metal naturally present in the environment, but most emissions of this metal are due to various human activities (production of non-ferrous metals, combustion of fossil fuels, application of fertiliser, etc.).
- (32) A general risk assessment on cadmium metal and cadmium oxide is currently being carried out under Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances⁽¹⁵⁾ with Belgium acting as rapporteur. This risk assessment will address all important uses and emissions of cadmium. At present only a draft report is available for discussions at the technical level.
- (33) From the scientific data available up to now, it can be concluded that cadmium metal and cadmium oxide in

general can be considered to pose serious risks to human health, in particular to kidneys and bones. Furthermore, cadmium oxide has been classified as a carcinogen, category 2. It is also generally agreed that cadmium in fertilisers is by far the most important source of cadmium input to soil and to the food chain. The draft general risk assessment calls for caution as risk to human health can not be excluded for local and regional situations, and that even risk factors that are below 1.0 may not be protective enough for all sections of the general population because of the large variability in food cadmium concentrations, dietary habits and nutritional status.

2.1.2. *Cadmium in fertilisers*

- (34) Cadmium is present in the natural state in the phosphate mineral rocks which are mined for use as raw material to manufacture phosphatic mineral fertilisers. In the finished state, these fertilisers always contain certain amounts of cadmium, depending on the original content of the phosphate rocks.
- (35) Cadmium is regarded as harmful both to the environment and to human health. Phosphate fertilisers have been identified as a major source of cadmium on arable land, where it tends to accumulate over time. Crops tend to absorb cadmium from the soil, and the cadmium content of food, which is the main source of human intake of cadmium, has become an issue of concern for human health. When ingested in food, cadmium tends to accumulate in the kidneys and may eventually lead to kidney dysfunction in vulnerable groups.
- (36) The environmental concerns raised by cadmium in fertilisers were first raised at Community level during the negotiations for the Accession of Austria, Finland and Sweden to the European Union. As indicated above, those three Member States were granted temporary derogations from Community legislation on fertilisers in order to allow a careful evaluation of the risks from cadmium in fertilisers at Community level.
- (37) In this context, the Commission first gathered all available data and information on the exposure situation in the European Community from cadmium in fertilisers. As not enough data were available in all Member States, the Commission mandated two studies to elaborate a methodology and procedures with a view to assessing the risks to health and the environment from cadmium in fertilisers⁽¹⁶⁾. Member States were subsequently invited to carry out nation-wide risk assessments by making use of the above methodology and procedures.

⁽¹⁵⁾ OJ L 84, 5.4.1993, p. 1.

⁽¹⁶⁾ ERM, study on data requirements and programme for data production and gathering to support a future evaluation of the risks to health and the environment for cadmium in fertilisers, March 1999; See also ERM, study to establish a programme of detailed procedures for the assessment of risks to health and the environment from cadmium in fertilisers, February 2000.

- (38) Nine Member States have completed risk assessments concerning cadmium in fertilisers. These risk assessments have been made available to the public since September 2001 on the Commission's web-site ⁽¹⁷⁾. In addition, a separate study which analyses these risk assessments has been published and various options for risk management of cadmium in fertilisers at a Community wide scale have been developed ⁽¹⁸⁾.
- (39) The above national risk assessments were submitted to the Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) ⁽¹⁹⁾ for evaluation. In particular, the CSTEE was asked to indicate what is the highest cadmium concentration in fertilisers that can be tolerated in order to avoid a significant increase in the cadmium content of cultivated soil. The CSTEE concluded that the content of cadmium in fertilisers does need to be limited to prevent accumulation of cadmium in the soil. Accumulation can occur in some soils even when fertilisers containing very low cadmium concentrations and will not be observed in some soils even when using fertilisers with high cadmium levels. However, fertilisers containing less than 20 mg Cd/kg P₂O₅ would, in most soils, not expect to result in long-term soil accumulation, if other Cd inputs are not considered, while fertilisers containing more than 60 mg Cd/kg P₂O₅ would, in most soils, expect to result in long-term soil accumulation. Therefore, a limit for cadmium in phosphate fertilisers should be derived based on a risk assessment approach and taking all cadmium sources into account ⁽²⁰⁾.
- (40) The completion of the general risk assessment on cadmium and cadmium oxide has taken a relatively long time, and there is at present no final EU-wide assessment of risks from cadmium. The final draft of the general risk assessment, dated March 2005, endorses the opinion of the CSTEE concerning the accumulation of cadmium in soil. Although it states that the contribution from cadmium in fertilisers may not by itself be sufficient to cause a severe and immediate risk to human health or to the environment, caution is needed, as the risk to human health cannot be excluded for all local and regional situations because of the large variability in food cadmium concentrations, dietary habits and nutritional status.
- (41) Pending finalisation of the general risk assessment on cadmium and cadmium oxide as well as the potential follow-up work on risk reduction measures, the

Commission proposal on cadmium in fertilisers has been subject to some delays.

2.1.3. *The risk assessment carried out by the Czech Republic*

- (42) In support of the request for a limit on cadmium in phosphate fertilisers the Czech authorities have submitted a national risk assessment. The framework used for conducting its risk assessment is built around three modules:

2.1.3.1. *The accumulation module*

- (43) According to this module, the net accumulation of cadmium in soil and soil solution (or pore water) ⁽²¹⁾, resulting from the application of fertilisers, is computed over time at steady state. The accumulation module allows for a range of inputs, for example average and extreme rates of application. The Czech risk assessment shows that with this module the following parameters have been considered:

- the present day cadmium concentration in soil,
- the cadmium input rate (due to mineral fertilisers but also to atmospheric deposition, soil conditioning preparations, sewage sludge and weathering of parent rock),
- the cadmium up-take rate concerning plants,
- the cadmium leaching rate, depending on the annual precipitation excess and the concentration of cadmium in the pore water leachate,
- the concentration of cadmium in the soil and leaching rates at present and after one hundred years for three scenarios: current conditions, conditions of increased fertiliser application rates and conditions of increased fertiliser cadmium content.

2.1.3.2. *The exposure module*

- (44) According to this module, the uptake of cadmium from soil into cultivated plants and the subsequent intake of cadmium by humans are computed, using exposure parameters characterising both current and extreme exposure scenarios.

⁽¹⁷⁾ http://europa.eu.int/comm/enterprise/chemicals/legislation/fertilizers/cadmium/reports_en.htm

⁽¹⁸⁾ ERM, analysis and conclusions from Member States' assessment of the risk to health and the environment from Cadmium in fertilisers, October 2001.

⁽¹⁹⁾ Renamed SCHER (Scientific Committee on Health and Environmental Risks).

⁽²⁰⁾ CSTEE's opinion on Member State assessments of the risk to health and the environment from cadmium in fertilisers. Opinion expressed at the 33rd CSTEE Plenary meeting, Brussels, 24 September 2002. <http://europa.eu.int/comm/enterprise/chemicals/legislation/fertilizers/cadmium/sctee.pdf>

⁽²¹⁾ Pore water means that part of the water contained in the soil which is maintained by capillarity between the solid particles of the soil.

2.1.3.3. The risk characterisation module

- (45) This module allows the Czech Republic to estimate the incidence and severity of the adverse effects likely to occur due to actual or predicted exposure to cadmium. Calculations are performed for three scenarios and four PNEC⁽²²⁾ values.

2.1.4. The results of the risk assessment

- (46) The application of the modules has produced hazard indices (PEC/PNEC ratios)⁽²³⁾ in the range of 0,1-1,19, with a realistic worst-case value of 0,93 highlighted as justification for national restrictions, provided that the cadmium content in phosphorous mineral fertilisers does not exceed 50 mg/kg P₂O₅.

2.1.5. Evaluation of the position of the Czech Republic

- (47) The risk-assessment submitted by the Czech authorities has been carried out according to the procedures and the methodology established at Community level, which are considered to ensure a high degree of reliability of the information obtained.
- (48) Given that the value proposed by the Czech Republic to justify the maintenance of national measures is to a PEC/PNEC ratio close to 1, it was deemed appropriate to submit the risk-assessment to the Commission's Scientific Committee on Health and Environmental Risks (SCHER) for a careful evaluation.
- (49) In particular, the SCHER has been requested to:

- Assess the overall scientific quality of the Czech report and identify any major deficiencies.
- Comment on the appropriateness of the scenarios studied and on the conclusions concerning the accumulation of cadmium in the soil.

⁽²²⁾ PNEC: Predictable No-Effect Concentration.

⁽²³⁾ The risk-assessment methodology, outlined in Commission Regulation (EC) No 1488/94 and further detailed in the Technical Guidance Document on risk assessment for new and existing substances, consists in calculating the ratios between the Predicted Environmental Concentration (PEC) of a given substance and the Predicted No-Effect Concentration (PNEC) of that substance in any specific environmental compartment. Risk is quantified by the PEC/PNEC ratio, a quantity referred to in the Czech report as the hazard index. A PEC/PNEC ratio below 1 indicates no risk to the environment, whereas a ratio of 1 or greater indicates a situation of real or potential risk; the larger the value, the greater the magnitude of the effect. Proportionate risk management measures are indicated in cases where the PEC/PNEC ratio is greater than 1.

- Comment on whether the reported PEC/PNEC ratio of 0,93 is the most appropriate value to describe the risk to human health and the environment.

- (50) The evaluation of the position of the Czech Republic is therefore deferred until the Commission receives the opinion of the scientific committee.

2.2. RECOURSE TO ARTICLE 95(6), THIRD SUBPARAGRAPH, OF THE TREATY

- (51) After a careful examination of these data, the Commission considers that the conditions laid down in Article 95(6), third subparagraph, are met in order for it to have recourse to the possibility of extending the six-month period within which it has to approve or reject the national provisions provided for by that Article.

2.2.1. Justification based on the complexity of the matter

- (52) In view of the study submitted by the Czech authorities, which concludes that the PEC/PNEC ratio is very close to 1, an examination by the SCHER is necessary in order to clarify whether there is indeed a risk to the environment and human health. The Commission's scientific committee was consulted in the past when Austria, Finland and Sweden submitted similar studies in support of their request for a national derogation. The Commission Decision under Article 95(6), first subparagraph, should therefore await the outcome of this review. In these circumstances, the Commission considers that it is justified to extend the six-month period within which it has to approve or reject the national provisions for a further period in order to allow for a careful evaluation and opinion by the scientific committee and for corresponding conclusions to be drawn as regards the national provisions. To this end, a period expiring on 6 December 2006 is necessary.

2.2.2. Absence of danger to human health

- (53) On the basis of the assumptions and scenarios used, the Czech report concludes that there is currently no risk to human health resulting from the use of cadmium in fertilisers.
- (54) The permitted tolerable weekly intake (PTWI) of cadmium set by the WHO (World Health Organisation) is of 7 µg/kg/week. This limit is equivalent to 60 µg/day for an individual with an average weight of 60 kg. In the Czech Republic, the average daily cadmium intake by an adult was estimated at 12-27 µg/day in 2000, depending on the scenario envisaged, which amounts to approximately 19 %-45 % of the WHO limit.

- (55) In the human risk characterisation module provided by the Czech authorities, the intakes of cadmium identified in different scenarios were compared with the limit values recommended by the WHO. The result is the so-called margin of safety (MOS). When the margin of safety exceeds 1, the examined situation can be considered as a source of potential health risk for an exposed person. Under the assumptions and with the methodology used in the Czech report, which is being scrutinised by the Scientific Committee, the limit MOS ratio of 1 was not exceeded in any of the exposure scenarios, including the upper-bound scenario studied, i.e. assuming that 100 % of supplied food originates from fertiliser-applied areas and that the cadmium content is at the level of 90 mg/kg P₂O₅.

IV. CONCLUSION

- (56) In the light of the foregoing, the Commission concludes that the application that the Czech Republic notified to it on 1 December 2005 with a view to obtaining approval of its national provisions on the limit of the cadmium content in fertilisers is admissible.
- (57) However, in view of the complexity of the matter and of the absence of evidence highlighting a danger for human health, the Commission considers it justified to extend

the period referred to in Article 95(6), first subparagraph, for a further period expiring on 6 December 2006,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant Article 95(6), third subparagraph, of the Treaty, the period referred to in the first subparagraph of the said Article to approve or reject the national provisions on cadmium in fertilisers notified by the Czech Republic on 1 December 2005 pursuant to Article 95(4) is extended until 6 December 2006.

Article 2

This Decision is addressed to the Czech Republic.

Done at Brussels, 24 May 2006.

For the Commission

Günter VERHEUGEN

Vice-President

COMMISSION DECISION

of 30 May 2006

amending Decision 2006/346/EC concerning certain protection measures relating to classical swine fever in Germany

(notified under document number C(2006) 2058)

(Text with EEA relevance)

(2006/391/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽¹⁾, and in particular Article 10(4) thereof,

Having regard to Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽²⁾ and in particular Article 11(1)(f) thereof,

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption ⁽³⁾, and in particular the first subparagraph of Article 4(3) thereof,

Whereas:

- (1) Following outbreaks of classical swine fever in Germany, protection and surveillance zones were immediately established around outbreak sites in Germany in accordance with Article 9(1) of Directive 2001/89/EC.
- (2) In addition, Commission Decision 2006/346/EC of 15 May 2006 concerning certain protection measures relating to classical swine fever in Germany and repealing Decision 2006/274/EC ⁽⁴⁾ was adopted in order to maintain and extend the measures taken by Germany pursuant to Directive 2001/89/EC.
- (3) The provisions for the use of a health marking on fresh meat are laid down in Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended

for human consumption ⁽⁵⁾. However, pursuant to Council Directive 2001/89/EC, that health mark may not be used for marking the fresh meat from pigs originating from a holding located in a surveillance zone.

- (4) Pursuant to Article 4(3) of Directive 2002/99/EC, Germany has submitted a request for a derogation concerning the health marking provided for in Directive 2001/89/EC and the use of pigmeat from pigs kept on holdings situated in the surveillance zones established in the federal state of North Rhine-Westphalia and slaughtered, subject to a specific authorisation issued by the competent authority.
- (5) Based on the epidemiological situation as regards classical swine fever in the federal state of North Rhine-Westphalia and the pattern of the earlier spread of the disease, the risk of the spread of that disease should not be affected by applying the health marking, laid down in Regulation (EC) No 854/2004, on fresh meat from pigs from a surveillance zone located in certain areas of North Rhine-Westphalia in accordance with the conditions and testing of the pigs laid down in this Decision. It may also be considered that protection from the risk of the spread of that disease should not be affected by marketing the fresh meat without further processing or treatment under those conditions.
- (6) Based on the information provided by Germany, it is appropriate to review protective measures relating to classical swine fever in Germany as regards the duration of the measures in the protection and surveillance zones established around an outbreak site pursuant to Directive 2001/89/EC.
- (7) It is also necessary to reintroduce the prohibition for Member States to send pigs to slaughterhouses in the areas of North Rhine-Westphalia in Germany where outbreaks of classical swine fever were notified that was revoked by Decision 2006/346/EC.
- (8) Decision 2006/346/EC should therefore be amended accordingly.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

⁽¹⁾ OJ L 224, 18.8.1990, p. 29. Directive as last amended by Directive 2002/33/EC of the European Parliament and of the Council (OJ L 315, 19.11.2002, p. 14).

⁽²⁾ OJ L 316, 1.12.2001, p. 5. Directive as amended by the 2003 Act of Accession.

⁽³⁾ OJ L 18, 23.1.2003, p. 11.

⁽⁴⁾ OJ L 128, 16.5.2006, p. 10.

⁽⁵⁾ OJ L 155, 30.4.2004, p. 206; corrected version (OJ L 226, 25.6.2004, p. 83). Regulation as last amended by Regulation (EC) No 2076/2005 (OJ L 338, 22.12.2005, p. 83).

HAS ADOPTED THIS DECISION:

Article 1

Decision 2006/346/EC is amended as follows:

1. Article 1 is replaced by the following:

'Article 1

Germany shall ensure that no pigs are dispatched to other Member States and to third countries from:

- (a) the areas listed in Annex I;
- (b) holdings on its territory located outside the areas listed in Annex I that have received pigs since 15 January 2006 from a holding located in North Rhine-Westphalia.'

2. The following Article 3a is inserted:

'Article 3a

1. By way of derogation from the fourth indent of Article 10(3)(f) of Directive 2001/89/EC, Germany is authorised, for pigmeat obtained from pigs in accordance with paragraph 2 of this Article:

- (a) to apply the health marking laid down in Article 5(1) of Regulation (EC) No 854/2004;
- (b) not to submit the fresh meat to a subsequent treatment in accordance with the rules laid down in Article 4(1) of Directive 2002/99/EC.

2. Without prejudice to the measures provided for in Directive 2001/89/EC and in particular Article 11(1)(f) and Article 11(2) of that Directive, where Germany applies the derogation provided for in paragraph 1 of this Article, the pigmeat shall be obtained from pigs which have been slaughtered within 12 hours of arrival at the slaughterhouse and which originate from:

- (a) a surveillance zone established in the areas listed in Annex I(A) to this Decision, in accordance with Article 9(1) of Directive 2001/89/EC and around a protection zone where:
 - (i) no outbreak of classical swine fever has been detected during a period of 21 days prior to the movement of the pigs to the slaughterhouse and where at least 21 days have elapsed following the

completion of the preliminary cleaning and disinfection of the infected holdings;

- (ii) clinical examinations for classical swine fever have been carried out in all holdings in those protection and surveillance zones following the detection of classical swine fever, with negative results;

(b) a holding:

- (i) which has been authorised by the competent authority to remove pigs to a designated slaughterhouse;
- (ii) which has had no contact with an infected holding, following the epidemiological inquiry;
- (iii) which has been subject to regular inspections by a veterinarian following the establishment of the surveillance zone and that inspection has included all pigs kept on the holding;
- (iv) where all pigs have been submitted to clinical and laboratory examinations in accordance with paragraphs 1, 3, 4 and 5 of Chapter IV(D) of the Annex to Decision 2002/106/EC.

3. Germany shall ensure that the slaughterhouse designated in application of paragraphs 1 and 2:

- (a) is located within the areas listed in Annex I(A);
- (b) does not on the same day, accept pigs for slaughter, other than the pigs referred to in paragraphs 1 and 2.

4. Germany shall ensure that the vehicles used for the transport of the pigs referred to in paragraph 2 are cleaned and disinfected twice after each transport.'

3. The following Article 4a is inserted:

'Article 4a

1. Germany shall ensure that for pigmeat referred to in Article 3a of this Decision:

- (a) a certificate is issued in accordance with the Annex to Commission Regulation (EC) No 599/2004 and completed by the official veterinarian with the animal health attestation as set out in Annex III to this Decision;
- (b) it must be accompanied by the certificate referred to in paragraph (a).

2. Germany shall ensure that the Commission and the Member States are provided with the following information concerning the pigs referred to in Article 3a:

- (a) before the slaughtering of the pigs, the name and location of the slaughterhouses designated to receive the pigs for slaughter;
- (b) after the slaughtering of the pigs, on a weekly basis, a report which contains information on:
 - (i) the number of the pigs slaughtered at the designated slaughterhouses;
 - (ii) the identification system and movement controls applied to slaughter the pigs, as required in accordance with Article 11(1)(f) of Directive 2001/89/EC.

4. Article 5 is replaced by the following:

'Article 5

1. Germany shall ensure that:

- (a) in the areas listed in Annex I(A), at least the services provided by persons in direct contact with pigs or requiring entrance to the housing areas for pigs and the use of vehicles for transport of pigs and vehicles for transport of feed, manure or dead animals to and from pig holdings, are limited to those areas and are not shared with other parts of the Community;
- (b) if the areas listed in Annex I(A) are divided in defined risk-based zones the provisions of paragraph (a) are limited to these zones;
- (c) the persons and vehicles referred to in point (a) may provide services outside the areas listed in Annex I(A) or the risk-based zones following the thorough cleansing and disinfection of the vehicles, equipment and any other fomite and a minimum absence of any contact with pigs or pig holdings of at least three days; contact in connection with transport carried out pursuant to Article 2(2)(a) are deemed to have taken place within that defined zone or those defined zones;
- (d) without prejudice to the measures taken in the framework of Directive 2001/89/EC, as soon as

possible pig holdings situated in the protection zone of a confirmed outbreak in the municipality of Borken in North Rhine-Westphalia are preventively emptied from all pigs;

- (e) in the areas listed in Annex I(A) surveillance measures are carried out in accordance with the principles set out in Annex II;
- (f) the measures in case of suspicion of the presence of classical swine fever in pigs on a holding are applied as necessary, in accordance with Article 4(3)(a) of Directive 2001/89/EC;
- (g) an appropriate information campaign is addressed to pig farmers.

2. The measures referred to in paragraph 1(d) of this Article shall be taken without prejudice to Decision 90/424/EEC.'

5. The following Article 5a is inserted:

'Article 5a

Without prejudice to the measures provided for in Directive 2001/89/EC and in particular Articles 10(4) and 11(3) thereof, Germany shall ensure that in the areas listed in Annex I(A):

- (a) the measures in the protection and surveillance zones continue to apply until at least 40 days have elapsed following the completion of preliminary cleaning and disinfection measures on the infected holdings;
- (b) pigs on all holdings in the surveillance zones have, in addition to the examinations referred to in Article 11(3)(b) of Directive 2001/89/EC and before the measures provided for in Directive 2001/89/EC are withdrawn in the surveillance zone, undergone clinical and laboratory examinations carried out in accordance with Chapter IV(F) of the Annex to Decision 2002/106/EC; those examinations must not take place before 30 days have elapsed following the completion of preliminary cleaning and disinfection measures on the infected holdings.'

6. Article 6 is replaced by the following:

'Article 6

Member States, other than Germany, shall ensure that:

- (a) no pigs are sent to holdings and slaughterhouses in the areas listed in Annex I(A);
- (b) within their territory, persons and vehicles referred to in point (a) of Article 5(1) comply with the restrictions set out in that point and only provide services in accordance with point (c) of that Article.'

7. Annex II to Decision 2006/346/EC is replaced by the text in the Annex I to this Decision.

8. The text in the Annex II to this Decision is added as Annex III.

Article 2

The Member States shall amend the measures they apply to trade so as to bring them into compliance with this Decision and they shall give immediate appropriate publicity to the measures adopted. They shall immediately inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 30 May 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

*ANNEX I**'ANNEX II*

In accordance with Article 5(1)(e), Germany shall ensure that in the areas listed in Annex I the following surveillance measures are implemented:

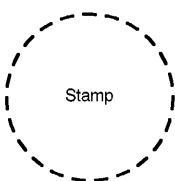
- (a) any case of a contagious disease in pig holdings for which a treatment with antibiotic or other antibacterial drugs is indicated, shall be reported to the competent veterinary authorities without delay and before treatment is commenced,
 - (b) in the pig holdings referred to in (a), the clinical examinations and sampling procedures laid down in Chapter IV(A) of the Annex to Commission Decision 2002/106/EC are carried out by a veterinarian without delay.'
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ANNEX II

ANNEX III

EUROPEAN COMMUNITY

Fresh meat restricted area

Part II: Certification	II. Health information	II.a. Certificate reference number	II.b. Local reference number
	I, the undersigned official veterinarian, certify that the meat described above Animal health attestation: was obtained in a slaughterhouse (name), from pigs situated in a restricted region or area of (name of Member State) due to (name of the disease) according to the Decision (number) and conforms to the requirement of Article(s) of this Decision.		
Official veterinarian or official inspector Name (in Capital): Qualification and title: Local Veterinary Unit: No of the related LVU: Date:  Stamp Signature			