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I

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

REGULATIONS

COMMISSION REGULATION (EC) No 449/2009**of 29 May 2009****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 30 May 2009.

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

Done at Brussels, 29 May 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	69,6
	MA	75,3
	MK	47,9
	TN	105,3
	TR	54,8
	ZZ	70,6
0707 00 05	JO	151,2
	MK	23,0
	TR	117,1
	ZZ	97,1
0709 90 70	JO	216,7
	TR	118,8
	ZZ	167,8
0805 10 20	EG	44,7
	IL	57,2
	MA	48,2
	TN	108,2
	TR	67,5
	US	55,6
	ZA	66,7
	ZZ	64,0
0805 50 10	AR	50,1
	TR	51,3
	ZA	48,6
	ZZ	50,0
0808 10 80	AR	68,3
	BR	74,6
	CL	76,3
	CN	85,3
	NZ	104,5
	US	100,3
	UY	71,7
	ZA	81,9
	ZZ	82,9
0809 20 95	US	272,9
	ZZ	272,9

⁽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'.

COMMISSION REGULATION (EC) No 450/2009**of 29 May 2009****on active and intelligent materials and articles intended to come into contact with food****(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 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC ⁽¹⁾, and in particular Article 5(1) (h), (i), (l), (m) and (n) thereof,

After consulting the European Food Safety Authority,

Whereas:

- (1) Regulation (EC) No 1935/2004 establishes that active and intelligent food contact materials and articles (active and intelligent materials and articles) are included in its field of application and, therefore, all its provisions concerning materials and articles intended to come into contact with food (food contact materials) also apply to these materials and articles. Other Community measures, such as those provided for in Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety ⁽²⁾ and its implementing measures, and Council Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of the consumers ⁽³⁾, also apply, where appropriate, to such materials and articles.
- (2) Regulation (EC) No 1935/2004 lays down the general principles for eliminating the differences between the laws of the Member States as regards food contact materials. Article 5(1) of that Regulation provides for the adoption of specific measures for groups of materials and articles and describes in detail the procedure for the authorisation of substances at Community level when a specific measure provides for a list of authorised substances.
- (3) Certain rules applicable to active and intelligent materials and articles are set out in Regulation (EC) No 1935/2004. These include rules for released active

substances that have to comply with Community and national provisions applicable to food and labelling rules. Specific rules should be laid down in a specific measure.

- (4) This Regulation is a specific measure within the meaning of Article 5(1)(b) of Regulation (EC) No 1935/2004. This Regulation should establish the specific rules for active and intelligent materials and articles to be applied in addition to the general requirements established in Regulation (EC) No 1935/2004 for their safe use.
- (5) Many different types of active and intelligent materials and articles exist. The substances responsible for the active and/or intelligent function can be contained in a separate container, for example, inclusion in a small paper sachet or, the substances can be directly incorporated into the packaging material, for example, incorporation in the plastic of a plastic bottle. Those substances, responsible for creating the active and/or intelligent function of those materials and articles (the components) should be evaluated in accordance with this Regulation. The passive parts, such as the container, the packaging into which that container is placed and the packaging material, in which the substance is incorporated, should be covered by the specific Community or national provisions applicable to those materials and articles.
- (6) The active and intelligent materials and articles may be composed of one or more layers, or parts of different types of materials, such as plastics, paper and cardboard or coatings and varnishes. Requirements for those materials may be either fully harmonised, or only partially harmonised, or not yet harmonised at Community level. The rules laid down in this Regulation should apply without prejudice to Community or national provisions that regulate such materials.
- (7) The individual substance or, if relevant, the combination of substances which constitute the components should be evaluated to guarantee that they are safe and comply with the requirements laid down in Regulation (EC) No 1935/2004. In some cases, it may be necessary to evaluate and authorise the combination of substances, when the active or intelligent function implies interaction between different substances leading to an enhancement of the function or the generation of new substances responsible for the active and intelligent function.

⁽¹⁾ OJ L 338, 13.11.2004, p. 4.

⁽²⁾ OJ L 11, 15.1.2002, p. 4.

⁽³⁾ OJ L 192, 11.7.1987, p. 49.

- (8) Regulation (EC) No 1935/2004 provides that when specific measures include a list of substances authorised within the Community for use in the manufacture of materials and articles intended to come into contact with food, those substances should undergo a safety assessment prior to their authorisation.
- (9) It is appropriate that the person interested in placing on the market active and intelligent materials and articles or the components thereof, namely the applicant, should submit all the information necessary for the safety assessment of the substance or, if necessary, of the combination of substances which constitutes the component.
- (10) The safety assessment of a substance or of a combination of substances which constitutes the components should be carried out by the European Food Safety Authority (the Authority), after the submission of a valid application, in accordance with Articles 9 and 10 of Regulation (EC) No 1935/2004. In order to inform the applicant of the data to be provided for the safety assessment, the Authority should publish detailed guidelines concerning the preparation and the submission of the application. In order to enable the enforcement of any possible restrictions, it is necessary that the applicant provides an appropriate analytical method for the detection and quantification of the substance. The Authority should evaluate if the analytical method is suitable for the purpose of enforcement of any proposed restriction.
- (11) The safety assessment of a specific substance or of a combination of substances should be followed by a risk management decision as to whether the substance should be included in the Community list of authorised substances that may be used in active and intelligent components (the Community list). That decision should be adopted in accordance with the regulatory procedure referred to in Article 23(2) of Regulation (EC) No 1935/2004 ensuring close cooperation between the Commission and the Member States.
- (12) The Community list should include the identity, conditions of use, restrictions and/or specifications of use of the substance or of a combination of substances and, where necessary, of the component or of the material or of the article in which they are added to or incorporated into. The identity of a substance should include at least the name and, if available and necessary, the CAS numbers, particle size, composition or other specifications.
- (13) Active materials and articles may deliberately incorporate substances, which are intended to be released into food. As these substances are intentionally added to the food, they should only be used under the conditions set out in the relevant Community or national provisions for their use in food. Where the Community or national provisions provide for an authorisation of the substance, the substance and its use should comply with the requirements of the authorisation under the specific legislation on food, such as legislation on food additives. Food additives and enzymes could also be grafted or immobilised on the material and have a technological function on the food. Such applications are covered by legislation on food additives and enzymes and should, therefore, be treated in the same way as released active substances.
- (14) Intelligent packaging systems provide the user with information on the conditions of the food and should not release their constituents into the food. Intelligent systems may be positioned on the outer surface of the package and may be separated from the food by a functional barrier, which is a barrier within food contact materials or articles preventing the migration of substances from behind that barrier into the food. Behind a functional barrier, non-authorised substances may be used, provided they fulfil certain criteria and their migration remains below a given detection limit. Taking into account foods for infants and other particularly susceptible persons, as well as the difficulties of this type of analysis affected by a large analytical tolerance, a maximum level of 0,01 mg/kg in food should be established for the migration of a non-authorised substance through a functional barrier. New technologies that engineer substances in particle size that exhibit chemical and physical properties that significantly differ from those at a larger scale, for example, nanoparticles, should be assessed on a case-by-case basis as regards their risk until more information is known about such new technology. Therefore, they should not be covered by the functional barrier concept.
- (15) The specific Community measure covering the passive part of an active or intelligent material may lay down requirements for the inertness of the material, for example, an overall migration limit applicable to plastic materials. If a releasing active component is incorporated into a food contact material covered by a specific Community measure, there may be a risk of exceeding the overall migration limit due to the release of the active substance. As the active function is not an inherent feature of the passive material, the amount of released active substance should not be calculated in the value of overall migration.
- (16) Article 4(5) of Regulation (EC) No 1935/2004 provides that active and intelligent materials and articles already brought into contact with food are to be adequately labelled to allow identification by the consumer of non-edible parts. Consistency of such information is

indispensable in order to avoid confusion at consumer level. Therefore, active and intelligent materials and articles should be labelled with appropriate words and accompanied, where technically possible, by a symbol, whenever materials and articles or parts of them are perceived as edible.

(17) Article 16 of Regulation (EC) No 1935/2004 provides that materials and articles are to be accompanied by a written declaration of compliance attesting that they comply with the rules applicable to them. In accordance with Article 5(1)(h) and (i) of that Regulation, to strengthen the coordination and responsibility of the suppliers at each stage of the manufacturing process, the responsible persons should document compliance with the relevant rules in a declaration of compliance which is made available to his customer. In addition, at each stage of the manufacturing process, supporting documentation, substantiating the declaration of compliance, should be kept available for the enforcement authorities.

(18) Article 17(1) of Regulation (EC) No 178/2002 of the European Parliament and of the Council⁽¹⁾ requires food business operators to verify that foods satisfy the relevant requirements of food law. Article 15(1)(e) of Regulation (EC) No 1935/2004 provides that active materials and articles, which are not yet in contact with food when placed on the market, are to be accompanied by information on the permitted use or uses and other relevant information such as the name and maximum quantity of the substances released by the active component so as to enable food business operators who use these materials and articles to comply with any other relevant Community provisions or, in their absence, national provisions applicable to food, including the provisions on food labelling. To this end, subject to the requirement of confidentiality, food business operators should be given access to the relevant information to enable them to ensure that the migration or intentional release from active and intelligent materials and articles to food complies with the specifications and restrictions laid down in Community or national provisions applicable to food.

(19) Since several active and intelligent materials and articles are already on the market in the Member States, provisions should be established to ensure that the transition to a Community authorisation procedure is smooth and does not disturb the existing market for those materials and articles. Sufficient time should be allowed for the applicant to make available the information necessary for the safety assessment of the substance or the combination of substances which constitutes the component. Therefore, an 18 month

period should be allowed, during which time the information on active and intelligent materials and articles should be submitted by the applicants. It should also be possible to submit applications for authorisation of a new substance or of a combination of substances during that 18 month period.

(20) The Authority should evaluate, without delay, all applications for existing as well as new substances which constitute the components for which a valid application was submitted on time and in accordance with the guidelines of the Authority during the initial application phase.

(21) A Community list of authorised substances should be drawn up by the Commission after the completion of the safety assessment of all substances for which a valid application was submitted in accordance with the guidelines of the Authority, during the initial 18 month period. In order to ensure fair and equal conditions for all applicants, this Community list should be drawn up in a single step.

(22) The rules concerning the declaration of compliance and the specific labelling rules should only apply six months after the date of entry into force of this Regulation to give business operators sufficient time to adapt to these new rules.

(23) 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:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes specific requirements for the marketing of active and intelligent materials and articles intended to come into contact with food.

These specific requirements are without prejudice to Community or national provisions applicable to the materials and articles to which active or intelligent components are added or into which they are incorporated.

Article 2

Scope

This Regulation shall apply to active and intelligent materials and articles which are placed on the market within the Community.

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

Article 3

Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'active materials and articles' means materials and articles that are intended to extend the shelf-life or to maintain or improve the condition of packaged food; they are designed to deliberately incorporate components that would release or absorb substances into or from the packaged food or the environment surrounding the food;
- (b) 'intelligent materials and articles' means materials and articles which monitor the condition of packaged food or the environment surrounding the food;
- (c) 'component' means an individual substance or a combination of individual substances which cause the active and/or intelligent function of a material or article, including the products of an *in situ* reaction of those substances; it does not include the passive parts, such as the material they are added to or incorporated into;
- (d) 'functional barrier' means a barrier consisting of one or more layers of food contact materials which ensures that the finished material or article complies with Article 3 of Regulation (EC) No 1935/2004 and with this Regulation;
- (e) 'releasing active materials and articles' are those active materials and articles designed to deliberately incorporate components that would release substances into or onto the packaged food or the environment surrounding the food;
- (f) 'released active substances' are those substances intended to be released from releasing active materials and articles into or onto the packaged food or the environment surrounding the food and fulfilling a purpose in the food.

Article 4

Placing on the market of active and intelligent materials and articles

Active and intelligent materials and articles may only be placed on the market if they:

- (a) are suitable and effective for the intended purpose of use;
- (b) comply with the general requirements set out in Article 3 of Regulation (EC) No 1935/2004;

- (c) comply with the special requirements set out in Article 4 of Regulation (EC) No 1935/2004;
- (d) comply with the labelling requirements set out in Article 15(1)(e) of Regulation (EC) No 1935/2004;
- (e) comply with the composition requirements set out in Chapter II of this Regulation;
- (f) comply with labelling and declaration requirements set out in Chapters III and IV of this Regulation.

CHAPTER II

COMPOSITION

SECTION 1

Community list of authorised substances

Article 5

Community list of substances that may be used in active and intelligent components

1. Only substances which are included in the 'Community list' of authorised substances (hereinafter referred to as the Community list) may be used in components of active and intelligent materials and articles.
2. By way of derogation from paragraph 1, the following substances may be used in components of active and intelligent materials and articles without being included in the Community list:
 - (a) released active substances provided that they comply with the conditions set out in Article 9;
 - (b) substances falling within the scope of Community or national provisions applicable to food, which are added to or incorporated into active materials and articles by techniques such as grafting or immobilisation in order to have a technological effect in the food, provided that they comply with the conditions set out in Article 9;

- (c) substances used in components which are not in direct contact with food or the environment surrounding the food and are separated from the food by a functional barrier provided that they comply with the conditions set out in Article 10 and that they do not fall within either of the following categories:
 - (i) substances classified as 'mutagenic', 'carcinogenic', or 'toxic to reproduction' in accordance with the criteria set out in sections 3.5, 3.6 and 3.7 of Annex I to Regulation (EC) No 1272/2008 of the European Parliament and of the Council ⁽¹⁾;

⁽¹⁾ OJ L 353, 31.12.2008, p. 1.

- (ii) substances deliberately engineered to particle size which exhibit functional physical and chemical properties that significantly differ from those at a larger scale.

Article 6

Conditions for inclusion of substances in the Community list

In order to be included in the Community list, substances which constitute the components of active and intelligent materials and articles must satisfy the requirements of Article 3 and, where they apply, Article 4 of Regulation (EC) No 1935/2004 for the intended condition of use of the active or intelligent material or article.

Article 7

Content of the Community list

The Community list shall specify:

- (a) the identity of the substance(s);
- (b) the function of the substance(s);
- (c) the reference number;
- (d) if necessary, the conditions of use of the substance(s) or component;
- (e) if necessary, restrictions and/or specifications of use of the substance(s);
- (f) if necessary, conditions of use of the material or article to which the substance or component is added or into which it is incorporated.

Article 8

Conditions for the establishment of the Community list

1. The Community list shall be drawn up on the basis of applications made pursuant to Article 9 of Regulation (EC) No 1935/2004.
2. The deadline for submitting applications shall be 18 months following the date of publication of the guidelines of the European Food Safety Authority (the Authority) for the safety assessment of substances used in active and intelligent materials and articles.

The Authority shall publish those guidelines at the latest six months after the date of publication of this Regulation.

3. The Commission shall make available to the public a register which contains all substances for which a valid application has been submitted in accordance with paragraph 2.

4. The Community list shall be adopted by the Commission in accordance with the procedure laid down in Articles 10 and 11 of Regulation (EC) No 1935/2004.

5. Where the Authority requests supplementary information and the applicant fails to provide the additional data within the set time limit, the substance shall not be evaluated by the Authority for inclusion in the Community list as the application cannot be considered a valid application.

6. The Commission shall adopt the Community list after the Authority has delivered its opinion on all substances included in the register for which a valid application has been submitted pursuant to paragraphs 2 and 5.

7. For the addition of new substances to the Community list, the procedure laid down in Articles 9, 10 and 11 of Regulation (EC) No 1935/2004 shall apply.

SECTION 2

Conditions of use for substances not to be included in the Community list

Article 9

Substances referred to in Article 5(2)(a) and (b)

1. Released active substances, as referred to in Article 5(2)(a) of this Regulation and substances added or incorporated by techniques such as grafting or immobilisation, as referred to in Article 5(2)(b) of this Regulation, shall be used in full compliance with the relevant Community and national provisions applicable to food, and shall comply with the provisions of Regulation (EC) No 1935/2004 and, when applicable, its implementing measures.
2. The amount of a released active substance shall not be included in the value of the measured overall migration, in cases where an overall migration limit (OML) is established in a specific Community measure for the food contact material in which the component is incorporated.
3. Without prejudice to Article 4(1) and (3) of Regulation (EC) No 1935/2004, the amount of a released active substance may exceed the specific restriction established for that substance in a specific Community or national measure on the food contact materials in which the component is incorporated provided it complies with the Community provisions applicable to food, or, where no such provisions exist, with the national provisions applicable to food.

Article 10

Substances referred to in Article 5(2)(c)

1. The migration into food of the substances from components which are not in direct contact with food or the environment surrounding the food, as referred to in Article 5(2)(c) of this Regulation, shall not exceed 0,01 mg/kg, measured with statistical certainty by a method of analysis in accordance with Article 11 of Regulation (EC) No 882/2004 of the European Parliament and of the Council ⁽¹⁾.

2. The limit provided for in paragraph 1 shall always be expressed as a concentration in foods. It shall apply to a group of substances, if they are structurally and toxicologically related, in particular isomers or substances with the same relevant functional group, and shall include possible set-off transfer.

CHAPTER III

LABELLING

Article 11

Additional rules on labelling

1. To allow identification by the consumer of non-edible parts, active and intelligent materials and articles or parts thereof shall be labelled, whenever they are perceived as edible:

(a) with the words 'DO NOT EAT'; and

(b) always where technically possible, with the symbol reproduced in Annex I.

2. The information required by paragraph 1 shall be conspicuous, clearly legible and indelible. It shall be printed in characters of a font size of at least 3 mm and comply with the requirements set out in Article 15 of Regulation (EC) No 1935/2004.

3. Released active substance shall be considered as ingredients within the meaning of Article 6(4)(a) of Directive 2000/13/EC of the European Parliament and of the Council ⁽²⁾ and shall be subject to the provisions of that Directive.

CHAPTER IV

DECLARATION OF COMPLIANCE AND DOCUMENTATION

Article 12

Declaration of compliance

1. At the marketing stages other than at the point of sale to the final consumer, active and intelligent materials and articles, whether or not they are in contact with food, or the components intended for the manufacturing of those

materials and articles or the substances intended for the manufacturing of those components, shall be accompanied by a written declaration in accordance with Article 16 of Regulation (EC) No 1935/2004.

2. The declaration referred to in paragraph 1 shall be issued by the business operator and shall contain the information set out in Annex II.

Article 13

Supporting documentation

Appropriate documentation to demonstrate that the active and intelligent materials and articles and the components intended for the manufacturing of those materials and articles comply with the requirements of this Regulation shall be made available by the business operator to the national competent authorities on request.

That documentation shall contain information on the suitability and effectiveness of the active or intelligent material or article, the conditions and results of testing or calculations or other analysis, and evidence on the safety or the reasoning demonstrating compliance.

CHAPTER V

FINAL PROVISIONS

Article 14

Entry into force and application

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

Article 4(e), and Article 5 shall apply from the date of application of the Community list. Until that date, and without prejudice to the requirements set out in Article 4(2) of Regulation (EC) No 1935/2004 and Articles 9 and 10 of this Regulation, national provisions in force concerning the composition of active and intelligent materials and articles shall continue to apply.

Article 4(f), Article 11(1) and (2) and Chapter IV shall apply from 19 December 2009. Until that date, and without prejudice to the requirements set out in Article 4(5) and (6) of Regulation (EC) No 1935/2004 and Article 11(3) of this Regulation, national provisions in force concerning the labelling and declaration of compliance of active and intelligent materials and articles shall continue to apply.

The placing on the market of active and intelligent materials and articles labelled in accordance with Article 4(5) of Regulation (EC) No 1935/2004 prior to the date of application of Article 11(1) and (2) of this Regulation shall be permitted until the exhaustion of stocks.

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.

⁽²⁾ OJ L 109, 6.5.2000, p. 29.

Until the date of application of the Community list, released active substances shall be authorised and used in accordance with the relevant Community provisions applicable to food, and shall comply with the provisions of Regulation (EC) No 1935/2004 and its implementing measures.

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

Done at Brussels, 29 May 2009.

For the Commission
Androulla VASSILIOU
Member of the Commission

ANNEX I

SYMBOL



ANNEX II

DECLARATION OF COMPLIANCE

The written declaration referred to in Article 12 shall contain the following information:

1. the identity and address of the business operator which issues the declaration of compliance;
2. the identity and address of the business operator which manufactures or imports the active and intelligent materials and articles, or the components intended for the manufacturing of those materials and articles, or the substances intended for the manufacturing of the components;
3. the identity of the active and intelligent materials and articles or the components intended for the manufacturing of those materials and articles, or the substances intended for the manufacturing of the components;
4. the date of the declaration;
5. the confirmation that the active or intelligent material or article complies with the relevant requirements laid down in this Regulation, Regulation (EC) No 1935/2004, and in specific Community measures applicable;
6. adequate information relative to the substances which constitute the components, for which restrictions are in place under the Community or national provisions applicable to food and this Regulation; where appropriate, specific purity criteria in accordance with the relevant Community legislation applicable to food and, the name and quantity of the substances released by the active component, to allow the downstream business operators to ensure compliance with those restrictions;
7. adequate information on the suitability and effectiveness of the active or intelligent material or article;
8. specifications on the use of the component, such as:
 - (i) the group or groups of materials and articles in which the component may be added to or incorporated into;
 - (ii) the conditions of use necessary to achieving the intended effect;
9. specifications on the use of the material or article, such as:
 - (i) the type or types of food intended to be put in contact with it;
 - (ii) the time and temperature of treatment and storage in contact with the food;
 - (iii) the ratio of food contact surface area to volume used to establish the compliance of the material or article;
10. when a functional barrier is used, the confirmation that the active or intelligent material or article complies with Article 10 of this Regulation.

The written declaration shall permit an easy identification of the active and intelligent materials and articles or the component or the substance for which it is issued and shall be renewed when substantial changes in the production bring about changes in the migration or when new scientific data are available.

COMMISSION REGULATION (EC) No 451/2009

of 29 May 2009

amending Regulation (EC) No 883/2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the keeping of accounts by the paying agencies, declarations of expenditure and revenue and the conditions for reimbursing expenditure under the EAGF and the EAFRD

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽¹⁾, and in particular Article 42 thereof,

Whereas:

(1) Deadlines for payments of aid to beneficiaries laid down in Community agricultural legislation must be respected by the Member States. Article 16 of Regulation (EC) No 1290/2005 provides that any overrun of those payment deadlines by the paying agencies shall make the payments ineligible for Community financing, except in cases, conditions and limits determined, according to the principle of proportionality.

(2) Pursuant to Article 9 of Commission Regulation (EC) No 883/2006 ⁽²⁾ where the expenditure effected after the deadlines is equal to 4 % or less of the expenditure effected before the deadlines, no reduction should be made.

(3) The Commission presented a declaration at the meeting of the Special Committee on Agriculture on 6 October 2008 ⁽³⁾ on the increase from 4 % to 5 % of the threshold provided for in Article 9 of Regulation (EC) No 883/2006. It is therefore appropriate to increase the threshold for eligible late payments. The new threshold should apply where the payment deadline expires after 15 October 2009.

(4) Article 8(1) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 ⁽⁴⁾ provides that the total net amount of direct payments granted in a Member State in respect of a calendar year, after application of modulation and voluntary modulation and

without prejudice to financial discipline with the exception of direct payment granted under Council Regulations (EC) No 247/2006 ⁽⁵⁾ and (EC) No 1405/2006 ⁽⁶⁾, shall not be higher than the ceilings set out in Annex IV to Regulation (EC) No 73/2009. In order to ensure financial discipline, specific provisions should be laid down to avoid that non-compliance with payment deadlines would lead to total expenditure for direct payments exceeding those ceilings in the corresponding financial exercise.

(5) Furthermore, in line with current practice and in order to ensure transparency, certain provisions should be further clarified.

(6) Regulation (EC) No 883/2006 should therefore be amended accordingly.

(7) The amendments should apply from 16 October 2009 in the case of revenue received and expenditure effected by Member States in respect of 2010 and following financial years.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Agricultural Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 883/2006 is amended as follows:

1. Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Expenditure effected after the payment deadlines shall be eligible for Community financing and monthly payments shall be reduced as follows:

(a) where expenditure effected after the deadlines is equal to 4 % or less of the expenditure effected before the deadlines, no reduction shall be made;

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

⁽²⁾ OJ L 171, 23.6.2006, p. 1.

⁽³⁾ Interinstitutional file: 2008/0103 (CNS).

⁽⁴⁾ OJ L 30, 31.1.2009, p. 16.

⁽⁵⁾ OJ L 42, 14.2.2006, p. 1.

⁽⁶⁾ OJ L 265, 26.9.2006, p. 1.

(b) above the threshold of 4 %, all further expenditure effected late shall be reduced in accordance with the following rules:

- for expenditure effected in the first month following the month in which the payment deadline expired, expenditure shall be reduced by 10 %,
- for expenditure effected in the second month following the month in which the payment deadline expired, expenditure shall be reduced by 25 %,
- for expenditure effected in the third month following the month in which the payment deadline expired, expenditure shall be reduced by 45 %,
- for expenditure effected in the fourth month following the month in which the payment deadline expired, expenditure shall be reduced by 70 %,
- for expenditure effected later than the fourth month following the month in which the payment deadline expired, expenditure shall be reduced by 100 %;

(c) the threshold of 4 % referred to in paragraphs 1(a) and 1(b) shall be 5 % for payments for which the deadlines expire after 15 October 2009¹;

(b) paragraph 2 is replaced by the following:

‘2. By way of derogation from paragraph 1, in the case of the direct payments falling under the net ceiling referred to in Article 8(1) of Council Regulation (EC) No 73/2009 (*) the following conditions shall apply:

- (a) where the threshold referred to in paragraph 1(a) has not been used in full for payments made no later than 15 October of year N + 1 and the remainder of the threshold exceeds 2 %, that remainder shall be reduced to 2 %;
- (b) the total amount of direct payments made within a financial year Y, other than payments in accordance with Council Regulation (EC) No 247/2006 (**) and Council Regulation (EC) No 1405/2006 (***), is only

eligible for Community financing up to the net total amount of direct payments established in respect of the calendar year Y-1 in accordance with Article 8(1) of Regulation (EC) No 73/2009 where applicable corrected by the adjustment provided for in Article 11 of that Regulation;

(c) expenditure exceeding the limits referred to in point (a) or (b) shall be reduced by 100 %.

In the case of Member States for which no net ceiling has been established in accordance with Article 8(1) of Regulation (EC) No 73/2009 the net ceiling referred to in the first subparagraph shall be substituted by the sum of the individual ceilings for direct payments for the Member States concerned.

(*) OJ L 30, 31.1.2009, p. 16.

(**) OJ L 42, 14.2.2006, p. 1.

(***) OJ L 265, 26.9.2006, p. 1.’

(c) in paragraph 3, the second subparagraph is replaced by the following:

‘However, the first subparagraph shall not apply for expenditure exceeding the limit referred to in paragraph 2(b).’

2. In Article 19, paragraph 4 is replaced by the following:

‘4. Amounts withheld in accordance with Articles 3 and 4 of Regulation (EC) No 1259/1999 or Article 1 of Regulation (EC) No 1655/2004 and any interest that they generate which have not been paid in accordance with Article 1 of Commission Regulation (EC) No 963/2001 (*) or Article 3(1) of Regulation (EC) No 1655/2004 shall be credited to EAGF with the expenditure for October of the financial year concerned. Where applicable, the exchange rate to be used shall be that referred to in Article 7(2) of this Regulation.

(*) OJ L 136, 18.5.2001, p. 4.’

Article 2

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

It shall apply from 16 October 2009 in respect of the 2010 and following financial years.

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

Done at Brussels, 29 May 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

COMMISSION REGULATION (EC) No 452/2009**of 29 May 2009****repealing Regulation (EC) No 1898/2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/1999 as regards measures for the disposal of cream, butter and concentrated butter on the Community market**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Articles 43, 101, and 192, in conjunction with Article 4 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1898/2005 ⁽²⁾ laid down detailed rules for the application of the aid scheme for the disposal of the surplus of certain milk products. That scheme, provided for in Article 101 of Regulation (EC) No 1234/2007, is abolished by Council Regulation (EC) No 72/2009 of 19 January 2009 on modifications to the common agricultural policy by amending Regulations (EC) No 247/2006, (EC) No 320/2006, (EC) No 1405/2006, (EC) No 1234/2007, (EC) No 3/2008 and (EC) No 479/2008 and repealing Regulations (EEC) No 1883/78, (EEC) No 1254/89, (EEC) No 2247/89, (EEC) No 2055/93, (EC) No 1868/94, (EC) No 2596/97, (EC) No 1182/2005 and (EC) No 315/2007 ⁽³⁾.
- (2) In this context and with a view to more cost-effective outlets for intervention butter and for reasons of simplification, the provisions on sales from intervention for use in pastry products, ice cream and other foodstuffs should also be abolished.
- (3) Commission Regulation (EC) No 1898/2005 should therefore be repealed.

- (4) Article 101 of Regulation (EC) No 1234/2007 is deleted by Regulation (EC) No 72/2009 from 1 July 2009. Regulation (EC) No 1898/2005 should therefore be repealed from the same date. However, Article 78 of Regulation (EC) No 1898/2005 provides that the butter may be taken over from the 20th day of the month preceding the calendar month indicated on the voucher up to the 10th day of the month following the calendar month indicated thereon. In order to allow operators to make full use of vouchers valid until and including the month of June 2009, Chapter IV of Regulation (EC) No 1898/2005 should continue to apply for those vouchers.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1898/2005 is repealed.

However, Chapter IV of that Regulation shall continue to apply and aid can be paid for deliveries of butter made on the basis of vouchers that are valid until and including the month of June 2009.

Article 2

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

It shall apply from 1 July 2009.

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

Done at Brussels, 29 May 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 308, 25.11.2005, p. 1.

⁽³⁾ OJ L 30, 31.1.2009, p. 1.

COMMISSION REGULATION (EC) No 453/2009**of 29 May 2009****fixing the import duties in the cereals sector applicable from 1 June 2009**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 in respect of import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 136(1) of Regulation (EC) No 1234/2007 states that the import duty on products falling within CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002, ex 1005 other than hybrid seed, and ex 1007 other than hybrids for sowing, is to be equal to the intervention price valid for such products on importation increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

- (2) Article 136(2) of Regulation (EC) No 1234/2007 lays down that, for the purposes of calculating the import duty referred to in paragraph 1 of that Article, representative cif import prices are to be established on a regular basis for the products in question.

- (3) Under Article 2(2) of Regulation (EC) No 1249/96, the price to be used for the calculation of the import duty on products of CN codes 1001 10 00, 1001 90 91, ex 1001 90 99 (high quality common wheat), 1002 00, 1005 10 90, 1005 90 00 and 1007 00 90 is the daily cif representative import price determined as specified in Article 4 of that Regulation.

- (4) Import duties should be fixed for the period from 1 June 2009 and should apply until new import duties are fixed and enter into force,

HAS ADOPTED THIS REGULATION:

Article 1

From 1 June 2009, the import duties in the cereals sector referred to in Article 136(1) of Regulation (EC) No 1234/2007 shall be those fixed in Annex I to this Regulation on the basis of the information contained in Annex II.

Article 2

This Regulation shall enter into force on 1 June 2009.

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

Done at Brussels, 29 May 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 161, 29.6.1996, p. 125.

ANNEX I

Import duties on the products referred to in Article 136(1) of Regulation (EC) No 1234/2007 applicable from 1 June 2009

CN code	Description	Import duties ⁽¹⁾ (EUR/t)
1001 10 00	Durum wheat, high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	High quality common wheat, other than for sowing	0,00
1002 00 00	Rye	43,39
1005 10 90	Maize seed other than hybrid	10,29
1005 90 00	Maize, other than seed ⁽²⁾	10,29
1007 00 90	Grain sorghum other than hybrids for sowing	43,39

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal the importer may benefit, under Article 2(4) of Regulation (EC) No 1249/96, from a reduction in the duty of:

- 3 EUR/t, where the port of unloading is on the Mediterranean Sea, or
- 2 EUR/t, where the port of unloading is in Denmark, Estonia, Ireland, Latvia, Lithuania, Poland, Finland, Sweden, the United Kingdom or the Atlantic coast of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flatrate reduction of EUR 24 per tonne where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating the duties laid down in Annex I

15.5.2009-28.5.2009

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

(EUR/t)

	Common wheat ⁽¹⁾	Maize	Durum wheat, high quality	Durum wheat, medium quality ⁽²⁾	Durum wheat, low quality ⁽³⁾	Barley
Exchange	Minneapolis	Chicago	—	—	—	—
Quotation	211,86	121,76	—	—	—	—
Fob price USA	—	—	210,44	200,44	180,44	100,65
Gulf of Mexico premium	—	11,19	—	—	—	—
Great Lakes premium	11,05	—	—	—	—	—

⁽¹⁾ Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).⁽²⁾ Discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).⁽³⁾ Discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight costs: Gulf of Mexico–Rotterdam: 18,77 EUR/t

Freight costs: Great Lakes–Rotterdam: 17,97 EUR/t

II

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

DECISIONS

COUNCIL

COUNCIL DECISION

of 27 April 2009

on the existence of an excessive deficit in France

(2009/414/EC)

THE COUNCIL OF THE EUROPEAN UNION,

down detailed rules and definitions for the application of the provisions of the said Protocol.

Having regard to the Treaty establishing the European Community, and in particular Article 104(6) thereof,

Having regard to the recommendation from the Commission,

Having regard to the observations made by France,

Whereas:

(1) According to Article 104 of the Treaty Member States are to avoid excessive government deficits.

(2) The Stability and Growth Pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation.

(3) The excessive deficit procedure (EDP) under Article 104, as clarified by Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure⁽¹⁾ (which is part of the Stability and Growth Pact), provides for a decision on the existence of an excessive deficit. The Protocol on the excessive deficit procedure annexed to the Treaty sets out further provisions relating to the implementation of the EDP. Council Regulation (EC) No 3605/93⁽²⁾ lays

(4) The 2005 reform of the Stability and Growth Pact sought to strengthen its effectiveness and economic underpinnings as well as to safeguard the sustainability of the public finances in the long run. It aimed at ensuring that in particular the economic and budgetary background was taken fully into account in all steps in the EDP. In this way, the Stability and Growth Pact provides the framework supporting government policies for a prompt return to sound budgetary positions taking account of the economic situation.

(5) Article 104(5) of the Treaty requires the Commission to address an opinion to the Council if the Commission considers that an excessive deficit in a Member State exists or may occur. Having taken into account its report in accordance with Article 104(3) and having regard to the opinion of the Economic and Financial Committee in accordance with Article 104(4), the Commission concluded that an excessive deficit exists in France. The Commission therefore addressed such an opinion to the Council in respect of France on 24 March 2009⁽³⁾.

(6) Article 104(6) of the Treaty states that the Council should consider any observations which the Member State concerned may wish to make before deciding, after an overall assessment, whether an excessive deficit exists. In the case of France, this overall assessment leads to the following conclusions.

⁽¹⁾ OJ L 209, 2.8.1997, p. 6.

⁽²⁾ OJ L 332, 31.12.1993, p. 7.

⁽³⁾ All EDP-related documents for France can be found at the following website:
http://ec.europa.eu/economy_finance/netstartsearch/pdfsearch/pdf.cfm?mode=_m2

- (7) According to the data notified by the French authorities on 6 February 2009, the general government deficit in France reached 3,2 % of GDP in 2008 ⁽¹⁾, thus exceeding the 3 % of GDP reference value. The Commission report under Article 104(3) considers that the deficit was close to the 3 % of GDP reference value but that the excess over the reference value cannot be qualified as exceptional within the meaning of the Treaty and the Stability and Growth Pact with GDP growth estimated to have attained 0,7 % of GDP in 2008, after 2,2 % in 2007. The excess over the reference value cannot be considered temporary. According to the Commission services January 2009 interim forecast, the general government deficit is forecast to reach 5,4 % of GDP in 2009 and, on a no-policy change basis, to decline only slightly to 5 % in 2010 as the budgetary impact of the recovery plan is phased out. Therefore the deficit criterion in the Treaty is not fulfilled.
- (8) According to Article 2(4) of Regulation (EC) No 1467/97, 'relevant factors' can only be taken into account in the steps leading to the Council decision on the existence of an excessive deficit in accordance with Article 104(6) if the double condition – that the deficit remains close to the reference value and that its excess

over the reference value is temporary – is fully met. In the case of France, this double condition is not met. Therefore, relevant factors are not taken into account in the steps leading to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

From an overall assessment it follows that an excessive deficit exists in France.

Article 2

This Decision is addressed to the French Republic.

Done at Luxembourg, 27 April 2009.

For the Council
The President
A. VONDRA

⁽¹⁾ The Government announced on 4 March that the deficit would reach 3,4 % of GDP in 2008. This estimate is not final.

COUNCIL DECISION
of 27 April 2009
on the existence of an excessive deficit in Greece
(2009/415/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104(6) thereof,

Having regard to the recommendation from the Commission,

Having regard to the observations made by Greece,

Whereas:

- (1) According to Article 104 of the Treaty Member States are to avoid excessive government deficits.
- (2) The Stability and Growth Pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation.
- (3) The excessive deficit procedure (EDP) under Article 104, as clarified by Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure⁽¹⁾ (which is part of the Stability and Growth Pact), provides for a decision on the existence of an excessive deficit. The Protocol on the excessive deficit procedure annexed to the Treaty sets out further provisions relating to the implementation of the EDP. Council Regulation (EC) No 3605/93⁽²⁾ lays down detailed rules and definitions for the application of the provisions of the said Protocol.
- (4) The 2005 reform of the Stability and Growth Pact sought to strengthen its effectiveness and economic underpinnings as well as to safeguard the sustainability of the public finances in the long run. It aimed at ensuring that in particular the economic and budgetary background was taken fully into account in all steps in the EDP. In this way, the Stability and Growth Pact provides the framework supporting government policies for a prompt return to sound budgetary positions taking account of the economic situation.
- (5) Article 104(5) of the Treaty requires the Commission to address an opinion to the Council if the Commission considers that an excessive deficit in a Member State exists or may occur. Having taken into account its report in accordance with Article 104(3) and having regard to the opinion of the Economic and Financial Committee in accordance with Article 104(4), the Commission concluded that an excessive deficit exists in Greece. The Commission therefore addressed such an opinion to the Council in respect of Greece on 24 March 2009⁽³⁾.
- (6) Article 104(6) of the Treaty states that the Council should consider any observations which the Member State concerned may wish to make before deciding, after an overall assessment, whether an excessive deficit exists. In the case of Greece, this overall assessment leads to the following conclusions.
- (7) The general government deficit in Greece reached 3,5 % of GDP in 2007, thus exceeding the 3 % of GDP reference value. According to the Commission services' January 2009 interim forecast, the general government deficit net of one-offs is estimated at 3,6 % of GDP in 2008 (or 3,4 % of GDP including one-offs). This estimation is based on a real GDP growth rate of 2,9 % in 2008 and takes account of the latest information on the execution of the 2008 Budget Law. For 2009, the Commission services' January 2009 interim forecast projects the general government deficit net of one-offs at 4,4 % of GDP (3,7 % including one-off revenues) based on a real GDP growth projection of 0,2 % and on the basis of a prudent assessment of the 2009 Budget Law approved by Parliament on 21 December. Based on the customary unchanged policy assumption and assuming the discontinuation of one-off measures, the 2010 deficit is projected at 4,2 % of GDP. Therefore, the deficit criterion in the Treaty is not fulfilled.
- (8) General government gross debt stood at 94,8 % of GDP in 2007 and 94,6 % of GDP in 2008, well above the 60 % of GDP Treaty reference value. According to the Commission services' January 2009 interim forecast, the general government debt ratio is projected to increase further to 96,25 % in 2009 and 98,5 % of GDP by 2010. The current deficit levels and estimates of medium-term growth are not compatible with a debt ratio converging to a level below 60 % of GDP. The debt ratio cannot be considered as diminishing sufficiently and approaching the reference value at a satisfactory pace within the meaning of the Treaty and the Stability and Growth Pact.

⁽¹⁾ OJ L 209, 2.8.1997, p. 6.

⁽²⁾ OJ L 332, 31.12.1993, p. 7.

⁽³⁾ All EDP-related documents for Country can be found at the following website:
http://ec.europa.eu/economy_finance/netstartsearch/pdfsearch/pdf.cfm?mode=_m2

- (9) According to Article 2(4) of Regulation (EC) No 1467/97, 'relevant factors' can only be taken into account in the steps leading to the Council decision on the existence of an excessive deficit in accordance with Article 104(6) if the double condition – that the deficit remains close to the reference value and that its excess over the reference value is temporary – is fully met. In the case of Greece, this double condition is not met. Therefore, relevant factors are not taken into account in the steps leading to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

From an overall assessment it follows that an excessive deficit exists in Greece.

Article 2

This Decision is addressed to Hellenic Republic.

Done at Luxembourg, 27 April 2009.

For the Council
The President
A. VONDRA

COUNCIL DECISION
of 27 April 2009
on the existence of an excessive deficit in Ireland
(2009/416/EC)

THE COUNCIL OF THE EUROPEAN UNION,

for a prompt return to sound budgetary positions taking account of the economic situation.

Having regard to the Treaty establishing the European Community, and in particular Article 104(6) thereof,

Having regard to the recommendation from the Commission,

Having regard to the observations made by Ireland,

Whereas:

(1) According to Article 104 of the Treaty Member States are to avoid excessive government deficits.

(2) The Stability and Growth Pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation.

(3) The excessive deficit procedure (EDP) under Article 104, as clarified by Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure⁽¹⁾ (which is part of the Stability and Growth Pact), provides for a on the existence of an excessive deficit. The Protocol on the excessive deficit procedure ed to the Treaty sets out further provisions relating to the implementation of the EDP. Council Regulation (EC) No 3605/93⁽²⁾ lays down detailed rules and definitions for the application of the provisions of the said Protocol.

(4) The 2005 reform of the Stability and Growth Pact sought to strengthen its effectiveness and economic underpinnings as well as to safeguard the sustainability of the public finances in the long run. It aimed at ensuring that in particular the economic and budgetary background was taken fully into account in all steps in the EDP. In this way, the Stability and Growth Pact provides the framework supporting government policies

(5) Article 104(5) of the Treaty requires the Commission to address an opinion to the Council if the Commission considers that an excessive deficit in a Member State exists or may occur. Having taken into account its report in accordance with Article 104(3) and having regard to the opinion of the Economic and Financial Committee in accordance with Article 104(4), the Commission concluded that an excessive deficit exists in Ireland. The Commission therefore addressed such an opinion to the Council in respect of Ireland on 24 March 2009⁽³⁾.

(6) Article 104(6) of the Treaty states that the Council should consider any observations which the Member State concerned may wish to make before deciding, after an overall assessment, whether an excessive deficit exists. In the case of Ireland, this overall assessment leads to the following conclusions.

(7) According to the updated stability programme, the general government deficit in Ireland reached 6,3 % of GDP in 2008, thus exceeding the 3 % of GDP reference value. The deficit was not close to the 3 % of GDP reference value but the excess over the reference value can be qualified as exceptional. In particular, it resulted from a severe economic downturn in the sense of the Treaty and the Stability and Growth Pact. According to the Commission services' January 2009 interim forecast, real GDP growth in Ireland is projected to have been strongly negative in the year 2008 (– 2,0 %, somewhat worse than the Irish authorities' forecast (at – 1,4 %) in the January 2009 addendum to the update of the stability programme).

(8) Furthermore, the excess over the reference value cannot be considered temporary. According to the Commission services' January 2009 interim forecast, taking into account the measures for the current year in the budget for 2009 (but not the 1 % of GDP additional consolidation package announced in February 2009), the deficit would widen to 11 % of GDP in 2009 and, on a no-policy change basis, worsen further to 13 % of GDP in 2010. The deficit criterion in the Treaty is not fulfilled.

⁽¹⁾ OJ L 209, 2.8.1997, p. 6.

⁽²⁾ OJ L 332, 31.12.1993, p. 7.

⁽³⁾ All EDP-related documents for Ireland can be found at the following website:
http://ec.europa.eu/economy_finance/netstartsearch/pdfsearch/pdf.cfm?mode=_m2

(9) General government gross debt stood at 40,6 % of GDP in 2008, remaining below the 60 % of GDP reference value. However, according to the Commission services' January 2009 interim forecast the debt level should continue to rise quickly, resulting in a breach of the 60 % of GDP reference value by 2010.

(10) According to Article 2(4) of Regulation (EC) No 1467/97, 'relevant factors' can only be taken into account in the steps leading to the Council on the existence of an excessive deficit in accordance with Article 104(6) if the double condition — that the deficit remains close to the reference value and that its excess over the reference value is temporary — is fully met. In the case of Ireland, this double condition is not met. Therefore, relevant factors are not taken into account in the steps leading to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

From an overall assessment it follows that an excessive deficit exists in Ireland.

Article 2

This Decision is addressed to Ireland.

Done at Luxembourg, 27 April 2009.

For the Council
The President
A. VONDRA

COUNCIL DECISION
of 27 April 2009
on the existence of an excessive deficit in Spain
(2009/417/EC)

THE COUNCIL OF THE EUROPEAN UNION,

for a prompt return to sound budgetary positions taking account of the economic situation.

Having regard to the Treaty establishing the European Community, and in particular Article 104(6) thereof,

Having regard to the recommendation from the Commission,

Having regard to the observations made by Spain,

Whereas:

(1) According to Article 104 of the Treaty Member States are to avoid excessive government deficits.

(2) The Stability and Growth Pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation.

(3) The excessive deficit procedure (EDP) under Article 104, as clarified by Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure⁽¹⁾ (which is part of the Stability and Growth Pact), provides for a decision on the existence of an excessive deficit. The Protocol on the excessive deficit procedure annexed to the Treaty sets out further provisions relating to the implementation of the EDP. Council Regulation (EC) No 3605/93⁽²⁾ lays down detailed rules and definitions for the application of the provisions of the said Protocol.

(4) The 2005 reform of the Stability and Growth Pact sought to strengthen its effectiveness and economic underpinnings as well as to safeguard the sustainability of the public finances in the long run. It aimed at ensuring that in particular the economic and budgetary background was taken fully into account in all steps in the EDP. In this way, the Stability and Growth Pact provides the framework supporting government policies

(5) Article 104(5) of the Treaty requires the Commission to address an opinion to the Council if the Commission considers that an excessive deficit in a Member State exists or may occur. Having taken into account its report in accordance with Article 104(3) and having regard to the opinion of the Economic and Financial Committee in accordance with Article 104(4), the Commission concluded that an excessive deficit exists in Spain. The Commission therefore addressed such an opinion to the Council in respect of Spain on 24 March 2009⁽³⁾.

(6) Article 104(6) of the Treaty states that the Council should consider any observations which the Member State concerned may wish to make before deciding, after an overall assessment, whether an excessive deficit exists. In the case of Spain, this overall assessment leads to the following conclusions.

(7) According to the January 2009 update of the stability programme, Spain's general government deficit is estimated to have reached 3,4 % of GDP in 2008, thus exceeding the 3 % of GDP reference value. The deficit was close to the 3 % of GDP reference value but the excess over the reference value cannot be qualified as exceptional within the meaning of the Treaty and the Stability and Growth Pact with real GDP growth in Spain estimated to have attained 1,2 % of GDP in 2008, after 3,7 % in 2007, and with the output gap remaining positive. Furthermore, the excess over the reference value cannot be considered temporary.

(8) According to the Commission services' January 2009 interim forecast, the general government headline deficit will increase to 6,2 % of GDP in 2009, including deficit-increasing one-off measures worth over 0,5 % of GDP. The forecast was based on a projected GDP contraction by 2 % as well as on a prudent assessment of both the 2009 Budget Law and the fiscal package announced by the Spanish authorities on 27 November 2008. Based on the customary unchanged policies assumption, the 2010 deficit is projected at 5,7 % of GDP. Therefore, the deficit criterion in the Treaty is not fulfilled.

⁽¹⁾ OJ L 209, 2.8.1997, p. 6.

⁽²⁾ OJ L 332, 31.12.1993, p. 7.

⁽³⁾ All EDP-related documents for Spain can be found at the following website:
http://ec.europa.eu/economy_finance/netstartsearch/pdfsearch/pdf.cfm?mode=_m2

- (9) General government gross debt remains well below the 60 % of GDP reference value and stood at an estimated 39,5 % of GDP in 2008 according to the January 2009 stability programme. However, according to the Commission services' January 2009 interim forecast, the general government debt-to-GDP ratio is projected to increase significantly reaching 53 % in 2010.
- (10) According to Article 2(4) of Regulation (EC) No 1467/97, 'relevant factors' can only be taken into account in the steps leading to the Council decision on the existence of an excessive deficit in accordance with Article 104(6) if the double condition – that the deficit remains close to the reference value and that its excess over the reference value is temporary – is fully met. In the case of Spain, this double condition is not met. Therefore, relevant factors are not taken into account in the steps leading to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

From an overall assessment it follows that an excessive deficit exists in Spain.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Luxembourg, 27 April 2009.

For the Council
The President
A. VONDRA

COUNCIL DECISION
of 25 May 2009
appointing one Estonian member of the European Economic and Social Committee
(2009/418/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Article 1

Having regard to the Treaty establishing the European Community, and in particular Article 259 thereof,

Ms Reet TEDER, Eesti Kaubandus-Tööstuskoja poliitika-direktor — I grupp — tööandjate esindajad (Policy Director of the Estonian Chamber of Commerce and Industry — Group I — employers' representatives) is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2010.

Article 2

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 167 thereof,

This Decision shall take effect on the day of its adoption.

Having regard to Decision 2006/524/EC, Euratom ⁽¹⁾,

Having regard to the proposal of the Estonian Government,

Done at Brussels, 25 May 2009.

Having regard to the opinion of the Commission,

Whereas a member's seat on the European Economic and Social Committee has become vacant following the resignation of Ms Kristina TSHISTOVA,

For the Council

The President

J. ŠEBESTA

⁽¹⁾ OJ L 207, 28.7.2006, p. 30.

COUNCIL DECISION
of 25 May 2009
appointing one Belgian member of the European Economic and Social Committee
(2009/419/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Article 1

Having regard to the Treaty establishing the European Community, and in particular Article 259 thereof,

Mr Ronny LANNOO, Adviseur-generaal UNIZO, is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2010.

Article 2

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 167 thereof,

This Decision shall take effect on the day of its adoption.

Having regard to Decision 2006/651/EC, Euratom ⁽¹⁾,

Done at Brussels, 25 May 2009.

Having regard to the proposal of the Belgian Government,

Having regard to the opinion of the Commission,

Whereas a member's seat on the European Economic and Social Committee has become vacant following the resignation of Ms Christine FAES,

For the Council
The President
J. ŠEBESTA

⁽¹⁾ OJ L 269, 28.9.2006, p. 13.

COMMISSION

COMMISSION DECISION

of 28 May 2009

amending Decision 2006/133/EC requiring Member States temporarily to take additional measures against the dissemination of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle *et al.* (the pine wood nematode) as regards areas in Portugal, other than those in which it is known not to occur

(notified under document number C(2009) 3868)

(2009/420/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽¹⁾, and in particular the fourth sentence of Article 16(3) thereof,

Whereas:

(1) In accordance with Commission Decision 2006/133/EC ⁽²⁾, Portugal is implementing an eradication plan against the dissemination of the pine wood nematode.

(2) On 16 January 2009 the United Kingdom informed the Commission of the interception of wood packaging material coming from Portugal containing live PWN and not marked in accordance with the FAO International Standard for Phytosanitary Measures No 15 on Guidelines for regulating wood packaging material in international trade (hereinafter FAO International Standard for Phytosanitary Measures No 15) as required by Decision 2006/133/EC.

(3) On 20 February 2009 Belgium informed the Commission of five non-compliant consignments of bark and wood waste coming from Portugal. The intercepted bark was accompanied by certificates of phytosanitary treatment by fumigation. Yet Decision 2006/133/EC requires bark to undergo heat treatment. In the case of the intercepted consignment of wood waste, in addition, inconsistencies were found in the accompanying documentation.

(4) On 11 February 2009, Spain informed the Commission of interceptions of consignments of bark and wood waste of susceptible wood coming from Portugal in which live PWN was found. On 20 February 2009 and 3 March 2009, Spain informed the Commission of interceptions of consignments of susceptible wood coming from Portugal which were not accompanied by a plant passport, as required in accordance with point 1(a) of the Annex to Decision 2006/133/EC. On 3, 6 and 18 March 2009, Spain informed the Commission of interceptions of consignments of wood packaging material from Portugal not marked in accordance with FAO International Standard for Phytosanitary Measures No 15 as required by Decision 2006/133/EC.

(5) On 1 April 2009, Ireland notified to the Commission the interception of wood packaging material coming from Portugal in which live PWN was found. Furthermore, Ireland notified on 21 April 2009 to the Commission the interceptions of four consignments of wood packaging material coming from Portugal not marked in accordance with FAO International Standard for Phytosanitary Measures No 15.

(6) On 24 March 2009 and 3 April 2009, Lithuania informed the Commission of the interception of wood packaging material coming from Portugal not marked in accordance with FAO International Standard for Phytosanitary Measures No 15.

(7) Inspections carried out by the Commission in Portugal from 2 to 11 March 2009 revealed that movements of wood and wood packaging material are not fully controlled, as required by Decision 2006/133/EC. In particular, inspectors discovered several cases of non-compliance while controlling road controls at the Spanish border. Consequently the risk cannot be excluded that PWN will be spread to areas outside the demarcated areas in Portugal.

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.

⁽²⁾ OJ L 52, 23.2.2006, p. 34.

- (8) In the light of those new findings in several Member States and of the results of the mission carried out by the Commission, it is necessary that Portugal intensifies the official controls applied on movement of susceptible wood, bark and plants from the demarcated areas to other areas up to the maximum feasible level of controls in order to ensure that the conditions set out in Decision 2006/133/EC are met. Those official controls should focus on the movements presenting the highest risk of spreading live PWN outside the demarcated areas. To limit the risks of fraud, the official checks should be carried out where susceptible wood, bark and plants are leaving the demarcated areas. The results of those official controls should be communicated to the Commission and the other Member States on a weekly basis to allow them to follow the developments of the situation in Portugal closely.
- (9) In addition, to increase surveillance on materials that could promote spread of live PWN into other Member States, it is appropriate to reinforce the level of official controls carried out by the Member States on susceptible wood, bark and plants, coming from Portugal and moved into their territory. Those official controls should consist of a documentary check, identity check and, as appropriate, a plant health check, which may include testing for the presence of PWN. The frequency of the official controls should be proportionate to the risk. In case of confirmation of non-compliance, the appropriate measures, as provided for in Directive 2000/29/EC, should be taken.
- (10) At the moment Decision 2006/133/EC does not provide for requirements to be applied on movements of susceptible wood, originating in areas other than the demarcated areas in the form of dunnage, spacers and bearers, including that which has not kept its natural round surface, as well as in the form of packing cases, boxes, crates, drums and similar packings, pallets, box pallets and other load boards, pallet collars, whether or not actually in use in the transport of objects of all kinds (hereafter 'susceptible wood packaging material') from the demarcated areas to other areas in Member States or in third countries as well as movement of these materials from part of the demarcated area in which PWN is known to occur to the part of the demarcated area designated as buffer zone.
- (11) The absence of such requirements follows from the fact that susceptible wood packaging material not originating in the demarcated areas does not present a risk of carrying PWN even if circulated within the demarcated areas. However it is currently not possible to distinguish such wood packaging material from wood packaging material originating within the demarcated areas which is not marked according to Annex II to FAO International Standard for Phytosanitary Measures No 15 in contradiction with Decision 2006/133/EC.
- (12) As a result, in application of the precautionary principle, susceptible wood packaging material of any origin, leaving the demarcated areas without having been marked according to Annex II to FAO International Standard for Phytosanitary Measures No 15 has to be considered by the responsible official bodies of Member States as material which is not in compliance with Decision 2006/133/EC. Therefore it is appropriate to prohibit the movements of such material, originating in areas other than the demarcated areas, from the demarcated areas into areas other than demarcated areas in Member States or in third countries, as well as movement of those materials from the part of the demarcated areas in which PWN is known to occur to the part of the demarcated areas designated as buffer zone, unless the material can be identified as free of risk of spreading PWN.
- (13) Such material should be identified as free of risk of spreading PWN when it has undergone one of the approved treatments specified in Annex I to FAO International Standard for Phytosanitary measures No 15 and it has been marked according to Annex II to the said Standard. At the moment there is no alternative that can provide the same level of guarantees given, in particular, that there is no system in place at Community level requiring the responsible official bodies of the Member States to certify the origin of the wood used to produce susceptible wood packaging material, and that the introduction of such provisions is not possible at short term.
- (14) There are indications that boxes entirely composed of wood of 6 mm thickness or less constitute a lower risk for spreading PWN compared to thicker sizes. It is therefore appropriate to exempt such boxes, whatever the origin of the wood used to produce them, from the treatment and marking obligations as provided for in the FAO International Standard for Phytosanitary Measures No 15.
- (15) In order to give sufficient time to the operators to adapt to the requirements set out in this Decision, the latter should not apply before 16 June 2009.
- (16) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,
- HAS ADOPTED THIS DECISION:
- Article 1*
- Decision 2006/133/EC is amended as follows:
1. in Article 2, the following paragraph is inserted after the first paragraph:
- 'When verifying compliance with the conditions set out in point 1 of the Annex, Portugal shall apply the maximum

feasible level of official controls to movements of susceptible wood, bark and plants from demarcated areas situated in its territory to areas other than demarcated areas in Member States or in third countries. It shall pay particular attention to the movements which present the highest risk of transporting live PWN outside the demarcated areas. Those official controls shall be carried out at the points where the susceptible wood, bark and plants are leaving the demarcated areas. All results shall be communicated to the Commission and the other Member States on a weekly basis.;

2. Article 3 is replaced by the following:

‘Article 3

1. Member States of destination other than Portugal shall carry out official controls on susceptible wood, bark and plants, coming from Portugal and moved into their territory. These controls shall include a documentary check comprising a check for the presence and the conformity of the marking in accordance with this Decision, an identity check and, as appropriate, a plant health check which may include testing for the presence of PWN.

2. Official controls in accordance with paragraph 1 shall be carried out at a frequency depending in particular on the risk associated with different types of susceptible wood, bark

and plants and the history of compliance with the requirements of this Decision of the operator responsible for the movement of susceptible wood, bark and plants.

3. In case non-compliances are confirmed following official controls carried out in accordance with paragraph 1, appropriate measures, similar to the ones referred to in Article 11 of Directive 2000/29/EC shall be taken.;

3. the Annex is amended in accordance with the Annex to this Decision.

Article 2

This Decision shall apply from 16 June 2009.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 28 May 2009.

For the Commission

Androulla VASSILIOU

Member of the Commission

ANNEX

The Annex to Decision 2006/133/EC is amended as follows:

1. point (1)(d) is replaced by the following:

'(d) susceptible wood in the form of dunnage, spacers and bearers, including that which has not kept its natural round surface, as well as in the form of packing cases, boxes with exception of boxes entirely composed of wood of 6 mm of thickness or less, crates, drums and similar packings, pallets, box pallets and other load boards, pallet collars, whether or not actually in use in the transport of objects of all kinds, that wood shall not be allowed to leave the demarcated area; the responsible official body may grant an exception from this prohibition where that wood has been subject to one of the approved treatments as specified in Annex I to the FAO International Standard for Phytosanitary Measures No 15 on *Guidelines for regulating wood packaging material in international trade* and marked according to Annex II to the said Standard.'

2. point (2)(g) is replaced by the following:

'(g) susceptible wood originating in the demarcated areas in the form of newly produced packing cases, boxes with exception of boxes entirely composed of wood of 6 mm of thickness or less, crates, drums and similar packings, pallets, box pallets and other load boards, pallet collars, dunnage, spacers and bearers, including that which has not kept its natural round surface, shall be subject to one of the approved treatments as specified in Annex I to the FAO International Standard for Phytosanitary Measures No 15 on *Guidelines for regulating wood packaging material in international trade* and marked according to Annex II to the said Standard.'

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